



# THERE ARE ALTERNATIVES

A handbook for preventing unnecessary immigration detention



**Introducing CAP: The Community Assessment and Placement model for working with refugees, asylum seekers and irregular migrants**

## INTERNATIONAL DETENTION COALITION

The International Detention Coalition (IDC) is a coalition of 250 non-governmental groups and individuals working in over 50 countries to protect the rights of refugees, asylum seekers and migrants in immigration detention around the world through education, networking, advocacy, reporting and research.

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# GLOSSARY

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TERM	DEFINITION
Abscending	Actions taken by an individual to avoid contact with immigration authorities in order to avoid legal migration proceedings and outcomes.
Alternative to detention	For the purposes of this research, alternatives to detention was defined as any legislation, policy or practice that allows for asylum seekers, refugees and migrants to reside in the community with freedom of movement while their migration status is being resolved or while awaiting deportation or removal from the country.
Alternative <i>forms of</i> detention	Any form of management that is designed to substantially curtail or completely deny freedom of movement has been regarded as a <i>form of</i> <b>detention</b> .
Asylum applicant	See <b>asylum seeker</b> .
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 resolution	A final outcome on an immigration matter including permission to remain on the territory or departure from the territory.
Closed accommodation	Accommodation facilities where people can move about within the facility but cannot leave the premises. We note in other settings the term 'closed' is sometimes used to describe detention facilities where the detainees are generally not allowed to leave their room.
Compliance	To act in accordance with any stated expectations or conditions imposed by immigration authorities while their migration status is being resolved or while awaiting deportation or removal from the country. Compare with independent departure.
Detention	"...confinement within a narrowly bounded or restricted location, including prisons, closed camps, detention facilities or airport transit zones, where freedom of movement is substantially curtailed, and where the only opportunity to leave this limited area is to leave the territory." UNHCR (1999). <i>UNHCR's Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers</i> , February 1999.
Deportation	The act of a State to remove a <b>migrant</b> from its territory after the migrant has been refused admission or has forfeited or never obtained permission to remain on the territory.
Forced departure	See <b>deportation</b> .
Immigration detention	See <b>detention</b> .
Independent departure	Compliance of a migrant with the obligation to depart a country within a specified time period.

<b>TERM</b>	<b>DEFINITION</b>
Irregular migrant	A <b>migrant</b> who does not fulfil, or no longer fulfils, the conditions of entry, stay or residence within a State.
Migrant	A person within a State's territory who is a citizen of another State or a <b>stateless person</b> from another territory.
Open accommodation	Accommodation facilities in which people are able to come and go from the premises at will.
Presumption against detention	A presumption against detention is any law, policy or practice that ensures the right to liberty and protection from arbitrary detention is applied in the first instance.
Reception centre	See <b>open accommodation</b> .
Refugee	A person recognised by a qualified authority as having a legitimate claim under the 1951 Convention relating to the Status of Refugees.
Stateless person	An individual who is not considered a citizen by any State.
Status resolution	See <b>case resolution</b> .
UNHCR	Office of the United Nations High Commissioner for Refugees (UNHCR).
Voluntary departure	See independent departure.
Voluntary return	The decision of a migrant to depart the country entirely voluntarily, such as when legal avenues to pursue residency are still open to them.

Many of these definitions were influenced by those found in the European Migration Network (2010) *Asylum and migration glossary: A tool for better comparability*. Retrieved 30.03.2011 from <http://www.unhcr.org/refworld/docid/4ab25b972.html>

# FINDINGS AND THEIR IMPLICATIONS

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. Despite the clear direction to authorities to first consider less onerous options, there is little clarity over how this can be achieved in a systematic manner.

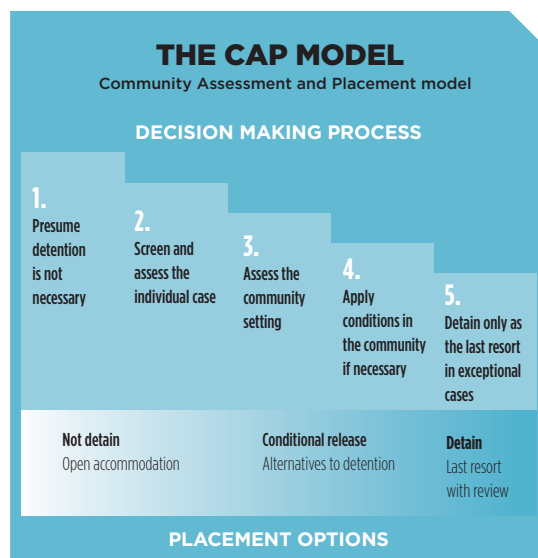
This research was undertaken to address this gap. The aim was to identify and describe any legislation, policy or practice that allows for asylum seekers, refugees and migrants to reside in the community with freedom of movement while their migration status is being resolved or while awaiting deportation or removal from the country. This was achieved through an extensive review of existing literature; an international online survey of 88 participants in 28 countries; and international field work in nine countries including in-depth interviews with 57 participants and eight site visits. Participants included representatives of governments, non-governmental organisations, international human rights organisations and key agencies from the United Nations.

The research has identified a range of mechanisms currently in use that can assist in preventing unnecessary detention by ensuring detention is only applied as the last resort in exceptional cases. In particular, the research found that the most significant policies for preventing unnecessary detention lie in the process of determining who should be detained and the reasons for their detention, rather than in traditional conceptions of 'alternative to detention' programs. In addition, those countries that only used detention in a small number of cases or for short periods of time did not see themselves as making use of 'alternative to detention' programs. Instead, their normal way of operating involved managing most irregular migrants and asylum seekers in a community setting.

The research also identified common characteristics of successful community management programs

and, where able, established the reasons why these factors contributed to compliance, cost and health and wellbeing outcomes. Such 'alternative to detention' programs 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 facilities as part of a management system, the location of the individual is not of primary concern. Instead, the focus is on assessing each case and ensuring that the community setting contains the necessary structures and conditions that will best enable the individual to work towards a resolution of their migration status with authorities.

By taking a strengths-based approach to this area of policy, the research has been able to identify and incorporate positive examples from a range of countries into one framework. The Community Assessment and Placement model (CAP model) identifies five steps that prevent and reduce the





likelihood of unnecessary detention. These steps are:

1. Presume detention is not necessary.
2. Screen and assess the individual case.
3. Assess the community setting.
4. Apply conditions in the community if necessary.
5. Detain only as the last resort in exceptional cases.

The CAP model has been designed as a non-prescriptive framework to assist governments in their exploration and development of preventative mechanisms and alternatives to detention. Although designed in this way, these five mechanisms are also steps that could be taken in individual cases to assess the need for detention and to ensure detention is only applied as a last resort in exceptional cases.

Throughout the report, examples of current practice are provided to assist in understanding how such a process can be implemented in a range of settings. For example:

- Argentina operates with a presumption against detention.
- New Zealand has established alternatives to detention in law.
- Hong Kong has developed criteria to assess the need to detain with release on 'own recognisance' and basic needs met for eligible groups.
- Indonesia has established a mechanism by which irregular migrants holding UNHCR documentation may live in the community.
- The United Kingdom has increased investment in early legal advice because it results in quicker and more durable decisions, saving money overall.
- Belgium has expanded its return counselling program for families because compliance rates remained high and children were no longer detained.

The research identified a range of benefits associated with the prevention of unnecessary detention and in the use of alternative to detention programs, including that they:

- Cost less than detention

- Maintain high rates of compliance and appearance
- Increase voluntary return and independent departure rates
- Reduce wrongful detention and litigation
- Reduce overcrowding and long-term detention
- Respect, protect and fulfil human rights
- Improve integration outcomes for approved cases
- Improve client health and welfare

This handbook is designed to expand current policy debates beyond the traditional interpretation of an 'alternative to detention' by looking more broadly at mechanisms that prevent and reduce unnecessary detention. Policy makers and other stakeholders will be able to use this handbook when assessing current practice in their own countries by providing a conceptual framework for discussion of systemic issues and by describing a range of concrete examples for exploring possibilities for practice and implementation. Despite its focus on national systems, the handbook is also a resource for stimulating debate in regional and international forums by establishing a shared understanding of key concepts and presenting a range of examples for consideration.

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 and introduce appropriate supports and conditions in the community as needed, authorities can learn to manage people in the community in the majority of cases without the financial and human cost that detention incurs. The research 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.

# EXECUTIVE SUMMARY

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## 1. Introduction

This research came about in response to the growing interest of governments and other stakeholders around the world in finding reliable, cost-effective and humane ways of managing asylum seekers, refugees and irregular migrants without the financial and human costs that detention incurs. Immigration detention is a growing phenomenon of modern governance as governments strive to regulate growing cross-border migration and limit the number of migrants who do not have legal status on their territory. Detention capacity continues to expand despite well established concerns that detention does not deter irregular migrants and asylum seekers; that it interferes with human rights; and that it is known to harm the health and wellbeing of detainees.

Notwithstanding this trend, when we take an international perspective and compare existing migration policy and practice across different contexts, we find that most countries do not use detention as the first option in the majority of cases; that a number of countries rarely resort to immigration detention, if at all; and that successful migration systems break down the population before considering management or placement options. This international perspective allows us to take into account the extensive systems in operation designed to work with a range of migrants in a community setting while a migration issue is being resolved.

The aim of this research was to identify and describe examples of community-based alternatives to immigration detention. For the purposes of this research, 'alternatives to immigration detention' include any legislation, policy or practice that allows for asylum seekers, refugees and migrants to reside in the community with freedom of movement while their migration status is being resolved or while awaiting deportation or removal from the country. Our 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 that 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 populations.
- Describe the role of governments and their institutions in creating and implementing alternatives to detention.
- Describe the role of non-governmental 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 that are regarded as contributing to the effectiveness of community-based alternatives to detention.

## 2. Methods: Online survey and international field work

This research made use of an iterative qualitative research design by which each stage of research informs subsequent data collection procedures. The first stage of the research involved an extensive review of existing research, program evaluations and policy documents in this field. This was used to inform the design of an international online survey, with input from key staff of the International Detention Coalition. The survey, being the second stage of research, resulted in responses from 88 participants in 28 countries, providing an overview of the current use of detention and its alternatives in a range of countries and regions.

In the final stage of research, the researcher (Sampson) undertook in-depth field work in nine countries between January and March 2010, resulting in 43 interviews with 57 participants. Participants included representatives of governments, non-governmental organisations, international advocacy organisations and UN agencies. The field work included

site visits and interviews regarding specific alternative to detention programs in Hungary, Spain, Belgium, the Netherlands, Sweden, the United Kingdom, the U.S.A. and Hong Kong. Additional interviews were undertaken with representatives of international organisations located in Geneva, Switzerland.

Finally, staff of the International Detention Coalition provided the researcher with copies of their notes during the research period that included details of alternative to detention policies provided to them by experts at international meetings or by member organisations of the International Detention Coalition.

### **3. Key findings and background to the model: Combining mechanisms that prevent unnecessary detention with successful community management models**

The research has identified a range of mechanisms currently in use that can assist in preventing unnecessary detention by ensuring detention is only applied as the last resort in exceptional cases. The research found that there are significant differences between countries in terms of the groups of people being detained and the reasons for their detention. These differences in detention policy had a much more substantial impact on the size of the detention infrastructure and population than any 'alternative to detention' program. In addition, those countries that only used detention in a small number of cases or for short periods of time did not see themselves as making use of 'alternative to detention' programs. Instead, their normal way of operating involved managing most irregular migrants and asylum seekers in a community setting. These findings highlighted that the most significant detention policies lie in the process of determining who should be detained and the reasons for their detention, rather than in traditional conceptions of 'alternative to detention' programs.

The research also identified common characteristics of successful community management programs and, where able, established the reasons why these factors contributed to compliance, cost and health and wellbeing outcomes. Such 'alternative to detention' programs 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 facilities as part of a management system, the location of the individual is not of primary concern. Instead, the focus is on assessing each case and ensuring that the community setting contains the necessary structures and conditions that will best enable the individual to work towards a resolution of their migration status with authorities.

Although further research is required, analysis of the existing evidence suggests that:

- Irregular migrants and asylum seekers rarely abscond while awaiting the outcome of a visa application, status determination or other lawful process, if in their destination country.
- Irregular migrants and asylum seekers 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.

#### **Successful programs understand and break down the population to make informed decisions about management and placement options.**

- Irregular migrants and asylum seekers are better able to comply with requirements if they can meet their basic needs while in the community.

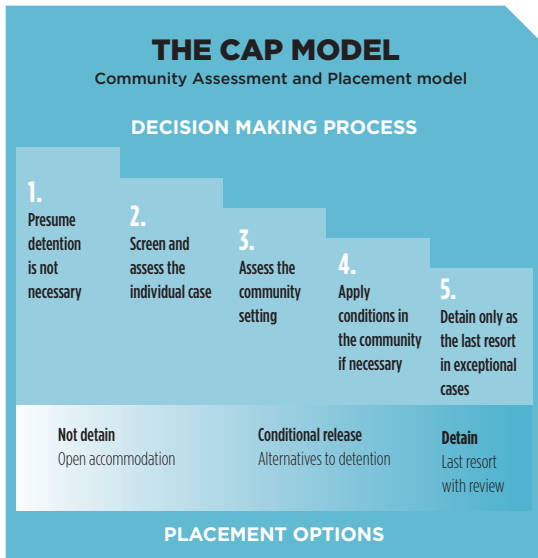
#### **Successful programs ensure basic needs can be met.**

- Irregular migrants and asylum seekers are more likely to accept and comply with a negative visa decision if they believe:
  - They have been through a fair visa determination or refugee status determination process.
  - They have been informed and supported through the process.
  - They have explored all options to remain in the country legally.

#### **Successful programs support clients through the bureaucratic process with information and advice to explore all options to remain in the county legally and, if needed, to consider all avenues to depart the country.**

### **4. Introducing CAP: The Community Assessment and Placement model**

The results have been used to develop the CAP, the Community Assessment and Placement model, which



Key examples for this section are Hungary, the Philippines and Hong Kong.

are important tools in reducing unnecessary detention, as authorities can identify and assess levels of risk and vulnerability as well as the strengths and needs of each person. The research identified four key areas of assessment including:

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

Key examples for this section are the United Kingdom, Spain and Sweden.

**4.3 Assess the community setting**  
In order to best match an individual with an appropriate and effective program of response it is necessary to assess those factors in the community setting that can either support

describes five steps authorities can take to ensure that detention is only used as the final option in exceptional cases after all other alternatives have been tried or assessed as inadequate in the individual case.

Key examples for this section are Argentina, Venezuela and New Zealand.

**4.1 Presume detention is not necessary**  
The research identified a number of laws, policies or practices that presume detention is not necessary when resolving an individual's migration status.

Such a 'presumption against detention' establishes each individual's right to freedom of movement and helps to prevent immigration officials from resorting to confinement when other options may suffice. This can be reinforced when alternative measures are also established in law or policy, clearly directing officials to consider and try less intrusive management strategies. Two strategies for protecting the right to freedom of movement were:

- A presumption against detention
- A mandate to consider alternatives to detention

**4.2 Screen and assess the individual case**  
Screening and assessment of the individual case

or undermine a person's ability to comply with immigration authorities. Such contextual factors may have a significant impact on the individual's ability to maintain their commitments with authorities. These are also areas that can be improved upon through government or non-governmental organisations' investment, in order to strengthen the community context and increase the number of people who are spared unnecessary detention. Four key aspects of a community setting are:

- Case management
- Legal advice and interpretation
- Ability to meet basic needs
- Documentation

Key examples for this section are the U.S.A., Australia, Belgium and Canada.

**4.4 Apply conditions in the community setting if necessary**  
If authorities remain concerned about the placement of an individual in the community, there are a range of additional mechanisms that can be introduced to promote engagement with authorities that do not place undue restrictions on freedom of movement. These

conditions, usually associated with 'alternative to detention' programs, variously rely on the following mechanisms:

- Individual undertakings
- Monitoring
- Supervision
- Intensive case resolution
- Negative consequences for non-compliance

Key examples for this section are Hungary, Australia, Argentina and Sweden.

#### 4.5 Detain only as a last resort in exceptional cases

The use of confinement as a management tool with people in an administrative procedure is highly controversial due to its negative impact on health, wellbeing and human rights.

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. Detention should be avoided entirely for vulnerable groups and be in accordance with international, regional and national law and standards. Despite serious concerns regarding its use, detention is included here to be used only as a last resort for exceptional cases when all other options have been tried and have failed. Areas of detention that require strict regulation and monitoring include:

- Grounds for detention
- Independent oversight including automatic judicial review and monitoring
- Avenues for release
- Length of time in detention
- Conditions
- Treatment including behaviour management
- Access to information and the outside world

## 5. Discussion and conclusions

This research has identified and described those laws, policies and practices that allow asylum seekers, refugees and irregular migrants 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. In taking a broad approach to the concept of 'alternatives to

detention', the research has been able to identify mechanisms currently in use that prevent unnecessary detention and reduce the length of time someone is detained, while also outlining key factors impacting on the effectiveness of community management programs.

The CAP model has been designed as a non-prescriptive framework to assist governments in their exploration and development of preventative mechanisms and alternatives to detention. Although designed in this way, these five mechanisms are also steps that could be taken in individual cases to assess the need for detention and to ensure detention is only applied as a last resort in exceptional cases.

The research has identified several benefits in restricting the application of detention and prioritising community-based management options, including in the key areas of compliance, cost, and health and wellbeing. The range of benefits identified include that these options:

- Cost less than detention
- Maintain high rates of compliance and appearance
- Increase voluntary return and independent departure rates
- Reduce wrongful detention and litigation
- Reduce overcrowding and long-term detention
- Respect, protect and fulfil human rights
- Improve integration outcomes for approved cases
- Improve client health and welfare

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 and introduce appropriate supports and conditions in the community as needed, authorities can learn to manage people in the community in the majority of cases without the financial and human cost that detention incurs. The research 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.

# 1. INTRODUCTION

## 1.1 Background

The number of migrants crossing national borders has increased over recent decades as the global population increases and becomes more mobile and as more countries gain independence and establish new territorial boundaries.<sup>1</sup> 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.<sup>2</sup> 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 migration.<sup>3</sup>

This regulation of migration is considered a core function of modern governments, resulting in a range of systems to manage the flow of foreigners into a nation's territory. Despite the success of many of these systems of governance in managing large flows of people well, a perception of migration as being unregulated and out-of-control has developed in some populations. These negative perceptions are variously associated with concerns regarding security and crime, job availability and the maintenance of cultural heritage.<sup>4</sup> The arrival of migrants in an irregular manner can become a particular focus for these concerns, making the regulation of migration a challenging and sensitive area of policy for many governments.

Although managing migration and responding to irregular migration is a constantly changing and complex task, it is also an everyday phenomenon and a normal part of operating a government. All countries are facing the dilemma of monitoring legal migration programs and managing the arrival and/or stay of irregular migrants and asylum seekers while also ensuring protection is available for vulnerable individuals when needed. In some countries this dilemma is presented as a difficult and perhaps overwhelming problem, spurred on by public debate and political controversy, while other countries display

confidence in their systems to govern the movement of people well.

## 1.2 The use of detention in migration management

The use of immigration detention has been growing over the past 20 years as governments strive to control migrant entry and stay.<sup>5</sup> In many western countries, this focus on enforcement became magnified in the wake of the terrorist attacks of 2001, further justifying the expansion of detention.<sup>6</sup> Whatever the cause, many countries have recently intensified their efforts to reduce the number of irregular migrants on their territory.<sup>7</sup> As a core element of this trend, detention is being used by different governments at various stages of the process including on-arrival; throughout the processing of claims; and in preparation for deportation. Increasingly, destination countries are investing in the interception capacity and detention infrastructure of countries of transit as an element of border control.<sup>8</sup> As a result, it is estimated that hundreds of thousands of migrants are detained around the world, although the number of detainees at any one time is unknown.<sup>9</sup>

As described in Section 4.5, there are many different forms or types of immigration detention. For the purposes of this report, immigration detention is defined as:

*...confinement within a narrowly bounded or restricted location, including prisons, closed camps, detention facilities or airport transit zones, where freedom of movement is substantially curtailed, and where the only opportunity to leave this limited area is to leave the territory.<sup>10</sup>*

## 1.3 Concerns regarding the use of immigration detention

Immigration detention is used by governments as both a migration management tool and as a political tool. As a tool for managing irregular migrants, it is used to limit the entry of non-citizens to the territory; to house non-citizens with no valid visa while their status

is assessed and/or resolved; and to ensure compliance with negative visa application outcomes including deportation. In this sense, it is part of a system for managing the entry and exit of non-citizens on the territory.

Detention is also sometimes used by governments 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. 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 evidence shows the use of detention for these reasons is unsupportable given:

- **Detention is not an effective deterrent**
- **Detention interferes with human rights**
- **Detention has been shown to harm health and wellbeing**

#### **Detention is not an effective deterrent**

Firstly, existing evidence and government statements<sup>11</sup> suggest a policy of detention is not effective in deterring asylum seekers, refugees and irregular migrants. Despite increasingly tough detention policies being introduced over the past 20 years, the number of irregular arrivals has not reduced.<sup>12</sup> Several studies have been undertaken to establish which factors most impact the choice of destination of asylum seekers and irregular migrants.<sup>13</sup> According to this research, the principal aim of asylum seekers and refugees is to reach a place of safety.<sup>14</sup> 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. 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.<sup>15</sup> 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; or where they can already speak the language of the destination country.<sup>16</sup> 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.<sup>17</sup> This evidence shows detention has little impact on destination choices.

#### **Detention interferes with human rights**

Secondly, 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.<sup>18</sup> As detention interferes with an individual's human rights, it must be applied only in those circumstances outlined in national law; in proportion to the objectives underlying the reason for the detention; when necessary in that particular case; and applied without discrimination.<sup>19</sup> 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*, as is often the case when detention is used to convey a message of deterrence to potential irregular arrivals and a message of border control to citizens.

#### **Detention has been shown to harm health and wellbeing**

The third 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. 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)<sup>20</sup> and that mental health deteriorates the longer someone is detained.<sup>21</sup> 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.<sup>22</sup> The impact on children is particularly

disturbing, especially as the consequences for their cognitive and emotional development may be lifelong.<sup>23</sup> 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.<sup>24</sup> Searching for alternatives that do not rely on confinement is all the more important in light of the evidence of the harm that it can produce.

Given these concerns, issues of political authority and public sentiment are best addressed without recourse to detention, such as through strong leadership and confidence in the effectiveness of migration policy and its implementation. Other programs must be used when attempting to regulate irregular migration. Addressing the root causes of irregular migration and stay can include increasing investment in development and peace-making endeavours in major source countries;<sup>25</sup> expanding legal avenues to enter the country either temporarily, as with short-term working visas, or long-term as is needed for family reunion;<sup>26</sup> increasing the resettlement of people with protection needs directly from countries of first asylum; developing complementary protection mechanisms to address the needs of the range of forced migrants;<sup>27</sup> and providing avenues for regularisation.<sup>28</sup>

#### **1.4 Aims and objectives of this research**

This research was undertaken to identify alternatives to detention that fulfil the objective of managing irregular migrants for those reasons established in international law.<sup>29</sup> The particular aim of this research is to identify and describe examples of community-based alternatives to immigration detention (as defined in Section 1.5). Our objectives are 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 populations.
- Describe the role of governments and their

institutions in creating and implementing alternatives to detention.

- Describe the role of non-governmental 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.

#### **1.5 Definition of ‘alternatives to detention’**

For the purposes of this research, ‘alternatives to immigration detention’ include:

*Any legislation, policy or practice that allows for asylum seekers, refugees and migrants to reside in the community with freedom of movement while their migration status is being resolved or while awaiting deportation or removal from the country.*

This very broad definition was developed to ensure all areas of policy that might impact on the number of people being held in detention could be included in the research. By taking this perspective, we hope to stimulate discussions about whether those people currently in detention really need to be there, and whether existing systems for managing migrants outside of detention can be translated into a program of response for those asylum seekers, refugees and irregular migrants currently being detained. The development of this concept during the research is further described in Section 3.

#### **1.6 What do we already know about alternatives to detention?**

Despite the interest in alternatives to detention from a range of parties, research on this issue has been slow to develop. Existing studies have largely focused on alternative to detention programs for asylum seekers,<sup>30</sup> thereby excluding major groups of irregular migrants who are currently detained. While some consideration has been given to interpreting international human rights frameworks that provide a mandate for pursuing alternative measures,<sup>31</sup> there is very limited information in the public realm internationally about the effectiveness of different policies or programs in managing irregular migrants in the community for



either destination or transit countries or the experience of such policies from the point of view of asylum seekers and irregular migrants. Systematic assessment of national programs is minimal,<sup>32</sup> with evaluations by government generally restricted to assessments of pilot programs.<sup>33</sup> While non-governmental organisations have stepped in to bridge this gap when able,<sup>34</sup> the lack of access to government statistics has resulted in small studies with less reliable conclusions. The lack of initiative or disclosure by governments in evaluating their migration management programs has restricted productive dialogue, as the effectiveness of alternatives to detention in different contexts and in terms of different objectives such as compliance, client wellbeing and cost is largely unknown.

Although there is a dearth of reliable information in this field, an overview of existing policy and practice at the international level highlights that there are the extensive systems in operation designed to work with migrants in a community setting while a migration issue is being resolved. By extending our research beyond the traditional definition of 'alternatives to detention', 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 immigration detention, if at all.**
- **Successful migration systems break down the population to make informed decisions about management and placement options.**

Although the normal practice of managing migration varies widely across the world, most countries do not rely *primarily* on detention to manage asylum seekers, refugees and irregular migrants while resolving a migration matter. The cost of detention and the number of migrants who might be eligible to be detained are just too great. For instance, a large proportion of irregular migrants in many countries are tourists or short-term visitors who overstay their visa.<sup>35</sup> These people are rarely detained but, rather provided

with avenues for resolving their situation through voluntary departure or through an application for a new visa or other status. 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.<sup>36</sup> This is important to acknowledge and draw on as a source of expertise when developing alternative to detention systems.

Another key trend is that successful migration management programs understand that irregular migrants and asylum seekers are a highly diverse population with different needs and motivations.<sup>37</sup> This has been well established in the concept of 'mixed migration flows' currently informing strategies to manage groups of irregular migrants and asylum seekers at the point of entry.<sup>38</sup> Non-citizens currently at risk of detention in various contexts can include a broad array of people including, *inter alia*, international students who have breached a condition of their education visa; persons who cannot be returned to their country of origin due to a recent natural disaster, violent conflict or lack of co-operation of their own government; women who have been working 'illegally' as a result of being trafficked into prostitution; tourists who have overstayed their 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; 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 their individual protection needs and the international obligations owing to them. Identifying and discriminating between these different populations can have a significant impact on the decision to detain and on the design of programs for managing people in the community. Effective migration systems incorporate a process to break down the population of individuals without legal status.

## 2. METHODS

This study made use of qualitative research methods to explore the laws, policies and practices employed by governments to manage irregular migrants and asylum seekers in the community with freedom of movement. Qualitative methods were considered most useful in collecting the kind of information required to fulfil the objectives of the research.

The study was approved by the La Trobe University Faculty of Humanities and Social Sciences Ethics Committee (approval #843-09).

### 2.1 Data collection

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 'alternatives 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 International Detention Coalition, 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 International Detention Coalition, the Forced Migration e-group and several other international organisations and networks.<sup>39</sup> We had 88 survey responses from 28 countries (eight participants did not list a country). The survey data were used to inform the international field work and were included for analysis as part of the overall qualitative dataset.

#### Stage 3: International field work

Potential countries for field work were identified through the internet-based survey, the literature review and the knowledge of the International Detention Coalition's staff and member organisations. Eight countries were selected based on a range of factors including type of alternative to detention program and target population; transit or destination; and size of the asylum seeker or irregular migrant population. Financial and practical constraints limited the number of countries and regions that could be visited in person.

In-depth field work was undertaken in nine countries between January and March 2010. The field work included interviews<sup>40</sup> and/or site visits regarding broad policy issues as well as specific alternative to detention programs including, *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;
- a program for former unaccompanied minors in the Netherlands;
- an asylum seeker reception program in Sweden;
- a detention centre in Sweden;
- a legal advice project in the United Kingdom;
- a new individual risk and vulnerability assessment tool in the U.S.A.;
- a shelter for undocumented migrants in the U.S.A.; and
- a social services support program for asylum seekers, refugees and torture claimants 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-governmental organisations, international advocacy organisations and UN bodies. Details of the date and location of interviews are provided in Appendix I. In addition, staff of the

International Detention Coalition provided the researcher with copies of their own notes that included details of alternative to detention policies provided by member organisations or independent experts during presentations in public forums or discussions undertaken in the course of their work.

## **2.2 Data analysis**

In the first stage of data analysis, content analysis was used to establish a catalogue of the types of alternatives to detention that are currently in use; known countries in which each type of alternative is being implemented; and a list of the perceived strengths and weaknesses of these alternatives. Secondly, the survey and interview data were analysed on a country-by-country basis with the existing literature to develop an in-depth description of the alternative to detention program visited during field work. These sources of data were also used to develop an understanding of the national context and general systems of migration management in each country. The findings were then integrated with the wider literature and human rights legislation to develop a model of migration management that establishes detention as the last resort after all other options have been assessed as inadequate in the individual case.

## **2.3 Limitations**

There are some limitations to the interpretation and impact of these findings. Firstly, due to financial and practical constraints, the in-depth field work was

largely undertaken in western democratic settings in the global 'north', with data from other settings based on the web-based survey, information provided to staff of the International Detention Coalition and existing literature. This potential bias may mean the findings are less relevant and more difficult to translate in some settings, although the basic principles of individual screening and creating appropriate conditions in the community will still apply. In particular, the research was not designed to address issues of mass influx due to a recent crisis in a nearby country.

In addition, 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 entirely clear. In particular, while the research identified programs believed to be better for health and wellbeing than detention, it did not include an evaluation of the impact of these programs on health and wellbeing or the ways in which they are experienced by 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.

# 3. KEY FINDINGS AND BACKGROUND TO THE MODEL

## Combining mechanisms that prevent unnecessary detention with successful community management models

This research came about in response to the growing interest of governments and other stakeholders around the world in finding reliable, cost-effective and humane ways of managing irregular migrants and asylum seekers outside of detention. The aim of this research is to identify and describe examples of community-based alternatives to immigration detention in order to provide up-to-date and practical information for these discussions. However, as the research progressed it became clear that traditional 'alternative to detention' programs that provide an alternative for those already in detention had limited impact on the use of detention in terms of the numbers of people detained and the length of their detention. Instead, the most significant policies lie in the process of determining who should be detained and the reasons for their detention, and in the strength of existing mechanisms to manage migrants from a community setting. It became evident that these factors needed to be included in the research in order to gain greater insight into the ways in which detention can be prevented.

### 3.1 Characteristics of migration systems that prevent unnecessary detention

The inclusion of mechanisms within migration systems that prevent detention derived from two observations. Firstly, those countries that only used detention in a small number of cases and for short periods of time did not see themselves as making use of 'alternative to detention' programs. Instead, their normal way of operating involved managing most asylum seekers, refugees and irregular migrants in a community setting. These were not traditional 'alternative to detention' programs, but different ways of responding to irregular migrants and asylum seekers. Instead of identifying a select group of people in detention who would be

eligible for an 'alternative to detention' program, these countries only placed people in detention as the final option when all other options had failed. In these countries, strong systems for managing asylum seekers, refugees or irregular migrants in the community had been developed and were crucial in preventing unnecessary instances of detention.

Secondly, an international perspective highlighted the inconsistencies in the use of detention between countries and, in particular, differences in the groups of people being detained or the reasons for applying detention. The decision of some countries to regularly detain a particular group of people, such as undocumented asylum seekers, while other countries did not detain this same group pointed to this systemic issue. Such differences in detention policy have a much more substantial impact on the size of detention infrastructure and population than any 'alternative to detention' program. These two insights highlighted the importance of good systems in limiting the number of people placed in detention.

### 3.2 Characteristics of successful community management programs

In addition to identifying the importance of good systems in preventing unnecessary detention, the research also identified common characteristics of successful community-based management programs. Compliance, cost, and health and wellbeing were the areas identified as the most significant for developing humane programs that continue to fulfil government requirements and community expectations. The characteristics of successful community-based programs were identified from the research and from existing evidence regarding the factors that influence the compliance, cost and wellbeing outcomes of alternative to detention programs.

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.<sup>41</sup> A recent study collating evidence from 13 programs found compliance rates among asylum seekers awaiting a final outcome ranged between 80% and 99.9%.<sup>42</sup> For instance, 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.<sup>43</sup> A U.S. study piloting community supervision programs with various detainee groups found minimal supervision levels were associated with an 84% compliance rate with asylum seekers in their program.<sup>44</sup> An Australian pilot project with this population achieved a 93% compliance rate (Box 12). This evidence coincides with 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."<sup>45</sup> 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.<sup>46</sup> See section 5.1.

While the issue of transit continues to be of concern to many governments, there is some evidence to suggest irregular migrants and asylum seekers 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.<sup>47</sup> Hong Kong achieves a 97% compliance rate with asylum seekers or torture claimants in the community (Box 5), despite the fact recognised refugees or torture claimants are not offered permanent residency status in that country.<sup>48</sup> The findings of one large survey of alternatives to detention in 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."<sup>49</sup> More recent research has suggested that issues of compliance in these contexts may be similar to those amongst people facing return in destination countries.<sup>50</sup>

Another key finding is that irregular migrants and asylum seekers are better able to comply with requirements if they can meet their basic needs while in the community.<sup>51</sup> Irregular migrants and asylum seekers 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.<sup>52</sup> Policies that restrict access to housing, basic welfare or health care amongst irregular migrants have not been associated with increased rates of return or deterrence outcomes.<sup>53</sup> Instead, these policies have been associated with poorer health, with serious consequences for authorities working towards case resolution including return.<sup>54</sup> However, case management programs that work with clients to meet their basic needs have been associated with higher rates of voluntary return and independent departure or other case resolution (see 4.3.3).

The final key finding is that irregular migrants and asylum seekers are more likely to accept and comply with a negative visa decision if they believe they have been through a fair visa determination or refugee status determination process; they have been informed and supported through the process; they have explored all options to remain in the country legally.<sup>55</sup> The failure of a recent family return pilot project to achieve its aims has been attributed partly to the lack of success in this area: "families within the project feel that they were poorly, if not unfairly, treated within the asylum procedure and are not therefore willing to engage in discussion about return, but are rather looking for other ways to remain."<sup>56</sup> Conversely, a return preparation program in Belgium - working with families at the final stages, described in Box 13 - relies on these strategies to achieve an 82% compliance rate with families facing return. These findings are discussed further in Section 5.1.

**In summary:**

- Irregular migrants and asylum seekers rarely abscond while awaiting the outcome of a visa application, status determination or other lawful process, if in their destination country;
- Irregular migrants and asylum seekers 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.

**Successful programs understand and break down the population to make informed decisions about management and placement options.**

- Irregular migrants and asylum seekers are better able to comply with requirements if they can meet their basic needs while in the community.

**Successful programs ensure basic needs can be met.**

- Irregular migrants and asylum seekers are more likely to accept and comply with a negative visa decision if they believe:

- They have been through a fair visa determination or refugee status determination process.
- They have been informed and supported through the process.
- They have explored all options to remain in the country legally.

**Successful programs support clients through the bureaucratic process with information and quality advice to explore all options to remain in the country legally and, if needed, to consider all avenues to depart the country.**

These findings highlight the importance of understanding the diversity within the population of asylum seekers 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.

# 4. INTRODUCING CAP

## The Community Assessment and Placement model

The Community Assessment and Placement model, or CAP model, identifies five key mechanisms within migration management systems that can contribute to preventing unnecessary detention and can support the success of community-based alternatives. The CAP model, as seen in Figure 1, has been designed as a non-prescriptive framework to assist governments in their exploration and development of preventative mechanisms and alternatives to detention. Although designed as a conceptual framework, these five mechanisms are also steps that could be taken in individual cases to ensure detention is only applied as a last resort in exceptional cases. The model, while based on the findings of research, also reinforces the normative international standards relating to the detention of asylum seekers, refugees and migrants.

A presumption against detention is the first step in ensuring detention is only used as the last resort.

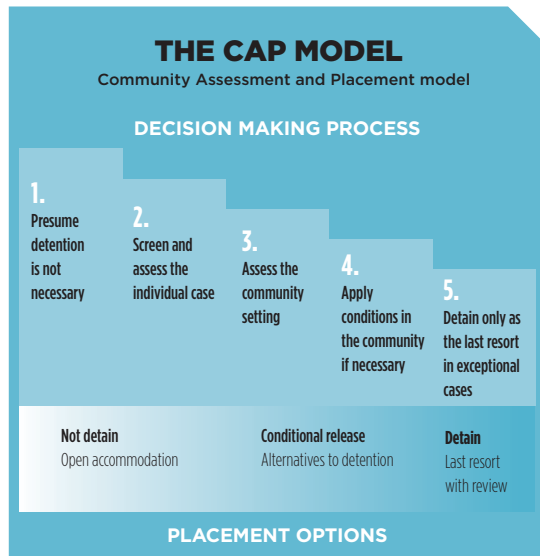


Figure 1: The CAP model

Breaking down the population through individual screening and assessment is the second step, in order to identify the needs, strengths, risks and vulnerabilities in each case. The third step involves an assessment of the community setting, in order to understand the individual's context in the community and to identify any supports that may assist the person to remain engaged in immigration proceedings. As a fourth step, further conditions such as reporting requirements or supervision may be introduced to strengthen the community setting and mitigate identified concerns. If these conditions are shown to be inadequate in the individual case, detention in line with international standards including judicial review and of limited duration may be the last resort in exceptional cases.

These steps relate to the decision making process, while the panels beneath describe the placement options. For instance, if authorities screen out an individual from detention at Step 2, then the individual is not detained and can be placed in an open accommodation setting. However, if individual and community assessments identify serious concerns, then release into the community may only be possible through placement in a program involving additional conditions, as shown at Step 4. Reevaluation of the case should occur at certain points, such as after a negative decision on a visa application or when a set review period is reached for people in detention. It is not intended to imply that most cases end in detention.

### Accommodation options in the community setting

Placement options sometimes rely on accommodation facilities for managing irregular migrants and asylum seekers but, as discussed later in the report, the location of an individual is not necessary to develop an effective management program. *Open accommodation*<sup>57</sup> is used in the CAP model to describe placement options for individuals who can

live independently or who need accommodation but who do not require intensive supervision or substantial conditions. *‘Alternatives to detention’* may sometimes involve residence at a particular facility but the focus is on mechanisms to monitor the progress of the case including compliance with specific conditions. In-depth examples of placement options are described in the boxes throughout the report.

Despite the importance of developing a whole program of response, there is often particular concern about where migrants will live if they remain in the community. The types of accommodation currently in use as community placement options include:

- Privately arranged accommodation;
- Living with immediate family, friends or relatives;
- Living with members of the host community;
- Government-funded housing options;
- Private housing funded by charities;
- Open reception centres for asylum seekers;
- Open centres for recognised refugees that also house asylum seekers;
- Refugee camps and other places offering shelter as part of humanitarian aid;
- Shelters for unaccompanied minors or minors travelling alone;

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

The following sections of the report will describe each step in detail and present results from the research that demonstrate why it has been identified and included in the CAP model. Each section will also include practical examples of current implementation in different contexts.

## Step 1.

### 4.1 PRESUME DETENTION IS NOT NECESSARY

It is important to establish that detention is not necessary when resolving an individual's migration status unless there is evidence that no other option will suffice. Such a ‘presumption against detention’, as outlined in international standards,<sup>58</sup> can uphold each individual's right to freedom of movement and helps to prevent immigration officials from resorting to

## Box 1.

### Establishing a presumption against detention in law – Venezuela

Screen and assess the individual	Assess the community setting	Apply conditions if necessary
<input checked="" type="checkbox"/> Legal obligations	<input type="checkbox"/> Case management	<input checked="" type="checkbox"/> Individual undertakings
<input type="checkbox"/> Identity, health and security	<input type="checkbox"/> Legal advice	<input checked="" type="checkbox"/> Monitoring
<input type="checkbox"/> Vulnerability	<input type="checkbox"/> Ability to meet basic needs	<input type="checkbox"/> Supervision
<input type="checkbox"/> Individual case factors	<input type="checkbox"/> Documentation	<input type="checkbox"/> Intensive case resolution
		<input checked="" type="checkbox"/> Negative consequences

Venezuela has no law allowing for the detention of migrants.<sup>61</sup> Instead, the law provides for some ‘precautionary measures’ or conditions that can be imposed when implementing deportation or expulsion orders. These conditions must not exceed thirty days. Article 46 of the Immigration Law and Migration N° 37, 944 of May 24,

2004 states: “For the purposes of ensuring the implementation of the measures of deportation or expulsion; the relevant authority on immigration and migration, in the act of commencing such administrative procedures, may require the foreigner who is subject to these procedures covered by this Chapter, the following

precautionary measures:  
 1. Regular reporting to the relevant authority in foreign affairs and migration.  
 2. Ban on leaving the town in which he resides without authorization.  
 3. Provision of adequate monetary bail, to which economic conditions of the foreigner must be taken into account.

4. To reside the duration of the administrative procedure in a particular locality.  
 5. Any other measure deemed appropriate to ensure compliance with decisions of the relevant authority, **provided that such measures do not involve deprivation or restricting the right to personal liberty**” [emphasis added].





**Presumption against detention in law, policy or practice:**

Argentina, Venezuela, Peru, Uruguay, Brazil, Austria, Germany, Denmark, the Netherlands, Slovenia, the United Kingdom\*

confinement when other options are at their disposal.<sup>59</sup> It is notable in this regard that some countries do not make use of immigration detention at all, including several in Latin America such as Brazil, Peru, Uruguay and Venezuela (Box 1).

There are two key strategies governments use to direct officers to respect the right to freedom of movement. These strategies are most strongly articulated in law; however, they can also be stated in policy or established in practice.

These include:

- A presumption against detention
- A mandate to consider alternatives to detention

**4.1.1 A presumption against detention**

A presumption against detention is most strongly articulated when established in law. Such laws can ensure decision-makers and immigration officials review less restrictive measures for each case and demonstrate the particular reasons why detention

is deemed necessary for those individuals facing detention. Evidence of such consideration may be required to be submitted when a detention decision is being made or reviewed in court.

A presumption against detention is not always established in law but can still be established in policy or in the practice of immigration officials to not detain until necessary, as seen in Box 8 Spain, Box 9 Sweden, Box 10 Indonesia and Box 17 Argentina. Sometimes these policies focus on vulnerable groups by introducing a policy never to detain or rarely detain some groups, as seen in Box 3 Hungary. Such targeted policies aim to reduce the rate of detention of people who are vulnerable, as discussed in Section 4.2.3. Individual assessments, as discussed in Section 4.2, can be one tool for implementing a presumption against detention. Shifts in policy or practice towards such alternatives have sometimes been the result of legal cases, with courts ordering governments to demonstrate the reasons for detention and why a more lenient measure has not been applied.<sup>60</sup>

**4.1.2 A mandate to consider alternatives to detention**

A presumption against detention can be strengthened when alternatives to detention are also established in

**Box 2.**

**Establishing alternatives to detention in law – New Zealand**

Screen and assess the individual	Assess the community setting	Apply conditions if necessary
<input type="checkbox"/> Legal obligations	<input type="checkbox"/> Case management	<input checked="" type="checkbox"/> Individual undertakings
<input type="checkbox"/> Identity, health and security	<input type="checkbox"/> Legal advice	<input checked="" type="checkbox"/> Monitoring
<input type="checkbox"/> Vulnerability	<input type="checkbox"/> Ability to meet basic needs	<input type="checkbox"/> Supervision
<input type="checkbox"/> Individual case factors	<input type="checkbox"/> Documentation	<input type="checkbox"/> Intensive case resolution
		<input checked="" type="checkbox"/> Negative consequences



New Zealand has recently introduced “a tiered detention and monitoring system that includes a greater ability to use reporting and residence requirements instead of secure detention.”<sup>65</sup> 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: [A]n immigration officer and the

person liable for arrest and detention may agree that the person will do all or any of the following things: (a) reside at a specified place; (b) report to a specified place at specific periods or times in a specified manner; (c) provide a guarantor who is responsible for: (i) ensuring the person complies

with any requirements agreed under this section; and (ii) reporting any failure by the person to comply with those requirements; (d) if the person is a claimant, attend any required interview with a refugee and protection officer or hearing with the Tribunal; (e) undertake any other action for the

purpose of facilitating the person’s deportation or departure from New Zealand. The person is subject to arrest and detention if they fail to comply with the conditions of their release or in order to execute a deportation order. The application of these conditions is at the discretion of the immigration officer.

\* Selected country examples. See appendix IV for detailed list.

**Alternatives to detention in law, policy or practice:**

New Zealand, Venezuela, Japan, Switzerland, Lithuania, Denmark, Finland, Norway, Sweden, Austria, Germany, Canada

law.<sup>62</sup> Legally prescribed alternatives to detention provide immigration officials with clear options for irregular migrants and asylum seekers to remain in the community while their migration case is being resolved, as seen in Box 2 New Zealand.

The effectiveness of such laws relies on good implementation at the individual level. These laws can also include mechanisms

to monitor the use of alternatives to ensure that any conditions or restrictions are applied in limited circumstances and only when necessary.

**Individual screening and assessment: the United Kingdom, Hong Kong, the U.S.A. (in development), Canada**

about the most appropriate way to manage and support the individual as they seek to resolve their migration status and to make case-by-case decisions about the need to detain or not, and under what circumstances. Cost savings can be achieved through such targeted approaches by limiting unnecessary detention. It also provides a process by which authorities can ensure their decisions adhere to legal requirements and issues of duty of care,

particularly in the case of individuals with complex needs. Examples of such assessment frameworks are seen in Canada,<sup>64</sup> the United Kingdom<sup>65</sup> and Hong Kong (Box 5).

Screening and assessment of the individual case can include several factors. The sections below will describe four key areas of assessment that are currently considered as significant for effective case management with migrants, seen in Figure 2.

## Step 2.

### 4.2 SCREEN AND ASSESS THE INDIVIDUAL CASE

Screening and assessment of an individual subject to or at risk of immigration detention are important tools in reducing unnecessary detention.

With individual assessment, authorities can identify and assess levels of risk and vulnerability as well as the strengths and needs of each person. Such assessment enables authorities to make an informed decision

#### 4.2.1 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 minors, 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.<sup>66</sup>

Some of the obligations imposed by law or established in policy that might be assessed at this stage include those that prevent the detention of particular groups of people, as seen with minors in

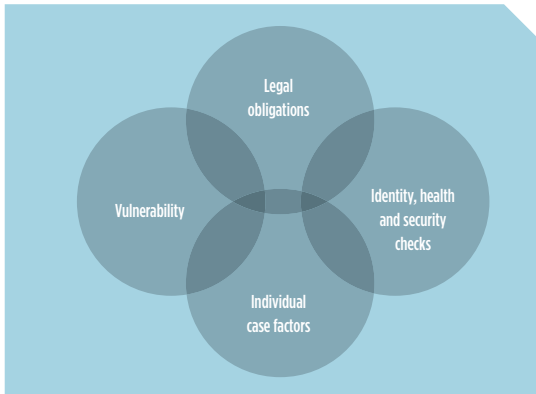


Figure 2: Understanding the population through individual assessment

## Box 3.

### Legislation establishing that unaccompanied minors are not to be detained – Hungary

Screen and assess the individual	Assess the community setting	Apply conditions if necessary
<input checked="" type="checkbox"/> Legal obligations	<input checked="" type="checkbox"/> Case management	<input type="checkbox"/> Individual undertakings
<input type="checkbox"/> Identity, health and security	<input checked="" type="checkbox"/> Legal advice	<input type="checkbox"/> Monitoring
<input checked="" type="checkbox"/> Vulnerability	<input checked="" type="checkbox"/> Ability to meet basic needs	<input type="checkbox"/> Supervision
<input type="checkbox"/> Individual case factors	<input type="checkbox"/> Documentation	<input type="checkbox"/> Intensive case resolution
		<input type="checkbox"/> Negative consequences

Section 56 of Act II of 2007 on the Admission and Rights of Residence of Third-Country Nationals establishes that unaccompanied minors cannot be detained for migration matters in Hungary. A shelter houses 14–18 year old minors who enter Hungary without an adult.<sup>67</sup> This project is run by a national non-governmental organisation and funded by the European Refugee

Fund and the Hungarian government. At the time of interview, the shelter was housing 80 residents mostly from Afghanistan and Somalia. Bedrooms are shared between 2–4 residents. Facilities include lounge rooms; activities rooms with billiards, ping-pong and table soccer; sports hall; and classrooms for Hungarian language classes. The staff are highly committed to

supporting the wellbeing of residents. Legal support is available through a specialist legal aid organisation. In partnership with another non-governmental organisation, the shelter has worked with one of the local schools to create appropriate education opportunities for this group of young people.

Panama (Decree 03/2008) and Belgium (Box 13) and unaccompanied minors in Hungary (Box 3). This can include laws that prohibit the detention of:

- Citizens and residents with legal status
- Unaccompanied or separated minors
- Families with minors
- Vulnerable groups such as refugees, survivors of torture or human trafficking

Law or policy may require that alternatives to detention are applied or shown to be inadequate in the individual case before detention can be applied, as seen in Section 4.1.

Finally, there may be laws or policies outlining the circumstances in which people who are already in detention must be released, as discussed in Section 4.5.1 and seen in Box 17 Argentina. 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

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

#### 4.2.2 Health, identity and security checks

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

##### Health checks

A medical assessment allows the government to check for any health issues, including communicable diseases such as tuberculosis.<sup>68</sup> 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 (see Section 4.5.1) and to screen out or release seriously ill people from detention. Health checks are sometimes used to limit any unfair burden of migrants on national health care systems; however this must be exercised with caution to ensure that individuals who are seriously ill do not face inhuman suffering should they be denied medical attention or face deportation without the prospect of

appropriate medical care on return.<sup>69</sup> 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.<sup>70</sup>

### 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.<sup>71</sup> This research cannot speak to these issues; however, the inability to provide documentation establishing identity should not lead to prolonged detention, which may render detention arbitrary. 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 co-operating with efforts to establish their identity but whose identity cannot be established.<sup>72</sup>

### 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 the United Kingdom, the U.S.A. and Hong Kong (Box 5). Such checks should be undertaken as soon as possible and in a timely manner to ensure detention is not prolonged unnecessarily. As with identity checks, individuals who are co-operating with efforts to undertake a security check should not

**Children, including unaccompanied minors, not detained or a provision for release into an alternative in law, policy or practice: Belgium, Italy, Ireland, Philippines, Hungary, Hong Kong, Australia, Denmark, Netherlands, the United Kingdom, France, Panama, New Zealand**

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 information 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 4.2.4.

### 4.2.3 Vulnerability

An assessment of vulnerability can ensure a management program is sensitive to the particular needs of vulnerable individuals and incorporates 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. Vulnerable individuals may have fewer personal resources to enable them to cope with the detention environment and may be at higher risk of harm.<sup>73</sup> In some countries it has been established that some vulnerable groups should never be detained, as discussed in Sections 4.1 and 4.2.1. Vulnerable individuals are best protected from the harms associated with detention through management in a community setting. Vulnerability assessments identify the ways in which an individual's position in society places them in an unequal relationship with others. Recent work

**Provision for release of other vulnerable individuals in law, policy or practice: Belgium, Malta, Canada, Indonesia, Sweden, New Zealand, Australia**

on this concept focuses on the contexts that create vulnerability by framing assessments around what people may be *vulnerable to*.<sup>74</sup> However, most vulnerability assessments currently in use identify certain categories of people as being vulnerable based on particular personal characteristics.<sup>75</sup> For the purposes of this report we will discuss four areas that have traditionally been used to identify vulnerable groups, as seen in Figure 3.

## 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.<sup>76</sup> Similarly,

children mostly rely on adults to provide for their basic needs. In addition, children are at a time of life when they are developing their cognitive and emotional capacities and any impairment at this point in their development may impact on their future capabilities. International convention protects children by directing authorities to pursue the best interest of the child.<sup>77</sup> Minors who are travelling alone, or who are not with their own family, are particularly vulnerable during the migration process. Age assessments of minors should be undertaken only as a last resort with the child's consent by independent professionals in a way that is culturally sensitive and gender appropriate. Children should be given the benefit of the doubt when disputes over age arise.<sup>78</sup> Examples responding to minors as a vulnerable group can be seen in Box 3 Hungary, Box 5 Hong Kong, Box 4 Philippines and Box 13 Belgium.

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

Figure 3: Assessing vulnerability

## 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

## Box 4.

### Releasing refugees, asylum seekers and vulnerable groups from detention – Philippines

Screen and assess the individual	Assess the community setting	Apply conditions if necessary
<input type="checkbox"/> Legal obligations	<input type="checkbox"/> Case management	<input checked="" type="checkbox"/> Individual undertakings
<input type="checkbox"/> Identity, health and security	<input type="checkbox"/> Legal advice	<input type="checkbox"/> Monitoring
<input checked="" type="checkbox"/> Vulnerability	<input checked="" type="checkbox"/> Ability to meet basic needs	<input type="checkbox"/> Supervision
<input type="checkbox"/> Individual case factors	<input checked="" type="checkbox"/> Documentation	<input type="checkbox"/> Intensive case resolution
		<input type="checkbox"/> Negative consequences

The Philippines makes use of a recognisance release model by issuing documentation to undocumented asylum seekers.<sup>84</sup> Under Section 47(b) of the Immigration Act of 1940, the President is authorised "For humanitarian reasons, and when not opposed to the public interest, to admit aliens who are refugees for religious, political, or racial reasons, in such classes of cases and under such conditions as he may prescribe." In addition, Section 13 of the Department of Justice Department Order No. 94, series of 1998 states "if the [refugee] applicant is under detention, the Commission may order

the provisional release of the applicant under recognisance to a responsible member of the community."<sup>85</sup>

This Department Order formalised the relationship between the Department of Justice, UNHCR and non-governmental organisations. Through this relationship, an undocumented or unauthorized arrival in detention who seeks asylum may be released by order of the Department of Justice. In practice an asylum seeker is given a Certification of Status in coordination with the UNHCR. This document is sent to the Immigration Commissioner

to complete and issue and provides the basis for the discretionary release of the asylum seeker.

The only condition is that the asylum seeker agrees to follow the requirements of the refugee status determination process.

Further to this, children are generally not detained. Undocumented children located at the border are generally not detained, or if so are released as a matter of course following referral to the Department of Social Welfare and Development, who are delegated as the responsible guardians and provide social work, shelter and healthcare services.

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.<sup>79</sup> Identifying these issues during a vulnerability assessment can assist in ensuring management choices include a safe living environment, as seen in Box 13 Belgium.

## Health

Those with serious issues impacting on their health and wellbeing may be vulnerable during a migration status determination process (see Box 5 Hong Kong and Box 12 Australia). 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.<sup>80</sup> 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.<sup>81</sup>

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.

## 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.<sup>82</sup> Regional agreements in Latin America and Africa offer additional protection to migrants who have been forced to leave their country for legitimate reasons.<sup>83</sup> 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 processes and are placed in an appropriate environment while their status is assessed. See Box 8 Spain, Box 9 Sweden and Box 15 Hungary.

### 4.2.4 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

### 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 avenue 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.<sup>86</sup> 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.<sup>87</sup> 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 12 Australia and Box 13 Belgium. 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.

### **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 to detention, as seen in Box 5 Hong Kong, Box 16 Australia and Box 17 Argentina. Detention cannot be justified when it is clear that a visa decision or deportation will not be not achievable in a reasonable amount of time, given that the likelihood of psychological harm escalates the longer someone is detained.<sup>88</sup> In particular, persons who are stateless or who are facing deportation to a country which is in turmoil due to war, violent conflict or natural disaster are particularly at risk of unnecessary or prolonged detention when alternatives are not made available to them.<sup>89</sup>

### **Intended destination**

Existing research and evidence from the interviews suggest that asylum seekers and irregular migrants rarely abscond if they are in their destination country and awaiting the outcome of a visa application, status determination or other legal process.<sup>90</sup> 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 has often been based on whether the country itself is categorised as a transit or destination country. However, it is more effective to establish whether that country is the intended destination of each particular individual. For instance, one study in the U.S.A. assessing compliance amongst a group of asylum seekers released from detention found that those individuals who had said Canada was their

intended destination were least likely to appear at their immigration hearings.<sup>91</sup> The categorisation of the U.S.A. as a 'destination country' was not of consequence to those individuals who were focused on reaching Canada.

### **Family and community ties**

Many migrants are driven by their commitment to their family and this can shape their decisions and choices 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,<sup>92</sup> as are those individuals with family in the community who provide an extra source of support and point of contact.<sup>93</sup> Those who have left family behind may risk working unlawfully in order to provide financial support to loved ones struggling overseas, even though this may compromise their migration status. 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.<sup>94</sup>

Ties to the local community are also important when assessing the individual case.<sup>95</sup> Indications that a person has ties with the local community can increase confidence that the person will remain in the local area. 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, employment, 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 the role of existing ties, effective ties can be established quickly for new arrivals who do not have family or friends in the community but who become engaged with community or religious organisations through programs that provide support and/or case management on release.

Family or community ties are often assessed as part of a bond or guarantor program, or a supervision program, as discussed in Section 4.4. See also Box 5 Hong Kong, Box 11 U.S.A. and Box 14 Canada.

### **Character including compliance to date**

As in the criminal justice setting, many countries rely on evidence of a person's character, including

## Box 5.

### Identifying individuals who do not need to be detained – Hong Kong

Screen and assess the individual	Assess the community setting	Apply conditions if necessary
<input type="checkbox"/> Legal obligations	<input checked="" type="checkbox"/> Case management	<input checked="" type="checkbox"/> Individual undertakings
<input type="checkbox"/> Identity, health and security	<input checked="" type="checkbox"/> Legal advice	<input checked="" type="checkbox"/> Monitoring
<input checked="" type="checkbox"/> Vulnerability	<input checked="" type="checkbox"/> Ability to meet basic needs	<input type="checkbox"/> Supervision
<input checked="" type="checkbox"/> Individual case factors	<input checked="" type="checkbox"/> Documentation	<input type="checkbox"/> Intensive case resolution
		<input checked="" type="checkbox"/> Negative consequences

Authorities in Hong Kong SAR undertake screening and assessment of irregular migrants when considering detention.<sup>100</sup> Current 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:

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

satisfied to be genuine;

- (v) whether that person has close connection or fixed abode in Hong Kong; and
- (vi) whether there are other circumstances in favour of release.”<sup>101</sup>

After a short period of detention, most vulnerable individuals including asylum seekers and torture claimants<sup>102</sup> are released on their own recognisance, which 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 as well as direct provision of food, clothing and medicine to these clients. 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 around 97%.<sup>103</sup> Case workers are not responsible for compliance matters, although known breaches must be reported to authorities. Other non-governmental organisations in Hong Kong provide *pro bono* legal advice and support services which strengthen this community context.

their previous compliance with authorities, when considering the best option while a visa or status process is completed or while preparing for return or deportation. Past behaviour can be a good indicator of future choices and character assessments can help in establishing reasonable expectations. For instance, someone who has a history of co-operating with authorities may be reasonably expected to continue to behave in a trustworthy manner until evidence to the contrary arises. Evidence of previous co-operation with authorities may include complying with authorities while completing a community service or prison sentence. Individuals who have served a sentence for a non-violent crime should not be automatically excluded from community placement options. Countries that make use of such assessments are able to identify those individuals with a history of non-compliance and introduce more stringent conditions, such as those outlined in Section 4.4, to mitigate risk of absconding.

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; Hong Kong (Box 5); South Africa; the United Kingdom and the U.S.A.

#### Belief in the process

As described in Section 3, evidence from this research shows that asylum seekers and irregular migrants are more likely to accept and comply with a negative visa or status decision if they believe they have been through a fair refugee status or visa determination process; they have been informed and supported through the process; and they have explored all options to remain in the country legally.<sup>96</sup> 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 or find another avenue to remain in the country.<sup>97</sup> 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.

This issue is best addressed by ensuring proper and timely legal advice and case management throughout the process, as discussed in section 4.3. 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 been accepted rather than rejected<sup>98</sup> or if they are facing serious threats to life or liberty on return that fall outside existing protection mechanisms.<sup>99</sup> In these cases, it is particularly important that case workers 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 4.4.4.

## Step 3.

### 4.3 ASSESS THE COMMUNITY SETTING

In order to best match an individual with an appropriate and effective program of response it is necessary to assess those factors in the community setting that can either support or undermine a person's ability to comply with immigration authorities. Such contextual factors, which are often outside the control of the individual, may have a significant impact on their ability to maintain their commitments with authorities.

As noted in Section 3, asylum seekers and irregular migrants are more likely to accept and comply with a negative visa or status decision if they believe they have been through a fair refugee status determination or visa determination process; if they have been informed and supported through the process; and if they have explored all options to remain in the

country legally. The community setting can contribute to this outcome if it contains appropriate supports and structures throughout the process. Such supports can ensure asylum seekers and irregular migrants understand the legal and bureaucratic processes they are involved in, the limited avenues to legal residency, all potential future outcomes and the impact of non-compliance. The key aspects of a community setting that can contribute to these outcomes are:

- Case management
- Legal advice and interpretation
- Ability to meet basic needs
- Documentation

These are some of the ways in which a community setting might mitigate concerns raised through a screening process. They are also areas that a government can have some control over. Authorities can choose to strengthen the community setting, such as by funding legal advice and case management, to reduce concerns about compliance with the immigration process. In addition, an accommodation program with case management and legal support is less expensive than keeping the individual detained for the same period, as discussed further in Section 5.

It is worth noting that 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.<sup>104</sup> 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.<sup>105</sup>

**Case management for migration matters by government or by non-government organisation: Sweden, Australia, Canada, the Netherlands, Belgium, Spain, Hong Kong**

#### 4.3.1 Case management

A number of the most successful systems or programs identified during the research rely on case management to work towards case resolution while maintaining high levels of compliance with conditions of residency in the community and improved health and wellbeing. Case management centres on understanding and responding to the unique

(Continued on p. 33.)

# WHAT IS CASE MANAGEMENT?

Case management is a comprehensive and co-ordinated service delivery approach widely used in the human services sector to ensure a co-ordinated response to, and support of, the health and wellbeing of vulnerable people with complex needs.<sup>107</sup> Case managers form working relationships with individuals and families to empower, enhance their wellbeing and problem-solving capacities, resolve outstanding issues, provide information on how to obtain services and resources in their communities, and work towards the protection of people who are not in a position to do so themselves, such as children and youth in need of care or persons experiencing mental illness. Case managers are generally social workers, psychologists or other human services professionals.<sup>108</sup>

## CASE MANAGEMENT WITH MIGRANTS

Applied in the context of migration, case management is a strategy for supporting and managing refugees, asylum seekers and irregular migrants in the community or detention, whilst their status is being resolved.<sup>109</sup> The case manager role differs to that of an immigration officer, bureaucrat or guard. Case managers are not making decisions on people's immigration cases or enforcing issues of compliance. Rather, the case manager forms an essential link between the individual, authorities and the community. The case manager may:

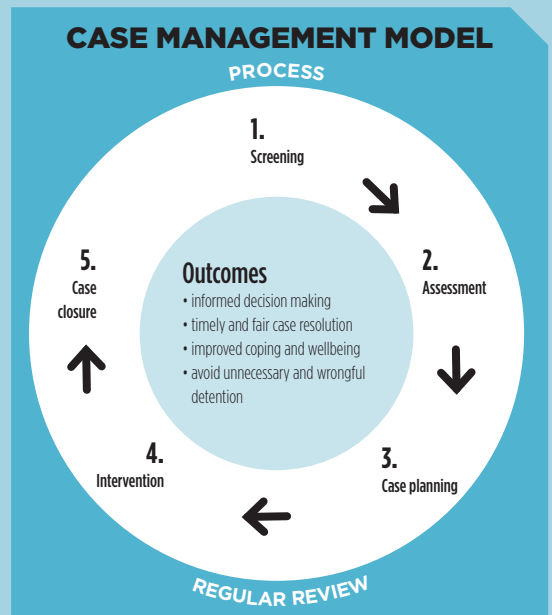
- **Promote informed decision making** by both the government decision maker and individual in question, by ensuring timely access to all relevant information, options, rights and responsibilities. Case managers ensure individuals have an understanding of their immigration status, legal and administrative 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 understand what their options are and therefore will be more able to comply with any requirements placed on them.

- **Promote 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 return and independent departure for refused individuals. For example, with a consistent, trusting relationship between case manager and individual, previously undisclosed critical case information and barriers to return may be identified and addressed. With client consent and transparent communication on 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 clients being prepared and more likely to comply with immigration decisions including exploring departure options if refused.

- **Promote coping and wellbeing** by facilitating access to community services and support networks. Where a person with an identified vulnerability, such as health concerns or torture experience, is supported during status determination, better outcomes for the individual,



## 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 AND REPATRIATION ASSISTANCE, ALONG WITH THE FLEXIBILITY TO RESPOND TO BARRIERS FACING RETURN, SUCH AS STABILISING HEALTH CONDITIONS.

community and government are achieved, regardless of the immigration outcome. For example, if the person is granted refugee status or visa, he or she may be more likely to be well enough to engage with and make a meaningful contribution to society, such as supporting themselves and their family. Alternatively, they may be in a better position to return home and resettle if their case is refused.

• **Avoid unnecessary and wrongful detention** by ensuring case-by-case assessments of the risks, vulnerabilities and needs of individuals and exploring all options and supporting implementation of appropriate decisions. With reliable information, authorities can make informed decisions related to actual flight risk or vulnerabilities. In addition, where a person is determined not to be a refugee or eligible for any other visa or status, case managers can support the client to look at all remaining options, including departure.

### THE CASE MANAGEMENT PROCESS

Screening, assessment, case planning, intervention and ongoing review are the key steps in the case management process.

**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.

**Comprehensive assessment** follows an indication of risk or vulnerability during screening, and 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, family members and so forth to understand

risks; vulnerabilities; strengths; 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.

**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, for example legal assistance or counselling to deal with experiences of torture or trauma. Information gathered throughout the assessment process is therefore considered and analysed with the client, goals set, prioritised and action plans put in place, outlining necessary steps to reach goals, suggested timeline, and responsible person. Consideration and planning for practical necessities, such as housing, health care, livelihood, social support needs, reporting requirements and logistics is critical.

**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.

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

## IMPLEMENTING CASE MANAGEMENT

Case management is implemented in a number of ways, ranging from intensive individual case work with complex cases including families facing return, to 'triage' systems designed to deal with large influxes and times of national crisis. A number of countries, such as Australia (Box 12) and Belgium (Box 13), piloted case management services before developing national case management programs. A number of countries use a 'triage' system, especially with large numbers of new arrivals or irregular migrants located in the community, to screen and assess all individuals subject to immigration detention in order to make informed placement, health and welfare decisions, and referral as needed to appropriate services. Individuals with high level need or complex circumstances may require more intensive case management, while others will be referred to social services, non-governmental organisations, counseling or other services (see Section 4.4.4). Case loads will vary depending on assessed need and complexity. Re-assessments 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 or programs, and maintain oversight of individual health and wellbeing within these programs.

### FOUNDATIONS OF EFFECTIVE CASE MANAGEMENT

- 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
- EMPOWERING INDIVIDUALS TO MAKE DECISIONS BASED ON AVAILABLE OPTIONS
- CLEAR ROLES AND EXPECTATIONS
- RESOURCES AND OPTIONS FOR INDIVIDUALS AS NEEDED

## Box 6.

### Case management in the migration context – two case studies

Screen and assess the individual	Assess the community setting	Apply conditions if necessary
<input type="checkbox"/> Legal obligations	<input checked="" type="checkbox"/> Case management	<input checked="" type="checkbox"/> Individual undertakings
<input type="checkbox"/> Identity, health and security	<input checked="" type="checkbox"/> Legal advice	<input checked="" type="checkbox"/> Monitoring
<input checked="" type="checkbox"/> Vulnerability	<input checked="" type="checkbox"/> Ability to meet basic needs	<input type="checkbox"/> Supervision
<input checked="" type="checkbox"/> Individual case factors	<input checked="" type="checkbox"/> Documentation	<input checked="" type="checkbox"/> Intensive case resolution
		<input checked="" type="checkbox"/> Negative consequences

#### Case study 1: Case management with families pending removal

Cecilia is a mother with two sons aged seven and 16.<sup>10</sup> Five years ago, she came to Belgium from Brazil without documents to join her sister. In 2006, Cecilia was detained and sent back to Brazil; however, a month later she made her way back to Belgium intending to stay and work. Cecilia was refused legal residential status and she and her children were placed in the open family units, described in Box 13 Belgium, pending their removal. Cecilia was assigned a case manager, and was initially assessed as a risk to abscond, as she was adamant on staying in Belgium.

The case manager sought legal advice for Cecilia to ensure all her options to remain in

the country legally had been fully explored. They found that Cecilia would need to return to Brazil and apply for a visa in order to come back to Belgium and work legally. The case manager made sure Cecilia knew what steps to take to apply for a visa from Brazil. The case manager then engaged the International Organization for Migration to work with Cecilia to explore possibilities to support the family's return to Brazil.

By working with the case manager Cecilia had the time to contemplate the future and make the best decision for her and her children. Cecilia finally agreed to return to Brazil.

#### 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.<sup>11</sup> Ravi was found not to have protection concerns and, following a failed appeal, was required by the immigration department to depart Australia or face detention pending removal. Ravi, however, refused to depart, citing 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 previous student politics, he also had an overwhelming sense of shame



and fear of facing his family without savings. Ravi's case manager assisted Ravi to gain independent legal advice to review his case and outline his realistic chances of remaining legally in Australia. The case manager negotiated an additional 3 months to explore these options and Ravi was granted permission to work for the remainder of his time in Australia. He managed to save some money before going home so that he would not be destitute on arrival. He was also referred to a counsellor for additional support.

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.

## Box 7.

### Saving money by investing in early legal advice – United Kingdom

Screen and assess the individual	Assess the community setting	Apply conditions if necessary
<input type="checkbox"/> Legal obligations	<input type="checkbox"/> Case management	<input type="checkbox"/> Individual undertakings
<input type="checkbox"/> Identity, health and security	<input checked="" type="checkbox"/> Legal advice	<input type="checkbox"/> Monitoring
<input type="checkbox"/> Vulnerability	<input type="checkbox"/> Ability to meet basic needs	<input type="checkbox"/> Supervision
<input type="checkbox"/> Individual case factors	<input type="checkbox"/> Documentation	<input type="checkbox"/> Intensive case resolution
		<input type="checkbox"/> Negative consequences

In 2007–08, the U.K. government undertook a pilot project to assess the effectiveness of investing in quality legal advice at the earliest stages of the asylum process.<sup>106</sup> This project provided claimants with information and advice from legal advisors from the earliest stages of the asylum process. This included the legal adviser preparing the witness statement including corroborative evidence and discussing the claim with the decision maker before the first asylum interview. Compared with the national average, the pilot project generated a 75%

higher rate of case conclusion within six months; a 73% higher initial refugee status grant rate; and a 50% lower successful appeal rate. Statistical information supported anecdotal evidence that the pilot was also associated with a higher removal rate and a lower rate of absconding. The investment in early legal advice reduced overall costs to the system due to fewer appeals, with an average saving of £47,205.50 for every 100 cases. The pilot program has now been expanded to approximately 16% of all new asylum applications in the country.

needs and challenges of individuals and their context – from vulnerability and protection needs to legislation and policy considerations. 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.<sup>106</sup> It is described on page 30 in more detail as many people are unsure of what case management is and how it can be used in the context of migration management. Practical examples of its use within migration systems are found in Box 3 Hungary, Box 5 Hong Kong, Box 8 Spain, Box 9 Sweden, Box 11 U.S.A., Box 12 Australia, Box 13 Belgium, Box 14 Canada and Box 6 Case studies.

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.<sup>112</sup> Lawyers and appropriately trained migration agents are best able to provide accurate and reliable advice to an individual about these matters. Case workers 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 system<sup>113</sup> 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.<sup>114</sup> The benefits of legal counsel are described in detail in Box 7 United Kingdom. The use of legal counsel can also be seen in Box 3 Hungary, Box 5 Hong Kong., Box 8 Spain, Box 9 Sweden, Box 11 U.S.A., Box 13 Belgium, Box 14 Canada, Box 15 Hungary and Box 17 Argentina.

Interpretation and translation is also an important element as it provides irregular migrants with the information they need in a language they can understand. In addition to translated written materials, qualified interpreters improve communication with

**Legal advice for migrants funded by government or through *pro bono* lawyers: the United Kingdom, New Zealand, Hungary, Argentina, U.S.A., Australia**

#### 4.3.2 Legal advice and interpretation

An important way of ensuring that asylum seekers and irregular migrants get to the end of their immigration determination process with a belief in the fairness of the system is to provide legal counsel throughout the entire process. Asylum seekers and irregular migrants are in a better position

lawyers, case workers and immigration officials. When interpreters cannot be on site, telephone-based interpretation services may be the next best option.<sup>115</sup>

### 4.3.3 Ability to meet basic needs

It is important that all individuals, regardless of migration status, have the right to access the means 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.<sup>117</sup>

In addition to this mandate, there is evidence from the field work and from existing literature that asylum seekers, refugees and irregular migrants are better able to comply with requirements if they are able to meet their basic

#### Open accommodation for asylum seekers:

Spain, Denmark, Finland, Ireland, Portugal, Belgium, Sweden, Hungary, Hong Kong, Germany, Switzerland, Bulgaria, Poland, Greece, Italy, Lithuania, Austria, the Netherlands, Romania, South Africa, Nepal, Indonesia

#### Release to community group or religious group, family:

U.S.A., Mexico, Lebanon, Canada, Australia

needs while in the community.<sup>118</sup> 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.<sup>119</sup> Policies that restrict access to housing, basic welfare or health care amongst irregular migrants and asylum seekers have not been associated with increased rates of independent departure or deterrence outcomes.<sup>120</sup> Instead, these policies have been associated with poorer health, with serious consequences for authorities working towards case resolution including return.<sup>121</sup> 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.<sup>122</sup> It must be noted

## Box 8.

### Supporting asylum seekers to meet their basic needs – Spain

Screen and assess the individual	Assess the community setting	Apply conditions if necessary
<input type="checkbox"/> Legal obligations	<input checked="" type="checkbox"/> Case management	<input type="checkbox"/> Individual undertakings
<input type="checkbox"/> Identity, health and security	<input checked="" type="checkbox"/> Legal advice	<input type="checkbox"/> Monitoring
<input checked="" type="checkbox"/> Vulnerability	<input checked="" type="checkbox"/> Ability to meet basic needs	<input type="checkbox"/> Supervision
<input type="checkbox"/> Individual case factors	<input checked="" type="checkbox"/> Documentation	<input type="checkbox"/> Intensive case resolution
		<input type="checkbox"/> Negative consequences

In Spain, asylum seekers who enter the refugee determination process can be housed in an open reception centre if they cannot afford private accommodation.<sup>123</sup> Some are operated directly by the government and some are run by non-governmental 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.<sup>124</sup> Residents in these reception centres can come and go from the premises 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, exhibits and movies are supported by an activities officer. Psychological services and specialised services including legal aid are available

for eligible residents. The centres also undertake advocacy activities to promote the centre and its residents with the local Spanish community.<sup>125</sup> Spanish law allows everyone on Spanish territory to access medical care, no matter their legal status. Residents are issued with a card that identifies them as asylum seekers and can be used to facilitate their access to local medical centres.

Asylum seekers can be housed in the centre for six months. If they are still awaiting a decision on their refugee application at that time, they are assisted to find independent housing and employment. 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 positive developments and high standards.<sup>126</sup>

that confinement in immigration detention is not an appropriate way to provide for the basic needs of irregular migrants and asylum seekers.

In some cases, asylum seekers or irregular migrants are supported to provide for their own needs through legal employment or other activities, described in Box 8 Spain (see also Box 6 Ravi and Box 9 Sweden). However, in many cases support may be needed either through financial aid or direct provision of goods. Non-governmental organisations often play an important role in providing for basic needs, with or without government funding, thereby creating the conditions to enable release from detention. Support to meet basic needs can be seen in Box 3 Hungary, Box 5 Hong Kong, Box 8 Spain, Box 9 Sweden, Box 11 U.S.A., Box 12 Australia, Box 13 Belgium, Box 14 Canada and Box 16 Australia.

**Documentation:**  
 South Africa,  
 Ireland, Hong Kong,  
 Bulgaria, France,  
 Sweden, Malaysia,  
 Uganda, Zambia,  
 Kenya, Australia,  
 U.S.A., Indonesia,  
 Philippines,  
 Luxembourg

#### 4.3.4 Documentation

Asylum seekers and irregular migrants who are awaiting a final decision regarding their migration status become extremely vulnerable to unnecessary detention if they do not have some form of documentation demonstrating their legal right to be in the country (see Box 8 Spain, Box 9 Sweden). This documentation is strongest when it conveys a form of legal status on the holder, as with interim visas issued to people awaiting a decision on a substantive visa (Box 12 Australia), preparing for departure (Box 16 Australia) or with victims of human trafficking.<sup>127</sup> Such visas or status documentation may incorporate certain conditions, such as limits on the duration of stay. Documentation can also act as a *de facto* reporting mechanism if it requires reissuing after a set period of time or in

## Box 9.

### Using documentation with asylum seekers – Sweden

Screen and assess the individual	Assess the community setting	Apply conditions if necessary
<input type="checkbox"/> Legal obligations	<input checked="" type="checkbox"/> Case management	<input type="checkbox"/> Individual undertakings
<input checked="" type="checkbox"/> Identity, health and security	<input checked="" type="checkbox"/> Legal advice	<input checked="" type="checkbox"/> Monitoring
<input type="checkbox"/> Vulnerability	<input checked="" type="checkbox"/> Ability to meet basic needs	<input type="checkbox"/> Supervision
<input type="checkbox"/> Individual case factors	<input checked="" type="checkbox"/> Documentation	<input type="checkbox"/> Intensive case resolution
		<input checked="" type="checkbox"/> Negative consequences

In Sweden, an asylum seeker is registered on arrival and then issued with a plastic photo identity card which is used by immigration to track the case, and used by the asylum seeker in the community to gain access to some services.<sup>128</sup> On arrival, asylum seekers spend about a week in an initial transit or processing centre for government checks before they are moved into the reception program. If they have their own funds, they can live independently in the community but most do not and are placed in open accommodation arranged by the authorities. This is usually a furnished apartment within a building of private Swedish renters, with each apartment shared between 4 to 6 asylum seekers. They receive a minimal daily allowance and use this to buy and

prepare their own meals in the kitchen of their apartment. They have access to emergency health and dental care, with children receiving the same medical care as Swedish children. Asylum seekers can request the assistance of a lawyer, who is appointed and paid for by the Swedish Migration Board. There are a range of circumstances in which asylum seekers are given the right work. If they do work, they must contribute to the costs of their food and accommodation in the reception program. Each asylum seeker has a case worker who arranges accommodation and activities as possible, such as Swedish language classes or training. This case worker also works with them from the beginning of the process to prepare for either a negative or

positive outcome to their case. For those with a negative final outcome, they have approximately two months where they are supported by the case worker to leave voluntarily. In 2008, 82% of returns of asylum seekers were undertaken independently.<sup>130</sup> In 2009, the government expanded its return assistance program for unsuccessful asylum seekers because “we’ve seen that it brings results.”<sup>131</sup> Those who do not co-operate with independent departure options can have conditions introduced including reporting requirements or reduced benefits while they are still in the community.<sup>132</sup> As seen in Box 18, detention is only applied as a last resort during deportation procedures in conditions that support dignity and wellbeing.

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 (as per 'own recognisance' Box 5 Hong Kong). 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 (see Box 4 Philippines and Box 10 Indonesia).

Documentation and identification papers are important because they can ensure that people who have already been screened by authorities are not picked up by another branch of the government and go through the whole process again, wasting resources. This documentation can also be used in the community by service providers to identify those migrants who are eligible for their services. Given most states have processes for issuing visas or other documentation to legal migrants, this can be an area to build on or modify existing structures to assist in managing irregular migrants and asylum seekers.<sup>128</sup>

## Step 4.

### 4.4 APPLY CONDITIONS IN THE COMMUNITY SETTING IF NECESSARY

As shown in Section 4.3, case management, legal advice, basic needs and documentation create a strong context from which asylum seekers and irregular migrants can participate in the administrative procedures associated with resolving their migration status. Satisfactory outcomes can often be achieved in those contexts without extra conditions when there is no evidence the individual does not intend to participate in immigration procedures fully.

However, for those individuals with a history of non-compliance or where there are other serious concerns identified through the screening process, there are a range of mechanisms understood to promote and enforce compliance that do not place undue restrictions on freedom of movement. These conditions are what are usually described as 'alternatives to detention'. Unfortunately, there is very limited

data available documenting the specific levels of effectiveness of each of these mechanisms.<sup>133</sup> The data that is available has been noted with each mechanism. These mechanisms variously rely on:

- Individual undertakings
- Monitoring
- Supervision
- Intensive case resolution
- Negative consequences for non-compliance

By identifying the mechanisms underlying various conditions, we can see how a program of response can be constructed that is appropriate for the individual case. Many 'alternative to detention' programs integrate a number of these mechanisms, along with legal advice, case management, basic needs and documentation, to create effective management programs in a community context. The use of conditions can be re-negotiated or amended as a person's circumstances change. For instance, reassessment of a case due to non-compliance or a negative visa or status decision may lead to an increase in conditions, while when an individual is working well with authorities a decrease in conditions may be appropriate. 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,<sup>134</sup> as in the 30-day limit on conditions in Venezuela (Box 1).

It should be noted that the undue application of additional conditions can increase the costs of community management programs unnecessarily while also decreasing efficiency. Compliance issues may arise when conditions create an unmanageable or unfair burden for the individual. For instance, in-person reporting that is too onerous due to lengthy or costly travel, regular interruption to legal employment, or for those caring for children or the sick has sometimes resulted in non-compliance despite the individual being willing to remain in contact with authorities. If such requirements are too onerous, or are required at high levels over long periods of time, compliance can be inadvertently compromised.

#### 4.4.1 Individual undertakings

Many authorities do not allow an individual to remain in the community unless that person has undertaken



**Individual undertakings:**  
New Zealand,  
Japan, Philippines,  
Hong Kong,  
Canada, Australia,  
Indonesia

certain commitments to assist in the progress of their case and to respect restrictions on their participation in society, as seen in Box 1 Venezuela, Box 2 New Zealand, Box 5 Hong Kong, Box 10 Indonesia, Box 14 Canada and Box 16 Australia. Individuals may be required to undertake a range of

things, including to:

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

#### **Appear at immigration hearings or interviews**

An individual may be required to commit to appear at any hearings or official interviews with authorities regarding their visa application or migration status, as seen in Box 2 New Zealand. Such a commitment reinforces the importance of attending appointments to progress the migration matter and work towards case resolution. Attendance at such hearings are sometime also used as an opportunity to re-evaluate the conditions of release in the community should a negative decision on a visa application or other status be received.

#### **Undertake acts to assist case resolution**

An individual may be required to commit to undertake acts to assist in the resolution of their case. This may include a requirement to present further evidence in support of their claims by a certain date, such as further documents or witnesses. This may also include a commitment to take steps in preparation for return, such as purchasing tickets to leave the country and applying for a passport or other travel document, as seen in Box 2 New Zealand and Box 16 Australia.

#### **Respect visa or residency status conditions**

Another form of commitment is an undertaking to respect the conditions imposed on them through the short-term visa or other temporary status issued. Such a commitment 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 restrictions encourage case resolution or compliance. Instead it appears, as described in Section 4.3.3, that the ability to meet basic needs contributes to community-based case resolution. Another condition may be that the holder is not permitted to leave the country without permission. For an example, see Box 10 Indonesia.

#### **4.4.2 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.<sup>135</sup> 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 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:**  
Uganda, Zambia,  
Kenya, Indonesia

#### **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 with asylum seekers and refugees in Uganda, Zambia and Kenya has resulted in fewer people being detained unnecessarily.<sup>136</sup> For an example, see Box 10 on Indonesia.

#### **Nominated address**

Providing a nominated address can be used in a range of ways. Some countries use this mechanism largely to ensure that all official communication about the

**Nominated address:** Spain, Hungary, Belgium, Australia, New Zealand, Romania, Switzerland, the United Kingdom

progress of the case will be received, while other governments require an address to be registered to monitor movement and ensure the individual can be located in the community.<sup>137</sup> The address that can be

**Handover of travel documents:** Hungary, Poland, Austria, Australia, Luxembourg, Canada, Norway, Sweden

work unlawfully for short periods of time.<sup>138</sup> 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 Hungary, Poland, Austria<sup>139</sup> and Canada (Box 14).

registered depends on these various 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. Nominated or registered address is used in Canada (Box 14).

**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 individual'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

**Reporting requirements**

Reporting acts as a monitoring mechanism to ensure the individual remains known to and in contact with authorities. This may require a person to present themselves at set intervals at an immigration office, police station or contracted agency and sign a register documenting their presence. Telephone reporting can require the individual to call a particular number at set times, sometimes from a set telephone number, and record a statement which is verified using voice recognition technology.<sup>140</sup> The use of reporting

**Box 10. Reporting requirements as a monitoring mechanism – Indonesia**

Screen and assess the individual	Assess the community setting	Apply conditions if necessary
<input type="checkbox"/> Legal obligations	<input type="checkbox"/> Case management	<input checked="" type="checkbox"/> Individual undertakings
<input type="checkbox"/> Identity, health and security	<input type="checkbox"/> Legal advice	<input checked="" type="checkbox"/> Monitoring
<input checked="" type="checkbox"/> Vulnerability	<input type="checkbox"/> Ability to meet basic needs	<input type="checkbox"/> Supervision
<input type="checkbox"/> Individual case factors	<input checked="" type="checkbox"/> Documentation	<input type="checkbox"/> Intensive case resolution
		<input checked="" type="checkbox"/> Negative consequences

Through a Directive of the Director General of Immigration, Indonesia has established that irregular migrants holding attestation letters or letters verifying their status as refugees or asylum seekers by UNHCR should be allowed to remain in Indonesia.<sup>142</sup> It does not provide legal status but rather prevents detention by permitting their continued presence on the territory. Such individuals must be registered with the immigration authorities and sign a Declaration of Compliance while their application or resettlement is being processed by

UNHCR. This Declaration allows them to live outside of detention. The Declaration stipulates certain conditions, including that the refugee:

- must stay within a designated area;
- is not allowed to be in an airport or seaport without an immigration officer present;
- is not allowed to have guests stay in the accommodation provided;
- must fully comply with Indonesian laws; and
- must report to immigration every two weeks to register their presence.

The Declaration also states that any violations would most likely result in their being placed in detention. The letters of attestation, along with the Declaration of Compliance, provides a reliable form of documentation to reduce unnecessary instances of detention, while limitations on travel and reporting requirements provides monitoring of asylum seekers and refugees for authorities in a transit country.

## Reporting requirements:

U.S.A., Australia, Denmark, Finland, New Zealand, Canada, Indonesia, the United Kingdom, Japan, Ireland, Sweden, Austria, Greece, the Netherlands, Bulgaria

requirements can be seen in Box 1 Venezuela, Box 2 New Zealand, Box 5 Hong Kong, Box 9 Sweden, Box 10 Indonesia, Box 11 U.S.A., and Box 14 Canada.

Case assessment will assist authorities in identifying those individuals who require additional monitoring such as reporting requirements and reduce the expense and impact of unnecessary monitoring activities. The frequency of reporting requirements may change as circumstances require. For

instance, if a date of departure is approaching, greater frequency may be considered necessary to monitor the individual more closely. On the other hand, once the

character of the individual has been established as a result of compliance with initial reporting requirements, less onerous reporting measures can be introduced.<sup>141</sup>

Attendance at a migration office to renew a temporary residency visa or status, or to obtain food vouchers or other goods, can sometimes act as a *de facto* reporting mechanism, although this only contributes to monitoring if a lack of appearance is reported to authorities.

## Directed residence

The provision of shelter at an accommodation centre can become a *de facto* monitoring mechanism by requiring residence at a particular location. In addition to establishing a known address, some accommodation centres undertake additional monitoring activities by reporting absentee residents to authorities. Some centres also have immigration authorities or case

## Box 11. Making use of supervision to increase appearance rates during removal proceedings: USA

Screen and assess the individual	Assess the community setting	Apply conditions if necessary
<input type="checkbox"/> Legal obligations	<input checked="" type="checkbox"/> Case management	<input type="checkbox"/> Individual undertakings
<input type="checkbox"/> Identity, health and security	<input checked="" type="checkbox"/> Legal advice	<input checked="" type="checkbox"/> Monitoring
<input type="checkbox"/> Vulnerability	<input checked="" type="checkbox"/> Ability to meet basic needs	<input checked="" type="checkbox"/> Supervision
<input checked="" type="checkbox"/> Individual case factors	<input type="checkbox"/> Documentation	<input checked="" type="checkbox"/> Intensive case resolution
		<input checked="" type="checkbox"/> Negative consequences

In the U.S.A., 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.<sup>143</sup> 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 supervision were

required to have a guarantor, such as a relative, who agreed to take moral responsibility for the person to fulfil their obligations.<sup>144</sup> 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.<sup>145</sup>

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 – undocumented 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 control 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.

**Directed residence:**  
Austria, Belgium,  
Romania, Germany,  
Indonesia, Japan,  
New Zealand

managers located on-site, increasing contact with migration authorities. Other countries direct individuals to live in a certain region or district

**Supervision:**  
U.S.A., New Zealand, Canada, Australia

#### 4.4.3 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 separate to case management due to its focus on compliance

and case resolution activities, although it can sometimes be intertwined with case management. It is a more active than monitoring as it provides the officer with authority to respond to changes in circumstances or issues with compliance. Supervision can involve:

and case resolution activities, although it can sometimes be intertwined with case management. It is a more active than monitoring as it provides the officer with authority to respond to changes in circumstances or issues with compliance. Supervision can involve:

## Box 12.

### Making use of intensive case resolution with complex cases – Australia

Screen and assess the individual	Assess the community setting	Apply conditions if necessary
<input type="checkbox"/> Legal obligations	<input checked="" type="checkbox"/> Case management	<input type="checkbox"/> Individual undertakings
<input type="checkbox"/> Identity, health and security	<input checked="" type="checkbox"/> Legal advice	<input type="checkbox"/> Monitoring
<input checked="" type="checkbox"/> Vulnerability	<input checked="" type="checkbox"/> Ability to meet basic needs	<input type="checkbox"/> Supervision
<input type="checkbox"/> Individual case factors	<input checked="" type="checkbox"/> Documentation	<input checked="" type="checkbox"/> Intensive case resolution
		<input type="checkbox"/> Negative consequences



The Australian government has recently developed two services to work with irregular migrants who require extra assistance to resolve their immigration status, building on the introduction of case management for migration issues in 2006.<sup>146</sup>

The Community Status Resolution Service provides early intervention and support through the immigration department for eligible migrants with no identified health or welfare issues who are living in the community on a 'Bridging Visa E' while awaiting a final decision on a migration matter or who are preparing for departure.<sup>147</sup> The service seeks to better understand an individual's circumstances and provide accurate information and advice to help resolve their migration status in a timely manner. It also works to identify and address any barriers that may delay an outcome, such as connecting individuals who need assistance with appropriate support services such as the International Organization for Migration's Assisted Voluntary Return program; welfare assistance provided through the Red Cross; and referral to legal advice.

Clients with complex needs are referred to the Community Assistance Support Program, a

case resolution service that seeks to "provide support intervention to highly vulnerable clients in exceptional circumstances while their immigration outcome is being actively managed and progressed."<sup>148</sup> Eligible persons will generally indicate one or more of the following 'vulnerabilities': living with the effects of torture and trauma; experiencing significant mental health issues including those who are suicidal; living with serious medical conditions; incapable of independently supporting themselves in the community (for example, if elderly, frail, mentally ill, disabled); or facing serious family difficulties, including child abuse, domestic violence, serious relationship issues or child behavioural problems.<sup>149</sup>

This program was expanded nationally after a pilot program achieved significant outcomes despite clients having high level welfare needs and having been in Australia for an average of more than six years. 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.<sup>150</sup> These figures show a compliance rate of 93%. 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. The program cost a minimum of AU\$38 per day compared with a minimum of AU\$125 for detention.<sup>151</sup>

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. The service has resulted in more clients approaching the department as well as an increase in the proportion of people departing voluntarily."<sup>152</sup> The Refugee Council of Australia has similarly reported that "The Community Care Pilot demonstrated that supporting vulnerable visa applicants to live in the community was a more constructive and cost-effective strategy than leaving them indefinitely in immigration detention. It also showed that many of those unable to remain in Australia could be encouraged to return home voluntarily, avoiding the trauma and expense associated with forced removals."<sup>153</sup>

- 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. Supervision provides authorities with the information required to make decisions about future management or case resolution, including appropriate pathways for those facing return. Intensive supervision programs appear to be most successful when established in conjunction with case management, legal support, basic needs and documentation, as seen in Box 11 U.S.A.

### **Delegated supervision**

Sometimes supervision tasks are delegated by authorities to an organisation authorised to supervise the compliance of irregular migrants with the conditions of their release. Non-governmental organisations have sometimes been willing to undertake supervision responsibilities as part of a broader support program 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 4.4.5) 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 2 New Zealand and Box 14 Canada.

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 5 Hong Kong). A focus on service provision may preclude some non-governmental organisations from responding to instances of non-compliance or limit their obligations to reporting non-compliance to authorities.

#### **4.4.4 Intensive case resolution**

Intensive case resolution work can be used as a mechanism to assist in resolving an individual's

**Intensive case resolution including return preparation: Belgium, Australia, the Netherlands, Germany, Canada.**

migration status while they remain in the community. 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. 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 management for complex cases
- Return preparation program with case management and legal support

### **Case management for complex cases**

Although the importance of case management has been established in section 4.3.1, it is important to note the specific strengths of case management when dealing with complex cases. Individuals are less able to focus on resolving their migration status if multiple and complex issues demand their attention and engage their time and energy. Complex cases vary widely but many involve issues of vulnerability, such as serious illness or trauma (see Section 4.2.3), an inability to meet basic needs including homelessness and poverty (see Section 4.3.3), those at risk of self-harm or experiencing suicidal ideation, or those with 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 12 Australia.

### **Return preparation program with case management and legal support**

Return preparation and counselling programs have been found to be an effective mechanism to support and facilitate the independent departure of individuals from the community without the need for detention pending removal for those who have no grounds to remain in the country and who have no protection or humanitarian concerns. Return preparation and

## Box 13.

### Preparing families for return from a community setting – Belgium

Screen and assess the individual	Assess the community setting	Apply conditions if necessary
<input type="checkbox"/> Legal obligations	<input checked="" type="checkbox"/> Case management	<input type="checkbox"/> Individual undertakings
<input type="checkbox"/> Identity, health and security	<input checked="" type="checkbox"/> Legal advice	<input type="checkbox"/> Monitoring
<input checked="" type="checkbox"/> Vulnerability	<input checked="" type="checkbox"/> Ability to meet basic needs	<input type="checkbox"/> Supervision
<input type="checkbox"/> Individual case factors	<input type="checkbox"/> Documentation	<input checked="" type="checkbox"/> Intensive case resolution
		<input type="checkbox"/> Negative consequences

Belgium has developed a project to work with families who have to leave the country or who are not granted access to the territory.<sup>158</sup> The project came out of a government decision to no longer detain children. This small-scale initiative accommodates families in apartment buildings in one of three sites in Belgium. Each family is assigned a worker or ‘coach’ who engages in intensive case work to review the family’s file, explore any options to remain in the country legally, refer for further legal advice as required, assist the family in accepting and preparing for return and to make practical arrangements for the journey. Case managers spend time building rapport and trust with the families, encouraging families to share their story. Case managers can then focus on the complex situations families find themselves in, and the challenges preventing realistic decisions about their future.

The apartment buildings are not locked and there are no security staff. The families are permitted to leave the premises for various reasons such as going to school, visiting their lawyer, buying groceries or to attending religious

ceremonies. Each family receives food vouchers to buy what they need at the local supermarket, from which they prepare their own meals.

At the end of 23 months of operation, 87 of 106 families (82%) remained in contact with the authorities. Of the 99 families who had exited the program, 34 were released from the program for various reasons. In addition, of 46 who departed the country there were 15 departures with the assistance of IOM ‘Assisted Voluntary Return’; 18 ‘Dublin cases’; seven refusals at the border; five ‘forced’ removals; and one on the grounds of a bilateral agreement. The average length of stay was 21.4 days.

The government has been pleased by these positive results and is working to expand the program nationally.<sup>159</sup> As one expert has noted, “Families facing removal do not abscond and are more able to comply with a final decision when they feel that their case manager is helping them to find a sustainable solution. This is achieved not through harsh policies, but when they can envisage a better future for themselves and especially their children.”<sup>160</sup>

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 12 Australia and Box 13 Belgium). Additional strategies in the return context can be found in Section 4.3.1 Case management.

There are a number of programs designed to support a person to prepare for voluntary return or independent departure while they remain in the community, including the Assisted Voluntary Return programs run by the International Organization for Migration.<sup>154</sup> Most of these programs provide practical support for the return process, such as assistance in organising and paying for flights and/or funds to re-establish life on return. Assisted return programs appear to be more effective at achieving 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 or case work (see Box 9 Sweden).

In addition to providing practical support, such programs can encourage irregular migrants to exit the country voluntarily or independently by highlighting the benefits of legal return migration as opposed to deportation. The effectiveness of such ‘return counselling’ is likely to depend on the individual’s situation and their trust in their case workers. One study, described in Box 11 U.S.A., 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 U.S.A. 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.<sup>155</sup> 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.<sup>156</sup> 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. As noted in Section 1.3, the impact of detention leads to increased vulnerability, impacting on a person's wellbeing and mental health and affecting their ability to think clearly, make departure arrangements or comply with decisions.

In addition, refused asylum seekers may have powerful reasons to fear return that are not allayed by standard re-integration support packages and particular care must be taken when working with this group.<sup>157</sup> Individual assessment and case management can assist authorities in determining the best pathway to return for these different populations.

#### 4.4.5 Negative consequences for non-compliance

Several mechanisms used to manage irregular migrants in a community setting impose negative 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.<sup>161</sup> Notwithstanding this lack of evidence, this strategy is commonly used by governments and as such is included in this report. Negative consequences for non-compliance can include:

- Bail, bond, surety or guarantee
- Other negative 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

**Release with bail, bond, surety or guarantee:** Japan, Australia, South Korea, United Kingdom, Canada, Slovenia, U.S.A., Finland

his or her immigration procedures or other conditions of their release to the community. The money involved in these schemes can be from the individual themselves, or through a third party such as a family member, friend or community organisation. 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 for these programs 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-governmental organisations have worked to develop a pool of funds to enable the release of detainees who may otherwise be unable to afford to participate in a release program. Such schemes can be seen in Box 1 Venezuela, Box 5 Hong Kong, Box 11 U.S.A. and Box 14 Canada.

**Threat of other negative consequences including (re) detention:** New Zealand, Japan, Hungary, Germany, Portugal

#### Other negative consequences

Other incentives currently being used in some migration systems rely on the threat of negative consequence to try and reduce non-compliance. The least imposing negative consequence used in this way is an increase in conditions of release in the community, such as the introduction of more intensive supervision or reporting requirements.

Another negative consequence is a loss of access to basic social welfare such as housing or basic needs. This has been criticised for its impact on human rights as well as the lack of evidence that it has any effect on rates of compliance.<sup>168</sup> Detention is another negative consequence used as a consequence for non-compliance. It is unclear in what ways and in which circumstances the threat of detention may be effective in increasing the compliance of irregular migrants with the conditions of their release.<sup>169</sup> Finally, non-compliance can lead to the withdrawal of options for independent or supported departure, as used to encourage those with no further avenue to remain in the country to comply with departure procedures. Some of the negative consequences associated with

## Box 14.

### Using bail to create a financial consequence for non-compliance – Canada

Screen and assess the individual	Assess the community setting	Apply conditions if necessary
<input type="checkbox"/> Legal obligations	<input checked="" type="checkbox"/> Case management	<input checked="" type="checkbox"/> Individual undertakings
<input type="checkbox"/> Identity, health and security	<input checked="" type="checkbox"/> Legal advice	<input checked="" type="checkbox"/> Monitoring
<input type="checkbox"/> Vulnerability	<input checked="" type="checkbox"/> Ability to meet basic needs	<input checked="" type="checkbox"/> Supervision
<input checked="" type="checkbox"/> Individual case factors	<input type="checkbox"/> Documentation	<input type="checkbox"/> Intensive case resolution
		<input checked="" type="checkbox"/> Negative consequences

Canada uses negative financial consequences, through a bail mechanism, as one tool in its system for managing irregular migrants and asylum seekers in the community.<sup>162</sup> Bail is one possible condition of release from detention and is automatically considered at hearings to review the decision to detain. 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.<sup>163</sup> Detainees may request an earlier review hearing if they have new facts pertaining to the reasons for their detention. Eligible detainees may access free legal representation through 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.

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.<sup>164</sup>

Several non-governmental 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. One

well-established organisation is the Toronto Bail Program, which has been operating since 1996 as a specialist agency funded by the government.<sup>165</sup> This organisation identifies eligible detainees through a screening and assessment process and then supports their application for release. Case management, support to access basic needs, information and advice, reporting and supervision are all components of this program. The program costs CA\$10–12 per person per day compared with CA\$179 for detention.<sup>166</sup> In the 2009–2010 financial year, it maintained a 96.35% compliance rate.<sup>167</sup> Authorities rarely refuse an application for release supported by this organisation. It is unclear what impact the bond facility has on compliance rates, given any financial consequences are born directly by the organisation. The use of assessment, case management and other supports appears to be more significant than the threat of financial consequences.

deportation instead of independent return include the trauma of forced repatriation; limitations on future international travel due to having been deported from a country; a debt for deportation procedures; and the loss of opportunity to pack up belongings, close bank accounts and farewell family and friends before departure.<sup>170</sup> Examples of negative consequences for non-compliance can be seen in Box 2 New Zealand, Box 5 Hong Kong, Box 9 Sweden and Box 10 Indonesia.

controversial. The management of irregular migrants and asylum seekers through detention or other substantial restriction on freedom of movement is contentious as it undermines an individual's right to liberty and places them at greater risk of arbitrary detention. 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.<sup>171</sup> Detention is inherently undesirable given that it undermines human rights and is known to have serious negative consequences for mental health, relationships and wellbeing. Certain vulnerable individuals should never be detained. Given these concerns, several countries do not use detention at all for migration matters, or substantially curtail its use through strict legal

## Step 5.

### 4.5 DETAIN ONLY AS A LAST RESORT IN EXCEPTIONAL CASES

The use of confinement as a management tool with people in administrative procedures is highly



limitations, as seen in Section 4.1.

In spite of this, detention is a growing element of migration management in many countries and is unlikely to be entirely abandoned in the near future. As a result, detention is included in the CAP model to be used only as a last resort in line with international human rights standards in a small number of cases after all other options have been tried and failed. If authorities can show before a court 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 without discrimination, and all other options have been explored, then detention in appropriate conditions, of limited duration and with regular judicial review in line with international standards may be considered the last resort.

This research was designed to focus on those forms of migration management that allow migrants to live with freedom of movement in the community while their migration status is being resolved. As a result of this focus, any form of management that is designed to substantially curtail or completely deny freedom of movement has been regarded as a *form of detention*.<sup>172</sup> The various *forms of detention* include transit zones, closed accommodation centres,<sup>173</sup> alternative places of detention, home detention (including curfews) and traditional immigration detention centres. In addition, electronic monitoring is included here as an alternative *form of detention* due to its use to substantially curtail 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.<sup>174</sup> 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 detention are covered within this section because

**Specific grounds for detention established in law: Lithuania, Finland, Hungary, Germany, the United Kingdom**

they substantially curtail freedom of movement and consequently require an extremely high threshold before application and require the same high level of regulation including judicial review and independent access and oversight as traditional forms of detention.

#### 4.5.1 Immigration detention standards

The impact and experience of immigration detention varies considerably depending on the structures underpinning the detention system and the conditions and culture established within particular detention centres. The International Detention Coalition’s *Checklist for Monitoring Places of Immigration Detention* can be found in Appendix III.<sup>175</sup> This section will outline some of the key areas to review and monitor to ensure immigration detention standards remain at an acceptable level, although this list is not comprehensive. These areas include:

- Grounds for detention
- Independent oversight including automatic judicial review and monitoring
- Avenues for release
- Length of time in detention
- Conditions
- Treatment including behaviour management
  - Access to information and the outside world

#### Grounds for detention

The Universal Declaration of Human Rights provides that *everyone* has the right to liberty and to protection from arbitrary detention. As it interferes with these rights, any use of immigration detention must meet those standards that have been established in international law including, *inter alia*, that it is lawfully applied; that it is reasonable and necessary in the individual case; that it is proportionate to the reasons for the detention; and that it is applied without discrimination.<sup>176</sup> Alternatives should first be considered and detention should only be used as a last resort in exceptional cases. Detention should be avoided for particular groups in accordance with international, regional and national law.<sup>177</sup> When used, it must be necessary and proportionate to the objectives of identity and security checks; prevention of absconding; or compliance with an expulsion order. The

## Box 15.

### Using lawyers to increase access to asylum procedures and to monitor places of detention at the border – Hungary

Screen and assess the individual	Assess the community setting	Apply conditions if necessary
<input type="checkbox"/> Legal obligations	<input type="checkbox"/> Case management	<input type="checkbox"/> Individual undertakings
<input type="checkbox"/> Identity, health and security	<input checked="" type="checkbox"/> Legal advice	<input type="checkbox"/> Monitoring
<input type="checkbox"/> Vulnerability	<input type="checkbox"/> Ability to meet basic needs	<input type="checkbox"/> Supervision
<input type="checkbox"/> Individual case factors	<input type="checkbox"/> Documentation	<input type="checkbox"/> Intensive case resolution
		<input type="checkbox"/> Negative consequences

Hungary has pioneered a border monitoring project that is increasing the access of lawyers to places of detention at the border.<sup>181</sup> A tripartite agreement between border police, UNHCR and the Hungarian Helsinki Committee allows designated lawyers to visit border detention facilities to inform detainees of their procedural rights including the right to access the asylum system and to benefit from

free legal assistance; to monitor the situation of detainees and the conditions of their detention; and to bring the findings of these visits to the attention of the authorities and to the public. Lawyers are permitted to interview current detainees and review de-identified case files of those individuals who have been deported. The project includes training for both management and field staff of the border

police on protection sensitive entry systems and communication techniques with asylum seekers with special needs. Through this work, lawyers provide additional mechanisms to identify detainees who may be eligible to access asylum procedures and to provide independent oversight of the conditions of detention.

International Detention Coalition's position relating to the detention of refugees, asylum seekers and migrants can be found in Appendix II.

#### Independent oversight including automatic judicial review and monitoring

The decision to restrict freedom of movement through confinement in a defined location is one of the strongest uses of power by a government against an individual. Decisions regarding confinement are best regulated through automatic, prompt and regular independent judicial review.<sup>178</sup> The use of a court to review the decision to detain establishes a system of independent and non-partisan oversight when the power of the state is being exercised in this way. Such transparency ensures that the reasons for a decision to detain have been well established by the decision maker and that the individual facing detention has a chance to raise their own concerns regarding the decision. It is important that an individual has access to legal counsel and a chance to instigate a judicial review of their detention, both upon entering detention, during their detention

if their circumstances change or through automatic periodic review at set times.

While a court can review the details of a decision to detain, the conditions of detention and the treatment of detainees are best monitored through independent access to places of detention.<sup>179</sup> Governments are encouraged to accede to the UN Convention Against Torture and its Optional Protocol, which introduces independent monitoring of places of detention as

a key preventative mechanism, including unannounced visits and roles for the UN Subcommittee on Prevention of Torture and National Preventative Mechanisms.<sup>180</sup> National human rights institutions, prison inspection authorities or non-governmental organisations are often involved in monitoring places of detention. Independent monitoring can ensure that the conditions of detention do not fall below acceptable standards by creating a public reporting mechanism that increases transparency and accountability. Such monitoring can include appointed and unannounced visits; interviews with current and former detainees; interviews with staff including management, guards, contracted workers and medical

#### Independent oversight including automatic judicial review and/or monitoring:

Argentina, Austria, Estonia, Denmark, France, Hungary, Italy, Latvia, Luxemburg, New Zealand, Canada, Hungary, Sweden, the United Kingdom

## Box 16.

### Creating an avenue to release detainees who cannot be deported – Australia

Screen and assess the individual	Assess the community setting	Apply conditions if necessary
<input type="checkbox"/> Legal obligations	<input type="checkbox"/> Case management	<input checked="" type="checkbox"/> Individual undertakings
<input type="checkbox"/> Identity, health and security	<input type="checkbox"/> Legal advice	<input type="checkbox"/> Monitoring
<input checked="" type="checkbox"/> Vulnerability	<input checked="" type="checkbox"/> Ability to meet basic needs	<input type="checkbox"/> Supervision
<input checked="" type="checkbox"/> Individual case factors	<input checked="" type="checkbox"/> Documentation	<input type="checkbox"/> Intensive case resolution
		<input type="checkbox"/> Negative consequences



Australia has a series of 'bridging visas' used to provide temporary legal status to migrants who have applied for a substantial visa or are preparing for return.<sup>183</sup> Australia has used this system to create an avenue for release for long-term detainees who were facing indefinite confinement for reasons outside of their control. The "Removal Pending

Bridging Visa" enables irregular migrants who are complying with efforts to prepare for their removal to be released from detention while this preparation is completed. The visa establishes the right to work, healthcare and basic welfare provision. Visa holders are required to comply with additional conditions related to making preparations to depart the

country. This visa was a response to the situation of those migrants whose country of origin was unable or unwilling to issue travel documents, resulting in detention for prolonged periods despite their own efforts to facilitate the return process.

staff; and review of de-identified case files of those who have been released or deported. In this respect, complaints procedures within detention facilities must include an opportunity to take complaints to external organisations. In addition to independent oversight, immigration authorities must closely monitor any places of detention that are operated on its behalf by another authority, such as a prison authority, or a private contractor.

The International Detention Coalition has developed a *Checklist for monitoring places of immigration detention*, which can be found in Appendix III. This checklist covers the broad areas of treatment, protection measures and safeguards, conditions, medical services, detention staff and regime and activities.

Protecting detainees from unnecessary detention is assisted through access to accurate and timely legal advice. This is facilitated when lawyers have open access to the detention population to identify those who require legal support. As described in Section 4.3.2, proper legal advice ensures the most relevant information regarding a person's migration situation is submitted to decision makers in the first instance, leading

to quicker and more sustainable decisions. However, detainees require additional legal advice to ensure that the reasons for their detention are assessed and reviewed appropriately. Examples of judicial review and/or legal advice for detainees can be seen in Box 14 Canada, Box 15 Hungary and Box 17 Argentina.

#### Avenues for release

It is important that detention systems provide legitimate avenues for eligible detainees to be released to a community-based alternative. Avenues for release ensure detainees have real opportunities to apply for and be considered for release. These avenues are often intertwined with the process of regular and ongoing judicial review. Avenues for release may include bail or bond schemes (described in Section 4.4.5) or release at the end of a maximum period of detention (discussed on page 48 ), while others may be tied to 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 for stateless persons who face extended periods waiting for a resolution of their situation.<sup>182</sup> Developing pathways to alternative management

**Avenues for release including bail schemes:**  
Japan, Australia, South Korea, United Kingdom, Canada, Slovenia, U.S.A., Finland

## Box 17.

### Limiting the use of detention – Argentina

Screen and assess the individual	Assess the community setting	Apply conditions if necessary
<input type="checkbox"/> Legal obligations	<input type="checkbox"/> Case management	<input type="checkbox"/> Individual undertakings
<input type="checkbox"/> Identity, health and security	<input checked="" type="checkbox"/> Legal advice	<input type="checkbox"/> Monitoring
<input type="checkbox"/> Vulnerability	<input type="checkbox"/> Ability to meet basic needs	<input type="checkbox"/> Supervision
<input type="checkbox"/> Individual case factors	<input type="checkbox"/> Documentation	<input type="checkbox"/> Intensive case resolution
		<input type="checkbox"/> Negative consequences

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.<sup>187</sup> For example, Argentina 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 and has recently legislated to provide temporary residence permits for people who might not be able to return to their country of origin because of a natural or environmental disaster.<sup>188</sup> Legal migration has been seen to benefit the economy and so irregular migration has largely been redirected and integrated into the formal market through these regularisation processes.

Immigration detention is limited in law and practice to rare instances during deportation procedures.<sup>189</sup> 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 for all irregular migrants. 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. Detention is limited to 15 days pending removal. In practice, migrants who have been committed to prison for criminal offences are the only immigration detainees.

programs ensures detention is not unnecessarily prolonged due a lack of options for release. See Box 4 Philippines, Box 14 Canada and Box 16 Australia for some examples.

#### Length of time in detention

Immigration detention can be an extremely traumatic and damaging experience and must be limited to the shortest length of time possible to protect detainees' wellbeing. Prolonged detention has been shown

to have severe and pervasive consequences for former detainees, limiting their ability to rebuild life after release.<sup>184</sup> Limitations on the length of detention are most clearly established when a maximum period of detention is set. These limitations ensure that detainees who have already been detained for a specified period of time are released. Maximum periods of

immigration detention are largely set through national law or policy and vary widely depending on the context.<sup>185</sup> In some cases, the maximum period of detention has been determined for pragmatic reasons, as authorities recognise that if deportation can not be achieved within a few months, then it is unlikely to be undertaken in a reasonable period of time.<sup>186</sup> This consideration can be seen in Box 16 Australia and Box 17 Argentina.

#### Conditions

The material conditions of a place of detention must meet basic standards that allow detainees to live in safety and dignity for the duration of their confinement.<sup>190</sup> Material conditions can cover a broad range of areas including the density of residents for the space provided; the quality of buildings and facilities provided; the quality of shelter given the local climate; levels of natural light and ventilation; and access to outdoor spaces. Food should meet dietary requirements and respect cultural or religious values. Necessities for maintaining hygiene, such as bathing facilities, toiletries, clean clothes and bed linen should be easily

**Length of time in detention including maximum length of detention: France, the Netherlands, Spain, Sweden, Ireland, Portugal, Luxembourg, Czech Republic, Hungary, Italy, Slovak Republic**

**Conditions of dignity and respect including treatment and access to outside world: Sweden, New Zealand**

accessible.<sup>191</sup> Basic conditions also involve appropriate routines for important activities including meal times; recreational time; time to access outdoor areas and undertake physical activity; and times to meet with others including lawyers and visitors. Authorities must provide time and appropriate facilities for detainees to practise their religion including by participating in religious services and receiving visits from religious representatives. Access to private spaces for quiet reflection is of importance to many detainees.<sup>192</sup> Immigration detainees should not be held in facilities designed for, or currently being used to hold, individuals serving a criminal sentence.<sup>193</sup> Detainees should not be required to wear prison uniforms, be deprived of physical contact with visitors, and otherwise treated as though they are in correctional facilities.

A long history of research with prison populations has developed a good understanding of ways to protect the health and wellbeing of confined populations.<sup>194</sup> Research on institutions of confinement has identified several factors that introduce risks to health and wellbeing. For instance, deprivation and overcrowding have been shown to dramatically increase the risk of suicide, as well as infectious

disease, amongst incarcerated populations.<sup>195</sup> Access to appropriate medical and mental health care is critical in this regard.<sup>196</sup> An example of conditions of detention that promote dignity and limit impacts on wellbeing can be seen in Box 18 Sweden.

### Treatment including behaviour management

The impact of staff and security personnel on the experience and wellbeing of detainees is vital.<sup>199</sup> A detainees' level of contact with others is highly limited and relationships with staff therefore become central to their experience of the social world.<sup>200</sup> Detention centre staff play an integral role in developing a culture of respect that allows detainees to live in safety and dignity for the duration of their confinement (see Box 18 Sweden).<sup>201</sup> The work of staff in this area can be supported through regular, independent access by non-governmental organisations and other visitors to limit the potential abuse of power that can emerge in unmonitored facilities.<sup>202</sup> Additional protections against inhumane treatment includes regulations and limitations on the use of physical and chemical restraints and on the use of detainees as paid or unpaid labour.<sup>203</sup>

Strategies to manage disruptive and difficult behaviours among detainees must be humane to

## Box 18.

### Creating detention conditions that respect dignity and wellbeing – Sweden

Screen and assess the individual	Assess the community setting	Apply conditions if necessary
<input type="checkbox"/> Legal obligations	<input type="checkbox"/> Case management	<input type="checkbox"/> Individual undertakings
<input type="checkbox"/> Identity, health and security	<input type="checkbox"/> Legal advice	<input type="checkbox"/> Monitoring
<input type="checkbox"/> Vulnerability	<input type="checkbox"/> Ability to meet basic needs	<input type="checkbox"/> Supervision
<input type="checkbox"/> Individual case factors	<input type="checkbox"/> Documentation	<input type="checkbox"/> Intensive case resolution
		<input type="checkbox"/> Negative consequences

In Sweden, detention may be used for people who are in the process of being deported because they have not complied with a final negative decision that requires them to depart the country.<sup>197</sup> Detention centres operate like small, closed accommodation centres. Residents can freely move about within the facility. Bedrooms are shared between two to four people. There are lounge areas

with televisions, computer rooms with access to the internet, and a gym. Most rooms have windows looking out to garden areas. Supervised access to a central courtyard provides access to an outdoor area. Residents can use mobile phones but these must not have an inbuilt camera. Staff work to build a culture of dignity and respect with clients. They do not wear security uniforms or carry weapons. There are

visitors rooms furnished with tables, chairs, lounges and toys for children. Two local non-governmental organisations have open access to these 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 observers.<sup>198</sup>

limit any potential impact on mental health. The use of solitary confinement as a form of punishment or population management is of particular concern given that its adverse effects can be substantial.<sup>204</sup> It is particularly unsuitable as a response to self-harm or attempted suicide.

### **Access to information and the outside world**

Upon detention, detainees must be given adequate information in a language and format they can understand outlining the reasons for their detention, the process for judicial review and the circumstances in which they may be eligible for release. Access to legal advice can be crucial in this regard. Social isolation is a significant issue for most detainees, as they are removed from their usual social worlds.<sup>205</sup> Detainees' psychosocial health can be supported when they are able to retain meaningful social contact with loved ones. This can be assisted by ensuring access to communication technologies such as telephones, mobile phones, email and internet

facilities; ensuring family or relatives are advised of the whereabouts of the detainee; limiting transfers to facilities away from family and local communities; ensuring detention centres are not in highly remote areas to facilitate access by visitors; and retaining family integrity as possible, such as keeping married couples without children detained in appropriate conditions together.

In addition, contact with the outside world must be facilitated to ensure assistance and support can be sought from non-governmental or other organisations, or to plan for release or return to their country of origin. For instance, access to the internet can be an important tool to make preparations for return to country of origin.

Finally, detainees should be able to remain engaged with society through regular access to media and broadcasters through access to television, radio, newspapers and the internet. For an example of this kind of access, see Box 18 Sweden.

# 5. DISCUSSION AND CONCLUSIONS

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This research has identified and described those laws, policies and practices that allow asylum seekers, refugees and irregular migrants 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 concern for human rights and minimising harm but shaped by the legitimate government concerns regarding compliance, case resolution and cost. In taking this approach, the 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 community management programs.

The findings have been brought together in the Community Assessment and Placement (CAP) model. The CAP model outlines five steps governments can take to prevent unnecessary detention and to ensure detention is only applied as the last resort. A presumption against detention is the first step in ensuring detention is only used as the last resort. Breaking down the population through individual screening and assessment is the second step, in order to identify the needs, strengths, risks and vulnerabilities in each case. The third step involves an assessment of the community setting, in order to understand the individual's context in the community and to identify any supports that may assist the person to remain engaged in immigration proceedings. As a fourth step, further conditions, such as reporting requirements or supervision may be introduced to strengthen the community setting and mitigate identified concerns. If these conditions are shown to be inadequate in the individual case, detention in line with international standards, including judicial review and of limited duration, may be the last resort in exceptional cases.

## 5.1 Benefits

The research has identified a range of benefits in

restricting the application of detention and prioritising community-based management options, including that they:

- Maintain high rates of compliance
- Cost less than detention
- Reduce wrongful detention and litigation
- Reduce overcrowding and long-term detention
- Protect and fulfil human rights
- Increase voluntary return and independent departure rates
- Improve integration outcomes for approved cases
- Improve client health and welfare

Although consistent data is not available for each of these outcomes, any available data have been included throughout the report. The three key areas of compliance, cost and health and wellbeing are discussed in more detail below.

### Compliance rates

Community management programs have been shown to maintain high compliance rates with a range of populations. The data is most reliable for those still awaiting a final visa or status decision who are in their preferred destination. As noted in Section 3.2, a recent study collating evidence from 13 programs found compliance rates among both asylum seekers and irregular migrants awaiting a final outcome ranged between 80% and 99.9%.<sup>206</sup> For example, over 85% of asylum seekers living independently in the community without restrictions on their freedom of movement appeared for their hearings with an Immigration Judge in the U.S.A. in FY 2003, without any extra conditions being imposed.<sup>207</sup> A bail project in Canada with a mixed group of detainees released into its supervision has retained high compliance levels of over 96% in the 2009-2010 financial year (Box 14). The use of legal advice in a United Kingdom pilot project was seen to support compliance rates, although the sample size was too small to draw statistically significant conclusions (Box 7). 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, remains hopeful about future possibilities and is not threatened with detention or deportation. For instance, Hong Kong achieves a 97% compliance rate with asylum seekers or torture claimants in the community (Box 5), despite the fact recognised refugees or torture claimants are not offered permanent residency status in that country.

In addition, the study found solid compliance rates can be achieved in programs designed to work with groups who are facing departure. The intensive supervision pilot run by the Vera Institute for Justice in the U.S.A. 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 (Box 11). An Australian pilot project achieved a 93% compliance rate in maintaining commitments to authorities; in addition, 60% of those not granted a visa to remain in the country departed independently or voluntarily, despite long periods in the country and significant barriers to their return (Box 12). An 82% rate of departure among refused asylum seekers was reported in Sweden (Box 9). Belgium experienced a compliance rate of 82% among families who might otherwise have been subject to detention and removal (Box 13). These figures demonstrate the ability of community management programs to sustain significant levels of compliance with a range of populations.

### **Cost benefits**

Significant cost benefits are also associated with the Community Assessment and Placement model as described in this report.<sup>208</sup> If cases can be managed in community settings without a reduction in visa application processing times, cost savings will be inevitable. Avoiding unnecessary cases of detention, or reducing the length of time someone is detained, is a key strategy in reducing the costs associated with detention.

Community management programs described in this report were much less expensive than detention to operate, with savings on a per person per day of US\$49 (Box 11), AU\$86 (Box 12) and CA\$167 (Box

14). More efficient systems can also improve upon the overall cost of operations, although these can be more difficult to calculate. As seen in the United Kingdom (Box 7), the provision of quality legal advice at an early stage of the process resulted in fewer appeals, creating an average saving of £47,205.50 for every 100 cases. Significant savings are also evident in the costs of assisted voluntary departures when compared with escorted deportations: one government representative estimated that the supported independent or voluntary departure of an individual to another country within the European Union cost €300–€600 compared with up to €1,500 for escorted deportations.<sup>209</sup> Similarly, the Australian government reported that the ‘non-common’ costs of an assisted independent departure or voluntary return from the community are approximately one-third of those of a ‘locate, detain and remove’ case: approximately \$1,500 compared with \$5,000.<sup>210</sup> Finally, the CAP model can assist governments in preventing or reducing cases of wrongful or arbitrary detention, thereby avoiding costly litigation. For example, the United Kingdom has paid out over £2 million, not including associated legal costs, over the past three years to 112 individuals where it has been proven that immigrants have been wrongly detained.<sup>211</sup>

### **Protecting health and wellbeing**

Protecting health and wellbeing is the third key factor used to assess the success of the various mechanisms included in this report. There are several reasons to believe community management programs promote better health and wellbeing outcomes when compared with immigration detention. All people awaiting an immigration outcome can experience stress and anxiety associated with uncertainty about their future.<sup>212</sup> Although management in the community does not take away this uncertainty, research has demonstrated 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.<sup>213</sup> Damaging experiences particular to detention, including confinement, a sense of gross injustice, broken relationships and isolation from society, are likely to be avoided.<sup>214</sup> The impact of detention on the cognitive and emotional development of children is similarly likely to be avoided



when a community program, like those described in Box 3 Hungary and Box 13 Belgium, is used instead of confinement in a detention facility. Appropriate management in the community is more likely to uphold human rights and support wellbeing, thereby contributing to people being able to contribute fully to society if residency is secured or being better able to face difficult futures, such as return.<sup>215</sup>

## 5.2 Discussion

The Community Assessment and Placement model is not designed to offer a single solution to the issues faced by governments in managing irregular migrants and asylum seekers, but it may identify ways of moving forward in this difficult area of policy. The CAP model can assist in framing discussions and providing a shared understanding of some of the issues, while the practical examples of current implementation demonstrate that reducing detention through community management is achievable and beneficial for a range of parties.

As noted in the methods section, further research and evaluation of existing policies would provide a much stronger foundation for future policy development. In particular, the application of the findings as described in this report may be limited in some contexts, although the principles of preventing unnecessary detention through individual assessment and prioritising community-based alternatives will still apply. Despite these limitations, governments can go some way to developing a more sensitive set of responses to the diversity of asylum seekers, refugees and irregular migrants on their territory with the information at hand.

This report 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 asylum seekers, refugees and irregular migrants from unnecessary detention, the report 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.

## 5.3 Conclusions

Governing issues of irregular migration in a way that satisfies the need to demonstrate control of national territories while also dealing with irregular migrants and asylum seekers in a humane and dignified manner can be difficult. Evidence-based policies that work to manage migrants in a fair and effective manner can be cast aside due to the politics surrounding issues of national sovereignty and border control. 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 the CAP model, 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 research 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.

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# APPENDIX I:

## FURTHER DETAILS

### OF IN-DEPTH DATA COLLECTION

Country	City	2010 Dates	Interviews	Participants	Site visits
Hungary	Budapest	12-18 Jan	6	8	1
International NGOs	Geneva	19-22 Jan	3	3	0
Spain	Madrid	22-29 Jan	7	10	2
Belgium	Brussels	30 Jan-3 Feb	5	11	1
The Netherlands	Amsterdam	4-7 Feb	3	4	0
Sweden	Stockholm	8-11 Feb	3	4	2
United Kingdom	London	12-20 Feb	4	4	0
U.S.A.	Washington, D.C. and El Paso, Texas	21 Feb-13 Mar	6	6	1
Hong Kong PRC	Hong Kong	15-19 Mar	6	7	1
<b>Totals</b>			<b>43</b>	<b>57</b>	<b>8</b>

## **APPENDIX II:**

### **INTERNATIONAL DETENTION COALITION POSITION:**

A summary of the International Detention Coalition's (IDC) position on the detention of refugees, asylum seekers and migrants, based on identified international law, standards and guidelines. For the full document, see International Detention Coalition (2011) *Legal framework and standards relating to the detention of refugees, asylum seekers and migrants*. Available at [www.idcoalition.org](http://www.idcoalition.org)

1. There should be a presumption against the detention of refugees, asylum seekers and migrants, which is inherently undesirable.
2. Vulnerable individuals—including refugees, children, pregnant women, nursing mothers, survivors of torture and trauma, trafficking victims, elderly persons, the disabled or those with physical or mental health needs—should not be placed in detention.
3. Children should not be detained for migration-related purposes. Their best interests must be protected in accordance with the Convention on the Rights of the Child. Children should not be separated from their caregivers and if they are unaccompanied, care arrangements must be made.
4. Asylum seekers should not be detained or penalized because they were compelled to enter a country irregularly or without proper documentation. They must not be detained with criminals and must have the opportunity to seek asylum and to access asylum procedures.
5. Detention should only be used as a measure of last resort. When used it must be necessary and proportionate to the objective of identity and security checks, prevention of absconding or compliance with an expulsion order.
6. Where a person is subject to detention, alternatives must first be pursued. Governments should implement alternatives to detention that ensure the protection of the rights, dignity and wellbeing of individuals.
7. No one should be subject to indefinite detention. Detention should be for the shortest possible time with defined limits on the length of detention, which are strictly adhered to.
8. No one should be subject to arbitrary detention. Decisions to detain must be exercised in accordance with fair policy and procedures and subject to regular independent judicial review. Detainees must have the right to challenge the lawfulness of their detention, which must include the right to legal counsel and the power of the court to release the detained individual.
9. Conditions of detention must comply with basic minimum human rights standards. There must be regular independent monitoring of places of detention to ensure these standards are met. States should ratify the Optional Protocol to the Convention against Torture, which provides a strong legal basis for a regular and independent monitoring of places of detention.
10. The confinement of refugees in closed camps constitutes detention. Governments should consider alternatives that allow refugees freedom of movement.

# APPENDIX III:

## INTERNATIONAL DETENTION COALITION DETENTION MONITORING CHECKLIST

### Checklist for monitoring places of immigration detention

This checklist outlines broad areas that should be considered during monitoring visits to places of immigration detention. It builds upon a general detention monitoring checklist, drawn from international standards of detention. The checklist contains a series of prompts grouped in terms of key issues for detention monitoring – it is not intended to be prescriptive or exhaustive.

INTERNATIONAL STANDARDS	NATIONAL LAW / POLICY
Population status	Additional national standards / notes
Legal basis of detention <ul style="list-style-type: none"> <li>• Legal basis to detain</li> <li>• Detention as a last resort</li> </ul>	
Demographics of detention population <ul style="list-style-type: none"> <li>• Detainee profile statistics – country of origin, number, gender, age</li> <li>• Screening procedure and practice for possible risk and vulnerability: gender, age, diversity, health</li> <li>• General observations of population</li> <li>• Length of time of detention: longest time, average time</li> </ul>	
Type/characteristics of detention facility <ul style="list-style-type: none"> <li>• Criminal, military administrative or ad hoc (operating without clear legal or policy mandate)</li> <li>• High-security, secure, semi-secure, non-secure, mixed regime</li> <li>• Location of facility (proximity to urban areas, services)</li> </ul>	
Detention staff	
<ul style="list-style-type: none"> <li>• Number of staff by categories, responsibilities, ratio to detainees, gender, languages spoken</li> <li>• Gender of guards/detainees</li> <li>• Military, police or civilian staff</li> <li>• Government or contracted/private administrator</li> <li>• Relationship between staff and detainees, management and detainees</li> <li>• Training of staff</li> </ul>	
Treatment	
<ul style="list-style-type: none"> <li>• Allegations of torture and ill-treatment</li> <li>• Use of force or other means of restraint</li> <li>• Use of solitary confinement</li> <li>• Transport of detainees</li> <li>• Culture of dignity and respect</li> </ul>	

<p>Disciplinary procedure and sanctions</p> <ul style="list-style-type: none"> <li>• Procedures for disciplinary actions against detainees</li> <li>• Sanctions for rule violations and statistics of use</li> <li>• Composition of disciplinary authority – who determines whether a detainee has violated a rule?</li> <li>• Possibilities of appeal</li> <li>• Description of any disciplinary cells, duration of disciplinary confinement, circumstances of use</li> </ul>	
Protection measures	
<ul style="list-style-type: none"> <li>• Register of all detainees upon arrival and any subsequent transfer, information regarding reason for detention, identity, time and date of detention, physical and mental state on arrival, health, behavioural, disciplinary and other records</li> <li>• Information provided to detainees</li> <li>• Orientation and information provided to detainees upon arrival: Reason for detention, rights, responsibilities, how to access attorneys, interpreters, medical and other services</li> <li>• Language and format of information</li> <li>• Accessibility to internal rules and procedures of the detention facility</li> <li>• Provisions to prevent sexual assault</li> </ul>	
<p>Access to protection mechanisms</p> <ul style="list-style-type: none"> <li>• Access to asylum and complementary protection procedure</li> <li>• Information provided regarding right to asylum and procedures (language, format)</li> <li>• Access to legal representation, conditions, privacy, frequency of visits</li> <li>• Access to UNHCR and NGOs, conditions, privacy, frequency</li> <li>• Location of asylum interviews, conditions, privacy</li> <li>• Access to judicial or administrative review of detention</li> <li>• Best interests determination for children</li> </ul>	
<p>Complaint, inspection and investigation procedures</p> <ul style="list-style-type: none"> <li>• Describe any complaint and inspection investigation and response procedures for the facility</li> <li>• Independence and accessibility of such procedures</li> <li>• Accessibility to and ease of identification of guards</li> <li>• Independent monitoring of detention facility</li> </ul>	
<p>Separation of detainees</p> <ul style="list-style-type: none"> <li>• Separation of criminal detainees from administrative detainees</li> <li>• Separation according to gender, age</li> <li>• Family unity provisions</li> </ul>	
<p>Safety and control</p> <ul style="list-style-type: none"> <li>• Surveillance</li> <li>• Fire safety</li> <li>• Procedures for incident and emergency management</li> </ul>	

Conditions	
<p>Capacity and occupancy of the detention facility</p> <ul style="list-style-type: none"> <li>• Approved capacity of the facility</li> <li>• Number of actual detainees by nationality, age and gender</li> </ul>	
<p>Facility conditions</p> <ul style="list-style-type: none"> <li>• Size and occupancy of cells or units where detainees sleep</li> <li>• Material conditions: lighting, ventilation, furniture, sanitary facilities, temperature, hygiene standard</li> <li>• Ability for detainees to adjust/direct lighting/temperature</li> <li>• Overall facility cleanliness and hygiene, responsibility for maintenance</li> <li>• Natural light</li> <li>• Security of detainee personal possessions</li> </ul>	
<p>Food</p> <ul style="list-style-type: none"> <li>• Meals: quality, quantity, frequency, cost, diversity</li> <li>• Where food is supplemented by friends/family/others visiting, is food provided to those without external support adequate?</li> <li>• Special dietary regimes (for medical, cultural, religious, health reasons)</li> <li>• Access to food between set meal times</li> <li>• Availability of clean water</li> </ul>	
<p>Personal hygiene</p> <ul style="list-style-type: none"> <li>• Showers: number/detainee, cleanliness, maintenance, access</li> <li>• Provision of basic hygiene supplies (including female hygiene needs)</li> <li>• Bedding: quality, cleanliness, frequency of change, climate appropriate</li> <li>• Access to laundry facilities</li> <li>• Access to culturally appropriate clothing, shoes</li> </ul>	
<p>Contact with the outside world</p> <ul style="list-style-type: none"> <li>• Access to printed materials</li> <li>• Access to television</li> <li>• Access to means of communication (telephones, written correspondence and parcels, computers/internet): frequency, cost, number/detainee, incoming and outgoing</li> </ul>	
<p>Visitation</p> <ul style="list-style-type: none"> <li>• Right to have or refuse all forms of visits</li> <li>• Informal visitors – access, frequency, conditions, duration, who can visit, description of visiting rooms, physical contact</li> <li>• Access to/protection from media</li> <li>• Formal visitors: consular, legal, UNHCR</li> </ul>	



<p><b>Detention regime</b></p>	
<p>Administration of Time</p> <ul style="list-style-type: none"> <li>• Time spent inside unit or cells daily</li> <li>• Time spent/available for physical exercise</li> <li>• Time spent/available for working, voluntary or involuntary</li> <li>• Time spent/available for other recreation activities</li> <li>• Access to outdoor area, regularity, duration</li> </ul>	
<p>Services and activities available</p> <ul style="list-style-type: none"> <li>• Work: Access, type, remuneration</li> <li>• Education: Access, type, conditions, language</li> <li>• Recreation: Access, type, location, duration (indoor/outdoor)</li> <li>• Psychosocial support: Access, type (including individual counselling, group)</li> <li>• Religion: Access to religious representatives and services, conditions, frequency</li> </ul>	
<p><b>Health care</b></p>	
<p>Access to medical care</p> <ul style="list-style-type: none"> <li>• Medical examination upon entry to facility: Who conducts, what is covered, gender sensitive</li> <li>• Availability of, access to and procedures for medical care throughout detention</li> <li>• Number, training, qualification and independence of medical and psychological staff</li> <li>• Medical centre: number of beds, equipment, medication, personnel</li> <li>• Mental health: Access to counsellors/psychologists/psychiatrists and description of services</li> <li>• Provision of specialty care for those with particular needs: torture survivors, children, women, elderly, ill etc</li> </ul>	

# APPENDIX IV:

## SELECTED COUNTRY EXAMPLES

A non-exhaustive list of countries that make use of preventative mechanisms and alternatives to detention, whether in law, policy or practice. These countries will have specific policies that will shape its precise implementation.

### 1. Presume detention is not necessary

**Presumption against detention in law, policy or practice:**

Argentina, Venezuela, Peru, Uruguay, Brazil, Austria, Germany, Denmark, the Netherlands, Slovenia, the United Kingdom

**Alternatives to detention in law, policy or practice:**

New Zealand, Venezuela, Japan, Switzerland, Lithuania, Denmark, Finland, Norway, Sweden, Austria, Germany, Canada

### 2. Screen and assess the individual case

**Individual screening and assessment:**

the United Kingdom, Hong Kong, the U.S.A. (in development), Canada

**Children, including unaccompanied minors, not detained or a provision for release into an alternative in law, policy or practice:**

Belgium, Italy, Ireland, the Philippines, Hungary, Hong Kong, Australia, Denmark, Netherlands, the United Kingdom, France, Panama, New Zealand

**Provision for release of other vulnerable individuals in law, policy or practice:**

Belgium, Malta, Canada, Indonesia, Sweden, New Zealand, Australia

### 3. Assess the community setting

**Case management for migration matters by government or by non-government organisation:**  
Sweden, Australia, Canada, the Netherlands, Belgium, Spain, Hong Kong

**Legal advice for migrants funded by government or through pro bono lawyers:**  
the United Kingdom, New Zealand, Hungary, Argentina, U.S.A., Australia

**Documentation:** South Africa, Ireland, Hong Kong, Bulgaria, France, Sweden, Malaysia, Uganda, Zambia, Kenya, Australia, U.S.A., Indonesia, Philippines, Luxembourg

**Open accommodation for asylum seekers:** Spain, Denmark, Finland, Ireland, Portugal, Belgium, Sweden, Hungary, Hong Kong, Germany, Switzerland, Bulgaria, Poland, Greece, Italy, Lithuania, Austria, the Netherlands, Romania, South Africa, Nepal, Indonesia

**Release to community group or religious group, family:**  
U.S.A., Mexico, Lebanon, Canada, Australia

## 4. Apply conditions in the community if necessary

**Registration with authorities:** Uganda, Zambia, Kenya, Indonesia

**Individual undertakings:** New Zealand, Japan, Philippines, Hong Kong, Canada, Australia, Indonesia

**Nominated address:** Spain, Hungary, Belgium, Australia, New Zealand, Romania, Switzerland, the United Kingdom

**Handover of travel documents:** Hungary, Poland, Austria, Australia, Luxembourg, Canada, Norway, Sweden

**Directed residence:** Austria, Belgium, Romania, Germany, Indonesia, Japan, New Zealand

**Reporting requirements:** U.S.A., Australia, Denmark, Finland, New Zealand, Canada, Indonesia, the United Kingdom, Japan, Ireland, Sweden, Austria, Greece, the Netherlands, Bulgaria

**Supervision:** U.S.A., New Zealand, Canada, Australia

**Intensive case resolution including return preparation:** Belgium, Australia, the Netherlands, Germany, Canada, Sweden.

**Threat of other negative consequences including (re) detention:** New Zealand, Japan, Hungary, Germany, Portugal

**Release with bail, bond, surety or guarantee:** Japan, Australia, South Korea, United Kingdom, Canada, Slovenia, U.S.A., Finland.

## 5. Detain only as a last resort in exceptional cases

**Specific grounds for detention established in law:** Lithuania, Finland, Hungary, Germany, the United Kingdom

**Avenues for release including bail schemes:** Japan, Australia, South Korea, United Kingdom, Canada, Slovenia, U.S.A., Finland

**Conditions of dignity and respect including treatment and access to outside world:** Sweden, New Zealand

**Length of time in detention including maximum length of detention:** France, the Netherlands, Spain, Sweden, Ireland, Portugal, Luxembourg, Czech Republic, Hungary, Italy, Slovak Republic

**Independent oversight including automatic judicial review and/or monitoring:** Argentina, Austria, Estonia, Denmark, France, Hungary, Italy, Latvia, Luxembourg, New Zealand, Canada, Hungary, Sweden, the United Kingdom

# ENDNOTES

- 1 Interestingly, the proportion of transnational migrants as a percentage of the world's population has remained stable for the past 50 years at around 3%. See United Nations Development Programme. (2009). *Human development report 2009: Overcoming barriers: Human mobility and development*. New York: UNDP. Retrieved 14.10.2010 at <http://hdr.undp.org/en/reports/global/hdr2009/>
- 2 United Nations Development Programme (2009) above n 1.
- 3 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: Kovacheva, V., & Vogel, D. (2009). *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. Retrieved 14.10.2010 at [http://irregular-migration.hwwi.net/typo3\\_upload/groups/31/4.Background\\_Information/4.7.Working\\_Papers/WP4\\_Kovacheva-Vogel\\_2009\\_EuropeEstimate\\_Dec09.pdf](http://irregular-migration.hwwi.net/typo3_upload/groups/31/4.Background_Information/4.7.Working_Papers/WP4_Kovacheva-Vogel_2009_EuropeEstimate_Dec09.pdf). In the United States in 2003, it was estimated that of the 34.5 million foreign-born residents, 9.3 million were undocumented: Passel, J. S., Capps, R., & Fix, M. (2004). *Undocumented immigrants: Facts and figures*: Urban Institute Immigration Studies Program. The ability to estimate and compare regular and irregular migration populations in some regions makes it difficult to be confident this is true in all contexts: Hugo, G. (2005). *Migration in the Asia-Pacific region*. Adelaide: Global Commission on International Migration.
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- 8 Aubarell, G., Zapata-Barrero, R., & Aragall, X. (2009). *New directions of national immigration policies: The development of the external dimension and its relationship with the Euro-Mediterranean process*. Retrieved 06.08.2010 from [www.iemed.org/documents/EuroMeSCo%20Paper%2079\\_eng.pdf](http://www.iemed.org/documents/EuroMeSCo%20Paper%2079_eng.pdf); Global Detention Project (2009) above n 5; Lutterbeck, D. (2006). Policing migration in the Mediterranean. *Mediterranean Politics*, 11(1), 59–82; Taylor, S. (2010). The impact of Australia-PNG border management cooperation on refugee protection. *Local-Global: Identity, security, community (Special issue: Beyond border control)*, 8, 76–99.
- 9 The Global Detention Project aims to document detention infrastructure internationally but does not have a global estimate. For country estimates see [www.globaldetentionproject.org](http://www.globaldetentionproject.org)
- 10 UNHCR (1999). *UNHCR's Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers*, February 1999. These guidelines are currently being revised.
- 11 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 Owen, M. and T. Barras (2010) "Getting tougher 'won't stop boats' says Chris Bowen." *The Australian*. 2 November 2010. Retrieved 31.03.2011 from [www.theaustralian.com.au/news/nation/getting-tougher-wont-stop-boats-says-chris-bowen/story-e6frg6nf-1225946353586](http://www.theaustralian.com.au/news/nation/getting-tougher-wont-stop-boats-says-chris-bowen/story-e6frg6nf-1225946353586)
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  - 17 Richardson (2009) above n 13.
  - 18 *International Covenant on Civil and Political Rights*, adopted 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) arts 9 and 12.
  - 19 *Universal Declaration on Human Rights*, GA Res 217A (III), UN GAOR, 3<sup>rd</sup> sess, 183<sup>rd</sup> plen mtg, UN Doc A/810 (10 December 1948) arts 2, 3, 7 and 9; *International Covenant on Civil and Political Rights*, above n 18, arts 2, 9.1 and 26; *Convention relating to the Status of Refugees*, adopted 14 December 1950, 189 UNTS 137 (entered into force 22 April 1954) arts 3, 31; *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) arts 2, 22 and 37(b); UN General Assembly, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, UN GAOR, 43<sup>rd</sup> session, UN Doc A/RES/43/173 (9 December 1988) principles 2, 3 and 5(1); United Nations General Assembly, *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, UN GAOR, 45<sup>th</sup> session, UN Doc A/RES/45/113 (14 December 1990) para 4 and UNHCR, *UNHCR's Relating Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers*, (26 February 1999) paras 2–5. See also Edwards (forthcoming 2011) above n 12; Ricupero, I., & Flynn, M. (2009). *Migration and detention: Mapping the international legal terrain*. Geneva: Global Detention Project. Retrieved 02.09.2010 at [www.globaldetentionproject.org/fileadmin/docs/Migration\\_and\\_Detention\\_GDP.pdf](http://www.globaldetentionproject.org/fileadmin/docs/Migration_and_Detention_GDP.pdf)
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- 29 *Convention on the Rights of the Child*, above n 19, art 37(b); UN General Assembly, *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, above n 19, para 1; United Nations High Commissioner for Refugees, *UNHCR's Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers*, above n 19, para 1, guidelines 2 and 4, *Universal Declaration on Human Rights*, above n 19, arts 2, 3, 7 and 9 and *International Covenant on Civil and Political Rights*, above n 19, art 9.1. For a summary of action at the UN level (for example General Resolutions, reports by Special Rapporteurs) encouraging states to seek alternatives to detention, see International Detention Coalition (2011) *Legal framework and standards relating to the detention of refugees, asylum seekers and migrants*. Available at [www.idcoalition.org](http://www.idcoalition.org)
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- 33 Aspden, J. (2008). *Evaluation of the Solihull Pilot for the United Kingdom Border Agency and the Legal Services Commission*. London: UKBA and LSC; Cranfield, A. (2009). *Review of the Alternative to Detention (A2D) project*. London: Tribal Group; Department of Immigration and Citizenship Australia (2009) *Community Care Pilot and Status Resolution Trial*. Retrieved 01.02.2011 at <http://idcoalition.org/wp-content/uploads/2009/06/ccp-march-2009.doc>; Nandy, L. (2009). *An evaluative report on the Millbank Alternative to Detention project*: The Children's Society and Bail for Immigration Detainees; Sullivan, E., Mottino, F., Khashu, A., & O'Neil, M. (2000). *Testing community supervision for the INS: An evaluation of the appearance assistance program*. New York: Vera Institute for Justice. Retrieved 11.11.2010 at [www.vera.org/content/testing-community-supervision-ins-evaluation-appearance-assistance-program](http://www.vera.org/content/testing-community-supervision-ins-evaluation-appearance-assistance-program); Verbauwhede. (2010). *Alternatives to detention for families with minor children – The Belgium approach*: Belgian Presidency of the Council of the European Union. Retrieved 25.09.2010 at [http://idcoalition.org/wp-content/uploads/2010/09/discussant\\_i\\_alternatives\\_for\\_detention.pdf](http://idcoalition.org/wp-content/uploads/2010/09/discussant_i_alternatives_for_detention.pdf).
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- 37 For instance, Field and Edwards (2006) 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, above n 30.
- 38 UNHCR. (2007). *Refugee protection and mixed migration: A*

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- 39 A copy of the survey can be found online at [www.idcoalition.org](http://www.idcoalition.org)
- 40 A copy of the interview schedule can be found online at [www.idcoalition.org](http://www.idcoalition.org)
- 41 **See also Section 4.2.4.** This was evident in field work in Spain, Sweden, Hong Kong and the Netherlands. This finding is evident in Field and Edwards (2006) above n 30; Mitchell and Kirsner (2004) above n 34; Sullivan et al (2000) above n 33. 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 4.2.4).
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- 43 Field and Edwards (2006) above n 30 p. 248.
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- 47 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: “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.” de Haas, H. (2008). *Irregular migration from West Africa to the Maghreb and the European Union: An overview of recent trends*. Geneva: International Organization for Migration p. 9.
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- 51 **See also section 4.3.3 Ability to meet basic needs.** This was evident in field work in Sweden, Belgium and Hong Kong. This finding is supported by the findings of Edwards (forthcoming 2011) above n 12; Field and Edwards (2006) above n 30 pp. 30–35; Fiske, L., & Kenny, M. A. (2004). ‘Marriage of convenience’ or ‘match made in heaven’: Lawyers and social workers working with asylum seekers. *Australian Journal of Human Rights*, 10(1), 137–157; Lutheran Immigration and Refugee Service. (2009). *Alternatives to detention programs: An international perspective*. Washington, D.C.; Mitchell and Kirsner (2004) above n 34.
- 52 For a discussion, see Jesuit Refugee Service Europe. (2010). *Living in limbo: Forced migrant destitution in Europe*. Brussels: Jesuit Refugee Service Europe. Retrieved 28.11.2010 at [www.jrs europe.org/publications/JRS%20Europe%20Living%20in%20Limbo%20-18-18h.pdf](http://www.jrs europe.org/publications/JRS%20Europe%20Living%20in%20Limbo%20-18-18h.pdf)
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- 55 **This is discussed in more detail in Sections 4.3.1 Case management and 4.3.2 Legal advice.** This finding was evident in the United Kingdom, Sweden, the U.S.A., Australia, Belgium and reinforced by the findings of Aspden (2008) above n 33; Edwards (forthcoming 2011) above n 12; Field and Edwards (2006) above n 30 p. 45; Fiske & Kenny (2004) above n 51; Hotham Mission Asylum Seeker Project. (2006). *Providing casework to asylum seekers at the final stages: Discussion paper*. Melbourne: Hotham Mission. Retrieved 10.01.2011 at [067](http://idcoalition.org/paper-</a></p>
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- providing-casework-to-asylum-seekers-at-the-final-stages/ ; Sullivan et al (2000) above n 33.
- 56 Edwards (forthcoming 2011) above n 12 regarding the Glasgow ‘family return project’.
- 57 ‘Open accommodation’ is used here to describe facilities where people can leave the premises at will. In contrast, the term ‘closed’ is sometimes used to describe facilities where the detainees are generally not allowed to leave their room. We use the term ‘closed’ to describe facilities where people can move about within the facility but cannot leave the premises.
- 58 *Convention relating to the Status of Refugees*, above n 19, art 31; *Convention on the Rights of the Child*, above n 19, art 37(b); UN General Assembly, *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, above n 19, para 1 and United Nations High Commissioner for Refugees, *UNHCR’s Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers*, above n 19, para 1, guideline 2 and 3. The International Detention Coalition has a companion document that outlines relevant international standards relating to detention: see International Detention Coalition (2011) see above n 29. See also Amnesty International (2007) *Migration-related detention: A research guide on human rights standards relating relevant to the detention of migrants, asylum-seekers and refugees*. Retrieved 23/03/2009 at [www.unhcr.org/refworld/docid/476b7d322.html](http://www.unhcr.org/refworld/docid/476b7d322.html)
- 59 For a discussion of the human rights that underlie this presumption against detention, please refer to Edwards (forthcoming 2011) above n 12. See also European Union Agency for Fundamental Rights. (2010). *Detention of third-country nationals in return procedures: Thematic report*. Vienna: FRA. Retrieved 01.12.2010 at [www.fra.europa.eu/fraWebsite/attachments/detention-third-country-nationals-report-092010\\_en.pdf](http://www.fra.europa.eu/fraWebsite/attachments/detention-third-country-nationals-report-092010_en.pdf) pp. 80-81.
- 60 EU-FRA (2010) above n 59 pp. 80–81. 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: Daly, M. (2009). Detention policy in Hong Kong 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). Refugee law in Hong Kong: Building the legal infrastructure. *Hong Kong Lawyer*, 09, 14–30. South Africa has similarly seen cases of wrongful detention in the court: see *Lawyers for Human Rights* (2011) “Court criticizes home affairs unlawful detention practices”. Media release (11 February 2011). Retrieved 01.04.2011 at [www.lhr.org.za/news/2011/court-criticizes-home-affairs-unlawful-detention-practices](http://www.lhr.org.za/news/2011/court-criticizes-home-affairs-unlawful-detention-practices)). Litigation for wrongful detention has also been seen in Australia, with payout to one claimant of at least AU\$2.6 million (Minister for Immigration (2008) “Cornelia Rau’s settlement offer finalised” Media release (7 March 2008). Retrieved 01.04.2011 at [www.minister.immi.gov.au/media/media-releases/2008/ce08021.htm](http://www.minister.immi.gov.au/media/media-releases/2008/ce08021.htm)).
- 61 Information in this break out box provided to the International Detention Coalition by a regional expert. The English translation of this law was provided by an unqualified bilingual speaker.
- 62 Many countries in Europe provide for alternatives to detention in law, although these are often at the discretion of the authorities. EU-FRA (2010) above n 59 pp. 73–79.
- 63 New Zealand Department of Labour (2010) *A summary of the Immigration Bill as passed at third reading*. Retrieved 30.03.2011 at [www.dol.govt.nz/actreview/update/immigration-bill-third-reading-summary.asp](http://www.dol.govt.nz/actreview/update/immigration-bill-third-reading-summary.asp) Information in this break out box was provided to the International Detention Coalition by a national expert, with further references as noted.
- 64 Citizenship and Immigration Canada (2007) *ENF 20: Detention* Section 5.7 Retrieved 31.03.2011 at [www.cic.gc.ca/English/resources/manuals/enf/enf20-eng.pdf](http://www.cic.gc.ca/English/resources/manuals/enf/enf20-eng.pdf)
- 65 UK Border Agency (2011) *Operational Enforcement Manual: Section 55.3.1* Retrieved 31.03.2011 at [www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/)
- 66 *Universal Declaration on Human Rights*, above n 19, art 9; *International Covenant on Civil and Political Rights*, above n 18, art 9; *Convention relating to the Status of Refugees*, above n 19, art 31; *Convention on the Rights of the Child*, above n 19, art 37(b). UN General Assembly, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, above n 19, principles 2 and 3 and United Nations High Commissioner for Refugees, *UNHCR’s Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers*, above n 19, paras 1, 5. 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 (2006) *Migration laws must live up to Australia’s human rights commitments*. Media release 06.08.2006. Retrieved 31.03.2011 at [www.humanrights.gov.au/about/media/media\\_releases/2006/59\\_06.htm](http://www.humanrights.gov.au/about/media/media_releases/2006/59_06.htm)
- 67 Information in this break out box is from interviews and site visit. This was accurate at the time of interviews. It is understood at the time of publication the government is considering new arrangements for unaccompanied minors.



- 68 King, K., & Vodicka, P. (2001). Screening for conditions of public health importance in people arriving in Australia by boat without authority. *eMJA*, 175, 600–602.
- 69 For a discussion of the issues of the deportation of individuals with a serious illness see Sampson, R. C., Correa-Velez, I., & Mitchell, G. (2007) above n 54.
- 70 Interview in Sweden.
- 71 Engbersen, G., & Broeders, D. (2007). The Fight Against Illegal Migration: Identification Policies and Immigrants' Counterstrategies. *American Behavioral Scientist*, 50(12), 1592–1609.
- 72 Citizenship and Immigration Canada (2007) *ENF 20: Detention. Section 5.8*. Retrieved 01.04.2010 at [www.cic.gc.ca/english/resources/manuals/enf/enf20-eng.pdf](http://www.cic.gc.ca/english/resources/manuals/enf/enf20-eng.pdf)
- 73 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. Retrieved 05.12.2010 at [www.jrs europe.org](http://www.jrs europe.org)
- 74 Gillam, L. (2010) "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 Symposium the University of Melbourne, 17<sup>th</sup> November 2010; JRS Europe (2010) above n 73.
- 75 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). UNHCR's Revised Guidelines on Detention lists "single women, children, unaccompanied minors and those with special psychological or medical needs" and "unaccompanied elderly persons, torture or trauma victims, persons with physical or mental disability." UNHCR (2009) above n 9.
- 76 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: Atwell, R., Correa-Velez, I., & Gifford, S. (2007). 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(1), 4–14.
- 77 UN High Commissioner for Refugees (2007) *Best Interests Determination Children – Protection and Care Information Sheet*. Retrieved 11.03.2011 at [www.unhcr.org/refworld/docid/46a076922.html](http://www.unhcr.org/refworld/docid/46a076922.html) See also "Section 3: Children should not be detained for migration-related purposes" in International Detention Coalition (2011) above n 29.
- 78 Separated Children in Europe Programme. (2004). *Statement of good practice*. Copenhagen: Save the Children UNHCR and UNICEF Retrieved 10.02.2011 at [www.separated-children-europe-programme.org](http://www.separated-children-europe-programme.org) p. 25.
- 79 Anderson, L. (2010). 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(1), 1-1-31.
- 80 Interview in the U.S.A.
- 81 Department of Immigration and Citizenship. (2009). *Fact sheet 64: Community Assistance Support program*. Canberra: DIAC Retrieved 10.02.2010 at [www.immi.gov.au/media/factsheets/64community-assistance.htm](http://www.immi.gov.au/media/factsheets/64community-assistance.htm)
- 82 *Convention relating to the Status of Refugees*, above n 19, art 31; *International Covenant on Civil and Political Rights*, above n 18, art 2; *Convention on the Rights of the Child*, above n 19, art 37(b); *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, adopted 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987); *Convention on the Elimination of All Forms of Discrimination Against Women*, adopted 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) and *Convention relating to the Status of Stateless Persons*, adopted 28 September 1954, 360 UNTS 117 (entered into force 6 June 1960). See also International Detention Coalition (2011) above n 29.
- 83 Arboleda, E. (1991). Refugee Definition in Africa and Latin America: The Lessons of Pragmatism. *Int J Refugee Law*, 3(2), 185–207.
- 84 Information in this break out box was provided to the International Detention Coalition by a national expert, with further references as noted.
- 85 *Department Order No. 94/1998, Establishing a Procedure for Processing Applications for the Grant of Refugee Status* [Philippines], 4 March 1998. Retrieved 05.04.2011 from [www.unhcr.org/refworld/docid/3ede2d914.html](http://www.unhcr.org/refworld/docid/3ede2d914.html)
- 86 See Section 3 including above n 41–46.
- 87 Field and Edwards (2006) above n 30 p. 248.
- 88 Coffey et al, (2010) above n 24; Eagar et al, 2010 above n 21; Jesuit Refugee Service Europe (2010) above n 23.
- 89 Equal Rights Trust. (2010). *Unravelling anomaly: Detention, discrimination and the protection needs of stateless persons*. London: The Equal Rights Trust. Retrieved 13.10.2010 at [www.equalrightstrust.org/ertdocumentbank/UNRAVELLING%20ANOMALY%20small%20file.pdf](http://www.equalrightstrust.org/ertdocumentbank/UNRAVELLING%20ANOMALY%20small%20file.pdf)

- 90 As described in Section 3 including above n 41-46.
- 91 Sullivan et al (2000) above n 33 p. 30; Field and Edwards (2006) above no 30 p. 25.
- 92 Field and Edwards (2006) above n 30 p. 27; Jesuit Refugee Service Europe. (2008). *Alternatives to detention of asylum seekers: working paper*. Brussels: JRS Europe p. 11.
- 93 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. (undated). *Detention Policy*. Hong Kong SAR: The Government of the Hong Kong Special Administrative Region. Retrieved 11.11.2010 at [www.sb.gov.hk/eng/special/pdfs/Detention%20policy-e.pdf](http://www.sb.gov.hk/eng/special/pdfs/Detention%20policy-e.pdf) Also evidenced in factors influencing decisions to release on bond: Field and Edwards (2006) above n 30 p. 206 (U.K.) and p. 225 (U.S.A.).
- 94 Rousseau, C., Rufagari, M.-C., Bagilishya, D., & Measham, T. (2004). Remaking family life: Strategies for re-establishing continuity among Congolese refugees during the family reunification process. *Social Science & Medicine*, 59, 1095-1108; Wilmsen, B., & Gifford, S. (2009). *Refugee resettlement, family separation and Australia's humanitarian programme*. Geneva: UNHCR. Retrieved 10.02.2010 at [www.unhcr.org/4b167ae59.html](http://www.unhcr.org/4b167ae59.html)
- 95 This is a factor in decisions to release in Hong Kong (Box 5); the U.S.A (Box 11) and Canada (Box 14). 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, M., & Hansen, R. (2003). *Deportation and the liberal state: The forcible return of asylum seekers and unlawful migrants in Canada, Germany and the United Kingdom*. Geneva: UNHCR. Retrieved 10.02.2010 at [www.unhcr.org/3e59de764.html](http://www.unhcr.org/3e59de764.html) p. 12.
- 96 As described in Section 3 including above n 55 and Box 7 the United Kingdom.
- 97 As described in Section 3 including above n 56.
- 98 Disparities in the adjudication of refugee and visa cases are 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: Ramji-Nogales, J., Schoenholtz, A. I., & Schrag, P. G. (2007). Refugee Roulette: disparities in asylum adjudication. *Stanford Law Review*, 60(2), 295(117).
- 99 Hotham Mission Asylum Seeker Project (2006) n 55; Sampson, Correa-Velez and Mitchell (2007) above n 54.
- 100 Information in this break-out box is from interviews and site visits, with further references as noted. For a discussion, see Daly (2009) above n 60.
- 101 Security Bureau Immigration Department (undated) above n 93.
- 102 Hong Kong SAR has introduced a specific process for migrants to apply for protection from torture. See Daly (2009) above n 60.
- 103 Edwards (forthcoming 2011) above n 12.
- 104 Coffey et al (2010) above n 24.
- 105 London Detainee Support Group (2010) *No Return, No Release, No Reason: Challenging Indefinite Detention*. Retrieved 31.03.2011 from [www.ldsg.org.uk/files/uploads/NoReasonReport0910.pdf](http://www.ldsg.org.uk/files/uploads/NoReasonReport0910.pdf) In addition, airlines may refuse to accept deportees on board if they are resisting deportation: Gibney and Hansen (2003) above n 95.
- 106 Hotham Mission Asylum Seeker Project (2006) above n 55; International Detention Coalition (2009) above n 34.
- 107 Case Management Society of Australia. (n.d.). What is case management? Retrieved 12.02.2010 at [www.cmsa.org.au/definition.html](http://www.cmsa.org.au/definition.html) ; Gelman, S., & Frankel, A. J. (2004). *Case management: An introduction to concepts and skills*. Chicago: Lyceum Books.
- 108 For a description of the role of a case manager in a migration context, see Box 6 Case studies. Also above n 106 and 107.
- 109 Hotham Mission Asylum Seeker Project (2006) above n 55. For an example of its use by an immigration authority, see Department of Immigration and Multicultural Affairs (n.d.) *Case management in DIMA*. Retrieved 01.02.2011 at [www.immi.gov.au/about/plans/\\_pdf/case-management-in-DIMA.pdf](http://www.immi.gov.au/about/plans/_pdf/case-management-in-DIMA.pdf)
- 110 Case study provided to researchers by an expert involved in this case. A pseudonym has been used.
- 111 Case study provided by one of the researchers who was personally involved in the resolution of this case. A pseudonym has been used.
- 112 As described in Section 3 including above n 55-56. The importance of provision of information has been identified by Aspden (2008) above n 33; Field and Edwards (2006) above n 30 p. 45; and Lutheran Immigration and Refugee Service (2009) above n 51.
- 113 Ramji-Nogales, Schoenholtz, & Schrag (2007) above n 98.
- 114 American Bar Association. (2010). *Reforming the immigration system: Proposals to promote independence, fairness, efficiency, and professionalism in the adjudication of removal cases*. Washington DC: ABA. Retrieved 01.04.2011 from [www.americanbar.org/content/dam/aba/migrated/Immigration/PublicDocuments/aba\\_complete\\_full\\_report](http://www.americanbar.org/content/dam/aba/migrated/Immigration/PublicDocuments/aba_complete_full_report).

- authcheckdam.pdf ; Aspden (2008) above n 33.
- 115 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 requiring interpretation for a language that has a small number of bilingual speakers, especially in rural areas. Telephone interpretation is not ideal but it does reduce the likelihood of turning to informal interpreters, such as family members or other detainees.
- 116 Information in this break out box is from interviews and Aspden (2008) above n 33.
- 117 Dent, J.A. (undated) *Research paper on the social and economic rights of non-nationals in Europe*. ECRE. Retrieved 24.11.2010 at [www.ecre.org/files/socecon.pdf](http://www.ecre.org/files/socecon.pdf)
- 118 As described in Section 3 including above n 51–54.
- 119 For a discussion, see Jesuit Refugee Service Europe. (2010). *Living in limbo: Forced migrant destitution in Europe*. Brussels: Jesuit Refugee Service Europe. Retrieved 28.11.2010 at [www.jrseurope.org/publications/JRS%20Europe%20Living%20in%20Limbo%20-18-18h.pdf](http://www.jrseurope.org/publications/JRS%20Europe%20Living%20in%20Limbo%20-18-18h.pdf)
- 120 Bloch, A., & Schuster, L. (2002). Asylum and welfare: contemporary debates. *Critical Social Policy*, 22(3), 393–414; Cornelius (2005) above n 25; Da Lomba, S. (2006). The threat of destitution as a deterrent against asylum seeking in the European Union. *Refugee*, 23(1), 81(13); Thielemann (2004) above n 13.
- 121 Dumper, H., Malfait, R., & Flynn, N. S. (2006). *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. c.f. Hotham Mission Asylum Seeker Project (2006) above n 55. For a discussion on the importance of supporting health throughout the assessment process to support return see Sampson, Correa-Velez & Mitchell (2007) above n 54.
- 122 As described in Section 3 including above n 51–54.
- 123 Information in this break-out box is from interviews and site visits, with further references as noted.
- 124 “[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. (2007). *Refugee reception centres (C.A.R.)*. Calidad Administracion Publica.
- 125 Ministerio de Trabajo y Asuntos Sociales (2006). *C.A.R.: Refugee reception centre*. Madrid: Ministerio de Trabajo y Asuntos Sociales.
- 126 UNHCR (2009) *Submission by the UNHCR for the OHCHR’s compilation report Universal Periodic Review Spain* Accessed 31.03.2011 at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/ES/UNHCR\\_UPR\\_ESP\\_S08\\_2010\\_UNHighCommissionerforRefugees\\_%20Document1.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/ES/UNHCR_UPR_ESP_S08_2010_UNHighCommissionerforRefugees_%20Document1.pdf)
- 127 Such as the “T” visa issued in the U.S.A. See Field and Edwards (2006) above n 30 p. 39 footnote 157.
- 128 For a discussion of the role of visas on resolving migration status, see Banki, S., & Katz, I. (2009a). *Resolving immigration status Part 1: Rreview of the international literature*. Sydney: Social Policy Research Centre. Retrieved 01.02.2011 at [www.immi.gov.au/media/publications/pdf/unsw-report-1.pdf](http://www.immi.gov.au/media/publications/pdf/unsw-report-1.pdf) Banki, S., & Katz, I. (2009b). *Resolving immigration status Part 2: Comparative case studies*. Sydney NSW: Social Policy Research Centre UNSW. Retrieved 01.02.2011 at [www.immi.gov.au/media/publications/pdf/unsw-report-2.pdf](http://www.immi.gov.au/media/publications/pdf/unsw-report-2.pdf)
- 129 Information in this break out box is from interviews and site visits, with further references as noted. Further information available at [www.migrationsverket.se/info/skydd\\_en.html](http://www.migrationsverket.se/info/skydd_en.html)
- 130 The Centre for Social Justice. (2008). *Asylum matters: Restoring trust in the UK asylum system*. London: The Centre for Social Justice p. 5. Retrieved 06.12.2010 at [www.centreforsocialjustice.org.uk/client/downloads/FINAL%20Asylum%20Matters%20\\_Web\\_.pdf](http://www.centreforsocialjustice.org.uk/client/downloads/FINAL%20Asylum%20Matters%20_Web_.pdf) and European Migration Network (2007) *Return Migration*. p. 15. Retrieved 01.06.2010 at [http://ec.europa.eu/home-affairs/doc\\_centre/immigration/docs/studies/emn\\_return\\_migration\\_study\\_synthesis\\_report\\_may07.pdf](http://ec.europa.eu/home-affairs/doc_centre/immigration/docs/studies/emn_return_migration_study_synthesis_report_may07.pdf) Other reports suggest lower independent return rates for mixed groups from 53% in 2002 to 21% in 2005 (Jonsson, A. and D. Borg (2006) *Return: The Swedish approach*. Department of Eurasian Studies, Uppsala University. Retrieved 31.03.2011 at <http://emn.intrasoft-intl.com/Downloads/download.do?jsessionid...?fileID=491>).
- 131 Landes, D. (2009). Sweden to pay more asylum seekers to leave. *The Local: Sweden’s news in English*. 6 November 2009. Retrieved 31.03.2011, from [www.thelocal.se/23110/20091106/](http://www.thelocal.se/23110/20091106/)
- 132 Mitchell, G. (2001). *Asylum seekers in Sweden: An integrated approach to reception, detention, determination, integration and return*. Available at <http://idcoalition.org/asylum-seekers-in-sweden/>
- 133 Banki and Katz (2009b) above n 128 p. 102; Field and Edwards (2006) above n 30 p. 47.
- 134 Edwards (forthcoming 2011) above n 12.
- 135 Banki and Katz (2009b) above n 128 pp. 14–16; Field and Edwards (2006) above n 30 p. 45.
- 136 Field and Edwards (2006) above n 30 p. 35.
- 137 Field and Edwards (2006) above n 30 p. 30.

- 138 Field and Edwards (2006) above n 30 p. 35.
- 139 Field and Edwards (2006) above n 30 p. 35.
- 140 This study did not come across any examples of reporting mechanisms that make use of new communication technologies such as email, SMS/text messages, skype or web-based log in. Exploring avenues for reporting using new communication technology has the potential to increase the frequency of contact with authorities for some groups, with limited impositions on daily life.
- 141 “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 (forthcoming 2011) above n 12.
- 142 Information in this break out box was provided to the International Detention Coalition by a national expert, with further references as noted. Article 3 of the Directive of the Director General of Immigration enacted in Jakarta on 17<sup>th</sup> September 2010.
- 143 Information in this break out box based on Sullivan et al (2000) above n 33.
- 144 Unlike bond or bail programs, there was no financial consequences for the guarantor upon non-compliance in this program.
- 145 A detailed break down of cost outcomes is found at Sullivan et al (2000) above n 33 pp. 64–69.
- 146 The information in this break out box is based on International Detention Coalition (2009) above n 34 and further references as provided.
- 147 Department of Immigration And Citizenship. (2010). *Community Status Resolution Service: A new way of working with clients in Australia*. Retrieved 02.02.2011 at [www.immi.gov.au/managing-australias-borders/compliance/community-status-resolution/\\_pdf/english-comm-status-resolution.pdf](http://www.immi.gov.au/managing-australias-borders/compliance/community-status-resolution/_pdf/english-comm-status-resolution.pdf)
- 148 Department of Immigration and Citizenship. (2010). *Annual report 2009-2010*. Canberra: DIAC. Retrieved 02.02.2011 at [www.immi.gov.au/about/reports/annual/2009-10/html/](http://www.immi.gov.au/about/reports/annual/2009-10/html/) p. 169.
- 149 Department of Immigration and Citizenship. (2009) *Fact Sheet 64: Community Assistance Support Program*. Retrieved 21.02.2010 at [www.immi.gov.au/media/fact-sheets/64community-assistance.htm](http://www.immi.gov.au/media/fact-sheets/64community-assistance.htm)
- 150 Department of Immigration and Citizenship. (2009). *Community Care Pilot and Status Resolution Trial*. Retrieved 01.02.2011 at <http://idcoalition.org/wp-content/uploads/2009/06/ccpmarch-2009.doc>
- 151 These costs have been calculated as follows: The Community Care Pilot cost AUS\$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 AU\$38.30, excluding case management costs. Joint Standing Committee on Migration. (2009). *Inquiry into immigration detention in Australia: Report 2 – Community-based alternatives to detention*. Canberra: Commonwealth of Australia p. 122. Retrieved 28.09.2009 at [www.aph.gov.au/house/committee/mig/detention/report2.htm](http://www.aph.gov.au/house/committee/mig/detention/report2.htm) We have reported the cost of detention as used for detention debts. Joint Standing Committee on Migration. (2008). *Inquiry into immigration detention in Australia: A new beginning. First report: Criteria for release from detention*. Canberra: Commonwealth of Australia p. 112. Retrieved 28.09.2009 at [www.aph.gov.au/house/committee/mig/detention/report/fullreport.pdf](http://www.aph.gov.au/house/committee/mig/detention/report/fullreport.pdf)
- 152 Department of Immigration and Citizenship (2010) above n 148 p. 168.
- 153 Refugee Council of Australia. (2009). *Common sense changes build fairer refugee determination process*. Press release May 13, 2009. Retrieved 31.03.2011 at [www.refugeecouncil.org.au/docs/releases/2009/090513\\_Federal\\_Budget\\_RCOA.pdf](http://www.refugeecouncil.org.au/docs/releases/2009/090513_Federal_Budget_RCOA.pdf)
- 154 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. (2004). *Return migration: Policies and practices in Europe*. Geneva: IOM. p. 7.
- 155 Sullivan et al (2000) above n 33 p. 16.
- 156 Field and Edwards (2006) above n 30 p. 92.
- 157 Hotham Mission Asylum Seeker Project (2006) above n 55. c.f. The Centre for Social Justice (2008) above n 130 p. 4.
- 158 Information in this break out box is from interviews and site visits. The descriptive information is correct from the time of interviews, although the program has since been expanded. See also: Verbauwheide (2010). *Alternatives to detention for families with minor children – The Belgium approach. Discussion paper for the EU Asylum Conference 13–14 September 2010*. Belgian Presidency of the Council of the European Union. Available at [http://idcoalition.org/wp-content/uploads/2010/09/discussant\\_i\\_\\_alternatives\\_for\\_detention.pdf](http://idcoalition.org/wp-content/uploads/2010/09/discussant_i__alternatives_for_detention.pdf) ; Vluchtelingenwerk Vlaanderen [Flemish Refugee Action] (2009). *Briefing to the European Committee for the Prevention of Torture: Alternatives to immigration detention of families with minor children in Belgium*. Vluchtelingenwerk Vlaanderen, JRS and CIRE.
- 159 At time of interviews, the government was just beginning to use the facilities to work with families who arrive at the border without status. It is possible families on arrival may require a different program of response to ensure the structure remains effective.

- 160 Comment provided by an expert to staff of the International Detention Coalition.
- 161 Field and Edwards (2006) also recommend further research in this area. Above n 30 p. 45.
- 162 Information in this break out box is from Edwards (forthcoming 2011) above n 12 and other references as noted.
- 163 Citizenship and Immigration Canada (2007) *ENF 20: Detention*. Retrieved 01.04.2010 at [www.cic.gc.ca/english/resources/manuals/enf/enf20-eng.pdf](http://www.cic.gc.ca/english/resources/manuals/enf/enf20-eng.pdf)
- 164 Community Legal Education Ontario (2008). *Being arrested and detained for immigration reasons*. Retrieved 01.02.2011 at [www.cleo.on.ca/english/pub/onpub/PDF/immigration/arrdetim.pdf](http://www.cleo.on.ca/english/pub/onpub/PDF/immigration/arrdetim.pdf)
- 165 For an in-depth description of this program see Edwards (forthcoming 2011) above n 12; Field and Edwards (2006) above n 30 pp 85-89.
- 166 Edwards (forthcoming 2011) above n 12.
- 167 Edwards (forthcoming 2011) above n 12.
- 168 As described in Section 4.3.3 Ability to meet basic needs.
- 169 As discussed in Section 1.3.
- 170 For a discussion on issues of sustainable return see Ruben, R., Van Houte, M., & Davids, T. (2009). What Determines the Embeddedness of Forced-Return Migrants? Rethinking the Role of Pre- and Post-Return Assistance 1. *International Migration Review*, 43(4), 908–937.
- 171 *Convention relating to the Status of Refugees*, above n 19, art 31; *International Covenant on Civil and Political Rights*, above n 18, art 9; *Convention on the Rights of the Child*, above n 19, art 37(b); UN General Assembly, *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, above n 19, para 1 and United Nations High Commissioner for Refugees, *UNHCR's Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers*, above n 19, para 1, guidelines 2, 4, 6, 7, 8 and 9. See section 1.3 for a discussion of the concerns regarding the use of detention.
- 172 See section 1.2 for a definition of detention.
- 173 See above n 57 for a definition of 'open' and 'closed' facilities.
- 174 Electronic monitoring has been used in migration matters primarily in the USA: Field and Edwards (2006) above n 30 pp. 36–38.
- 175 See also Association for the Prevention of Torture. (2002). *Monitoring places of detention: A practical guide for NGOs*. Geneva: APT and ODIHR. Retrieved 01.02.2011 at [http://idcoalition.org/wp-content/uploads/2009/06/mpd\\_guide\\_ngo\\_en.pdf](http://idcoalition.org/wp-content/uploads/2009/06/mpd_guide_ngo_en.pdf)
- 176 *Universal Declaration on Human Rights*, above n 19, arts 2, 3, 7 and 9; *International Covenant on Civil and Political Rights*, above n 18, arts 2, 9, 10, 14(1) and 26; *Convention relating to the Status of Refugees*, above n 19, arts 3 and 31; *Convention on the Rights of the Child*, above n 19, arts 2, 22 and 37(b); UN General Assembly, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, above n 19, principles 2, 3 and 5(1); United Nations General Assembly, *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, above n 19, para 4; and United Nations High Commissioner for Refugees, *UNHCR's Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers*, above n 19, paras 3 and 5. For further discussion, see Edwards (forthcoming 2011) above n 11; Field and Edwards (2006) above n 26 pp. 4–22.
- 177 *Convention on the Rights of the Child*, above n 19, art 37(b); *Convention relating to the Status of Refugees*, above n 19, art 31; *International Covenant on Civil and Political Rights*, above n 18, art 9; UN General Assembly, *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, above n 19, para 1 and United Nations High Commissioner for Refugees, *UNHCR's Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers*, above n 19, para 1, guidelines 2, 4, 6, 7, 8 and 9. See also International Detention Coalition (forthcoming) above n 35. Alternatives to detention should particularly be considered for groups of vulnerable individuals such as unaccompanied elderly persons, torture or trauma victims and persons with a mental or physical disability. Detention should be avoided altogether for children, pregnant women, nursing mothers and trafficking victims. See United Nations High Commissioner for Refugees, *UNHCR's Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers*, above n 19, guidelines 6, 7 and 8; *Convention on the Rights of the Child*, above n 19, UN General Assembly, *Trafficking in women and girls: resolution/adopted by the General Assembly*, 30 January 2003, A/RES/57/176, para 17 and Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 20 May 2002, E/2002/68/Add.1.
- 178 *Universal Declaration on Human Rights*, above n 19, art 10; *International Covenant on Civil and Political Rights*, above n 19, art 9(4); *Convention relating to the Status of Refugees*, above n 19, art 16; *Convention on the Rights of the Child*, above n 19, art 37(d); UN General Assembly, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, above n 19, principles 4, 5(2) and 11 and UNHCR, *UNHCR's Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers*, above n 19, guideline 5(iii). See also Acer,



- E. (2004) Living up to America's values: Reforming the U.S. detention system for asylum seekers. *Refuge*, 20(3) pp. 44–57; Vladeck, S. I. (2009). *Boumediene's* quiet theory: Access to courts and the separation of powers. *Notre Dame Law Review*, 84(5), 2107–2150.
- 179 *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, above n 82, art 11; United Nations General Assembly, *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, above n 19, paras 14 and 72. See also Medlicott, D. (2009), Preventing Torture and Casual Cruelty in Prisons Through Independent Monitoring in Scraton, P. and McCulloch, J. (eds) *The Violence of Incarceration*. New York: Routledge. The Association for the Prevention of Torture also has substantial expertise and resources in monitoring places of detention. See [www.ap.toronto.on.ca/index.php?option=com\\_docman&Itemid=259&lang=en](http://www.ap.toronto.on.ca/index.php?option=com_docman&Itemid=259&lang=en).
- 180 Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199. Available at [www2.ohchr.org/english/bodies/cat/opcat/](http://www2.ohchr.org/english/bodies/cat/opcat/)
- 181 Information in this break-out box is from interviews and further references as noted. See also Hungarian Helsinki Committee. (2008). *Asylum seekers' access to territory and to the asylum procedure in the Republic of Hungary: Report on the Border Monitoring Program's first year in 2007*. Budapest: HHC. Retrieved 25.06.2010 from [http://helsinki.webdialog.hu/dokumentum/Border\\_Monitoring\\_Report\\_2007\\_ENG\\_FINAL.pdf](http://helsinki.webdialog.hu/dokumentum/Border_Monitoring_Report_2007_ENG_FINAL.pdf) ; Hungarian Helsinki Committee. (2010). *Report on the Border Monitoring Program 2008-2009*. Budapest: HHC, National Police Headquarters, UNHCR. Retrieved 31.03.2011 at <http://helsinki.hu/dokumentum/Hatatmegfigyelo-program-US-proof-2.pdf> ; UNHCR Regional Representation for Central Europe (2009). *Border monitoring in the Central European region: A summary of UNHCR activities and projects*. Budapest: UNHCR.
- 182 For a discussion of the issues facing stateless persons see: Equal Rights Trust (2010) above n 89.
- 183 Information in this break-out box based on expert knowledge provided to staff of the International Detention Coalition, and from Department of Immigration and Citizenship (2007). *Fact sheet 85: Removal Pending Bridging Visa*. Canberra: DIAC. Retrieved 01.02.2011 at [www.immi.gov.au/media/fact-sheets/85removalpending.htm](http://www.immi.gov.au/media/fact-sheets/85removalpending.htm)
- 184 Coffey et al (2010) above n 24.
- 185 European Union Agency for Fundamental Rights (2010) above n 59.
- 186 Participants interviewed in Hungary indicated their country's six month limit on detention was such a pragmatic decision by authorities. c.f. London Detainee Support Group (2010) above n. 105
- 187 Information in this break out box provided to the International Detention Coalition by a regional expert, with further references as noted.
- 188 UNHCR (2010). *High Commissioner's Dialogue on Protection Challenges: Breakout Session 1: Gaps in the International Protection Framework and in Its Implementation*. 8–9 December 2010. Retrieved 03.02.2011 at [www.unhcr.org/4d09e47a9.pdf](http://www.unhcr.org/4d09e47a9.pdf)
- 189 Giustiniani, R. (ed.) (2004). *Migración: Un Derecho Humano (Migration: A Human Right)*, Buenos Aires: Ed. Prometeo; Zurbriggen, C. and Mondol, L. (2010.) *Estado actual y perspectivas de las políticas migratorias en el MERCOSUR (Current situation and perspectives of migration policies in MERCOSUR)*, Montevideo: FLACSO. Also the government reports: Argentine Republic (2010) 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.
- 190 *International Covenant on Civil and Political Rights*, above n 18, art 10; *Convention on the Rights of the Child*, above n 19, art 27; *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, above n 19, principle 1; United Nations General Assembly, *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, above n 19, paras 31–80; United Nations High Commissioner for Refugees, *UNHCR's Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers*, above n 19, guideline 10. See also Association for the Prevention of Torture (2002) above n 175.
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- 192 Coffey et al (2010) above n 24.
- 193 Inter-American Commission on Human Rights. (2010). *Report on immigration detention in the United States: Detention and due process*. Retrieved 31.03.2011 at

- www.cidh.org
- 194 Association for the Prevention of Torture (2002) above n 175.
- 195 Huey, M. P., & McNulty, T. L. (2005). Institutional Conditions and Prison Suicide: Conditional Effects of Deprivation and Overcrowding. *The Prison Journal*, 85(4), 490–514; Massoglia, M. (2008). Incarceration as exposure: The prison, infectious diseases, and other stress-related illnesses. *Journal of Health & Social Behavior*, 49(1), 56–71.
- 196 Johnston, V. (2009). Australian asylum policies: have they violated the right to health of asylum seekers? *Australian and New Zealand Journal of Public Health*, 33(1), 40; Venters, H., Dasch-Goldberg, D., Rasmussen, A., & Keller, A. S. (2009). Into the Abyss: Mortality and Morbidity Among Detained Immigrants. *Human Rights Quarterly*, 31(2), 474.
- 197 Information in this break out box is from interviews and site visit. Further information available at [www.migrationsverket.se/info/skydd\\_en.html](http://www.migrationsverket.se/info/skydd_en.html)
- 198 CPT (2009) *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*. Retrieved 31.03.2011 at [www.cpt.coe.int/documents/swe/2009-34-inf-eng.pdf](http://www.cpt.coe.int/documents/swe/2009-34-inf-eng.pdf)
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- 200 Coffey et al (2010) above n 24.
- 201 Jesuit Refugee Service Europe (2010) above n 73 pp.45–52.
- 202 The impact of prison settings in allowing abusive behaviour to develop was recently revisited by the researchers who undertook the Stanford Prison Experiment: see Haney, C., & Zimbardo, P. G. (2009). Persistent dispositionalism in interactionist clothing: Fundamental attribution error in explaining prison abuse. *Personality and Social Psychology Bulletin*, 35(6), 807–814.
- 203 Jon, B. & Fidelis, C. (2010). Captive labour: Asylum seekers, migrants and employment in UK immigration removal centres. *Race & Class*, 51(4): 95–103.
- 204 These impacts vary according to the circumstances of the isolation, its duration and the personal characteristics of the individual isolated. Scharff Schiff, P. (2006). The effects of solitary confinement on prison inmates: A brief history and review of the literature. *Crime and Justice*, 34, 441–528.
- 205 Loyo, R., & Corrado, C. (2010) *Locked up but not forgotten: Opening access to family and community in the immigration detention system*. New York: New York University School of Law Immigrants Rights Clinic. Retrieved 28.05.2010 at [www.law.nyu.edu](http://www.law.nyu.edu)
- 206 Edwards (forthcoming 2011) above n 12.
- 207 Field and Edwards (2006) above n 30 p. 248.
- 208 An analysis of such cost savings can also be found in Banki and Katz (2009b) above n 128 p. 45; Edwards (forthcoming 2011) above n 12; Field and Edwards (2006) above n 30 pp. 48–50.
- 209 Interview during field work. Forced removal has been estimated to cost ten times more than independent departure in the United Kingdom at £1,100 compared with £11,000 (UK National Audit Office (2005). *Returning failed asylum applicants*. London: The Stationary Office p. 44. Retrieved 31.05.2010 at [www.nao.org.uk/](http://www.nao.org.uk/)).
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- 211 See Medical Justice (2010) *Review into ending the detention of children for immigration purposes: Response by Medical Justice*, July 2010 as quoted in Edwards (forthcoming 2011) above n 12.
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- 213 As described in Section 1.3. See also Ichikawa et al (2006) above n 24; Steel et al (2006) above n 24.
- 214 Coffey et al (2010) above n 24.
- 215 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: Corlett, D. (2005). *Following them home: The fate of the returned asylum seekers*. Melbourne: Black Inc p. 59. See Sampson, Correa-Velez and Mitchell (2007) above n 54 regarding the impact of poor health on the ability to prepare for return. See Coffey et al (2010) above n 24 regarding the difficulties faced by former detainees in building a new life after release with a visa.

# **NOTES**



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