



USE MIGRATION DETENTION ONLY AS A MEASURE OF LAST RESORT AND WORK TOWARDS ALTERNATIVES



Associated actions

- a. **Use existing relevant human rights mechanisms to improve independent monitoring of migrant detention**, ensuring that it is a measure of last resort, that human rights violations do not occur, and that States promote, implement and expand alternatives to detention, favouring non-custodial measures and community-based care arrangements, especially in the case of families and children
- b. **Consolidate a comprehensive repository to disseminate best practices of human rights based alternatives** to detention in the context of international migration, including by facilitating regular exchanges and the development of initiatives based on successful practices among States, and between States and relevant stakeholders
- c. **Review and revise relevant legislation, policies and practices related to immigration detention** to ensure that migrants are not detained arbitrarily, that decisions to detain are based on law, are proportionate, have a legitimate purpose, and are taken on an individual basis,

in full compliance with due process and procedural safeguards, and that immigration detention is not promoted as a deterrent or used as a form of cruel, inhumane or degrading treatment to migrants, in accordance with international human rights law

- d. **Provide access to justice for all migrants in countries of transit and destination that are or may be subject to detention**, including by facilitating access to free or affordable legal advice and assistance of a qualified and independent lawyer, as well as access to information and the right to regular review of a detention order
- e. **Ensure that all migrants in detention are informed about the reasons for their detention**, in a language they understand, and facilitate the exercise of their rights, including to communicate with the respective consular or diplomatic missions without delay, legal representatives and family members, in accordance with international law and due process guarantees
- f. **Reduce the negative and potentially lasting effects of detention on migrants** by guaranteeing due process and proportionality, that it is for the shortest period of time, safeguards physical and mental integrity, and that, as a minimum, access to food, basic healthcare, legal orientation and assistance, information and communication, as well as adequate accommodation is granted, in accordance with international human rights law
- g. **Ensure that all governmental authorities and private actors duly charged with administering immigration detention do so in a way consistent with human rights** and are trained on non-discrimination, the prevention

of arbitrary arrest and detention in the context of international migration, and are held accountable for violations or abuses of human rights

- h. Protect and respect the rights and best interests of the child at all times**, regardless of their migration status, by ensuring availability and accessibility of a viable range of alternatives to detention in non-custodial contexts, favouring community-based care arrangements, that ensure access to education and healthcare, and respect their right to family life and family unity, and by working to end the practice of child detention in the context of international migration



Example practices

For more practices, visit the Migration Network Hub's **Repository of Practices**

Hong Kong's program to house vulnerable individuals in the community

In Hong Kong, screening and assessment of migrants' situations ensure detention is used as a last resort only. During this assessment process, they take into account numerous factors, including whether the person concerned constitutes a security risk or threat to the community, whether they may abscond or re-offend, whether their identity has been resolved, and whether they have a fixed domicile (or a close connection) in Hong Kong. After being detained for a short time, most vulnerable individuals, among them torture claimants and asylum seekers, are released and issued with recognizance papers indicating their status. To help support these individuals, a project funded by the government and

operated by an NGO provides clothing, medicine and food, and arranges for the vulnerable individuals to be housed in the community (International Detention Coalition, 2015).

Cross-Regional Peer Learning Platform on Alternatives to Child Immigration Detention

International Detention Coalition (IDC) has partnered with UNICEF to convene a global multi-stakeholder initiative aimed at supporting States in addressing the practical challenges they face when implementing alternatives to child immigration detention. The Cross-Regional Peer Learning Platform on Alternatives to Child Immigration Detention provides an umbrella for government experts to come together and engage in peer exchange, with technical support from a wide range of stakeholders. Since 2018, regional peer learning events co-hosted by Member States, IDC and UNICEF have taken place in Ecuador, Namibia, Tunisia and Thailand (UN Network on Migration, 2021).

Thailand's inter-ministerial framework to apply alternatives for children in immigration detention

The Government of Thailand set out an inter-ministerial framework to apply alternatives for children in immigration detention, in partnership with civil society and UNICEF, establishing a practical link between migration and child protection law (Government of Thailand, 2019).

Release from immigration detention during COVID-19

Since the outbreak of COVID-19, hundreds of individuals have been released from immigration detention. In Spain, almost all immigration detainees have been released and provided accommodation in state-funded reception programmes run by NGOs (PICUM, 2020b). Hundreds of individuals have also

been released in the UK, Belgium, Netherlands and Italy. Most of the releases have been ordered by judges based on a case-by-case analysis of individuals' circumstances, both because of the difficulties in implementing social distancing measures in detention centres and because European Union law prohibits the detention of individuals if there is no reasonable prospect of return³.

3. See Directive 2008/115/EC of The European Parliament and of The Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, art. 15(4). Available at [www.europarl.europa.eu/RegData/etudes/STUD/2020/642840/EPRS_STU\(2020\)642840_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2020/642840/EPRS_STU(2020)642840_EN.pdf).



Relevant sustainable development goals



SDG 9: Industry, innovation and infrastructure

▪**9.1:** Develop quality, reliable, sustainable and resilient infrastructure, including regional and transborder infrastructure, to support economic development and human well-being, with a focus on affordable and equitable access for all



SDG 16: Peace, justice and strong institutions

▪**16.3:** Promote the rule of law at the national and international levels and ensure equal access to justice for all

▪**16.6:** Develop effective, accountable and transparent institutions at all levels

▪**16.9:** By 2030, provide legal identity for all, including birth registration

▪**16.10:** Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements