



Unlocking rights: towards ending
immigration detention for asylum-
seekers and refugees



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Cover Photograph *Libya. UNHCR facilitates release of detained refugees and asylum-seekers* © UNHCR/Mohamed Alalem

Division of International Protection

<https://www.unhcr.org/what-we-do/protect-human-rights/asylum-and-migration>

<https://www.refworld.org/thematic-area/detention>

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Introduction: the detention trap

Around the world, people who cross borders to seek asylum are at risk of becoming trapped in arbitrary detention imposed in the interests of immigration control, without the means to challenge their situation, or exercise their right to seek international protection. For people who have been forced to flee their homes due to conflict, violence or persecution, such detention can have particularly harmful and lasting consequences for their physical and mental health.¹ It can damage family relationships and undermine the best interests and the development of children.² For the State, the financial burden of immigration detention is significant and often unnecessary.³

International law constrains the use of immigration detention, requiring that it be applied only when prescribed by law, and when necessary and proportionate for a legitimate purpose as an exceptional measure of last resort, for the shortest possible period of time.⁴ It absolutely prohibits the detention of children for immigration-related purposes.⁵ In practice however, despite some promising developments, detention of asylum-seekers and refugees is a persistent and growing challenge.⁶ Asylum-seekers are sometimes mandatorily detained upon entering a country irregularly or are detained for long periods or indefinitely.⁷ They are often held in inadequate or degrading conditions, including sometimes in criminal justice facilities.⁸ “De facto detention” – the deprivation of liberty in practice for immigration-related purposes, although the situation is not qualified as one of detention in national law - is a growing concern, in particular in border facilities where the cumulative effect of restrictions on rights, including freedom of movement, of asylum-seekers and refugees, may in practice amount to deprivation of liberty.⁹ In many such contexts, asylum-seekers and refugees are unable to prevent or challenge arbitrary detention, including because they lack access to information, to a lawyer or to judicial review of their detention.¹⁰ Independent monitoring of immigration detention is too often subject to limitations or obstacles.¹¹

As States strive to manage arrivals at borders and to process asylum claims fairly and efficiently, how can immigration detention be restricted so that it truly becomes a measure of last resort? Effective systems of alternatives to detention (“ATDs”) and alternative forms of care for children at risk of immigration detention, based on clear national laws and reflecting human rights standards, are essential. Greater efforts are needed to implement these alternatives,¹² which have been found to be more cost-effective than detention in many countries and can ensure high rates of compliance with asylum and immigration procedures.¹³

UNHCR works around the world to uphold the rights of asylum-seekers and refugees, including those who are detained.¹⁴ In 2012, it published the UNHCR Detention Guidelines on the applicable standards regarding the detention of asylum-seekers and refugees.¹⁵ In this paper, drawing on the Detention Guidelines and its experience in a range of national systems, **UNHCR calls on States to implement legal and policy reforms and mobilize resources towards ending detention of asylum-seekers and refugees for immigration-related reasons and implementing alternatives to detention in practice.**

This paper focuses on four of the most pressing issues: situations of de facto detention; immigration detention of children; procedural rights in detention; and alternatives to detention. It sets out recommendations, based on international refugee and human rights law, on the key measures that States need to take to prevent the arbitrary immigration detention of asylum-seekers and refugees.

International law: turning legal guarantees into a reality for asylum-seekers and refugees

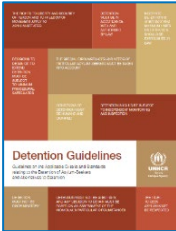
The detention of asylum-seekers and refugees for entering or staying irregularly in the territory of a country is limited by Article 31 of the 1951 Convention on the Status of Refugees (“1951 Convention”) which provides that asylum-seekers and refugees¹⁶ shall not be penalized for irregular entry or stay, subject to certain conditions,¹⁷ and that the movement of asylum-seekers and refugees is not restricted other than when necessary and only until their status is regularized or they gain admission into another country.¹⁸ More recently, under the Global Compact on Refugees (GCR), several States committed to developing non-custodial and community-based alternatives to detention, particularly for children.¹⁹

Under international human rights law, asylum-seekers and refugees have the right to liberty and security of the person.²⁰ The right to liberty requires that any deprivation of liberty must be in accordance with law and must not be arbitrary. To guard against arbitrariness, any detention must be necessary in the individual case, reasonable in all the circumstances, and proportionate to a legitimate purpose. It must be imposed only as a measure of last resort following consideration of less coercive alternatives, based on a detailed, individualised assessment of the need to detain, and it must be subject to independent, prompt and regular judicial review.²¹ **Mandatory detention of asylum-seekers and refugees for the sole reason of their status is inherently arbitrary,²² as is indefinite detention.²³**

Judicial scrutiny imposing limits on detention

In the **Republic of Korea**, in March 2023, the Constitutional Court ruled unconstitutional the provision in the Immigration law providing for the detention of asylum-seekers, refugees and migrants, due to the lack of a maximum time limit on detention and the absence of any legal basis for judicial review of detention in the law. The Constitutional Court also provided guidance on permissible upper time limits on detention and on the use of alternatives to detention. Legislation to implement the ruling is currently under discussion.²⁴

Resources



UNHCR DETENTION GUIDELINES

Guidelines on the applicable criteria and standards relating to the detention of asylum-seekers and alternatives to detention.



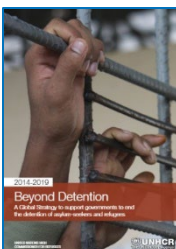
UNHCR'S POSITION REGARDING THE DETENTION OF REFUGEE AND MIGRANT CHILDREN IN THE MIGRATION CONTEXT

A note about UNHCR's position regarding the detention of children, unaccompanied, separated or in families for immigration related purposes.²⁵



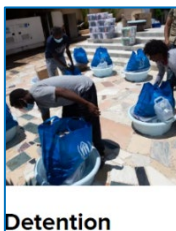
UNHCR POLICY ON DETENTION MONITORING

UNHCR/HCP/2015/7²⁶



BEYOND DETENTION: A GLOBAL STRATEGY TO SUPPORT GOVERNMENTS TO END THE DETENTION OF ASYLUM-SEEKER AND REFUGEES

A Global Strategy to support governments to end the detention of asylum-seeker and refugees, 2014-2019.²⁷



OPTIONS PAPERS, TOOLKITS, CHECKLISTS AND TRAINING MATERIALS

UNHCR resources related to immigration detention can be found on Refworld, Thematic Area Detention.²⁸

1. Recognizing and addressing detention in practice: de facto detention

De facto detention leaves asylum-seekers and refugees unprotected

In many national systems, there is an increasing risk that, while asylum-seekers and refugees are not detained under national law, the restrictions on rights and liberties imposed on them do, in practice, amount to detention.²⁹ Such “de facto” immigration detention may occur on arrival, where asylum-seekers and refugees are held in border zones, at airports or in other reception centres for registration, identity checks or case processing purposes, and are subject to significant restrictions on their freedom of movement and other rights. In situations of mass arrivals, asylum-seekers and refugees may be held in improvised facilities, at borders or in other, often remote areas.³⁰ Even where these arrangements are designed for short stays, delays in processing cases can mean that the length of stay in border or reception facilities ranges from several days to many months. These situations are likely to lead to arbitrary detention. They may also impede access to asylum, as asylum-seekers held in such facilities may lack access to information on their rights, to lawyers, as well as to judicial review that would apply under national law in situations acknowledged as detention. They may have difficulty in communicating with UNHCR or with NGOs which could assist them in accessing the asylum process.

Responding to the reality of de facto detention

In accordance with international law, **whether a particular situation amounts to a deprivation of liberty must be assessed on the facts**, rather than on the qualification of the situation in national law.³¹ “Detention” refers to deprivation of liberty or confinement in a closed place which an asylum-seeker or refugee is not permitted to leave at will, irrespective of the name or classification of the facility or place concerned.³² Therefore, accommodation in facilities or restricted or remote areas in a designated border or transit zone may in principle amount to detention, where the restrictions on rights in the location in question are sufficiently severe,³³ or “if the ability to leave such a place, facility or setting would be somehow limited or expose a person to serious human rights violations.”³⁴

There is no single factor which determines that a situation restricting liberty amounts to detention: it is a question of the degree or intensity of restrictions, rather than their nature or substance.³⁵

The cumulative effect of a series of restrictions, each of which might in themselves fall short of deprivation of liberty, can lead to a person being de facto detained.³⁶

In numerous cases before international human rights courts and tribunals, people held at airports, at borders or in reception centres have been found to be de facto detained, through an assessment of the cumulative impact of the restrictions imposed.³⁷ In such cases, the possibility to

leave the area of confinement by leaving the jurisdiction – either by crossing a border, or by taking a flight to another State – may be a factor in assessing whether the situation amounts to detention. However, such a situation may still amount to detention where an asylum-seeker can only leave an area of confinement by crossing a border in circumstances where doing so would put them at risk of refoulement³⁸ or jeopardize an asylum claim.³⁹



Afghanistan. UNHCR with partners has scaled up its work and presence at official border crossings as tens of thousands of Afghans arrive from Pakistan. Many have faced arrest, evictions, detention. © UNHCR/Oxygen Empire Media Production

Where, on entry to the territory, asylum-seekers and refugees are confined to a facility or similar restricted area for identification or processing of their cases, this should be considered as detention if they cannot leave the facility and if the time for which they are confined exceeds what is reasonably necessary for determining identity, documenting their entry and recording their claims.

The poorer the conditions in which the person is held, and the greater the restrictions on movement, communication and privacy, the more likely it is that the situation may amount to detention. The impact on the individual, having regard to their particular circumstances or specific needs should also be taken into account in assessing whether the confinement amounts to detention.

De facto detention?

Based on international human rights standards and case law, elements to consider in assessing whether there is a de facto deprivation of liberty under international law include:

- ✓ The situation of the individual, including whether they entered the area or facility by choice;
- ✓ If individuals may only leave a situation of confinement by agreeing to leave to another country, notably where this would put them at risk of refoulement or jeopardize their claim of asylum;
- ✓ The nature of the restrictions on liberty in practice, including physical barriers, security measures and rules controlling movement, or the remoteness or inaccessibility of the area or location of confinement;
- ✓ The nature and extent of any surveillance, monitoring or other restrictions on privacy, visits and communication with the outside world;
- ✓ The duration of stay and whether there are any limits to it;
- ✓ Whether there are any procedural rights or recourse to judicial review of the restrictions on movement;
- ✓ The adequacy of living conditions; and
- ✓ The impact on the individual in light of their particular circumstances or characteristics, including the impact on their physical or mental health.

Given the many situations, including at borders, where it is unclear or contested whether asylum-seekers and refugees are detained, **independent monitoring of facilities where conditions may amount to de facto detention is crucial to ensuring respect for the right to liberty, as well as other human rights for those held there.**

Furthermore, as a safeguard against arbitrary detention and to ensure access to the asylum process, **asylum-seekers and refugees accommodated in such facilities must have access to information in a language and manner they understand, as well as access to a lawyer.**

De facto detention: case examples

In ***J.A. and others v Italy***, the European Court of Human Rights considered the case of four Tunisian nationals, who were rescued at sea and brought to the Italian “hotspot” facility on the island of Lampedusa. The applicants did not have the opportunity to apply for asylum prior to their summary removal from the State. They were placed in the hotspot for 10 days, during which time they were not permitted to leave the centre. National legislation on hotspots did not make clear whether they were considered to be places of detention. However, the Court noted numerous reports which described the Italian hotspots as closed areas surrounded by bars, gates and fences, and not permitting people to leave. The applicants’ stay in the hotspot was found by the Court to amount to detention, especially considering that no maximum period of stay was defined by law and conditions there were inhuman and degrading. Given the lack of a clear legal basis for detention or any detention order in their cases, the Court found that their deprivation of liberty was arbitrary in violation of Article 5.1.f of the European Convention on Human Rights.⁴⁰

In its **Opinion concerning Saman Ahmed Hamad (Hungary)**, the Working Group on Arbitrary Detention addressed the case of an Iraqi asylum-seeker's stay in the Hungarian transit zone for two years, during which period his movements were severely restricted. The Government claimed that since Mr. Hamad had freely entered the area and was free to leave it by crossing back into Serbia, he was not detained. However, the Working Group noted that the physical structure of the compound where he was held resembled a detention facility, there were large numbers of police and security personnel present, and visitors to the compound required prior authorization. Asylum-seekers staying there were subject to constant surveillance and restrictions on their contacts with the outside world. Moreover, the Working Group did not accept that an individual who must either agree to remain in the transit zones or lose the possibility of lodging an asylum application could be described as freely consenting to stay in the transit zones. The situation of Mr. Hamad was therefore found to amount to detention and on the facts of the case, his detention was found to be arbitrary.⁴¹

2. Ending immigration detention of children



A group of young girls takes part in a drawing class in a shelter in the southern Mexican city of Tapachula. The shelter is run by Mexico's family welfare agency DIF, which houses minors and also assists refugees. © UNHCR/Jeoffrey Guillemard

Children continue to be detained for immigration-related purposes

Increased resort to immigration detention of asylum-seekers and refugees brings risks of increased detention of children. Despite progress towards ending immigration detention of children in law and practice in some States,⁴² at least 77 countries have laws or policies that permit the detention of children based on their legal or migratory status, and in practice at least 330,000 children are detained each year on this basis.⁴³ In addition, in some countries where immigration detention of children is not permitted by law, it continues to be used in practice.⁴⁴

Legal reform is therefore needed in many States, not only to ban the detention of children for purposes of immigration control, but equally importantly, to provide for adequate alternative care arrangements, both for unaccompanied and separated children through national child protection systems, and for children with their families, in line with the rights of the child and the principle of the best interests of the child.⁴⁵ Provisions for accompanied children and their families must also be consistent with the right to family life.⁴⁶

The implementation of appropriate alternative care arrangements for children, irrespective of their status or that of their parents, presents the greatest challenge in ending their detention. Where alternative arrangements for children are in place, they are sometimes insufficiently resourced or not practically accessible to children.⁴⁷ Lack of effective procedures, including for assessment of the best interests of the child or delays in such procedures, can also prevent children's referral to alternative care.⁴⁸

The prohibition on children's immigration detention must be made a reality

It is clearly established in international human rights law and reflected in UNHCR's 2017 Position regarding the detention of children, that children should not be detained for the purposes of immigration control. In particular, this has been affirmed by the UN Committee on the Rights of the Child (CRC),⁴⁹ drawing on the requirement that the best interests of the child shall be a primary consideration in all actions concerning the child⁵⁰ and that the right to liberty of the child is guaranteed by the Convention.⁵¹ The CRC, together with the Committee on Migrant Workers (CMW), has established that "children should never be detained for reasons related to their or their parents' migration status and States should expeditiously and completely cease or eradicate the immigration detention of children."⁵² The prohibition on detention of children for immigration-related purposes has also been affirmed by other global human rights bodies,⁵³ as well as by the Inter-American Court of Human Rights and the African Guiding Principles on the Human Rights of All Migrants, Refugees and Asylum-Seekers.⁵⁴ It is reflected in the restrictive approach to immigration detention of children in other regional standards⁵⁵ and in States' commitments under the New York Declaration for Refugees and Migrants and the Global Compact on Refugees, to support non-custodial and community-based alternatives to detention for children.⁵⁶

Ending immigration detention of children: promising developments

In 2020, **Mexico** enacted legislation to prohibit the detention of children based on their legal or migratory status, whether they are accompanied or unaccompanied. Responsibility for care of such children was allocated to the National System for the Protection of Children. These legislative changes are complemented by a Comprehensive Protection Protocol for Migrant Children, covering screening, evaluation, referral and community placement of children, and implemented with the support of civil society and IGOs.⁵⁷

In 2015, **Ireland** adopted the International Protection Act, prohibiting the detention of any applicant for international protection under the age of 18.⁵⁸

In **Thailand**, progress has been made in developing community-based alternatives for some asylum-seeking, refugee and migrant children who are already detained. In 2019, a number of relevant ministries and agencies agreed upon and signed a Memorandum of Understanding on the Determination of Measures and Approaches, Alternatives to Detention for Children in Immigration Detention Centres (ATD-MOU). Progress under the MoU is being monitored and evaluated by the Government.⁵⁹

To guard against immigration detention of children, **appropriate and safe care arrangements and community-based programmes should be available both to unaccompanied asylum-seeking and refugee children, and to accompanied children and their families**, alongside strong procedures for referral to alternatives, and assessment of the child's best interests. Such arrangements should respect the human rights of children, and ensure adequate reception conditions, including recreation, learning opportunities, and maternal and child health services.⁶⁰ Notably, these arrangements should be practically and financially accessible to children and their families without discrimination.

Unaccompanied and separated children should be swiftly identified, referred to child protection case management and best interests procedures and provided with family-based alternative care.⁶¹ Care should be provided through national child protection systems within communities⁶² and should ensure that asylum-seeking and refugee children are not discriminated against within that system. Where children are accompanied by family members, the family members should be accommodated outside of immigration detention, together with their children.⁶³



El Salvador. Support Spaces "A tu Lado" © UNHCR/Markel Redondo

3. Strengthening vital procedural rights



Greece. Protection team on Lesbos island provides crucial aid to refugees and asylum-seekers.
© UNHCR/Socrates Baltagiannis

Procedural safeguards are key to preventing arbitrary detention

Procedural rights for detained asylum-seekers and refugees – rights to receive information about the legal basis for their detention in a language that they understand, to have prompt and confidential access to a lawyer, and to bring judicial proceedings challenging the lawfulness of their detention – are essential to preventing or ending unlawful or unnecessary immigration detention.⁶⁴ While in many national systems, procedural rights for persons in immigration detention are guaranteed in law, their practical implementation often remains challenging. In some States, new or improvised systems of border detention in response to mass arrivals have further reduced procedural protection.⁶⁵

Asylum-seekers and refugees in immigration detention may receive inadequate information on the legal basis for their detention or the procedure for challenging it, or receive information only in a language or a format which they do not understand.⁶⁶

Access to lawyers is inadequate in some systems due to a variety of practical reasons, including insufficient numbers of qualified lawyers being available in the location of detention facilities, in particular where they are located in rural or remote areas, or where there are large numbers of arrivals beyond the capacity of lawyers to deal with or insufficient numbers of competent lawyers practicing in the immigration and asylum field.⁶⁷ High costs of legal representation and limitations on free legal assistance represent significant barriers to access to courts to challenge detention.⁶⁸ Also of concern are restrictions on lawyers' access to their clients in immigration detention, or restrictions on confidential lawyer-client consultations with them in detention facilities.⁶⁹

Judicial review of immigration detention is not always provided for by law, but where it is, its scope is sometimes too limited, for example where it is confined to review of compliance with national procedures and does not also address the substantive basis for the detention order.⁷⁰

A further crucial safeguard which is too often subject to obstacles or restrictions is independent monitoring of places of immigration detention, including by UNHCR, other international organisations or human rights bodies,⁷¹ national structures such as National Human Rights Institutions (NHRIs) and National Preventive Mechanisms (NPMs), or by NGOs. Such monitoring is critical to the identification of persons with international protection needs as well as to protecting the rights of asylum-seekers and refugees in detention, and for the prevention and correction of systemic problems, leading to violations of human rights in immigration detention.⁷²

States must increase efforts to implement procedural rights in practice

In accordance with UNHCR's Detention Guidelines as well as the right to liberty under international human rights law, detained asylum-seekers and refugees need to have access to procedural rights, in particular the right to information regarding their detention in a language they understand; access to a lawyer; and independent, prompt and regular judicial review.⁷³ International standards also provide for unhindered access of independent monitors to detention facilities.⁷⁴

The right to information

Every detained person, including those detained for purposes of immigration control, has the right to be provided promptly with information on the reasons for their detention, in a language that they understand,⁷⁵ with the assistance of an interpreter if necessary.⁷⁶ They must also be provided with accurate legal information about the asylum procedure and their rights concerning it.⁷⁷

The right to information is a crucial one, since **without clear and accessible information on the reasons for detention, the right to seek judicial review of detention is deprived of all effective substance.**⁷⁸ Access to interpretation may also be necessary to enable communication with the authorities, including staff in detention facilities and lawyers.

The right of access to a lawyer

Access to a qualified lawyer is a necessary condition for effective judicial review of detention.⁷⁹ Where necessary to ensure effective judicial review, the right of access to a lawyer may require in certain cases that free legal assistance is provided to a detainee.⁸⁰ It also includes the right to communicate with and to consult legal counsel, to have adequate time and facilities to do so, and to communicate in confidence.⁸¹

In all circumstances, therefore, asylum-seekers and refugees held in immigration detention should have prompt, regular and confidential access to a lawyer. It is the state's responsibility to ensure the availability and accessibility of legal advice to detainees, in the face of practical barriers including lack of capacity or geographical remoteness.



Ecuador. UNHCR staff provides information to refugees and migrants © UNHCR/Diana Diaz

The right to judicial review

Immigration detention must be subject to prompt and periodic review by a judicial or other independent body,⁸² and detainees must also have the right to take proceedings before a court to challenge the lawfulness of their detention.⁸³ **Judicial review of detention must be substantive and not merely formal, both in law and in practice:** it must extend beyond mere review of compliance with national law and include analysis of the compliance of the detention with the human rights of the individual detained, including the right to liberty, and the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment. In all such judicial reviews, the court must be capable of ordering release if the detention is incompatible with the right to liberty or with other human rights of the detainee.⁸⁴

Monitoring by independent bodies

The obligation to permit unrestricted access to places of immigration detention by independent monitoring organisations has been affirmed in international standards.⁸⁵ In the case of refugees and asylum-seekers, it is underpinned by the duty of States to cooperate with UNHCR under Article 35 of the 1951 Convention.⁸⁶ **Independent monitors, including UNHCR, should have unhindered access to all places where asylum-seekers and refugees are deprived of liberty, including places of de facto detention.**⁸⁷ In places of detention, they should be permitted to meet with any detained person or staff member, in private, and should have access to all areas of the facility.⁸⁸



Libya. UNHCR facilitates release of detained refugees and asylum-seekers © UNHCR/Mohamed Alalem

4. Implementing alternatives to detention

Alternatives to detention are gaining support, but are still insufficient

Globally, there is increasing awareness of the need to provide for Alternatives to Detention (“ATDs”) in order to ensure that immigration detention is only applied as a measure of last resort. ATDs are also recognized as bringing practical benefits, as they are generally more cost-efficient than detention⁸⁹ (see table below on costs) and are effective at ensuring compliance with immigration and asylum procedures.⁹⁰ Nevertheless, many states still make no or insufficient provision for and use of ATDs.⁹¹

Comparison of costs of immigration detention vs. ATDs

Note: The table below provides a general sense of the relative costs of immigration detention and ATDs; however, the available data is not comprehensive and is drawn from multiple studies concerning varied forms of ATDs.

State	Date of data collection	Cost of Detention (per person per day)	Cost of ATD (per person per day)
Australia ⁹²	2015	AU\$ 655	AU\$ 8.80 to AU\$ 38
Austria ⁹³	2015	€ 120	€ 17-24
Belgium ⁹⁴	2014	€ 180 - 190	€ 90 in a family unit
Canada ⁹⁵	2019-2020	CA\$ 200 - 400	CA\$ 10-12
Hong Kong ⁹⁶	2015		HK\$ 108
Indonesia ⁹⁷	2015		US\$ 8
United States ⁹⁸	2018	US\$ 208	US\$ 5.89
Slovenia ⁹⁹	2014	€ 15.10	€ 0 - 9.29
United Kingdom ¹⁰⁰	2022	£107	

Even where ATDs are provided for under national law or policy, they may not be sufficiently applied to ensure that detention is a last resort.¹⁰¹ In States where some forms of ATDs are available, there are often shortcomings in their implementation, including insufficient capacity or lack of accessibility. Asylum-seekers and refugees in immigration detention may face barriers to accessing ATDs as a result of excessive costs to the individual, such as in some bail arrangements, or due to lack of information necessary to access the measures.¹⁰² There are particular challenges in implementing ATDs at borders, given that border areas may be remote and may lack adequate administrative structures, capacities and services.

The type of ATD made available is also limited in some countries: for example, where ATDs are mainly based on electronic tagging (such as wrist or ankle bracelets),¹⁰³ they may be inappropriately reminiscent of the criminal justice system. ATDs in the form of electronic tagging are punitive in nature and are unlikely to comply with the principles of necessity and proportionality, including application of the least restrictive measure appropriate for the individual case.

One difficulty in ensuring sufficient implementation of ATDs is the lack of adequate procedures to apply them as appropriate in individual cases. In some countries, the absence of adequate screening processes, or delays in such processes, is a barrier to application of ATDs. Ineffective judicial review of detention, or the reluctance or lack of capacity of courts or tribunals to order ATD measures, present further barriers.¹⁰⁴

Standards related to ATD: accessibility in practice and compliance with human rights

Alternatives to detention can be an effective means of ensuring that that immigration detention is a measure of last resort, as required under international refugee law and international human rights law.¹⁰⁵ ATDs reflect States' obligations under the right to liberty to ensure that any decision to detain takes into account less invasive means of achieving the same ends.¹⁰⁶ In light of this, States have undertaken international commitments to develop ATDs,¹⁰⁷ including under the Global Compact on Refugees and the Global Compact on Migration.¹⁰⁸ Meeting these commitments requires investment of resources and development of strong systems of ATDs and referral processes, that uphold human rights while ensuring compliance with immigration and asylum proceedings. Peer-to-peer exchange of expertise and good practice examples between States can support progress in implementation of ATDs.¹⁰⁹

Effective provision of ATDs requires that they are available and accessible to all asylum-seekers and refugees in immigration detention or at risk of immigration detention, on an equal basis.¹¹⁰ They must be economically accessible, and there must be sufficient advice and information to enable access to ATDs without discrimination. There must be adequate resources to ensure that ATDs are accessible at a sufficient scale to address demand.

Alternatives to detention must themselves comply with human rights. ATDs must be adequately prescribed by law; must be of sufficient quality and precision, such that they are

reasonably foreseeable in their application;¹¹¹ and the least restrictive ATD appropriate in any individual case should be applied.¹¹² In addition, those subject to ATDs should have access to information about the measures in a language they understand, as well as access to legal advice.¹¹³ ATDs should be time-limited, and ATDs should be continuously monitored in each case to assess their impact on the human rights of the individual concerned and to ensure that the measures do not become unnecessary or disproportionate when applied for an extended period.

Asylum-seekers and refugees subject to ATDs must enjoy the right to liberty and should be subject to the minimal possible restrictions on their freedom of movement. If ATDs are not to become alternative forms of detention, they must never impose restrictions on movement sufficient to amount to de facto detention.

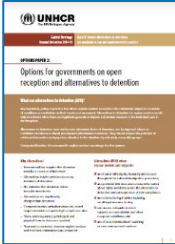
Furthermore, **ATDs must respect the principle that asylum-seekers and refugees should not be penalised for seeking international protection, or, subject to limited exceptions, for irregular entry or stay.**¹¹⁴

There is an especially strong obligation to consider ATDs in cases of vulnerability, given the heightened risk that the detention of vulnerable persons may violate the right to liberty or other human rights.¹¹⁵ To comply with principles of necessity and proportionality, and ensure referral to ATDs where necessary, there should be an **initial vulnerability screening of asylum-seekers on arrival, followed by a more detailed or specialist assessment in appropriate cases, as well as regular follow-up monitoring and screening for vulnerabilities.**¹¹⁶ Vulnerability screening requires dedicated services and trained and qualified staff for the identification and immediate referral to appropriate care of vulnerable individuals, including survivors of torture, gender-based violence and trafficking in persons. There should also be effective procedures in place for the identification of stateless persons and those at risk of statelessness, and referral to stateless determination procedures where applicable.¹¹⁷

Priority should be given to developing community-based models of ATDs in partnership with civil society organizations; these ATDs should be integrated with case management systems and support asylum-seekers in engaging with the asylum process.

ATDs should be applied only in circumstances where asylum-seekers or refugees would otherwise have been detained. ATDs should not become substitutes for open reception arrangements.¹¹⁸

Resources



UNHCR OPTIONS PAPER 2: OPTIONS FOR GOVERNMENTS ON OPEN RECEPTION AND ALTERNATIVES TO DETENTION

The paper presents examples of open reception and alternatives to detention.¹¹⁹



UNHCR, BEYOND DETENTION TOOLKIT: GUIDING QUESTIONS FOR THE ASSESSMENT OF ALTERNATIVES TO DETENTION

UNHCR, Beyond Detention Toolkit¹²⁰



UNHCR ALTERNATIVE TO DETENTION SELF-STUDY MODULES

UNHCR training materials on alternatives to detention are available on Refworld, Thematic Area – Detention.¹²¹

Promising developments to prevent or reduce immigration detention

Services and case management in the community

In **Ecuador**¹²² and **Uruguay**¹²³ there is no immigration detention of refugees or asylum-seekers. They have the right to work and have access to services while their case is processed.

In **Colombia**, in response to mass arrivals of Venezuelan refugees and migrants, the Government responded by establishing a programme of temporary regularization rather than a regime of immigration detention. The temporary protection status offered to Venezuelan nationals arriving in Colombia includes work permits and access to essential services for up to ten years.¹²⁴

Screening for vulnerabilities and increased ATD facilities

Zambia established a National Referral Mechanism in 2014 as a framework for the identification of vulnerable asylum-seekers, refugees and migrants and their referral to appropriate services. This has helped to avoid the use of immigration detention through diversion to accommodation in the community. In practice, Zambian authorities do not encourage the detaining of children for immigration-related offences. Instead, they promote non-custodial-based ATD, such as community-based support and supervision.¹²⁵ Challenges remain in practice, including misidentification of cases, and lack of adequate funding and infrastructure for ATDs and foster-care arrangements.

ATD civil society pilot projects

In **Bulgaria**, a pilot ATD project implemented by NGOs¹²⁶ demonstrates the value of community-based ATDs. The project applied a screening and assessment process to identify those suitable for ATD and then provided case management support to asylum-seekers with the close involvement of local communities. It achieved a high rate of compliance and engagement in asylum and immigration processes, with a rate of absconding or disengagement of 18%, compared to a national rate estimated at 75%.¹²⁷

In November 2023, the highest court in **Australia** overturned almost twenty years of legal precedent when it found that powers to detain people in immigration detention, as applied to a stateless refugee, were unconstitutional. The Court ruled that such detention was not reasonably capable of being seen as necessary for a legitimate and non-punitive purpose in circumstances where there was no real prospect of removal from Australia becoming practicable in the reasonably foreseeable future.¹²⁸ The impact of this ruling is still being examined in the courts, as the government continues to expand alternatives to detention with access to appropriate community support services for those in need.

5. Making immigration detention a true exception: recommendations to States

States' national law and policy on immigration detention must be guided by the principle that claiming asylum is not an unlawful act and should not in itself lead to punitive measures. It must uphold the rights to liberty and security of the person and to freedom of movement, in accordance with global and regional standards. Asylum-seekers and refugees should never be detained for immigration-related purposes where the detention is unnecessary or disproportionate, or where other less restrictive measures could be applied.

Implementing these standards in practice requires concerted and collaborative efforts by governments, IGOs, civil society and refugee-led organizations. UNHCR encourages governments to cooperate to ensure full implementation of international law and standards on immigration detention, including through exchanges of good practice and in the framework of reviews of international human rights mechanisms as well as commitments under the Global Compact on Refugees and the Global Compact for Migration.

In particular, States should take the following measures to address problems of law and practice, in consultation with UNHCR, NHRIs and civil society, including refugee-led organizations.

Overarching measures

- Take measures to ensure that in law and in practice, immigration detention of asylum-seekers and refugees is an exceptional measure of last resort and subject to clear time limits.¹²⁹
- Ensure that immigration detention of asylum-seekers and refugees is resorted to only when it is clearly authorized by law, determined to be necessary, reasonable in all the circumstances, and proportionate to a legitimate purpose in the individual case.¹³⁰
- Ensure that where asylum-seekers and refugees are detained, they have access to legal advice, that conditions are humane and dignified and prevent their detention in inappropriate facilities, including in prisons or other facilities designed for criminal justice purposes.¹³¹
- Ensure that all places of immigration detention are subject to independent monitoring and inspection by independent national and international institutions and bodies.¹³²

De facto detention

- Ensure that any facilities accommodating asylum-seekers or refugees that are not officially designated places of detention under national law, including reception facilities at borders, are designed and managed in compliance with the right to liberty – and do not become places of detention. Such facilities should impose minimal restrictions on movement, communication and privacy, and should provide adequate living conditions appropriate to the non-punitive nature of the facility.
- Where facilities accommodating asylum-seekers or refugees do entail deprivation of liberty in practice, States must ensure that detention is adequately provided for in national law, is necessary and proportionate for a legitimate purpose, and is subject to adequate procedural safeguards and time limits to ensure respect of rights of refugees and asylum-seekers.
- Independent monitoring of all de facto detention facilities, including those not recognized as detention facilities in national law, must be ensured. In situations of ambiguity where restrictions on freedom of movement and other rights may approach a deprivation of liberty, national authorities should provide for unhindered access by independent monitoring bodies, including UNHCR.

Detention of children

- The international legal prohibition on detention of children for immigration-related purposes should be reflected in national laws. Where necessary, States, in consultation with civil society and including children, should amend national law to prohibit such detention. In order to uphold the best interests of children and their right to family life, national law should also provide that accompanied children should be accommodated together with their family members outside of detention.
- Alternative care arrangements for unaccompanied and separated children should prioritize family-based care and should ensure their equal treatment within national child protection systems. States should implement alternative care arrangements that are financially and practically accessible for all children and their families at risk of immigration detention. Such arrangements should respect the human rights of children and their families, and provide adequate reception conditions, including recreation, learning opportunities and maternal and child health services. These alternatives should be implemented alongside effective child-friendly procedures for referral to alternatives, and assessment of the child's best interests.

Procedural safeguards

- States must take steps to ensure that all asylum-seekers and refugees detained for immigration-related purposes are promptly provided with adequate information about their detention, including through provisions of interpretation and/or translation into a language and in a manner that they understand.
- States must provide resources and implement systems to ensure that asylum-seekers and refugees in immigration detention have prompt, regular and confidential access to a lawyer, both in law and in practice, and that lawyers representing asylum-seekers or refugees in detention do not face obstruction in their work. Where confidential in-person consultations are not available, confidential online or telephone consultations should be facilitated.
- National laws should be amended where necessary to provide for precise limits to the duration of immigration detention and allow for judicial review of such detention that is substantive and not merely procedural, which examines compliance with national law and the human rights of refugees and asylum-seekers, and with the power to order release.

Detention monitoring

- States should permit and facilitate unhindered access by UNHCR and other independent monitoring organisations to all places where asylum-seekers and refugees are detained for immigration-related purposes. They should consider agreeing to memoranda of understanding to facilitate and guide such access. National independent monitoring mechanisms with mandates to monitor immigration detention should be established where they are not already in place.

Alternatives to detention

- States should step up provision and resourcing of ATDs to ensure that they are available, accessible, and affordable to all refugees and asylum-seekers in, or at risk of, immigration detention. Any discriminatory limitations on eligibility for referral to ATDs should be eliminated in law and in practice.
- States should ensure that there are prompt and effective procedures for vulnerability screening and referral to ATDs without undue delays.
- A range of ATDs should be put in place to ensure that appropriate and proportionate measures can be applied in each individual case. Application of ATDs should be time-limited and continuously monitored individually to ensure that any restrictions on rights do not become disproportionate over time.

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- Priority should be given to developing community-based models of ATDs that are integrated with case management systems and that support the asylum-seeker in accessing and engaging with the asylum process.
 - States should end the use of practices which may be referred to as “ATDs” that in practice amount to de facto detention, as well as those that are punitive in nature and based on criminal law models, such as bail arrangements or electronic tagging.
 - ATDs should never be applied as an alternative to liberty.

Data, information and capacity building

- States should collect and publish comprehensive disaggregated data on immigration detention, to inform policy and law reform.
- States should ensure that officials involved in reception and detention of asylum-seekers and refugees have an understanding of international refugee and human rights law and standards on immigration detention. They should work cooperatively with UNHCR and other relevant inter-governmental organizations, as well as NHRIs and civil society, including refugee-led organizations, to provide information and training on these issues.

Endnotes

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- ² UN General Assembly, *Ending immigration detention of children and providing adequate care and reception for them: Report of the Special Rapporteur on the human rights of migrants*, 20 July 2020, A/75/183, paras.24-32, www.refworld.org/reference/themreport/unga/2020/en/148499. UN Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, 10 April 2018, A/HRC/38/36, para. 55, www.undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F38%2F36&Language=E&DeviceType=Desktop&LangRequested=False.
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- ⁴ See for example, UN Human Rights Committee (HRC), *General comment no. 35, Article 9 (Liberty and security of person)*, 16 December 2014, CCPR/C/GC/35, para.12, www.refworld.org/docid/553e0f984.html. UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, Guideline 4, www.refworld.org/policy/legalguidance/unhcr/2012/en/87776 (Detention Guidelines).
- ⁵ See below, section 3.
- ⁶ See UNHCR, *Global Report 2023, Outcome Area 6, Safety and Access to Justice*, reporting.unhcr.org/global-report-2023/outcome-areas/safety-and-access-justice#:~:text=OUTCOME%20AREA%206,only%20as%20a%20last%20resort. International Detention Coalition, *Gaining ground: promising practice to reduce and end immigration detention*, May 2022, idcoalition.org/wp-content/uploads/2024/01/Gaining-Ground-Report-2022.pdf. UN Task Force on Children Deprived of their Liberty, *End Immigration Detention of Children, Advocacy Brief*, February 2024, p.5, www.refworld.org/reference/themreport/ia/2024/en/147364 (UN Task Force on Children Deprived of their Liberty, End Immigration Detention of Children). UN General Assembly, *Ending immigration detention of children and providing adequate care and reception for them: Report of the Special Rapporteur on the human rights of migrants*, note 2 above, para.12; UN General Assembly, *Report of the Independent Expert leading the UN global study on children deprived of liberty (UN Global Study on Children deprived of Liberty), Chapter 11*, 11 July 2019, paras. 3.1 and 3.4, www.ohchr.org/en/treaty-bodies/crc/united-nations-global-study-children-deprived-liberty.
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- ⁸ Ibid.
- ⁹ See for example, IDC, *Immigration Detention and Alternatives to Detention in the Asia-Pacific Region*, 17 May 2022, p.18, idcoalition.org/publications/immigration-detention-atd-in-the-asia-pacific-region/. European Council on Refugees and Exiles (ECRE), *Reception, Detention and restriction of movement at EU external borders*, July 2021, pp. 22-25, ecre.org/wp-content/uploads/2021/07/ECRE-Heinrich-Boll-StiftungReception-Detention-and-Restriction-of-Movement-at-EU-External-Borders-July-2021.pdf. Hungarian Helsinki Committee, Global Detention Project, Greek Council for Refugees, Italian Council for Refugees and Foundation for access to Rights, *Crossing a Red Line: How EU countries undermine the right to liberty by expanding the use of detention of asylum-seekers upon entry*, February 2019, www.refworld.org/reference/themreport/hhc/2019/en/148500. European Parliamentary Research Service, *European Commission's New Pact on Migration and Asylum, Horizontal substitute impact assessment*, 12 August 2021, pp. 97, 116, 201, [www.europarl.europa.eu/thinktank/en/document/EPRS_STU\(2021\)694210](http://www.europarl.europa.eu/thinktank/en/document/EPRS_STU(2021)694210). Linklater, IDC, *International Detention Coalition: Alternatives to detention in the Proposed EU Migration Pact – Preliminary Scoping Paper*, 23 June 2023, lpscdn.linklaters.com/-/media/files/document-store/pdf/uk/2023/july/idc_-_preliminary_scoping_paper_23_june_2023.ashx?rev=99389def-30aa-4c9b-ace3-3135851132cf&extension=pdf.
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³⁴ SPT General Comment No.1 on article 4 of the Optional Protocol, note 31 above.

³⁵ *Guzzardi v Italy*, (Application No.7367/76), Council of Europe: European Court of Human Rights, 6 November 1980, para.92, refworld.org/jurisprudence/caselaw/echr/1980/en/88144. ECtHR, *Ilias and Ahmed v Hungary*, note 31 above, para.212. *Nada v Switzerland*, (Application No.10593/08), Council of Europe: European Court of Human Rights, 12 September 2012, para.225, hudoc.echr.coe.int/fre?i=001-113118.

³⁶ ECtHR, *Guzzardi v Italy*, note 35 above, para.93-95. WGAD, *Opinion No. 22/2020 concerning Saman Ahmed Hamad (Hungary)*, 5 June 2020, A/HRC/WGAD/2020/22, www.ohchr.org/sites/default/files/Documents/Issues/Detention/Opinions/Session87/A_HRC_WGAD_2020_22_Advance_Edited_Versio

[n.pdf](#). HRC General Comment No. 35, note 4 above, para.6; *Amuur v France*, (Application No.19776/92), Council of Europe: European Court of Human Rights, 25 June 1996, para.42: In assessing whether someone is deprived of liberty “the starting-point must be his concrete situation, and account must be taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question. The difference between deprivation of and restriction upon liberty is merely one of degree or intensity, and not one of nature or substance,” hudoc.echr.coe.int/fre?i=001-57988.

³⁷ See for example, *ZA and others v Russia*, (Application Nos. 61411/15, 61420/15, 61427/15 and 3028/16), Council of Europe: European Court of Human Rights, 21 November 2019, www.refworld.org/jurisprudence/caselaw/echr/2019/en/123065. *JR v Greece*, (Application no. 22696/16), Council of Europe: European Court of Human Rights, 25 January 2018, www.refworld.org/jurisprudence/caselaw/echr/2018/fr/123318. *RR v Hungary*, (Application no.36037/17), Council of Europe: European Court of Human Rights, 2 March 2021, www.refworld.org/jurisprudence/caselaw/echr/2021/en/123982. *FMS and Others v. Főigazgatóság et al*, (joint cases C-924/19 and C-925/19), Court of Justice of the European Union (CJEU), 14 May 2020, paras 226 – 231, curia.europa.eu/juris/liste.jsf?num=C-924/19. See by contrast, ECtHR, *Ilias and Ahmed v Hungary*, note 31 above, paras 247-248.

³⁸ ECtHR, *Amuur v France*, note 36 above, para.48. WGAD, *Opinion No.22/2020 concerning Saman Ahmed Hamad*, note 36 above, para.15, noting that leaving the jurisdiction of Hungary would deprive Mr. Hamad of his right to seek asylum and put him at risk of refoulement.

³⁹ See WGAD, *Opinion No.22/2020 concerning Saman Ahmed Hamad*, note 36 above, para.69: the WGAD “cannot accept that an individual who must either agree to remain in the transit zones or lose the possibility of lodging an asylum application could be described as freely consenting to stay in the transit zones.” See also CJEU, *FMS and Others v. Főigazgatóság et al*, note 37 above, paras.227-230, finding that the possibility for the applicants to cross into Serbia did not prevent the situation from amounting to detention, since in doing so they could be exposed to penalties for illegal entry and could jeopardize their asylum claims in Hungary. However, before, the ECtHR in *Ilias and Ahmed v Hungary*, note 31 above, paras.236-243 the possibility for the applicants to enter Serbia, where they did not fear for their life or health, but had concerns about the reliability of the asylum system, was a factor in the ECtHR’s finding that the applicants were not de facto detained in Hungary.

⁴⁰ *J.A. and others v Italy*, (Application no.21329/18), Council of Europe: European Court of Human Rights, 30 March 2023, para.92-99, www.refworld.org/jurisprudence/caselaw/echr/2023/en/147486. The Court also found that the applicants’ removal from the country without examination of their individual situations amounted to a collective expulsion in violation of Article 4 of Protocol No.4 ECHR, note 20 above.

⁴¹ WGAD, *Opinion No.22/2020 concerning Saman Ahmed Hamad*, note 36 above, paras.59-87.

⁴² See UN General Assembly, *Ending immigration detention of children and providing adequate care and reception for them: Report of the Special Rapporteur on the human rights of migrants*, note 2 above, paras.33-44; See also IDC, UNICEF, *Promising Practices and Alternatives: Towards a Continuum of Protection and Care for Refugee and Migrant Children in the MENA region*, 20 December 2022, idcoalition.org/publications/mena-policy-brief-community-family-based-alternatives/. UNHCR, *Global Report 2023, Outcome Area 5: Child Protection*, 2023, reporting.unhcr.org/global-report-2023/outcome-areas/child-protection.

⁴³ United Nations Task Force on Children Deprived of their Liberty, *End Immigration Detention of Children*, note 6 above, p.5; UN General Assembly, *Ending immigration detention of children and providing adequate care and reception for them: Report of the Special Rapporteur on the human rights of migrants*, note 2 above, para.12; UN Global Study on Children Deprived of Liberty, note 6 above, Chapter 11 paras 3.1, 3.4.

⁴⁴ UN Task Force on Children Deprived of their Liberty, *End Immigration Detention of Children*, note 6 above, p.5.

⁴⁵ CRC, note 20 above, Article 3.1.

⁴⁶ ICCPR, note 20 above, Articles 17 and 23. CRC, note 20 above, Articles 9 and 16.

⁴⁷ IDC, *Immigration Detention and Alternatives to Detention in the Asia-Pacific Region*, note 9 above, p.22.

⁴⁸ UNHCR, *Global Strategy Beyond Detention Final Progress Report*, note 12 above, pp.16-17.

⁴⁹ See note 25 above. UN Committee on the Rights of the Child (CRC), *General Comment No.6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6, para.61, www.refworld.org/legal/general/crc/2005/en/38046. CRC, *Report of the 2012 day of general discussion on the Rights of All Children in the Context of International Migration*, 28 September 2012, para.78, www.refworld.org/reference/themreport/crc/2012/en/95889. UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), *Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return*, 16 November 2017, CMW/C/GC/4-CRC/C/GC/23, www.refworld.org/reference/research/cmw/2017/en/119190. See also, WGAD, *Revised Deliberation No. 5 on deprivation of liberty of migrants*, 7 February 2018, para.11, www.ohchr.org/sites/default/files/Documents/Issues/Detention/RevisedDeliberation_AdvanceEditedVersion.pdf. UN Human Rights Council, *Report of the Working Group on Arbitrary Detention: United Nations Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of their Liberty to Bring Proceedings before a Court*, 6 July 2015, A/HRC/30/37, para.46, documents.un.org/doc/undoc/gen/g15/149/09/pdf/g1514909.pdf.

⁵⁰ CRC, note 20 above, Article 3.1.

⁵¹ CRC, note 20 above, Article 37.1.

⁵² CMW General Comment No. 4 (2017), note 49 above, paras. 5-13.

- ⁵³ UN General Assembly, Ending immigration detention of children and providing adequate care and reception for them: Report of the Special Rapporteur on the human rights of migrants, note 2 above. UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 5 March 2015, A/HRC/28/68, para. 80, www.refworld.org/reference/themreport/unhcr/2015/en/104280. UN Global Study on Children Deprived of Liberty, note 6 above, Chapter 11, Recommendations 8, 10, 12 and 13. See also, UN OHCHR, *Child Immigration Detention must be prohibited following adoption of EU migration and asylum pact, UN experts say*, 2 May 2024, www.ohchr.org/en/press-releases/2024/05/child-immigration-detention-must-be-prohibited-following-adoption-eu.
- ⁵⁴ IACtHR, *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection (interpretation of Articles 1(1), 2, 4(1), 5, 7, 8, 11, 17, 19, 22(7), 22(8), 25 and 29 of the American Convention on Human Rights; Articles 1, 6, 8, 25 and 27 of the American Declaration of the Rights and Duties of Man; and Article 13 of the Inter-American Convention to Prevent and Punish Torture)*, Advisory Opinion OC-21/14 of 19 August 2014, para.154, www.refworld.org/jurisprudence/caselaw/iacrthr/2014/en/101667. African Commission on Human and People's Rights, *African Guiding Principles on the Human Rights of All Migrants, Refugees and Asylum Seekers*, 20 October 2023, principle 8.5, achpr.au.int/en/soft-law/african-guiding-principles-human-rights-all-migrants-refugees. See also, *Inter-American Principles on the Rights of all Migrants, Refugees, Stateless Persons and Victims of Human Trafficking*, 7 December 2019, Resolution 04/19, Principle 70, www.oas.org/en/iachr/decisions/pdf/Resolution-4-19-en.pdf.
- ⁵⁵ The European Court of Human Rights, while it has not absolutely prohibited the detention of children for immigration purposes, has considerably narrowed the permissible scope of such detention., see e.g. *G.B. and others v Turkey*, (Application no. 4633/15), Council of Europe: European Court of Human Rights, 17 October 2019, paras.150-151, www.refworld.org/jurisprudence/caselaw/echr/2019/en/122925; *A.B. and others v. France*, (Application No. 11593/12), Council of Europe: European Court of Human Rights, 12 July 2016, hudoc.echr.coe.int/eng/?i=002-11264; *M.D. and A.D v France*, (Application no.57035/18), Council of Europe: European Court of Human Rights, 22 July 2021, hudoc.echr.coe.int/eng-press?i=003-7084431-9580687; *Bilalova and others v. Poland*, (Application No. 23685/14), Council of Europe: European Court of Human Rights, 26 March 2020, hudoc.echr.coe.int/eng/?i=001-202246; *MH and others v Croatia*, (Applications nos. 15670/18 and 43115/18), Council of Europe: European Court of Human Rights, 18 November 2021, para.239, hudoc.echr.coe.int/fre/?i=001-213213. The *ASEAN Declaration on the Rights of Children in the Context of Migration*, 2 November 2019, para.9, recommended “that in order to promote the best interests of the child, States should work to develop effective procedures and alternatives to child immigration detention to reduce its impact, and ensure that, where possible, children are kept together with their families in a non-custodial, and clean and safe environment,” asean.org/wp-content/uploads/2019/11/4-ASEAN-Declaration-on-the-Rights-of-Children-in-the-Context-of-Migration.pdf.
- ⁵⁶ UNHCR, *Global Compact on Refugees*, note 19 above. See also *Global Compact for Safe, Orderly and Regular Migration (GCM)*, note 19 above, Objective 13; UN General Assembly, *New York Declaration for Refugees and Migrants*, 3 October 2016, A/RES/71/1, para.33, www.refworld.org/legal/resolution/unga/2016/en/112142 (adopted 19 September 2016).
- ⁵⁷ UN Task Force on Children Deprived of their Liberty, *End Immigration Detention of Children*, note 6 above, para.18; United Nations Network on Migration, *Promising Practices on Alternatives to Immigration Detention: Ending Child Immigration Detention*, migrationnetwork.un.org/system/files/resources_files/ATD_Ending%20child%20immigration%20detention.pdf; IDC, *Gaining Ground*, note 6 above, p.31. International Detention Coalition, *Alternatives to Immigration Detention in Contexts with Transit Migration*, July 2023, p.18, www.refworld.org/reference/themreport/idc/2023/en/148538.
- ⁵⁸ *Ireland: International Protection Act, 2015*, 30 December 2015, section 20(6), www.irishstatutebook.ie/eli/2015/act/66. If two relevant staff (immigration officers/national police etc) believe the minor is over 18 then they can be detained in accordance with section 20(7) of the International Protection Act 2015.
- ⁵⁹ UN Task Force on Children Deprived of their Liberty, *End Immigration Detention of Children*, note 6 above, p.8; UN Network on Migration, *Promising Practices on Alternatives to Immigration Detention, Whole of Government and Whole of Society Approaches*, migrationnetwork.un.org/system/files/resources_files/ATD_Whole-Of-Government%20and%20Who-of%20Society%20Approaches.pdf. The ATD-MOU evaluation process has sought input from relevant government agencies, and a revision of the ATD MOU Standard Operating Procedures (SOP) is scheduled for review in August 2024. This revision aims to address operational challenges related to the prolonged detention of children.
- ⁶⁰ UNHCR, *Technical Guidance: Child Friendly Procedures*, 2021, p.30, www.refworld.org/policy/opguidance/unhcr/2021/en/124121.
- ⁶¹ UNHCR, *UNHCR Policy on Child Protection*, 26 January 2024, UNHCR/HCP/2024/01, para.5.3.1 www.refworld.org/policy/strategy/unhcr/2024/en/147495.
- ⁶² *Ibid.*, paras 47-48. UN Global Study on Children Deprived of Liberty, note 6 above, Chapter 11, recommendations 7 and 17.
- ⁶³ UNHCR *Child Friendly Procedures*, note 60 above, p. 29-30.
- ⁶⁴ UNHCR *Detention Guidelines*, note 4 above, paras 47-48.
- ⁶⁵ See, e.g. ECRE/ELENA, *Legal Note on Access to Legal Aid in Europe*, November 2017, pp.7-9, www.refworld.org/reference/regionalreport/ecre/2017/en/119185.
- ⁶⁶ UN Global Study on Children Deprived of Liberty, note 6 above, Chapter 11, recommendations 7 and 17. IDC, *Immigration Detention and Alternatives to Detention in the Asia-Pacific Region*, note 9 above, p.29.
- ⁶⁷ See, e.g. UNHCR, UNHCR's views on the detention of asylum-seekers, note 20 above, pp.6-7; ECRE/ELENA *Legal Note on Access to Legal Aid in Europe*, note 65 above, pp.7-9.
- ⁶⁸ See IDC, *Immigration Detention and Alternatives to Detention in the Asia-Pacific Region*, note 9 above, pp. 28-29; *Kaak and others v Greece*, (Application no.34215/16), Council of Europe: European Court of Human Rights, 3 October 2019, hudoc.echr.coe.int/eng/?i=001-196150.

- ⁶⁹ See for example, *Feilazoo v Malta*, (Application No.6865/19), Council of Europe: European Court of Human Rights, 3 November 2023, hudoc.echr.coe.int/fre?i=001-208447; ACLU, *No Fighting Chance: ICE's Denial of Access to Counsel in US Immigration Detention Centers*, 9 June 2022, www.aclu.org/wp-content/uploads/publications/no_fighting_chance_aclu_research_report.pdf.
- ⁷⁰ See for example HRC, *A.K. v Australia*, note 21 above, para.8.7; HRC, *MMM v Australia*, note 21 above, para.10.6. See also *Suso Musa v Malta*, (Application No. 42337/12), Council of Europe: European Court of Human Rights, 23 July 2013, www.refworld.org/jurisprudence/caselaw/echr/2013/en/97759; *R.T. v. Greece*, (Application No. 5124/11), Council of Europe: European Court of Human Rights, February 11, 2016, www.refworld.org/jurisprudence/caselaw/echr/2016/fr/108932; *AM v France*, (Application No.56324/13), Council of Europe: European Court of Human Rights, 12 July 2016, hudoc.echr.coe.int/eng?i=001-165269.
- ⁷¹ Including ICRC, The Sub-Committee for the Prevention of Torture (SPT), UN Special Procedures including the Working Group on Arbitrary Detention, and regional human rights bodies. For a full list, see UNHCR, APT and IDC, *Monitoring Immigration Detention: Practical Manual*, 2014, section 1.2, www.unhcr.org/ip/wp-content/uploads/sites/34/protect/monitoring_immigration_detention_practical_manual.pdf. See also UNHCR Policy on Detention Monitoring, note 26 above, para.4.6.
- ⁷² UNHCR, *Monitoring Immigration Detention*, note 71 above, section 1.1. UNHCR Policy on Detention Monitoring, note 26 above, paras 1.4, 3.3, and 4.7-4.8. On the obstacles faced by UNHCR in accessing detention, see UNHCR Global Report 2023, Outcome Area 6, note 6 above, noting that in 30% of reporting country operations, UNHCR faced restrictions on access to places of detention.
- ⁷³ ICCPR, note 20 above, Articles 9.2 and 9.4. ECHR, note 20 above, Articles 5.2, 5.3, 5.4; American Convention on Human Rights, note 20 above, Article 7; UNHCR Detention Guidelines, note 4 above, Guideline 7.
- ⁷⁴ UNHCR Detention Guidelines, note 4 above, Guideline 10.
- ⁷⁵ HRC General Comment No. 35, note 4 above, paras 24-27; On the applicability of Article 9.2 to immigration detention, see UN Human Rights Committee (HRC), *General comment no. 8: Article 9 (Right to Liberty and Security of Persons)*, 30 June 1982, www.refworld.org/legal/general/hrc/1982/en/70483. See also *Khlaifia and Others v. Italy*, (Application no. 16483/12), Council of Europe: European Court of Human Rights, 15 December 2016, paras.115, 132, www.refworld.org/jurisprudence/caselaw/echr/2016/en/114241; UNHCR Detention Guidelines, note 4 above, Guideline 7.
- ⁷⁶ UN General Assembly, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, 9 December 1988, General Assembly resolution 43/173, Principles 13 and 14, www.ohchr.org/en/instruments-mechanisms/instruments/body-principles-protection-all-persons-under-any-form-detention. See also Council of Europe: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Factsheet on Immigration detention*, March 2017, CPT/Inf(2017)3, p. 3. CPT standards also specify that immigration detainees should receive information on their rights in writing, and that they should confirm in writing that they have received the information in a language that they understand, <https://www.refworld.org/reference/themreport/coecpt/2017/en/116109>; Report of the Special Rapporteur on the human rights of migrants, note 3 above, paras.15-16; ECtHR, *Khlaifia and Others v. Italy*, note 75 above, para 115.
- ⁷⁷ UNHCR Detention Guidelines, note 4 above, Guideline 7, para.47(vi).
- ⁷⁸ ECtHR, *Khlaifia and Others v. Italy*, note 75 above, para.132.
- ⁷⁹ HRC General Comment No. 35, note 4 above, para.46; WGAD, Revised deliberation No. 5, note 49 above, para.35. IACHR, Inter-American Principles on the Rights of all Migrants, Refugees, Stateless Persons and Victims of Human Trafficking, note 54 above, principle 50.g, 50.h and Principle 68; African Commission on Human Rights, African Guiding Principles on the Human Rights of Migrants, Refugees and Asylum-seekers, note 54 above, Principle 11.1.d and 11.1.e; Council of Europe: CPT Factsheet on Immigration detention, note 76 above, p.3. ECtHR, *Kaak and others v Greece*, note 68 above; UNHCR Detention Guidelines, note 4 above, Guideline 7.
- ⁸⁰ UNGA, Body of Principles for the Protection of all persons under any form of detention or imprisonment, note 76 above, principle 17.2; WGAD, Revised Deliberation No.5, note 49 above, para.35. ECtHR, *Suso Musa v Malta*, note 70 above, para.61. Free legal assistance should be provided where it is also available to nationals similarly situated: see 1951 Convention, note 17 above, Article 16(2).
- ⁸¹ UNGA, Body of Principles for the Protection of all persons under any form of detention or imprisonment, note 76 above, principle 18.
- ⁸² UNHCR Detention Guidelines, note 4 above, Guideline 7, para.47 (iii); *A. v. Australia*, Communication No.560/1993, CCPR/C/59/D/560/1993, UN Human Rights Committee (HRC), 3 April 1997, para. 9.4, www.refworld.org/cases/HRC.3ae6b71a0.html; American Convention on Human Rights, note 20 above, Article 7.5; CPT Factsheet on Immigration detention, note 76 above, p.3.
- ⁸³ ICCPR, note 20 above, Article 9.4; ECHR, note 20 above, Article 5.4; American Convention on Human Rights, note 20 above, Article 7.6. WGAD, Revised Deliberation No. 5, note 49 above, para.29; HRC General Comment No. 35, note 4 above, para.45. UN Human Rights Council, WGAD Opinion No. 2/2019 concerning Huyen Thu Thi Tran and Isabella Lee Pin Loong (Australia), note 23 above; UN Human Rights Council, WGAD, *Opinion No. 50/2018 concerning Edris Cheraghi (Australia)*, 1 October 2018, A/HRC/WGAD/2018/50, para75-77, documents.un.org/doc/undoc/gen/q18/291/91/pdf/q1829191.pdf?OpenElement. 1951 Refugee Convention, note 17 above, Article 16.1, provides that refugees shall have access to courts of law of Contracting States. UN Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of their Liberty to Bring Proceedings before a Court, note 49 above, para.43.
- ⁸⁴ HRC, *A. v. Australia*, note 82 above, para.9.5; *C. v. Australia*, Communication No.900/1999, CCPR/C/76/D/900/1999, UN Human Rights Committee (HRC), 28 October 2002, para.8.3, [juris.ohchr.org/casedetails/1026/en-US](https://www.ohchr.org/casedetails/1026/en-US); HRC, *A.K. v Australia*, note 21 above, para.8.7; HRC, *MMM v Australia*, note 21 above, para.10.6. See also ECtHR, *Suso Musa v Malta*, note 70 above.
- ⁸⁵ WGAD Revised Deliberation No.5, note 49 above, principle 70 provides: "The Office of the United Nations High Commissioner for Refugees, the International Committee of the Red Cross and other relevant organizations, including national human rights institutions,

national preventive mechanisms and international and national non-governmental organizations, must be allowed free access to the places of detention where those detained in the course of migration proceedings are held.” The IACHR, Principles on the Rights of all Migrants, Refugees, Stateless Persons and Victims of Human Trafficking, note 54 above, Principle 70, provides that States must ensure autonomous and independent monitoring mechanisms and allow civil society organizations and international organizations access to detention centers as well as access to relevant information and documentation and “the possibility of private and confidential interviews with persons deprived of liberty and staff.” See also CPT Factsheet on Immigration detention, note 76 above, page 7; UN OHCHR and Global Migration Group, *Principles and Guidelines on the Human Rights Protection of Migrants in Vulnerable Situations*, 03 April 2018, A/HRC/33/67, principle 8, <https://www.ohchr.org/sites/default/files/PrinciplesAndGuidelines.pdf>; UNHCR Detention Guidelines, note 4 above, Guideline 10.

⁸⁶ This should be read in conjunction with para.8. a of the UNHCR Statute. See UNHCR Policy on Detention Monitoring, note 26 above, paras. 1.2-1.3.

⁸⁷ UNHCR Detention Guidelines, note 4 above, Guideline 10.

⁸⁸ UNHCR Detention Monitoring Policy, note 18 above, para.4.8; OHCHR Principles and Guidelines on the Human Rights Protection of Migrants in Vulnerable Situations, note 85 above, principle 8. IACHR, Principles on the Rights of all Migrants, Refugees, Stateless Persons and Victims of Human Trafficking, note 54 above, principles 69-70.

⁸⁹ See, for example, EMN, Detention and Alternatives to Detention in international protection and return procedures, note 3 above; EMN, The use of detention and Alternatives to Detention in the context immigration policies, note 3 above; IDC, There are alternatives, note 3 above, paras. 2.4.1 and 2.4.2; UNHCR, Evaluation of the Refugee and Migrant Advisory Service’s Alternative to Detention Pilot, note 3 above, pp.70-71; Council of Europe, Alternatives to Immigration Detention, note 3 above, paras. 1.8.2 and 1.8.3; Steering Committee for Human Rights, Legal and practical aspects of effective alternatives to detention in the context of migration, note 3 above, p.4-5.

⁹⁰ See UNHCR Detention Guidelines, note 4 above, Annex 1, p.44, on the capacity of ATDs combined with case management to achieve compliance with asylum procedures.

⁹¹ IDC, Gaining Ground, note 6 above. See further IDC, Immigration Detention and Alternatives to Detention in the Asia-Pacific Region, note 9 above; IDC, There are Alternatives: Africa, note 12 above; IDC and PICUM, Implementing Case Management ATD in Europe, note 12 above.

⁹² IDC, There are alternatives, note 3 above, p. 11.

⁹³ Ibid.

⁹⁴ European Migration Network, *Annual Report on Immigration and Asylum 2014*, 19 June 2015, migrant-integration.ec.europa.eu/library-document/emn-annual-report-immigration-and-asylum-2014_en

⁹⁵ Human Rights Watch, *Considering Alternatives to Immigration Detention: Implementing Community-Based Case Management Through Newcomer Support Services and Organizations in Ontario*, August 2022, p. 14, www.socialconnectedness.org/wp-content/uploads/2022/11/Waghma-Final-Report-Considering-Alternatives-to-Immigration-Detention.docx.pdf

⁹⁶ IDC, There are alternatives, note 3 above, p. 11

⁹⁷ Ibid.

⁹⁸ Laurence Benenson, *The Math of Immigration Detention, 2018 Update: Costs Continue to Multiply*, (United States of America, National Immigration Forum), 9 May 2018, immigrationforum.org/article/math-immigration-detention-2018-update-costs-continue-multiply/

⁹⁹ European Migration Network, Annual Report 2014, note 94 above.

¹⁰⁰ Detention Action, *What is immigration detention?*, detentionaction.org.uk/about-detention/what-is-immigration-detention/#:~:text=According%20to%20Oxford's%20Migration%20Observatory,14%20was%20%C2%A3164.4m.

¹⁰¹ International Detention Coalition, *Immigration Detention as an Exceptional Measure of Last Resort*, 2023, p. 28, idcoalition.org/wp-content/uploads/2024/01/Immigration-Detention-as-an-Exceptional-Measure-of-Last-Resort_WEB.pdf.

¹⁰² International Journal of Refugee Law, *Alternatives to Detention: Executive Committee of the High Commissioner’s Programme*, Volume 28, Issue 1, March 2016, pp. 148–155, doi.org/10.1093/ijrl/eew005. See also UNCHR, *Back to Basics: The Right to Liberty and Security of Person and ‘Alternatives to Detention’ of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants*, PPLA/2011/01.Rev. 1, 2011, p.54-55, www.ohchr.org/sites/default/files/Documents/Issues/Migration/Events/BackToBasics.pdf.

¹⁰³ CMW General Comment No.5, note 20 above, para.48.

¹⁰⁴ IDC, Gaining Ground, note 6 above, p. 20-21.

¹⁰⁵ UNHCR Detention Guidelines, note 4 above, Guideline 4.

¹⁰⁶ HRC General Comment No. 35, note 4 above, para.18; OHCHR Principles and Guidelines on the Human Rights Protection of Migrants in Vulnerable Situations, note 85 above, Principle 8, paras.1 and 2. See also, WGAD, Revised deliberation no.5, note 49 above, para.16; HRC, *F.K.A.G. et al. v. Australia*, note 21 above, para.9.4. See also *C. v. Australia*, note 84, para. 8.2; *Zeyad Khalaf Hamadie Al-Gertani v. Bosnia and Herzegovina*, Communication No. 1955/2010, CCPR/C/109/D/1955/2010, UN Human Rights Committee (HRC), 6 November 2013, para. 10.4, www.refworld.org/jurisprudence/caselaw/hrc/2013/en/98623?prevPage=/node/98623; *Hassen El Dridi case*, Case no. C-61/11, European Union: Court of Justice of the European Union, 28 April 2011, para. 39, www.refworld.org/jurisprudence/caselaw/ecj/2011/en/75853; *Rahimi v. Greece*, (Application No. 8687/08), Council of Europe: European Court of Human Rights, 5 April 2011, para. 109, www.refworld.org/jurisprudence/caselaw/echr/2011/fr/78627; CMW General Comment No.5, note 20 above, paras.19-22 and 54-56.

¹⁰⁷ New York Declaration for Refugees and Migrants, note 56 above, para.33; Global Compact for Safe, Orderly and Regular Migration (GCM), note 19 above, Objective 13; See further the work of the *United Nations Migration Network (UNMIN) Working Group on Alternatives to Detention*, migrationnetwork.un.org/thematic-working-group-2-alternatives-detention.

¹⁰⁸ Global Compact on Refugees, note 19 above, para.60: "The development of non-custodial and community-based alternatives to detention, particularly for children, will also be supported". These aims are also reflected under Objective 13 of the Global Compact on Migration (GCM) which is implemented in a complementary manner with the GCR.

¹⁰⁹ See for example the peer learning events organized by the Working Group co-led by UNHCR, IDC and UNICEF on Alternatives to Detention of the UN Network on Migration, note 99 above.

¹¹⁰ UNHCR Detention Guidelines, note 4 above, paras.35 and 43.

¹¹¹ UNHCR Detention Guidelines, note 4 above, para.36.

¹¹² See e.g. Council of Europe, CDDH, Legal and Practical Aspects of effective alternatives to detention in the context of migration, 7 December 2017, p.7, edoc.coe.int/en/migration/7961-legal-and-practical-aspects-of-effective-alternatives-to-detention-in-the-context-of-migration.html; Report of the Special Rapporteur on the human rights of migrants, note 3 above, paras.53 and 73; WGAD, Revised Deliberation no. 5, note 49 above, para.17.

¹¹³ UNHCR Detention Guidelines, note 4 above, paras.37 and 41.

¹¹⁴ UNHCR Detention Guidelines, note 4 above, para.40.

¹¹⁵ See CMW General Comment No.5, note 20 above, para.52; *Thimothawes v. Belgium*, (Application no. 39061/11), Council of Europe: European Court of Human Rights, 4 April 2017, para.73, hudoc.echr.coe.int/eng/?i=001-172844; *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, (Application No.13178/03), Council of Europe: European Court of Human Rights, 12 October 2006, paras. 102-105, www.refworld.org/jurisprudence/caselaw/echr/2006/en/36666; ECtHR, *Rahimi v. Greece*, note 106 above, paras.102-110; *Yoh-Ekale Mwanje v. Belgium*, (Application no.10486/10), Council of Europe: European Court of Human Rights, 20 December 2012, para. 124, hudoc.echr.coe.int/eng/?i=001-108155.

¹¹⁶ UNHCR and IDC, *Vulnerability Screening Tool - Identifying and addressing vulnerability: a tool for asylum and migration systems*, 2016, www.refworld.org/policy/opguidance/unhcr/2016/en/112752. See also Global Compact for Refugees, note 19 above, para.60; *Abdi Mahamud v. Malta*, (Application no 56796/13), Council of Europe: European Court of Human Rights, 3 May 2016, paras.88-89, hudoc.echr.coe.int/eng/?i=001-162424; *Abdullahi Elmi and Aweys Abubakar v. Malta*, (Applications Nos. 25794/13 and 28151/13), Council of Europe: European Court of Human Rights, 22 November 2016, hudoc.echr.coe.int/eng/?i=001-168780; UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women*, 5 November 2014, CEDAW/C/GC/32, para. 34, www.refworld.org/legal/general/cedaw/2014/en/102146.

¹¹⁷ Global Compact for Refugees, note 19 above, para.60. See further, UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, para.115: "For stateless persons, the absence of status determination procedures to verify identity or nationality can lead to prolonged or indefinite detention. Statelessness determination procedures are therefore an important mechanism to reduce the risk of prolonged and/or arbitrary detention," www.refworld.org/policy/legalguidance/unhcr/2014/en/122573; UNHCR, *Stateless Persons in Detention, a tool for their identification and enhanced protection*, June 2017, p.13, www.refworld.org/policy/opguidance/unhcr/2017/en/117659; *Convention Relating to the Status of Stateless Persons*, (28 September 1954), Article 25, www.refworld.org/legal/agreements/unga/1954/en/32744.

¹¹⁸ UNHCR, *Beyond Detention Toolkit: Guiding Questions for the assessment of Alternatives to Detention*, May 2018, p.2, www.refworld.org/policy/opguidance/unhcr/2018/en/120848.

¹¹⁹ UNHCR, Options Paper 2, note 3 above.

¹²⁰ UNHCR, *Beyond Detention Toolkit*, note 118 above.

¹²¹ UNHCR, *Alternatives to Detention Self-study Modules*, 2018, www.refworld.org/thematic-area/detention.

¹²² IDC, *Gaining Ground*, note 6 above, p.23.

¹²³ *Ibid.*

¹²⁴ IDC, *Gaining Ground*, note 6 above, p.27; UN Network on Migration, *Promising Practices on Alternatives to Immigration Detention: temporary regularization programmes*, migrationnetwork.un.org/system/files/resources_files/ATD_Temporary%20regularisation%20programmes.pdf; IDC, *Alternatives to Immigration Detention in Contexts with Transit Migration*, note 57 above, p. 41.

¹²⁵ IDC, *Alternatives to Detention in Contexts with Transit Migration*, note 57 above, pp.20, 33; UNMN, *Promising Practices on Alternatives to Immigration Detention: Ending Child Immigration Detention*, https://migrationnetwork.un.org/system/files/resources_files/ATD_Ending%20child%20immigration%20detention.pdf; UNHCR, *Beyond Detention: Progress Report 2018: A Global Strategy to Support Governments to End the Detention of Asylum-Seekers & Refugees, 2014 - 2019*, February 2019, pp.72-76, www.refworld.org/policy/strategy/unhcr/2019/en/122574; UNHCR, *Global Strategy Beyond Detention Final Progress Report*, note 12 above, pp.103-105.

¹²⁶ Implemented by the Centre for Legal Aid – Voice in Bulgaria and Bulgarian Lawyers for Human Rights, in cooperation with the European Alternatives to Detention Network. The project has now ended but its implementors continue to work on ATD.

¹²⁷ The Bulgaria pilot project was carried out in parallel with similar projects in Cyprus and Poland, see Eiri Ohani, *Alternatives to Detention: Building a culture of cooperation*, EPIM, July 2020, www.epim.info/wp-content/uploads/2020/07/2020-ATD-Evaluation-Report_Final.pdf; IDC, *Alternatives to Detention in Transit Migration Contexts*, note 57 above, p.30.

¹²⁸ *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] HCA 37, Australia: High Court, 28 November 2023, www.refworld.org/jurisprudence/caselaw/aushc/2023/en/147911.

¹²⁹ UNHCR Detention Guidelines, note 4 above, Guideline 1, 2, 3.

¹³⁰ UNHCR Detention Guidelines, note 4 above, Guidelines 3 and 4.

¹³¹ UNHCR Detention Guidelines, note 4 above, Guideline 8.

¹³² UNHCR Detention Guidelines, note 4 above, Guideline 10.

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