

# Immigration Detention and Alternatives to Detention in the Asia-Pacific Region



United Nations  
Network on Migration  
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## 1. Executive Summary

### *The GCM in the Asia-Pacific Region*

The Global Compact for Safe, Orderly and Regular Migration (GCM), adopted in 2018, is the first intergovernmental framework covering all dimensions of migration in a holistic and comprehensive manner. The first International Migration Review Forum (IMRF), to be held in May 2022, provides an opportunity for Member States and the international community to discuss and share progress on the implementation of the GCM.

In the Asia-Pacific region, there have been several multi-stakeholder regional, sub-regional, and thematic consultations since the adoption of the GCM. The Asia-Pacific Migration Report 2020,<sup>1</sup> was developed in preparation for the first Asia-Pacific Regional Review of Implementation of the GCM,<sup>2</sup> which took place in March 2021. In the region there are several champion countries of the GCM,<sup>3</sup> notably Thailand, Bangladesh, Cambodia, Indonesia, Philippines, Nepal, and Azerbaijan. Thailand in particular, has over the last few years taken an active role in sharing insights, lessons learned and positive practices on its progress towards ending child immigration detention and will share learnings at the IMRF.<sup>4</sup> Bangladesh is one of the co-facilitators of the GCM Review Process at the IMRF.

This Report is primarily intended to inform and support preparations for the IMRF, as well as serve as a useful resource for post-IMRF implementation efforts in the region. This Report summarises the results of a mapping of the use of immigration detention and alternatives to immigration detention (ATD) in 19 countries across the five sub-regions in the Asia-Pacific region.<sup>5</sup> The 19 countries covered by this Report are as follows:

- **East and North-East Asia** - Hong Kong SAR China, Japan, Republic of Korea
- **South-East Asia** - Indonesia, Malaysia, Philippines, Singapore, Thailand
- **South and South-West Asia** - Bangladesh, India, Maldives, Pakistan, Turkey
- **North and Central Asia** - Azerbaijan, Georgia, Kazakhstan, and Tajikistan

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<sup>1</sup> Economic and Social Commission for Asia and the Pacific (ESCAP), [Asia-Pacific Migration Report 2020: Assessing Implementation of the Global Compact for Migration, 2020](#)

<sup>2</sup> See ESCAP, [Asia-Pacific Regional Review of Implementation of the Global Compact for Safe, Orderly and Regular Migration](#)

<sup>3</sup> The UN Network on Migration has invited a group of Member States to serve as “champion countries” for the implementation of the GCM. For more on the role of champion countries as well as a list of current champion countries, see UN Network on Migration, [Champion Countries Initiative: Frequently Asked Questions](#), Dec 2020

<sup>4</sup> See Ministry of Foreign Affairs Thailand, [Letter to Mrs Gita Sabharwal, UN Resident Coordinator in Thailand](#), 28 Aug 2020

<sup>5</sup> This report follows the geographical classification used by ESCAP. See ESCAP Statistics Division, [Methodology, Definitions and Country Groupings](#), 30 Nov 2020

- **Pacific** - Australia, New Zealand

### *Key Issues and Developments in the Asia-Pacific Region*

Across the Asia-Pacific region, there is widespread use of **arbitrary immigration detention**. Many countries use immigration detention as a de facto measure without safeguards in place to ensure that it is reasonable, necessary, and proportionate in the individual case. There is a lack of **regular and comprehensive screening for individual vulnerabilities**, such as those related to age, gender, sexual orientation, disability, health status, and other protection needs. Immigration detention is also used **indefinitely** in many countries for migrants issued with a removal or deportation order, and/or for prolonged periods for those awaiting a determination on their immigration cases. There is **limited recourse to challenge detention decisions** before a court or independent administrative body. Irregular migration is treated as a **criminal offence** in several countries, rather than an administrative offence - people found to be in violation of immigration laws can be imprisoned and/or fined, and in the case of Malaysia and Singapore, can be subject to whipping. **Gender-responsive and gender-sensitive approaches** are generally lacking in relation to laws, policies and practices pertaining to immigration detention and the use of ATD. There is little evidence that detaining authorities weigh considerations of gender and the inherent risks that women, girls, and lesbian, gay, bisexual, transgender, and intersex communities face in detention. While in some countries, the detention of specific groups of women is prohibited, this is limited to instances where women are pregnant, or where they are mothers to young children. Where ATD references women and girls, they are framed within a lens of vulnerability rather than agency, and often referred to in the same category as children and other vulnerable groups.

However, despite these challenges, there have been positive developments in the region. Although the **detention of children and their families** is prevalent across the countries surveyed, there has been **important progress towards ending child immigration detention and developing community-based ATD for children and their families**. Several countries either do not detain children in practice or have introduced laws or policies to prohibit or restrict the use of detention. Governments have worked increasingly with civil society, international organisations, and other stakeholders to develop community-based ATD, and are actively sharing successes, challenges and lessons learned through **peer learning initiatives at the regional and global levels**. These include the Regional Peer Learning Platform and Programme of Learning and Action on Alternatives to Child Immigration Detention, and the Global Online Peer Learning Exchanges co-hosted by the UN Network on Migration Working Group on Alternatives to Detention, both described further in this report. At the ASEAN level, ASEAN Member States have adopted the **ASEAN Declaration on the Rights of the Child in the Context of Migration** and its accompanying Regional Plan of Action,

through which they have agreed to promote the best interests of the child and develop ATD.

In moving towards ending child immigration detention, stakeholders are also working to address important gaps in the **provision of alternative care for children**. This includes ensuring that the **best interest principle** is upheld in all decisions and processes impacting children as well as building more **child-sensitive and holistic age assessment procedures**. The **right to family life and family unity** is not consistently respected, with more work needed to ensure that children are not separated from their parents but instead, that the whole family is supported in community-based ATD. At the same time, more efforts are being made to invest in community-based measures such as foster or kinship care, or supported independent living arrangements for older children, and to move away from an **over-reliance on institutional care** for unaccompanied and separated children.

Although rarely referred to as such, ATD is provided for in law and/or policy in many countries, particularly for persons in situations of vulnerability or who are seeking humanitarian protection. However, despite having a legal basis, ATD is generally under-utilised in the region. Furthermore, most ATD are centred on **enforcement and monitoring** rather than being community-based and ensuring that migrants are supported outside of detention with access to rights and services. Despite this, there are **promising examples of ATD** in several countries through which people who would otherwise have been at risk of immigration detention are able to live in the community and in some instances, access fundamental rights and services with tailored case management support. There are also examples of countries providing migrants with **legal identity** and access to a form of temporary legal status while their immigration cases are being resolved; there are also examples of temporary status providing a pathway to longer-term visas or permanent residency. **Regularisation or amnesty programmes** have also been used by several countries to allow individuals who would otherwise be at risk of arrest and detention to regularise their status.

The **COVID-19 pandemic** has led to an unprecedented number of people being released from immigration detention in many countries across the region. This has been accompanied by moratoriums on immigration enforcement and extensions of temporary visas and permits. However, in many instances, people were released into the community with little or no support, leaving them in situations of significant vulnerability and destitution. These significant shifts provide an important opportunity and platform from which to learn and build upon, as States work towards implementing the GCM.

Finally, it is important to note significant gaps in publicly available **data on immigration detention**. Except for Australia, none of the countries that were mapped proactively

and regularly release data on immigration detention, and data released are rarely disaggregated by sex, age, or migration status. This, together with poor access to immigration detention facilities across the region, particularly during the COVID-19 pandemic, has contributed to the general lack of transparency and public scrutiny around the use of immigration detention in the region.

## **2. Scope of the Mapping and Terms Used**

### ***Scope and Structure of Report***

This Report examines the laws, policies and practices surrounding the use of immigration detention and ATD in the 19 countries in the Asia-Pacific region. It provides an overview of the trends across the countries in relation to the use of immigration detention, including the legal and policy frameworks that enable or restrict the use of detention. The Report also identifies laws, policies and practices surrounding the use of ATD, highlighting a number of promising practices. Child-sensitive and gender-responsive ATD practices in the region are examined, with key gaps identified. Finally, changes in laws, policies, and practices, and lessons learned during the COVID-19 pandemic are highlighted, many of which show that it is possible to reduce and end the use of immigration detention and expand ATD. The Report includes in-depth country profiles that provide further information on the immigration detention and ATD context as well as key developments during the COVID-19 pandemic in each of the 19 countries.

The countries covered by this Report were selected on the basis that they host mixed migration movements, are in migration corridors, and where there are promising practices in ATD whether in law, policy, or practice.

Data collection was conducted from October 2021 to March 2022, primarily via desk research. Where possible, detailed input was obtained from national stakeholders and experts working at the national level. Country profiles were sent for review and comments by national and regional offices of UN Migration Network members, as well as IDC members and partners from civil society.

However, for some of the countries, secondary data sources were limited on how immigration detention and ATD laws and policies are applied in practice. In some cases, online resources were not available in English, and there were limitations on the ability to obtain input from national stakeholders.

## Terminology

There is no universally recognised definition of **ATD**. Using the definition employed by International Detention Coalition (IDC), this is a “range of laws, policies and practices by which people at risk of immigration detention are able to live in the community, without being detained for migration-related reasons.” ATD can involve a range of interventions in areas of migration governance that ensure migrants’ right to liberty and other rights, including access to information, including interpreters and translators; legal assistance and representation; work rights; health, education, and other services; individual screening and assessment; safe and suitable placement options; and case management support to facilitate fair and timely case resolution. Based on this holistic approach to ATD, IDC’s Community Assessment and Placement (CAP) model provides practical building blocks for developing rights based ATD.<sup>6</sup>

This Report has identified ‘promising practices’ in the field of ATD, in order to highlight potentially replicable initiatives from the countries surveyed that have helped to reduce or avoid the use of immigration detention. Not all these promising practices are ATD in themselves, but they contain elements that will support a move away from the use of immigration detention - particularly if strengthened and scaled up in scope and content. Promising practice is not the same as good practice, and with many of the examples highlighted, gaps and concerns have also been raised in the implementation of that practice. Ultimately, the aim of this mapping was to present an accurate representation of the immigration detention and ATD context in the region, showing progress and areas of potential, while also highlighting the gaps and challenges that exist.

In this report the term ‘**persons seeking humanitarian protection**’ is used to refer collectively to refugees, people seeking asylum, trafficking survivors, torture survivors, stateless persons, and persons who do not meet the refugee criteria but are at risk of significant harm if returned to their country of origin, including migrants in vulnerable situations. While this report was primarily produced to inform and support preparations for the IMRF as well as provide a useful resource for post-IMRF implementation efforts in the region, it takes a purposively broad approach by examining immigration detention and ATD laws, policies and practices relating to all groups of people on the move. This broad approach is particularly relevant given the “various and intertwined” motivations for migration in these countries, and indeed the Asia-Pacific regions as a whole.<sup>7</sup> By capturing a wide range of immigration and ATD laws, policies and practices across the region, the report also highlights the ways in which different people on the move are impacted by immigration detention, and the

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<sup>6</sup> Sampson, R., Chew, V., Mitchell, G., and Bowring, L. *There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention* (revised), International Detention Coalition, 2015.

<sup>7</sup> ESCAP, *Asia-Pacific Migration Report 2020: Assessing Implementation of the Global Compact for Migration*, p. 50 (see n.1).

broad range of ATD that can be used to support all people on the move, regardless of their status.

### Relevant International Human Rights on the Right to Liberty and ATD

The right to liberty applies to all forms of detention and must be guaranteed to all persons without discrimination, including all migrants, regardless of their migration status.<sup>8</sup> Several international and regional legal instruments guarantee human rights standards concerning immigration detention including Article 3 of the Universal Declaration of Human Rights; Article 9 of the International Covenant on Civil and Political Rights; Article 37 (b)–(d) of the Convention on the Rights of the Child; Article 16 and 17 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and Article 14 of the Convention on the Rights of Persons with Disabilities. At the regional level, relevant standards include Article 12 of the Association of Southeast Asian Nations (ASEAN) Human Rights Declaration.

International human rights standards clarify that detention of migrants should only be used as a last resort, regardless of the person's immigration status. Instead, States are required to provide non-custodial ATD that fully protect the human rights of migrants. In the case of children, international human rights mechanisms make it clear that children should never be detained for reasons related to their or their parents' migration status and that immigration detention is never in the best interest of the child.<sup>9</sup>

In light of the fundamental nature of the right to liberty, immigration detention should by necessity be guided by the principle of exceptionality. Any such detention should therefore only take place if it satisfies the tests of legitimacy, legality, necessity, and proportionality.<sup>10</sup> In other words, immigration detention may be used only when it is determined in each individual case to be necessary and proportionate to a legitimate purpose defined by law. At the same time, a series of legal and procedural safeguards must be introduced by States in order to ensure that migrants are not detained

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<sup>8</sup> Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), General Comment No.5, Migrants' Rights to Liberty, Freedom from Arbitrary Detention and their Connection With Other Human Rights, Aug 2021, para 10. Article 4 (2) of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines deprivation of liberty as "any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority."

<sup>9</sup> 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, para 7.

<sup>10</sup> CMW, General Comment No.5, para 19 (see n.8)



arbitrarily or unlawfully.<sup>11</sup> Such safeguards include the prohibition of mandatory or indefinite detention, guaranteeing the right to consular assistance and access to judicial remedies to challenge the lawfulness of a detention decision.

Conditions of immigration detention must respect the fundamental dignity of the person and meet minimum international legal standards, as well as ensuring that the administrative nature of the deprivation of liberty is clearly designated. Criminal prisons, jails, or other facilities similar to prison should never be used for immigration reasons. Detention facilities should be accessible to independent monitoring mechanisms that have an explicit human rights mandate. Persons in detention should be allowed to receive unannounced visits, to be interviewed freely, and have access to information. Monitoring entities should be able to make the results of their inspections and recommendations public as appropriate. Quantitative and qualitative data and indicators on immigration detention and ATD, including the reasons for rejection or adoption of such ATD, should be collected in order to inform migration policies and ensure the human rights of migrants, while protecting personal data and the right to privacy of migrants.<sup>12</sup>

Under international human rights law, immigration detention of any child is considered a violation of their rights and the principle of the best interests of the child, regardless of detention periods, their status, or the status of their parents. The purpose of family unity never justifies the detention of children with their parents or guardians, and ATD should be provided for the whole family. Similarly, immigration detention must be avoided for people in specific situations of vulnerability or those who are at particular risk of exploitation, abuse, sexual or gender-based violence, or other forms of violence. Pregnant and nursing women, older persons, persons with disabilities, survivors of torture or trauma, migrants with particular physical or mental health needs, LGBTQI+ individuals and stateless persons should be included in such groups.<sup>13</sup>

To ensure that any decision to detain is compliant with the requirements of reasonableness, necessity, proportionality and non-discrimination, States are obliged to consider other ways to achieve their objectives, such as considering non-custodial ATD. Importantly, ATD must not be provided when there is no justification for detention in the first place. In such cases, migrants should be released.<sup>14</sup>

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<sup>11</sup> Office of the High Commissioner for Human Rights (OHCHR) and Global Migration Group (GMP), Principles and Guidelines Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations, para 8 of Principle 8

<sup>12</sup> CMW, General Comment No.5, para 11 (see n.8)

<sup>13</sup> Ibid, para 46.

<sup>14</sup> The CMW has guided that States have an obligation to review and implement all available alternative measures before resorting to detention, in accordance with the principles of necessity and proportionality. Ibid, para 47.

ATD should aim to respect the human rights of migrants, through implementing non-custodial and community-based arrangements, which are less restrictive than detention.<sup>15</sup> Such alternatives allow migrants to live in their communities, are tailored to specific needs and vulnerabilities of individuals, are accompanied by case-management and other supporting measures, and uphold the human rights of migrants. ATD should be based on an ethic of care rather than enforcement.<sup>16</sup> The least intrusive and restrictive measure possible in each individual case should be applied. Measures similar to those used in criminal justice such as bail, home-based detention, electric surveillance or periodic reporting to the authorities are considered disproportionately restrictive and therefore not appropriate. The conditions of those alternatives should not be discriminatory, including on the basis of nationality or migration status and due process safeguards must apply. ATD should be subject to judicial review and independent monitoring and evaluation.<sup>17</sup>

In the context of the COVID-19 pandemic. UN human rights mechanisms have stressed that States should review immigration detention and to urgently consider the release of detained migrants including through implementing non-custodial, community-based ATD, in order to protect the human rights of detained persons and staff of detention facilities and prevent the spread of COVID-19 in detention facilities.<sup>18</sup>

### 3. The Use of Immigration Detention in the Asia-Pacific Region

#### A. Overall Migration Trends and Challenges

Mixed movements to countries in the Asia-Pacific region are complex and driven by a multiplicity of factors. Many of the countries surveyed host mixed and complex populations of people on the move, including temporary labour migrants, refugees, people seeking asylum, stateless persons, smuggled migrants, and survivors of human trafficking.<sup>19</sup>

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<sup>15</sup> Ibid, para 58.

<sup>16</sup> OHCHR and GMP, [Principles and Guidelines Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations](#), Principle 8, Guideline 2 (see n.11).

<sup>17</sup> CMW, [General Comment No.5](#), para 51 (see n.8)

<sup>18</sup> CMW and UN Special Rapporteur on the Human Rights of Migrants, [Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants](#), 26 May 2020. In the context of COVID-19, the United Nations Network on Migration has called on States, working in partnership with relevant stakeholders, to: 1) Stop new detentions of migrants for migration - or health-related reasons and introduce a moratorium on the use of immigration detention; 2) Scale up and urgently implement non -custodial, community -based ATD in accordance with international law; 3) Release all migrants detained into non-custodial, community-based alternatives, following proper safeguards; 4) Improve conditions in places of immigration detention while ATD are being scaled up and implemented.

<sup>19</sup> In the Asia-Pacific region where legal protection frameworks are weak for people on the move, these categories are not mutually exclusive, and people may fall within one or more of these groups

While many migrants move through well-established labour recruitment channels and other regular pathways, there are many others in irregular situations even if having arrived through regular channels. While there is no overall data on the numbers of migrants with irregular status in the region, this is likely to be a significant number given the mixed migration trends in the Asia-Pacific and the barriers associated with regular migration channels.

The number of refugees, people seeking asylum, and stateless persons in the Asia-Pacific region is high, accounting for over 38% of the global refugee population: at the end of 2019, there were over 7.8 million refugees and people in refugee-like situations in Asia-Pacific countries.<sup>20</sup> From available data, there were roughly equal numbers of male and female refugees in the region (53.1% and 46.9% respectively), and almost half were children (47.1%).<sup>21</sup> At the end of 2019, there were 534,300 people seeking asylum in the Asia-Pacific region, and almost 2.4 million stateless persons.<sup>22</sup>

Conflict continues to be a key driver of forced migration in the region, with ongoing cross-border migration from Myanmar to Thailand and India, as well as to other countries in the region, including Malaysia and Indonesia. Rohingya refugees move overland from Bangladesh to India, or by boat to Indonesia, Malaysia, and Thailand. Displacement from Afghanistan driven by ongoing conflict and poverty has accounted for one of the main mixed migration movements in the region, with large numbers of Afghans moving to Turkey, Pakistan, and Europe. At the same time, Turkey continues to host one of the largest numbers of refugees in the world, with some 3.6 million registered Syrian refugees as well as close to 320,000 persons of concern of other nationalities.<sup>23</sup>

Climate change induced natural disasters as well as environmental degradation have also resulted in mixed movement in the region. The Asia-Pacific region is one of the most natural disaster-prone in the world, with the region hit by multiple natural and biological disasters in 2020 and 2021. In 2019 alone, more than 19 million people were displaced by natural hazards in the Asia-Pacific region.<sup>24</sup> Although such displacement may be internal and short-term, if people are unable to return to their communities of origin or remain vulnerable to repeated displacement, this may in turn lead to greater cross-border movements in the future. Climate change induced migration has also become a fact in the Pacific, with communities forced to leave lands that can no longer sustain them.

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<sup>20</sup> United Nations High Commissioner for Refugees (UNHCR), [Global Trends: Forced Displacement in 2019, 2020](#)

<sup>21</sup> UNHCR, [Refugee Data Finder database](#)

<sup>22</sup> Ibid

<sup>23</sup> UNHCR, [Refugees and Asylum Seekers in Turkey](#)

<sup>24</sup> ESCAP, [Resilience in a Riskier World: Managing Systemic Risks from Biological and other Natural Hazards, Asia Pacific Disaster Report, 2021](#)

At the same time, trafficking in persons in the Asia-Pacific is a significant problem. Globally, there are an estimated 40 million people who live in conditions of modern slavery, with nearly 25 million in Asia and the Pacific.<sup>25</sup> Among the world's estimated 4.8 million victims of forced sexual exploitation, 73% are in Asia; children under age 18 comprise 21% of all victims.<sup>26</sup>

### ***B. Immigration Detention Trends in the Asia-Pacific Region***

Pursuant to Objective 13 of the GCM, States have committed to ensuring that immigration detention follows due process, is non-arbitrary, based on law, necessity, proportionality, and individual assessments, and is used for the shortest time possible, and as a measure of last resort.

Across the countries surveyed, immigration detention is however, frequently used as a measure of first response to irregular migration. It is used as a means of deterring and punishing people that seek to migrate irregularly, or who overstay their visas or otherwise lose their legal status in the country.

In recent years, there have been troubling developments in several countries where governments have sought to expand the detention infrastructure, using justifications embedded within security or border control narratives. In **India**, a controversial National Register for Citizenship (NRC) policy implemented in the state of Assam between 2018 and 2019 placed almost two million people living in Assam at risk of detention and deportation by excluding them from the NRC.<sup>27</sup> The NRC exercise is not yet final and there is a right of appeal for those excluded.<sup>28</sup> In 2017, the Indian government also issued an executive order directing all enforcement authorities across the country to detect, detain, and report migrants with irregular status from the Rakhine State of Myanmar.<sup>29</sup> In **Australia**, although not a recent development, the indefinite and mandatory detention of all persons without a valid visa, including people

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<sup>25</sup> International Labour Organisation and Walk Free Foundation, [Global Estimates of Modern Slavery: Forced Labour and Forced Marriage](#), 2017

<sup>26</sup> Ibid

<sup>27</sup> Washington Post, [In a corner of India 2 million risk becoming stateless after release of final citizenship list](#), Aug 2019

<sup>28</sup> Ibid, for reporting on Assam government building new detention centres; see BBC, [Assam NRC What next for 1.9 million stateless Indians?](#), Aug 2019 and The Wire, [Detention, Criminalisation, statelessness: The Aftermath of Assam's NRC](#), Sept 2019 for reports of people being detained as a result of NRC; The Economic Times, [Assam Chief Minister Sarma says government wants old NRC reviewed, new one to be made](#), Mar 2022

<sup>29</sup> India Ministry of Home Affairs, [Order on identification of illegal Migrants and Monitoring Thereof](#), 2017. Note that this executive order is currently being challenged before the Supreme Court of India

seeking asylum and recognised refugees, continues. The average length of detention is now nearly 700 days.<sup>30</sup>

There have been some positive developments, for example in **Indonesia**, since 2018, people seeking asylum and refugees are exempted from detention despite irregularly entering the country.<sup>31</sup> Although significant gaps remain in the protection of these groups in the community, Indonesia has, in a relatively short period of time, moved away from the use of immigration detention. In **Georgia**, the number of people in immigration detention is low<sup>32</sup> with clear safeguards in law to prevent and reduce the use of detention. This includes time limits on detention, judicial oversight, and a requirement that persons must be released if their deportation has not been effected within a maximum of nine months.<sup>33</sup> In **Azerbaijan** there are similar time limits on the use of detention, up to a maximum of six months, with persons afforded the right to challenge the legality and validity of their detention.<sup>34</sup> If they have adequate resources to meet their minimum needs and those of their family members, people seeking asylum and migrants with irregular status are allowed to reside in the community though migrants who are considered to be at risk of absconding are detained.

There has also been important progress towards **ending child immigration detention**. Several countries either do not detain children in practice or have introduced policies to restrict the immigration detention of children. Governments have also been increasingly working with civil society, international organisations, and other stakeholders to develop community-based ATD. In **Japan**, children can legally be subject to administrative detention, but are generally not detained in practice. In **Turkey**, which is host to one of the largest refugee populations in the world, legislation prohibits the immigration detention of unaccompanied children seeking asylum under 16 years of age.<sup>35</sup> Instead, they are placed in suitable accommodation facilities by the Ministry for Family and Social Policies, either in the care of their adult relatives or a foster family.

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<sup>30</sup> Senate Standing Committee on Legal and Constitutional Affairs, [Home Affairs Portfolio: Australia Border Force – Program 3.5: Onshore Compliance and Detention: SE21-323 – Immigration Detention – No of Years Held in Detention](#); 25 Oct 2021

<sup>31</sup> Indonesian Directorate General of Immigration (DGI), Circular on Restoring the Function of Immigration Detention Centres, 30 Jul 2018. See also Permanent Mission of the Republic of Indonesia to the United Nations, WTO, and Other International Organisations in Geneva, [Questionnaire of The Special Rapporteur on The Human Rights of Migrants: Ending Immigration Detention of Children and Seeking Adequate Reception and Care for Them](#), 21 Apr 2020

<sup>32</sup> As of 2018, there were 18 non-citizens detained in Georgia's sole immigration detention centre. Council of Europe, [Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\) from 10 to 21 September 2018](#), 2019

<sup>33</sup> Ibid. See also Law of Georgia on the Legal Status of Aliens and Stateless Persons 2014, Chapter XI, Article 64.

<sup>34</sup> Azerbaijan Migration Code 2013, Articles 82.2.3 and 87.1.13

<sup>35</sup> Turkey Law on Foreigners and International Protection, Article 66(1)(b)

In **Thailand**, between October 2018 and September 2021, 259 children and their families were released from immigration detention under the provisions of the 2019 intergovernmental MOU-ATD on children,<sup>36</sup> with many referred to a case management, community-based ATD run in partnership between the Thai government and two civil society organisations (Host International Thailand and Step Ahead). Although gaps in policy and implementation remain, Thailand, a GCM champion country, has emerged as a regional and global leader in its efforts to end child immigration detention and develop community-based ATD for children and their families. Thailand has also been actively engaged in **regional and global peer learning initiatives** (see **Alternatives to Immigration Detention in the Asia-Pacific Region** below).

In **Malaysia**, in April 2020 the Cabinet approved a small-scale pilot programme (ATD Pilot) for the release of unaccompanied and separated children from immigration detention centres; the ATD Pilot will be implemented in collaboration with two civil society organisations (SUKA Society and Yayasan Chow Kit) who will provide case management support and shelter to children upon their release from detention.<sup>37</sup> The ATD Pilot, which in Phase 1 is focused on the safe return of children where it is in their best interests, commenced in February 2022 with standard operating procedures finalised by relevant government ministries. However as of March 2022, children have yet to be released from immigration detention into the ATD Pilot.

Important progress has also been made at the ASEAN level, through the adoption of the **ASEAN Declaration on the Rights of the Child in the Context of Migration** and its accompanying **Regional Plan of Action (RPA)**.<sup>38</sup> Through these, ASEAN Member states have agreed 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” (Article 9). “The specific objective of [the] RPA is to encourage ASEAN Member States to ensure the protection of the best interests of the child as a primary consideration in all relevant policies and practices as they relate to children in the context of

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<sup>36</sup> Jatuporn Rojanaparnich (Director General, Department of Children and Youth Ministry of Social Development and Human Security, Royal Thai Government), during Thailand’s Intervention at the following side event: [Accelerating Process to End Child Immigration Detention in Line with the SDG Agenda including Targets 10.7 and 16.2, On the Occasion of the UNGA 76th Session](#), 15 Oct 2021.

<sup>37</sup> On 11 November 2021, the Malaysian Ministry of Home Affairs confirmed through a written parliamentary statement that “The ATD pilot project proposed for implementation in Malaysia is an alternative care for unaccompanied and separated children at immigration depots where the child will receive protection and support services through family-based care to meet the basic needs of children”. See Kamar Khas (Special Chamber), Malaysia Parliamentary Debates, 14<sup>th</sup> Parliament, Fourth-Term, Second Meeting, 8 Dec 2021

<sup>38</sup> [ASEAN Declaration on the Rights of Children in the Context of Migration](#) (adopted 2019) and the [ASEAN Regional Plan of Action on Implementing the ASEAN Declaration on the Rights of Children in the Context of Migration](#) (adopted 2021)

migration, and to further strengthen national systems to identify and respond to the specific needs of children in the context of migration....” (Para V).

### C. *Legal and Policy Frameworks*

In almost all countries, enforcement authorities have wide-ranging powers to detain non-citizens who do not meet the conditions to enter into and/or reside in the country. These powers are contained in national immigration or border control laws or policies (though policies are often not made publicly available). They are also found in laws and policies pertaining to persons seeking humanitarian protection, although often with limitations on the use of detention for such groups.

In Japan and Australia, **mandatory detention** is used. In **Australia**, the Migration Act provides that where a person is known or reasonably suspected to be an “unlawful non-citizen,” they must be detained. In **Japan**, a mandatory detention policy is used, known as ‘*Zenken-Shuyo Shugi*’ meaning ‘detention of all violators.’ While Japan’s immigration laws allow immigration officers to make detention decisions at their discretion, this internal policy of the Immigration Service provides that detention is the default, and alternative measures are an exception.<sup>39</sup>

In most of the countries surveyed, immigration laws and/or policies provide authorities with the **discretion to use immigration detention**. The discretion to detain is often accompanied with the discretion to apply some form of ATD, including discretion to a designated government authority to **exempt individuals or groups of persons from immigration detention**. These are described further below in ‘Alternatives to Immigration Detention in the Asia-Pacific Region.’

Most countries **do not regularly publish immigration detention statistics** except for Australia, and where data is available, this is often not sufficiently disaggregated. There is also a lack of information relating to the numbers of people at risk of immigration detention in all countries. However, a broad comparison of, on the one hand, available data on the numbers of persons in an irregular migration status against, on the other, the numbers of people arrested or detained for immigration violations indicates that in most countries, most people are **at risk of detention, rather than being detained**. For example, although the Thai government does not publish data on the number of people held in immigration detention, the Thai police reported that more than 42,400 migrants were arrested for entering Thailand irregularly in 2021.<sup>40</sup> The estimated number of migrants with irregular status in Thailand is between

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<sup>39</sup>Tokyo Bar Association [statement expressing concerns over Japan’s mandatory detention policy in 2020](#) [Japanese]

<sup>40</sup> Bangkok Post, [42,000 Illegal Migrants Caught This Year](#), 22 Dec 2021

one to 2.5 million.<sup>41</sup> Similarly in Japan, there were an estimated 66,759 migrants with irregular status residing in Japan,<sup>42</sup> and 141 people detained in immigration detention facilities as of September 2021;<sup>43</sup> although this number has decreased as a result of releases during COVID-19, in June 2019 the numbers of people in detention in Japan were 1,253.<sup>44</sup> While there is no clear and reliable information on why some migrants are detained while others are not, it appears that in many countries, people in an irregular status are only detained once they come into contact with the authorities. This most often occurs during immigration raids (usually at places of employment) or during police checks or patrols.

In countries where a legal framework for **humanitarian protection** exists, those who are granted a humanitarian status pursuant to that framework are generally not detained. This includes persons with refugee status, or those who do not meet the refugee criteria, but who are determined to be at risk of significant harm if returned to their country of origin, including migrants in vulnerable situations afforded protection under international human rights law (such as in Japan, Korea, Australia, and New Zealand). However, even in these countries where a legal framework for humanitarian protection exists, immigration detention commonly takes place **during status determination proceedings** with detention exemptions only applying after humanitarian status is granted.

#### ***D. Immigration Detention Infrastructure***

Most countries surveyed use designated immigration detention facilities, whether in the form of detention centres, or removal/holding centres at airports or other ports of entry. People arrested for migration-related reasons are also held in police stations after arrest and pending transfer to an immigration detention facility.

However, prisons and jails are also used in some countries. In **New Zealand and Bangladesh**, there are no designated immigration detention facilities, and persons in violation of immigration laws are detained in prisons. In other countries, persons found to be in violation of immigration laws can also be sent to prisons, i.e., where breaches of immigration law are not administrative, but **criminal offences**. This is the case for example, in **Hong Kong, India, Pakistan, Bangladesh, Malaysia, Maldives and Thailand**. In **Hong Kong** for example, the Immigration Ordinance specifies a number

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<sup>41</sup> McAuliffe, M. and A. Triandafyllidou (eds.), [World Migration Report 2022](#), 2021, International Organisation for Migration (IOM); IOM, [Asia-Pacific Migration Data Report 2020](#), 30 Aug 2021

<sup>42</sup> Immigration Services Agency of Japan, [Foreign nationals who overstayed their authorised periods of stay in Japan](#), Jan 2022 [Japanese]

<sup>43</sup> Immigration Services Agency of Japan, [Statistics on immigration detainees from 2016 to 2021](#), Sept 2021 [Japanese]

<sup>44</sup> Immigration Services Agency of Japan, [Statistics on immigration detainees detained for more than 6 months](#), Nov 2019 [Japanese]



of criminal offences relating to breaches of immigration laws, including failure to produce proof of identity, unlawful entry into Hong Kong, overstaying an entry permit, or breach of conditions of stay in Hong Kong.<sup>45</sup> Persons who are found to be in breach are liable to serve criminal sentences in prison, before being moved to immigration detention prior to deportation from Hong Kong. Similarly in **India**, detention for immigration-related purposes can be both custodial and administrative, as immigration violations are treated as criminal offences.<sup>46</sup> Often, people arrested for migration-related reasons are kept in correctional facilities (prisons, jails, police stations) to ensure that they appear for their trial while administrative detention (holding centres and detention camps) is used as a measure to hold migrants with irregular status prior to their removal. In **Pakistan**, the penalty for knowingly entering Pakistan irregularly is imprisonment for up to 10 years, and a fine up to 10,000 rupees.<sup>47</sup> Persons accused of irregular entry cannot be released on bail if there are reasonable grounds to believe that they are guilty of irregular entry.<sup>48</sup> Where non-nationals have been convicted and sentenced, they are not released once they have served their sentence but are detained pending deportation. There are reports that they often languish in prisons because they cannot afford to pay their fare home or have not had their nationalities confirmed and provided with access to their diplomatic or consular authority.<sup>49</sup> Very similarly, in **Bangladesh**, immigration offences are considered criminal offences and can be penalised with a maximum five years of imprisonment and/or fine.<sup>50</sup> Non-nationals who have served their sentence remain in prison until they are deported. In **Malaysia**, anyone who unlawfully enters or remains in Malaysia in violation of section 63 of the Immigration Act 1959 can be detained for between two to five years, fined not less than RM 10,000 and subject to whipping. While the arrest and detention processes are not transparent in Malaysia, it is reported that prison sentences are most often imposed where people are arrested by the police and then subsequently brought to court. However, when a person is arrested by an immigration officer, they are usually sent to the immigration detention centres instead of prisons. In **Thailand**, the penalties under section 81 of the Immigration Act 1979 for irregular stay are imprisonment not exceeding two years, or a fine not exceeding THB 20,000. In practice, courts will impose prison sentences where an individual is unable

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<sup>45</sup> Immigration Detention in Hong Kong, [Immigration Detention in Hong Kong: Know Your Rights](#), Sept 2021

<sup>46</sup> The key national laws that govern the management of foreign persons in India are the Foreigners Act, Section 3(2); Registration of Foreigners Act, Section 5; Passport Act, Section 3(3). Pursuant to these laws, immigration violations are treated as criminal offences.

<sup>47</sup> Pakistan Foreigners Act 1946, Section 14

<sup>48</sup> Pakistan Foreigners Act 1946, Section 14 (A)(2)

<sup>49</sup> International Crisis Group, [Reforming Pakistan's Prison System](#), Asia Report No. 212 - 12 Oct 2011; Committee for the Welfare of Prisoners-Legal Aid Office; [The Plight of Foreign Prisoners in Sindh: A Fact Sheet](#), 2020

<sup>50</sup> Bangladesh Foreigners Act 1946, Section 14

to pay the fine; upon serving the prison sentence, they will then be transferred to designated immigration detention facilities.

De facto detention also occurs where people are placed in **shelters or child welfare institutions** instead of immigration detention centres; while conditions are usually better in these institutions, people experience significant restrictions on their liberty and freedom of movement. These places therefore end up as **alternative forms of detention** rather than non-custodial, community-based ATD.

In some countries, restrictions on liberty can occur for people living in camps near border areas where there has been a mass arrival of people seeking humanitarian protection, such as the case in both **Thailand and Bangladesh**.

### *E. Individual Screening and Assessment, including for Vulnerabilities*

Immigration detention is used arbitrarily across most of the countries surveyed, with blanket detention policies applied in many countries and limited individual screening and assessment decisions taken to determine if detention is necessary, reasonable, and proportionate. There is a lack of comprehensive screening for individual vulnerabilities, such those related to age, gender, disability, sexual orientation and gender identity, health status, and other protection needs.<sup>51</sup> Some groups of people, such as children, are more readily accepted as vulnerable and in need of special care and protection. However, for others, whose individual circumstances and context are the main determinants of vulnerability such as persons with disabilities or women and girls at risk, there is very little evidence that screening takes place to identify and address these vulnerabilities.

There are some countries where individualised screening is required by law or policy, including **Hong Kong** (see below) and **Turkey**, where Article 68 (3) of the Law on Foreigners and International Protection requires an individualised assessment of the necessity to detain, and the consideration of less coercive ATD before detention in international protection procedures.

Several countries have enacted legal protections for identified **trafficking survivors**, including protection from violations of immigration laws. Most countries have ratified the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. Despite this, a noticeable trend has been that victim identification procedures are often not sufficiently robust to ensure that trafficking survivors are identified and protected; instead, there are reports in several countries

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<sup>51</sup> UNHCR and IDC, [Vulnerability Screening Tool: Identifying and Addressing Vulnerability: A Tool for Asylum and Migration Systems](#), 2016; see also OHCHR, [Recommended Principles and Guidelines on Human Rights at International Borders](#), 2014.

of trafficking survivors who have been sent to immigration detention centres and deported.

### Promising practice

**Thailand's** National Screening Mechanism (NSM),<sup>52</sup> which as of early 2022, is still in the process of development. Through the NSM, a mechanism would be established that would screen those who have protection claims in Thailand and grant a 'protected person status' to eligible applicants which in theory would protect them from arbitrary detention. However, many details remain unclear, including what protections persons with 'protected person status' will be able to access, and whether they will be protected from detention in practice. Although the NSM was due to be implemented on 22 June 2020, as of March 2022 the Standard Operating Procedures for the NSM are still pending approval from the Thai Cabinet.

There are a few exceptions to the use of immigration detention as a first resort, with carve-outs for specific groups based on vulnerability. In **Hong Kong**, the Immigration Department's Detention Policy exempts certain persons from detention on the grounds of **vulnerability**.<sup>53</sup> The Policy states that the following groups of people should not be detained:

- an elderly person requiring close supervision or medical care
- a person with a serious medical or mental health condition
- a person who is physically disabled requiring constant nursing care
- where there is satisfactory evidence that the detainee has been tortured
- a pregnant woman with no clear prospect of imminent removal
- a person under the age of 18

However, despite this, there are reportedly gaps in implementation; due to a lack of a robust screening mechanism to identify the vulnerabilities referenced in the policy, people within these categories of vulnerability may still be detained.

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<sup>52</sup> The Council of State, Memorandum of the Council of State on the Draft of Regulation of the Office of the Prime Minister on the Screening of Aliens who Enter into the Kingdom and are Unable to Return to the Country of Origin B.E.2562 (2019). On 25 December 2019, the government enacted the 'Regulation of the Office of the Prime Minister on the Screening of Aliens who Enter into the Kingdom and are Unable to Return to the Country of Origin BE 2562, 25 Dec 2019

<sup>53</sup> Hong Kong Immigration Department, Policy on Exercise of Detention Powers Conferred by Section 32 of the Immigration Ordinance (Cap. 115), Oct 2008

## F. Time Limits and Oversight of Detention

Several countries in the region impose time limits on the use of immigration detention, in the context of enabling initial security, identity and/or health checks once a person comes into contact with enforcement officials. However, in most countries, immigration detention can be used indefinitely (and therefore arbitrarily) once an individual is issued with a removal/deportation order as the law permits to keep the person in custody for such a period as may be necessary until the removal becomes possible. These countries include Australia, Hong Kong, India, Japan, the Republic of Korea, Malaysia, Singapore, and Thailand. Other countries like Indonesia provide for extremely lengthy periods of detention.

Notable exceptions are **Georgia, Turkey, and Azerbaijan** - in all three countries, laws set a clear time limit for detention. In **Georgia**, immigration detention for the purpose of removal can only be used for a maximum period of three months. In exceptional cases and following court approval, detention can be extended for a further six months; however, if following such extension deportation cannot be carried out within nine months, the person must be released.<sup>54</sup> In **Turkey**, the duration of detention in removal centres cannot exceed 6 months. This can be extended for a maximum of another six additional months if the inability to complete the removal was due to the failure to cooperate by the individual subject to removal.<sup>55</sup> In **Azerbaijan** there are similar time limits on the use of detention, up to a maximum of 6 months.<sup>56</sup>

**Legal safeguards** around the use of immigration detention are absent in several countries, including the **Maldives, Malaysia, Indonesia, and Hong Kong** where judicial review of decisions to detain are either not provided for in laws or policies, or permitted only in very narrow circumstances. In the **Republic of Korea**, Article 63 of the Immigration Act requires that approval is obtained every three months from the Minister of Justice for the continued detention of a person under a deportation order. However, in practice, Article 63(1) (which states that those under deportation orders who cannot immediately be deported can be detained in any detention facility *until the deportation is possible*) remains a legal ground for indefinite detention of migrants with irregular status, and the constitutionality of the clause is being debated at the Korean constitutional court as of December 2021. Relatedly, the Republic of Korea's Ministry of Justice announced on 1 November 2021 that it will initiate a series of legislative and policy changes to improve the immigration detention regime; this includes reduction in the use of detention orders, proactive use of temporary release, establishing a legal limit to the length of detention, as well as a plan to establish an

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<sup>54</sup> Law of Georgia on the Legal Status of Aliens and Stateless Persons 2014, Chapter XI, Article 64(5)

<sup>55</sup> Turkey Law No. 6458 on Foreigners and International Protection, Article 57

<sup>56</sup> Azerbaijan Migration Code 2013, Article 82.2.3

alternative detention facility which would allow freedom of movement within the facility, with a shift in focus of from detainment to protection.<sup>57</sup>

Most countries surveyed permit some form of **detention monitoring**, whether by the national human rights commission or national Ombudsman's office; however, monitoring is not always done independently or consistently, and in some countries, unannounced visits are not permitted. Civil society organisations form part of detention monitoring bodies under relevant regulations or can conduct their own monitoring in several countries including Japan, the Republic of Korea, Turkey, and Tajikistan. However, in Japan and Turkey, the monitoring body members are appointed by government authorities, and this could lead to non-invitation of civil society members in practice.

### **G. Immigration Detention of Children**

While there has been progress made towards ending child immigration detention in the region, many gaps remain. The detention of children remains prevalent in a few countries. None of the countries surveyed **explicitly prohibit** the immigration detention of children in law, except **Turkey** which prohibits a specific group of children from being detained, namely unaccompanied children seeking asylum who are under 16.<sup>58</sup> However, despite this legal prohibition on detention, gaps remain in practice with some children under 16 reportedly being detained at removal centres at the borders.<sup>59</sup>

In other countries, laws **restrict the immigration detention of children**, requiring that this be used as a measure of last resort. For example, **Georgia's** 2014 Law on the Legal Status of Aliens and Stateless Persons in Article 64(6) states that unaccompanied children should only be detained in exceptional cases, and for the shortest time possible, bearing the best interests of the child in mind. In **New Zealand**<sup>60</sup> and **Australia**,<sup>61</sup> immigration policies/laws state the detention of children should be a last resort. The numbers of children in immigration detention in Australia have significantly declined in recent years (see **Child-Sensitive Approaches to ATD for Children** below).

In some countries, while there is no explicit prohibition or restriction in law or policy, children are generally **not detained in practice**. For example, in **Japan**, children legally can be subject to immigration detention, but they are generally not detained in

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<sup>57</sup> Korean Ministry of Justice, [Press release](#), Nov 2021 [Korean]. This followed widely publicised footage released in May 2021 of a man with his ankles and arms bound in solitary confinement in an immigration detention centre in the Republic of Korea.

<sup>58</sup> Turkey Law No. 6458 on Foreigners and International Protection, Article 66 (1)(b)

<sup>59</sup> Council of Europe, [Report of the fact-finding mission to Turkey by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees, 30 May – 4 June 2016](#), Aug 2016

<sup>60</sup> New Zealand Immigration Operations Manual article 16.2.15(vii)

<sup>61</sup> Australia Migration Act 1958, Section 4AA

practice. One minor was detained in immigration detention facilities in the following years: 2019, 2017, and 2015.<sup>62</sup> Similarly in **Indonesia**, the immigration detention of refugees and people seeking asylum, including children, has effectively ceased since 2018.<sup>63</sup> In the Philippines, unaccompanied or separated children are generally not detained in practice.

In countries like **Thailand and the Republic of Korea**, the policy is to move away from detaining children, however there are implementation challenges. In **Thailand**, where the government has developed an ATD-MOU for the release of children from immigration detention, children continue to be arrested and detained for immigration offences. ATD in Thailand, therefore, applies once a child is in detention, rather than preventing a child from being arrested and detained in the first place (see **Child-Sensitive Approaches to ATD for Children** below).

In **the Republic of Korea**, it is an internal policy of the Justice Ministry to not detain children in principle. The government reported that migrant children under the age of 14 may only be placed in detention when deemed “unavoidable to ensure the safety of such children,” and that such detention is rare.<sup>64</sup> While no information is available on their numbers, official data shows that the number of children ages 14 to 18 in immigration detention have decreased over the years, to 19 children in 2020, compared to 57 in 2019 and 57 in 2018.<sup>65</sup>

In **Hong Kong and India**, while laws and policies provide that child immigration detention should be restricted, children are placed in institutions where they face restrictions on their freedom of movement, to such a degree that these can constitute de facto detention (alternative forms of detention). In **Hong Kong**, while the detention policy of the Immigration Department states that an individual below the age of 18 should not be detained, children can still be apprehended and sent to Tuen Mun Children and Juvenile Home, a correctional/residential institution for juvenile offenders.<sup>66</sup> In **India**, unaccompanied or separated migrant children below the age of seven are treated as “children in need of care and protection” as per the Juvenile Justice Act 2015 (JJ Act) and would be placed at a childcare institution (CCI), which in its nature is reported to be similar to detention as there is restriction on movement, limited access to legal aid and little to no access to UNHCR and other external

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<sup>62</sup> Immigration Services Agency of Japan, [Statistics on immigration detainees detained for more than 6 months](#), Nov 2019 [Japanese]

<sup>63</sup> Pursuant to Indonesia DGI Circular on Restoring the Function of Immigration Detention Centres, (see n.31)

<sup>64</sup> UN Committee on the Rights of the Child, [Republic of Korea: Replies of the Republic of Korea to the List of Issues in Relation to the Combined Fifth and Sixth Periodic Reports of the Republic of Korea](#), Aug 15, 2019

<sup>65</sup> Korea Ministry of Foreign Affairs, Draft of the Country Report for UN CERD 20 – 22nd session, Jan 2022 (unpublished) [Korean]

<sup>66</sup> Hong Kong Immigration (Place of Detention) Order (Cap. 115, section 35(1)), Schedule 2

stakeholders. Children, regardless of age, if apprehended with adult family members, then can be placed in prison together with their family members.

#### 4. Alternatives to Immigration Detention in the Asia-Pacific Region

Under the GCM, States have committed to prioritise “...promote, implement, and expand [ATD], favouring non-custodial measures and community-based care arrangements, especially in the case of families and children” (Objective 13(b)).

As previously noted, ATD can involve a range of interventions in areas of migration governance that ensure migrants’ right to liberty and other rights, including access to information, interpreters, and translators; legal assistance and representation; work rights; health, education, and other services; individual screening and assessment; safe and suitable placement options; and case management support to facilitate fair and timely case resolution. While there is no single definition of “community-based ATD,” it is commonly used to describe interventions that are provided in non-institutional and community settings, where people can access their fundamental rights and services. They are most often underpinned by tailored case management and engagement to build trust and support agency and wellbeing.<sup>67</sup>

In the Asia-Pacific region however, there are only a small handful of countries where community-based ATD exists, usually implemented on a small scale by governments and/or civil society organisations. Instead, the majority of ATD used is centred on enforcement, coercion, and security-based migration policies, rather than community and rights-based ATD.

Even where provided for in laws or policies, ATD is under-utilised, despite the ability/discretion of enforcement officers to apply it instead of detention. In **Malaysia**, section 55 of the Immigration Act gives the Minister of Home Affairs discretionary power to exempt persons or classes of persons from application of the Act. Similar discretionary powers are contained in the immigration laws of **Thailand**; however, these have rarely been used. In **Japan**, an ATD launched in 2012 for the placement of people seeking asylum in the community with case management support has been significantly underutilised despite positive outcomes (see **Community-Based Alternatives to Detention**). In **Georgia**, although the Migration Department has the discretion to apply ATD measures, in practice detention is used as the default. Between 2016 to 2020, the Migration Department has applied ATD just 13 times (in the form of regular reporting requirements), which accounts for 3.3% of the total

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<sup>67</sup> See for example, Sampson, R., Chew, V., Mitchell, G., and Bowring, L. There Are Alternatives, (see n.6); IDC, [Using Alternatives to Detention \(ATD\) as a Systems Change Strategy Towards Ending Immigration Detention](#), 2022

number of decisions taken by the Migration Department on whether migrants should be placed in immigration detention.<sup>68</sup>

### Promising practice

Peer learning exchanges between governments and civil society implementers have facilitated the sharing of ideas, experiences, knowledge, and challenges on implementing ATD. Some countries have made significant progress in restricting or even ending the use of immigration detention for some or all groups of people, while others are beginning to embark on this journey. While there is no one-size fits all approach, the sharing of successes and lessons learned means that stakeholders gain a better understanding of what is happening in other countries and can better determine if these different ATD strategies or systems can be adapted and implemented within their national context.

Peer learning initiatives on ATD include the Regional Peer Learning Platform and Programme of Learning and Action on Alternatives to Child Immigration Detention,<sup>69</sup> a closed-door Chatham House Rule initiative co-convened by International Detention Coalition (IDC) and the Asia Dialogue on Forced Migration (ADFM) Secretariat, with participating government and civil society implementers from Australia, Indonesia, Malaysia, New Zealand, and Thailand. This regional platform has convened 4 times since its launch in 2019,<sup>70</sup> with a further virtual workshop scheduled for April 2022. Platform participants discuss different aspects of ATD for children and their families, and share learnings, successes, and challenges. As part of the Platform, IDC and the ADFM Secretariat have also convened two bilateral meetings for participants from Australia and Thailand, and Thailand and Indonesia.

A further example is the Global Peer Learning Exchanges co-hosted by the UN Network on Migration Working Group on Alternatives to Detention (co-led by IDC, UNICEF, and UNHCR).<sup>71</sup> Three separate global online peer learning initiatives have been convened between November 2020 and January 2022: the first on sustaining and expanding the use of ATD during the COVID-19 pandemic;<sup>72</sup> the second on case

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<sup>68</sup> Public Defender of Georgia, [On the Situation of Protection of Human Rights and Freedoms in Georgia, 2019](#)

<sup>69</sup> For more information, see IDC, [Asia Pacific Virtual Peer-Learning Workshops](#), 7 Jul 2021.

<sup>70</sup> The [launch of the Regional Peer Learning Platform](#) was held in Bangkok, Thailand in November 2019 and co-hosted with the Thai Ministry of Social Development and Human Security.

<sup>71</sup> For further information, see United Nations Network on Migration, [Thematic Working Group: Alternatives to Detention](#). The Thai government has officially co-hosted all 3 global peer-learning events.

<sup>72</sup> [Report of Global Online Peer Learning Exchange, How to Sustain and Expand the Use of Alternatives to Immigration Detention in the Aftermath of the COVID-19 Pandemic](#), Co-hosted by the UN Network on



management for case resolution;<sup>73</sup> and the third on highlighting alternatives to detention in the IMRF.<sup>74</sup> A further IMRF dialogue on the whole-of-society approach: government, civil society partnerships on ATD is planned in April 2022.

Thailand has played a leading role in co-convening, co-hosting and/or sharing their experiences and learnings at these peer learning initiatives. Other countries from the region actively participated in the peer learnings as well as other stakeholders from Asia-Pacific.

### **A. Legal and Policy Frameworks**

Across the countries surveyed, there are several different forms of ATD in use, some of which are provided for in law and others in policy, such as in Georgia, Hong Kong, Indonesia, Japan, the Republic of Korea, Malaysia, Thailand, Turkey, and Singapore.

In Hong Kong, Turkey, Malaysia, and Thailand, these are specifically referred to as 'ATD' in law or policy:

- In **Hong Kong**, section 36 of the Immigration Ordinance stipulates that 'Recognisance' is an ATD. When determining whether to detain someone or release them on recognisance, police and immigration officials consider a range of factors, including whether: (1) releasing that person would create a public safety risk, (2) they are likely to abscond, (3) they have a close connection to or fixed place of residence in Hong Kong, and (4) their identity has been satisfactorily established. For a person due to be removed from Hong Kong, the authorities would additionally consider (5) whether removal can be carried out within a reasonable length of time. While most of the people released on recognisance are non-refoulement claimants (referring to mostly people seeking asylum and protection from torture), there are cases of recognisance also being approved for migrants with irregular status other than non-refoulement claimants.
- In **Turkey**, new amendments to the Law on Foreigners and International Protection (LFIP) adopted in December 2019 include Article 57(A) which lays

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Migration Working Group on Alternatives to Detention and the Permanent Missions of Portugal and Thailand in Geneva, 17 Nov 2020

<sup>73</sup> [Report of Second Online Peer Learning Exchange, Case Management for Case Resolution: Scaling up Alternatives to Detention](#), Co-hosted by the UN Network on Migration Working Group on Alternatives to Detention and the Permanent Missions of Colombia, Ghana, Nigeria, Portugal, and Thailand in Geneva, 29 Jun 2021

<sup>74</sup> Co-hosted by the UN Network on Migration Working Group on Alternatives to Detention and the Permanent Missions of Colombia, Nigeria, Portugal and Thailand in Geneva, 27 Jan 2022

down alternatives to pre-removal detention including seven specific alternatives: residence at a specific address, working on a voluntary basis for public good, reporting duties, family-based return, return counselling, financial guarantees, and electronic monitoring.<sup>75</sup>

- In **Thailand**, a Memorandum of Understanding on the Determination of Measures and Approaches Alternatives to Detention of Children in Immigration Detention Centres (the “MOU-ATD”), was signed by seven government agencies in 2019. Through this, children are released from immigration detention into the community, or as a last resort, to shelters (see **Child-Sensitive Approaches to ATD for Children** below).
- In **Malaysia**, the Cabinet gave its approval for the implementation of an ATD pilot for the release of children from immigration detention into a case management programme (see **Child-Sensitive Approaches to ATD for Children** below).
- In other countries, although the term ATD is **not explicitly used** in law or policy, a range of measures have been identified that enable persons in an irregular migration status to remain in the community or depart voluntarily without the use of immigration detention. These include discretion (usually reserved for persons in a Ministerial, or high-level position within the Immigration departments) to exempt or release people from detention, as well as other mechanisms set forth in laws or policies such as provisional/conditional release with or without bond, surety, guarantor, regular reporting requirements and/or directed residence, regularisation programmes, documentation, and temporarily legal statuses.

## ***B. Community-Based Alternatives to Detention***

As discussed earlier, while there is no single definition of “community-based ATD,” it is commonly used to describe interventions that are provided in non-institutional and community settings, where people can access their fundamental rights and social services. They are most often underpinned by tailored case management and engagement to build trust and support agency and wellbeing.

Global research<sup>76</sup> has shown that ATD which focuses on early engagement and working with people towards just and fair resolution of their case achieves better outcomes for both individuals and governments. This contrasts with coercive approaches, which are more centred on border enforcement and control. ATD that is centred on holistic community-based support, including using case management

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<sup>75</sup> Electronic tagging, while referred to as an ATD in the Law on Foreigners and International Protection, is de facto detention. It can involve substantial or complete deprivation of freedom of movement and liberty. See IDC, [Using ATD as a Systems Change Strategy](#), (see n.67)

<sup>76</sup> See for example, Sampson, R., Chew, V., Mitchell, G., and Bowring, L. There Are Alternatives, (see n.6)

support that is tailored to their specific needs and strengths, can help people to achieve stability, navigate immigration processes and ensure that they are able to access critical services and meet their basic needs.

Case management is a strategy for supporting and managing individuals with irregular status while they are working towards achieving case resolution. It is also a comprehensive and systematic service delivery approach designed to ensure the support for the health and wellbeing of people with complex needs. By building trust in the system, providing stability and facilitating agency, case management is an efficient and cost-effective approach to governing migration without using immigration detention.<sup>77</sup> Case management supports engagement with refugees and migrants; this is contrasted with ATD that are enforcement-based, such as the use of bail or guarantors, or financial or criminal penalties for failing to report to immigration authorities.

However, in the countries surveyed, there is limited use of engagement-based ATD, and only a few instances where **case management** is used to support migrants. These are described further below.

**Access to services** for people in ATD, such as healthcare, shelter, education, legal assistance, and interpretation is also a key gap in the region. In many countries, there is no legal right to healthcare for individuals with irregular status. Instead, they often rely heavily on NGOs and the support of charities, or fee waiver schemes run by public and private hospitals, such as in Hong Kong, the Republic of Korea and Thailand. In some countries, government laws/policies not only fail to provide access to healthcare, but also require that health workers report persons who do not have a legal status if they seek health services, including emergency health services. This in turn leads to a reluctance by people in an irregular migration status to seek medical treatment due to a fear of arrest and detention. For example, in **Malaysia**, the Ministry of Health issued a circular in 2001 directing all government healthcare workers to report undocumented persons seeking treatment at government healthcare facilities.<sup>78</sup> As a result of this circular, people seeking asylum who have not yet been registered with UNHCR and migrants with an irregular status have been arrested and

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<sup>77</sup> United Nations Special Rapporteur on the Human rights of Migrants, [Ending Immigration Detention for Children and Providing Adequate Care and Reception for them](#), 20 Jul 2020, UN document A/75/183, para 56. See also the [European Alternatives to Detention Network](#) which has been advocating for an end to immigration detention through piloting case-management based ATD and showcasing their effectiveness. A [2-year evaluation of 3 pilot projects](#) in the EATDN has demonstrated that case management had a positive impact on individuals' ability and capacity to work towards case resolution and to help them stay engaged in migration processes. Case management also had a significant impact on individual wellbeing and engagement.

<sup>78</sup> Malaysia Ministry of Health, [Guidelines on Reporting Illegal Immigrants seeking Treatment at Government Hospitals and Clinics](#), Circular 10/2001.

taken from hospitals to immigration detention centres, including women who have been detained immediately after childbirth.<sup>79</sup>

Even where national laws or policies provide for a right to **healthcare** for migrants, refugees and people seeking asylum holding a form of temporary legal status (such as the case in several countries including New Zealand, Pakistan, India, Turkey, Georgia, Azerbaijan, and Kazakhstan), these groups can still face practical barriers in accessing quality, affordable healthcare services. These include: being turned away from public hospitals due to lack of knowledge among hospital administrators or staff; language barriers and lack of interpreters; difficulty in paying for treatment, e.g. where only certain costs are covered or they are unable to purchase health insurance; cultural barriers that may discourage people from seeking treatment; transportation barriers where there is a lack of healthcare facilities in their area of residence; and lack of information on what types of healthcare services are available, and how these can be accessed. In practice, migrants, refugees, and people seeking asylum - even if they hold a form of temporary status - often rely heavily on NGOs and the fee waiver schemes by private and public hospitals.

Access to **legal assistance** varies greatly across the countries surveyed, as well as between different groups at risk of immigration detention. While several national laws or policies provide for legal assistance and interpretation for migrants, people seeking asylum and/or trafficking survivors, these are not always provided free of charge, or at a subsidised rate. In other countries, laws merely require that people are informed on how they can obtain legal assistance but must pay for legal support themselves. In addition to cost, there are also a number of practical challenges in accessing legal aid, including language barriers, lack of knowledge regarding the right to and/or availability of legal assistance, and a lack of trained legal professionals with relevant expertise.

An example of the variation in availability of legal assistance can be found in **Turkey**, Article 57(7) of the Law on Foreigners and International Protection (LFIP) states that those who appeal against an administrative detention action but who do not have the means to pay attorney's fees should be provided free legal counsel at their demand. However, LFIP Article 81(1) provides that applicants and international protection beneficiaries may be represented by a lawyer, provided that the lawyer's costs are covered by them. The **Maldives** Anti-Human Trafficking 2013 (Article 35) simply requires that potential trafficking survivors are provided with information on how to obtain the assistance of a lawyer. In **Australia**, the Migration Act 1958 states that there

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<sup>79</sup> Loganathan T, Chan ZX, de Smalen AW, Pocock NS, [Migrant Women's Access to Sexual and Reproductive Health Services in Malaysia: A Qualitative Study](#), International Journal of Environmental Research and Public Health. 2020; 17(15):5376.

is no requirement to provide legal assistance, unless specifically requested by the person who is detained.

In most of the countries surveyed, **civil society and UN agencies** step in to fill this gap in legal assistance. In several countries the UNHCR country office facilitates the provision of legal aid to UNHCR persons of concern. This is the case, for example, in Pakistan, Kazakhstan, and Azerbaijan. The role of civil society actors, including local NGOs and human rights lawyers has been critical in providing pro bono legal assistance in countries such as the Republic of Korea, Japan, Thailand, Hong Kong, Tajikistan, Australia, Kazakhstan, and Malaysia. This is also the case with access to interpreters, which is guaranteed as a fundamental right in many national laws and policies for all persons, including non-nationals, who are in immigration and/or court proceedings. However, in practice, migrants regularly report significant challenges in accessing interpretation, or poor-quality interpretation during court or immigration proceedings.

### Promising practice

In **Hong Kong**, people seeking asylum and protection from torture can apply for protection from refoulement through the Unified Screening Mechanism (USM).<sup>80</sup> During this process, claimants can be released from immigration detention and issued with recognisance papers that provide a form of legal status and protection against immigration detention. They are then referred to an ATD programme funded by the Hong Kong government and implemented by an NGO, the International Social Services-Hong Kong (ISS-HK).<sup>81</sup> Non-refoulement claimants who enter this programme are provided with case management support, counselling, food allowance, housing and utilities, transportation allowance, clothing, and toiletries. The objective of the programme is to provide humanitarian assistance to non-refoulement applicants so that they do not live in destitution, can meet basic needs, and remain engaged with authorities during the case resolution process.<sup>82</sup> However, despite this, it is reported that the level of humanitarian assistance is inadequate for protection claimants to enjoy an adequate standard of living.

The stipend given to non-refoulement claimants under the humanitarian assistance programme is very restrictive as it is mostly provided directly to the service providers

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<sup>80</sup> Hong Kong SAR Immigration Department, [Making a Claim for Non-refoulement Protection in Hong Kong](#)

<sup>81</sup> International Social Service Hong Kong, [Administering and Delivery of Assistance for Non-Refoulement Claimants](#)

<sup>82</sup> Ibid

or as a form of voucher and the amount has not increased for years.<sup>83</sup> There is no specific law or policy providing for access to healthcare for non-refoulement claimants, but they can apply for medical waivers through the Social Welfare Department (SWD). For emergency treatment, post-application for the medical waiver is possible whereas for non-emergency medical treatment the waiver needs to be obtained at SWD prior to the hospital appointment.<sup>84</sup> In reality, many non-refoulement claimants seek informal employment for livelihood which will then put them at risk of detention for violating immigration regulations.<sup>85</sup> In February 2022, amidst the fifth wave of Covid-19 outbreak, ISS-HK adjusted its relevant service delivery and moved most service provision online.<sup>86</sup> Such changes, coupled with panic buying/stockpiling at supermarkets, left refugees and non-refoulement claimants in dire humanitarian situations.<sup>87</sup>

In **Japan**, Forum for Refugee Japan (FRJ), a network of NGOs supporting refugees and people seeking asylum, entered into a Memorandum of Understanding with the Ministry of Justice and Japan Federation of Bar Associations in 2012. This MOU was to pilot an ATD programme for people seeking asylum entering Japan via designated airports who are likely to be subjected to one of the alternative measures. Under the ATD Pilot, instead of subjecting them to immigration detention, the Ministry of Justice could refer them to FRJ for emergency shelter, support with longer-term accommodation needs, case management support and further referrals for legal assistance and other services. People seeking asylum already in immigration detention facilities can also be referred to FRJ, provided they once sought asylum at the airport and with permission for provisional release by the Ministry of Justice.<sup>88</sup> FRJ reports that this pilot ATD programme has proven that early intervention with case management support makes a significantly positive difference on the participants' wellbeing, addresses their special needs, supports them to productively engage in asylum and migration processes which has in turn led to better compliance and results in improved and timely case resolutions. The programme was piloted between 2012 and 2014 and has since been formally implemented.<sup>89</sup> Despite the positive outcomes achieved by the programme, funding

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<sup>83</sup> Hong Kong Free Press, [Driven by desperation: Without the right to work, refugees in Hong Kong face impossible choices](#), Feb 2022

<sup>84</sup> Health in Action. [Health Information for people seeking asylum and Refugees](#), 2014

<sup>85</sup> Hong Kong Free Press, [Driven by desperation: Without the right to work, refugees in Hong Kong face impossible choices](#), Feb 2022

<sup>86</sup> International Social Service Hong Kong, [Special Notice - Operation of NRC Service in February 2022](#), Feb 2022

<sup>87</sup> See Reuters, [Hong Kong refugees struggle to find food on empty supermarket shelves](#), Mar 2022 and France24, [Hong Kong refugees face 'dire' food crisis in Covid outbreak: survey](#), Mar 2022

<sup>88</sup> Forum for Refugees Japan, Ministry of Justice and Japan Federal Bar Association, [Joint Report of the Alternative to Detention Pilot Project for Foreign Nationals Seeking Asylum at Airport in Japan](#), Mar 2015 [Japanese]

<sup>89</sup> Ibid

has been a challenge, with all funding needs met by NGOs alone and no financial support from the Japanese government. The number of cases referred by the Ministry of Justice has also remained low, with only 42 people having entered the ATD between 2011 and 2020.<sup>90</sup> People seeking asylum in Japan do not legally have access to the universal healthcare system and national health insurance scheme. People seeking asylum in the ATD programme have access to limited medical care that is funded solely by NGOs, charities, or individual hospitals' medical waiver schemes.

In **New Zealand**, people seeking asylum are informed of the right to legal assistance in a document intended to explain the refugee and protection status process.<sup>91</sup> People seeking asylum in New Zealand have access to free legal aid and free interpretation services, although there are challenges in practice in accessing quality and government-funded counsel and interpreters.<sup>92</sup> People seeking asylum and migrants in an irregular situation applying for visas, including work visas, must do so at their own cost.

In the **Philippines**, an Inter-Agency Agreement on the Protection of Asylum Seekers, Refugees and Stateless Persons in the Philippines was concluded in 2017 to streamline the provision of services to these groups in the country. This was strengthened through the President's recent signing of Executive Order No. 163, series of 2022,<sup>93</sup> institutionalising access to protection services for refugees, stateless persons and people seeking asylum. Refugees, stateless persons, and asylum and stateless applicants have access to free or subsidised public health care. A memorandum of understanding between UNHCR and the Philippine Public Attorney's Office was signed in 2013 to provide free legal assistance, counselling and representation for refugees, stateless persons, and people seeking asylum, at all stages of administrative, judicial, and quasi-judicial proceedings.<sup>94</sup> Representation by the Public Attorney's Office may start as early as the application process.

In the **Republic of Korea**, the Refugee Act (Articles 30 to 38) stipulates that recognised refugees are entitled to the same level of social security, education, and livelihood support as Korean citizens. Article 43 also provides that refugee

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<sup>90</sup> Forum for Refugees Japan, [Progress Report of the Alternative to Detention Project for Foreign Nationals Seeking Asylum at Airport in Japan](#), Dec 2019 [Japanese]

<sup>91</sup> New Zealand Government, Ministry of Business, Innovation & Employment, [Claiming Refugee and Protection Status in New Zealand](#), Mar 2021

<sup>92</sup> UN Human Rights Council, [Report of the Working Group on Arbitrary Detention: Mission to New Zealand](#), 6 Jul 2015, UN Doc A/HRC/30/36/Add.2, para 75

<sup>93</sup> President of the Philippines Executive Order No. 163, Institutionalising Access to Protection Services for Refugees, Stateless Persons and Asylum Seekers, 28 Feb 2022

<sup>94</sup> UNHCR, [Universal Periodic Review: 3rd Cycle, 27th Session: The Philippines](#), Sept 2016

applicants and their underaged family members are entitled to receive the same level of primary and secondary education as citizens. Refugees, humanitarian status holders and refugee applicants are legally eligible to seek employment though conditions for obtaining work permits vary; for recognised refugees, the right to work is accorded alongside refugee status while humanitarian status holders and refugee applicants will need to obtain approval to work.<sup>95</sup> People seeking asylum in the process of Refugee Status Determination (RSD) have legal rights to interpretation and translation during their RSD interviews as well as right to legal assistance.<sup>96</sup> However, the National Human Rights Commission of Korea reported the lack of adequate interpretation services for refugee applicants.<sup>97</sup>

### *Legal Identity and Adequate Documentation*

In Objective 4 of the GCM, States have committed to ensuring that all migrants have proof of legal identity. In the context of immigration detention, a legal identity is critical to ensuring that detention is not used arbitrarily. Where migrants have proof of legal identity and access to a form of temporary legal status while their immigration cases are being processed, immigration detention for the purposes of ascertaining identity is no longer necessary or proportionate, as the migrant's identity is clearly established through documentation and legal status.

In most countries surveyed, there is a system by which persons seeking humanitarian protection can lodge applications whether with government authorities or UNHCR, following which they are provided with a temporary legal status and/or identification documents. In most cases, this then provides a form of protection against arrest and detention, though this is not always the case. For example, in **Malaysia** and **Thailand** where UNHCR conducts refugee status determination, persons registered and issued with UNHCR documentation are still vulnerable to arrest and detention as the UNHCR card is not recognised by these governments to provide a form of legal status. In Malaysia, pursuant to a government policy, UNHCR card holders have historically had some degree of protection against arrest and detention, but this has not been uniformly implemented.<sup>98</sup> Since August 2019, UNHCR has also been denied access to immigration detention facilities to advocate for the release of persons of concern from

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<sup>95</sup> Korea Ministry of Justice, [Handbook Refugee Status Determination Procedures in Korea](#), 2015

<sup>96</sup> Korea Refugee Act, Articles 12, 14 and 15

<sup>97</sup> National Human Rights Commission of Korea, [Information to the UN Human Rights Committee for the adoption of the List of Issues Prior to Reporting in relation to the consideration of the Fifth Periodic Report by the Government of Republic of Korea](#), May 2019

<sup>98</sup> Pursuant to a 2005 Attorney General's Chambers Circular stipulating that people seeking asylum and refugees registered with UNHCR should not be prosecuted on account of their immigration status (this does not however, include persons who have yet to be registered with UNHCR). Neither this document, nor National Security Council Directive 23 (also relating to refugees and people seeking asylum with UNHCR documentation) are publicly available.



detention.<sup>99</sup> **India** allows UNHCR to conduct refugee status determination (RSD) for people seeking asylum arriving from non-neighbouring countries and Myanmar. People seeking asylum from neighbouring countries that directly share borders with India can approach the Ministry of Home Affairs (MHA) directly, though there is no clear policy guideline regarding RSD.<sup>100</sup> Those refugees registered with UNHCR receive a UNHCR card that in principle serves as an ID card for refugees. MHA registered refugees also receive a similar form of ID. These ID documents from two agencies function as a form of ATD as they allow refugees to live in the community legally and provide access to public services.<sup>101</sup> However, in reality, UNHCR cardholders remain at risk of arrest, detention and deportation as such status may not be recognised by state authorities, in contrast to the ID document issued directly by MHA.<sup>102</sup>

Temporary status can also take the form of **humanitarian visas** for persons who are not found to be refugees, but who are granted permission to remain in the country on other grounds, e.g., where their removal from the country is not possible. This is the case for example, in the Republic of Korea and Japan. In many cases, the formal status also provides an entitlement to access certain services, or in some cases, work rights. There are also several countries, such as Australia and New Zealand, that issue visas to **survivors of sexual and gender-based violence (SGBV)**, to support migrants experiencing family violence to leave abusive relationships without harming their immigration status in the country (see **Gender-Responsive Approaches to ATD**). There are also specific protections available for recognised **trafficking survivors**. In most cases, trafficking survivors are issued a form of temporary protection visa which in many countries including Georgia, New Zealand, and the Republic of Korea, also provide the survivor with work rights and access to social services and support. However, in many countries the right to temporary status is dependent on the survivor continuing to assist in the investigation and prosecution of traffickers. Also as noted earlier in this report, victim identification procedures are often not sufficiently robust to ensure that trafficking survivors are identified and protected.

Several countries have also instituted mechanisms by which migrants with irregular status can obtain a legal identity to facilitate their voluntary departure from the country, without being subject to immigration detention. While these measures avoid the use of immigration detention, they are centred on return, rather than being rights-based ATD. It is critical that voluntary departure is not a prerequisite for access to legal identity, but rather, that it facilitates a person's genuine wish to voluntarily depart in safety and dignity from the country. Examples of such measures can be seen in

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<sup>99</sup> Malay Mail, [Malaysia Denying UN Access to Detained Asylum Seekers, says Agency](#), 11 Nov 2020

<sup>100</sup> Shanker and Vijayaraghavan, [Refugee Recognition Challenges in India](#), 2020

<sup>101</sup> Ibid

<sup>102</sup> Ibid

Singapore, Japan, and the Republic of Korea.

In **Singapore**, migrants in an irregular situation can apply for a Special Pass Card, which temporarily legalises the cardholder's stay in Singapore. It is used for specific purposes, such as assisting in investigations into labour complaints, work injury claims or salary claims, and for stateless persons that reside in Singapore.<sup>103</sup> However, holders of the Special Pass do not have work rights (with exceptions) and are generally expected to depart Singapore upon expiry of the Special Pass. In **Japan**, according to the Immigration Control and Refugee Recognition Act (Article 24), persons who agree to a prompt voluntary return to their home country and who have been issued with a Departure Order instead of a Deportation Order will not be detained, provided they leave within the prescribed time frame.

In the **Republic of Korea**, the Korean Immigration Service has been running an on-and-off voluntary departure programme for migrants with irregular status since 2004.<sup>104</sup> This programme is typically time-bound and targets migrant workers who have overstayed their visa or have violated the terms of their stay. By submitting a voluntary departure declaration either in-person at a local immigration office or online, they are exempted from a deportation order (which legally subjects them to detention) but instead are given 15-30 days to voluntarily depart the country. The latest example of this type of scheme was particular to COVID-19 contexts as the voluntary departure programme between October to December 2021 allowed migrants in an irregular situation to voluntarily declare their status and depart without immigration penalties if they had completed their COVID-19 vaccination.<sup>105</sup>

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<sup>103</sup> Singapore Immigration & Checkpoints Authority: [Special Pass Card](#)

<sup>104</sup> Korean Immigration Service, [Management of irregular foreigners](#) [Korean]

<sup>105</sup> Korea Ministry of Justice Press release, Nov 2021.

<https://www.moj.go.kr/bbs/moj/182/552664/artclView.do> [Korean]

## Promising practice

In **Australia**, Bridging Visas are transitory visas that allow the holder to gain temporary legal status for a fixed period of time, and to live in the community while their substantive visa is being assessed. There are different types of Bridging Visas with different eligibility requirements. Bridging Visa conditions can vary, however most provide the right to work and study, and some provide access to government-funded medical care or in some cases, access to the Status Resolution Support Services (SRSS) programme, though support under the SRSS has been significantly reduced in recent years and many people released from immigration detention have been left in situations of destitution in the community.<sup>106</sup>

In **Georgia**, if a person cannot be removed from the country on the grounds provided in the Law of Georgia on the Legal Status of Aliens and Stateless Persons, they should immediately be granted the right of temporary stay.<sup>107</sup>

In **Turkey**, according to the Law on Foreigners and International Protection Article 46, a Humanitarian Residence Permit with a maximum duration of one year at a time may be granted when non-nationals cannot be removed from Turkey, or their departure is not reasonable or possible.

In previous years, **Malaysia** has conferred a form of temporary legal status together with work rights and other entitlements to a very small number of refugees, such as the Bosnians, Acehnese, and Syrians. In 2016, the Syrian Migrants Temporary Placement Programme through which Syrians (whether in Malaysia already, or who were residing outside of Malaysia) were able to apply for a temporary legal status and if successful, are issued with the 'IMM13,' a form of government ID. Syrians holding this status can access education and healthcare. They are also able to apply for the right to work. This programme is administered by the Malaysian Department of Home Affairs, and while it has been a promising practice for eligible Syrians, it has not benefited other refugees or people seeking asylum in Malaysia.<sup>108</sup>

In **India**, the government in 2015 decided to allow religious minorities from Afghanistan, Bangladesh and Pakistan who entered India before 31 December 2014

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<sup>106</sup> Refugee Council of Australia, [How Cuts to Support for People Seeking Asylum Will Affect People, States and Local Communities](#), 26 Jan 2019. See also Refugee Council of Australia, [Status Resolution Support Services \(SRSS\)](#), 20 Nov 2021; Jesuit Refugee Service Australia, [Access to a Safety Net for All People Seeking Asylum in Australia](#), June 2021

<sup>107</sup> Ordinance No. 525 of 2014 on Approving the Procedures for Removing Aliens from Georgia, Article 10

<sup>108</sup> For further details of IMM13 permits and their usage in Malaysia, see Asylum Access and Host International, [Refugee Work Rights Report: Refugee Access to Fair and Lawful Work in Asia](#), 2019

to apply for a Long Term Visa (LTV).<sup>109</sup> This change in LTV policy provides a pathway to legalise certain groups within the undocumented population staying in the country.<sup>110</sup> Once granted, they are entitled to rights to seek for employment or study in any academic institution in India. While this policy change opened a door for a certain group of undocumented migrants and refugees to legalise their status in India, its issuance is reportedly arbitrary and restricted.<sup>111</sup>

In **Japan and the Republic of Korea**, Humanitarian Status is granted to people seeking asylum who are not recognised as refugees, but who are granted permission to stay in the country on humanitarian grounds. 'Humanitarian status holders' receive residence permits and generally have access to education, healthcare, and employment.

There are many examples of promising practice in relation to legal identity for trafficking survivors. For example, in the **Republic of Korea**, the government issues G-1 visas to non-national victims of crimes, including trafficking survivors, which allows the survivors to stay and work in the Republic of Korea for up to one year.<sup>112</sup> In **Georgia** the government grants a one-year renewable residence permit to trafficking survivors. Under this permit, trafficking survivors are also able to seek employment.<sup>113</sup> In **New Zealand**, trafficking survivors can first apply for a special Temporary Visa (Work Visas for Human Trafficking Victims), which is valid for one year. Where trafficking survivors cannot return home because they are in danger as a result of being trafficked or are at risk of being re-victimised or suffering significant social stigma and financial hardship, they can apply for a special Resident Visa which provides the right to live, work and study in New Zealand permanently.<sup>114</sup>

There has been commendable progress in several countries in relation to the protection of **stateless persons**. In **Turkey**, Article 50(1) of the Law on Foreigners and International Protection provides for stateless persons to be issued with a Stateless Person Identification Document, which entitles the holder the right to legally reside in Turkey. In **Tajikistan**, a 2020 Amnesty Law allows non-nationals and stateless persons irregularly residing in the country to regularise their stay by obtaining residence permits which will also enable them to apply for Tajik citizenship after three years; migrants with irregular status who are eligible for amnesty will no

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<sup>109</sup> India Ministry of Home Affairs, [Long Term Visas](#), 2015 (see Section 5)

<sup>110</sup> The Economic Times, [India to allow minorities from Pakistan, Bangladesh to stay without papers](#), Sept 2015

<sup>111</sup> Shanker and Vijayaraghavan, [Refugee Recognition Challenges in India](#), p. 26 (see n. 100)

<sup>112</sup> US Department of State, [Trafficking in Persons Report: South Korea](#), 2021

<sup>113</sup> US Department of State, [Trafficking in Persons Report: Georgia](#), 2020

<sup>114</sup> Immigration New Zealand, Operational Manual, [S4.15 Residence Category for Victims of People Trafficking](#)

longer be subject to immigration penalties.<sup>115</sup> In 2019, Kazakhstan amended its Code on Marriage and Family to ensure that all children born in the country are registered at birth and issued birth certificates, regardless of the legal status of their parents - an important protection against future statelessness.<sup>116</sup>

In **New Zealand**, migrant partners of a New Zealand citizen or permanent resident who have experienced family violence are able to apply for two special visa categories: a six-month Temporary Visa (Victims of Family Violence Work Visa) or a Special Resident Visa which provides a pathway to New Zealand citizenship.<sup>117</sup> Similarly in **Australia**, the Migration Regulations 1994 provide some women on temporary visas the opportunity to continue their applications for permanent residency where they have experienced family violence by a partner or spouse on whom their temporary visa is dependent.<sup>118</sup> The visas in both New Zealand and Australia however, are only available to a specific cohort of family violence survivors, rather than all survivors of family violence. Further details can be found in **Gender-Responsive Approaches to ATD** below.

#### **A. Regularisation Schemes or Amnesty Programmes**

Several countries utilise regularisation programmes or schemes that would allow individuals who would otherwise be at risk of arrest and immigration detention to regularise their status in the country. These tend to target specific groups of people in the country.

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<sup>115</sup> UNHCR, [UNHCR welcomes Tajikistan's new law tackling statelessness](#), Jan 2020

<sup>116</sup> UNHCR, [Kazakhstan Amends Laws to Ensure Universal Birth Registration and Prevent Childhood Statelessness](#), 26 Dec 2019

<sup>117</sup> Immigration New Zealand, Operational Manual, [S4.5 Residence Category for Victims of People Trafficking](#)

<sup>118</sup> Division 1.5 of the Migration Regulations 1994. See also Australia Department of Home Affairs, [Domestic and Family Violence and Your Visa](#)

## Promising practices

Between 2016 to 2018, a more comprehensive legal framework was established in **Thailand** to manage labour migration. The Thai government established the One Stop Service (OSS) and the Management Centre for Migrant Workers (MCMW) as a mechanism to legalise migrant workers with irregular status from Myanmar, Cambodia, Laos, and Vietnam. The role of both authorities is to record personal data, coordinate with the health sector for health examinations, and work with the Ministry of Interior (MOI) to issue legitimate residence permits and cooperate with the Ministry of Labour (MOL) to issue work permits. All these functions are known as the nationality verification (NV). During the period, 1,827,096 migrant workers came forward and completed their regularisation process.<sup>119</sup> These positive efforts continued in 2022, paving the way for migrants from the participating countries to legalise their stay and work in Thailand until 2023 (see **COVID-19 Related Developments** below).

In **Malaysia**, regularisation programmes (known as ‘recalibration’ programmes) have enabled migrants to depart the country without the use of immigration detention. The latest ‘recalibration programme’ commenced in December 2020 and has been extended to 30 June 2022, with 192,281 migrants in an irregular situation registered to return home voluntarily under the programme as of December 2021.<sup>120</sup> Under this latest programme, migrants were required to pay a RM500 compound fine and possess valid travel documents. While as a legal mechanism they have helped reduce the use of immigration detention, these programmes have had varying impact, with reports of many migrant workers being unable to access the schemes due to bureaucratic challenges or prohibitive costs.<sup>121</sup>

In **Maldives**, the Ministry of Economic Development has been running a regularisation scheme for migrant workers with irregular status in the Maldives<sup>122</sup> which may protect migrant workers from detention and deportation. There is no publicly available information on details regarding the process, but the regularisation programme allows migrants to change their employers in case the employer is responsible for the irregular status.<sup>123</sup> It allows the migrant workers to legally stay in the country for a certain period of time while looking for a new employer. In 2018, it was reported that only few migrants were able to benefit from this scheme due to the lack of awareness, insufficient rules, and the migrants’ distrust of authorities.<sup>124</sup> More recently, the UN Special Rapporteur on Torture positively noted the on-going regularisation initiative by the government for migrant workers after his visit to the Maldives in November 2019.<sup>125</sup>

In **New Zealand**, amnesties were previously granted in 1987, 1991 and again in 2000 for “well-settled overstayers.” These are defined as people who have been living in

New Zealand for five years or more, have New Zealand-born children and are married or in a de facto relationship of at least two years with a New Zealand citizen or resident.<sup>126</sup>

### ***B. Child-Sensitive Approaches to ATD for Children***

The GCM promotes existing international legal obligations in relation to the rights of children, including the requirement that the best interests of the child is a primary consideration in all situations concerning children in the context of international migration. In Objective 13(h), States have committed to “protect and respect the rights and best interests of the child at all times, regardless of 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 health care, and respect the right to family life and family unity, and by working to end the practice of child detention in the context of international migration.”

ATD, or alternative care arrangements, should not imply any kind of child or family deprivation of liberty and should be based on an ethic of care and protection, not enforcement.<sup>127</sup> In supporting unaccompanied and separated children, residential or institutional care should always be the last resort and only considered where family-based care arrangements are not possible, or where this is not in the best interests of the child.<sup>128</sup> Where used, residential or institutional care should be for the shortest time possible. Instead, alternative care arrangements such as kinship care, foster care, other forms of family-based or family-like care arrangements or supervised independent living arrangements should be prioritised.

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<sup>119</sup> TRIANGLE in ASEAN, [Quarterly Briefing Note: Thailand \(October - December 2021\)](#)

<sup>120</sup> Bernama, '[Undocumented Migrants Recalibration Scheme Extended to June 30](#)', 23 Dec 2021

<sup>121</sup> Joseph Trawicki Anderson, *Managing Labour Migration in Malaysia: Foreign Workers and the Challenges of 'Control' Beyond Liberal Democracies*, *Third World Quarterly*, 2021, 42:1, 86-104

<sup>122</sup> UN Human Rights Council, [Visit to Maldives : Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Nils Melzer](#), 2020

<sup>123</sup> IOM, [Migration in Maldives: A Country Profile](#), 2018

<sup>124</sup> Ibid

<sup>125</sup> UN Human Rights Council, [Visit to Maldives : Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Nils Melzer](#), 2020

<sup>126</sup> Ministry of Business, Innovation & Employment, [Submission by the Ministry of Business, Innovation and Employment on the Petition of Anu Kaloti for the Migrant Workers Association](#), 3 Aug 2021

<sup>127</sup> See UN General Assembly, [Guidelines for the Alternative Care of Children](#), UN Doc A/RES/64/142, 24 Feb 2010; CMW and CRC, Joint General Comment No. 4 (2017), (see n. 9)

<sup>128</sup> UN General Assembly, [Guidelines for the Alternative Care of Children](#), UN Doc A/RES/64/142, 24 Feb 2010; see also UNHCR, [Child Protection Issue Brief: Alternative Care](#), Jan 2014

As noted previously (see **Immigration Detention of Children**), the detention of children remains prevalent in a number of the countries surveyed, with only Turkey prohibiting the immigration detention of a specific group of children, i.e., unaccompanied children below the age of 16 seeking international protection. A small number of countries restrict or limit the use of immigration detention by requiring that for children, this is used as a measure of last resort. Some countries do not detain children in practice, even though a prohibition or restriction on detention is not codified in law or (publicly available) policy.

However, as previously discussed, there has also been important progress in the region towards ending child immigration detention, with several governments working closely with civil society, international organisations, and other stakeholders to implement community-based ATD. The ASEAN Declaration on the Rights of the Child in the Context of Migration and its accompanying Regional Plan of Action is an example of the growing commitment of governments towards strengthening the protection of children and their families in the context of migration, including the development of ATD.



## Promising Practice

In **Thailand**, the *Memorandum of Understanding on the Determination of Measures and Approaches Alternatives to Detention of Children in Immigration Detention Centres* ("the MOU-ATD") was signed by seven government agencies.<sup>129</sup> The MOU-ATD states that children should not be detained, unless there is an "absolute necessity," and that detention be used as a measure of last resort only and for the shortest time possible. The best interests of the child must inform decision-making, and the child's opinion must be taken into consideration. It also prioritises family-based care, with shelters as a measure of last resort and for the shortest time possible. A Multi-Disciplinary Working Group (MWG) established under the standard operating procedures (SOP) of the ATD-MOU is required to assess the child's best interests, develop an individual care plan for each child and coordinate with relevant service providers to implement the care plan. The Working Group is composed of Immigration officials, competent officers under the Child Protection Act of 2003, and representatives from UNHCR, UNICEF and IOM. Registered NGOs work in partnership with the Ministry of Social Development and Human Security (Department of Children and Youth) to support screening and assessment processes.

Children released under the MOU-ATD are supported by two NGOs, Step Ahead and Host International Thailand, who assist in reporting requirements and providing case management support in the community. While in the community, children have access to education under Thailand's 1999 Education for all Policy and 2005 Cabinet Resolution on Education for Unregistered Persons which provide for all children to access 15 years of free education, regardless of their legal status or nationality. Children and their families, however, are not able to access public healthcare. There are also some important gaps in the MOU-ATD, including: (1) children must be arrested and detained before being referred under the protective mechanisms of the MOU-ATD - it does not prevent children from being arrested and detained in the first instance (2) mothers must pay high amounts of bail in order to be released with children (3) fathers are not typically considered for release under the MOU-ATD, resulting in family separation and pressure on mothers who find themselves as single heads of the household (4) children who are released can be re-detained when they turn 18 (5) migrant children from Cambodia, Lao PDR and Myanmar are not referred to the MOU-ATD as they are prioritised for deportation. The Department of Children and Youth is currently leading a government initiative to develop a monitoring, learning and evaluation framework to assess progress and areas for development under the MOU-ATD; this is being done with technical support from IDC and UNICEF.

In **Indonesia**, the detention of refugee and asylum-seeking children has effectively ceased (see **Immigration Detention Trends in the Asia-Pacific Region**). Although there is no formal guardianship system in Indonesia for children who are refugees or seeking asylum, IOM and UNHCR have established an informal guardianship/kinship mechanism through which adult refugees from the same community provide protection until other legal guardianship processes are determined, based on the child's best interests. Children who are with their families live in either IOM housing, in temporary government shelters, or independently in the community with some support from UNHCR and/or NGOs. Unaccompanied and separated children live in either IOM housing, or in group homes run by UNHCR and its implementing partners, or they live independently in the community. There is still a heavy reliance on institutional care in Indonesia for children.

In **Malaysia**, SUKA Society, a Malaysian child rights NGO, implements an ATD programme for unaccompanied and separated children. Established in 2015, **the Community Placement and Case Management (CPCM) Programme** runs independently of government and uses a holistic case management approach centred around child well-being, safety, permanency, and case resolution. Children are placed in safe and stable housing, in kinship/informal foster care among families from their communities. SUKA offers a continuum of services to support children in their programme to achieve a durable solution, having regard to their best interests. The SUKA CPCM programme was independently evaluated in 2019 and was shown to have significantly improved the overall wellbeing of children in the programme, while costing 90% less than immigration detention. SUKA Society also facilitates access to education, healthcare, and legal assistance though the costs of this are borne by the organisation or other civil society groups to whom they refer the children for support. Refugee, asylum seeking, and migrant children are only able to access the public healthcare system if they pay non-national rates, and have no access to the national schools, with most attending learning centres established by refugee communities or NGOs. In April 2020, the Malaysian Cabinet approved a small-scale pilot programme for the release of unaccompanied children from immigration detention centres. The pilot officially started in February 2022 and envisages the release of five children at any one time from detention into the care of SUKA Society and Yayasan Chow Kit, who will provide case management support and temporary shelter. As of March 2022 however, no children have been released from detention.

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<sup>129</sup> Signed by the Royal Thai Police, the Ministry of Social Development and Human Security, the Ministry of Foreign Affairs, Ministry of Interior, Ministry of Public Health, Ministry of Education, and Ministry of Labour

In the **Republic of Korea**, the Ministerial policy of the Ministry of Justice provides protection against detention and deportation for undocumented children who are residing in South Korea and attending school. In the past, this policy did not grant legal status to the children, nor provided a pathway to legalisation; instead, it only functioned as a temporary suspension of the deportation order. This meant that the children were still subjected to detention and deportation when they no longer attended school or after they graduated, regardless of how long they resided in South Korea.<sup>130</sup> However a newly enforced policy, effective from 1 February 2022 until March 2025, grants permission to stay (a D-4 or G-1 visa for a temporary stay with opportunities to transfer to other longer term visas and naturalisation) to undocumented children who are either currently in school or have graduated from school.<sup>131</sup> Their parents are also provided with a temporary permission to stay and are able to seek employment for the purpose of supporting their children until their children reach adulthood.<sup>132</sup>

In **Australia**, the law provides for the detention of children, but also states that children should only be detained as a measure of last resort, pursuant to section 4AA of the Migration Act 1958. The government has gradually phased out the detention of children in Australia's onshore detention facilities; in the past, thousands of children were detained but in recent years, the number of detained children has significantly decreased. According to statistics from the Australian Department of Home Affairs, as of 31 December 2021 there were less than five children in immigration detention.<sup>133</sup> However, children and their families have been released from immigration detention into the community with increasingly limited support, often into situations of significant vulnerability. Also, in Australia, there are some positive examples in the context of age assessment processes. Interviews are conducted by two trained Age Determination Assessors with the assistance of an interpreter and an Independent Observer. Evidence collected includes identity documents, employment/education history, family composition, level of social independence, observations of the person's behaviour and demeanour and physical appearance.

In **Azerbaijan**, the Ministry of Social Protection is responsible for conducting best interest assessments and determinations for unaccompanied children. There is a Working Group on unaccompanied and separated children – UNHCR is a member, as are several government ministries. It is worth highlighting that it is the Ministry of

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<sup>130</sup> South Korean NGO Coalition, [Republic of Korea NGO Alternative Report to the UN Committee on the Elimination of Racial Discrimination](#), Nov 2019

<sup>131</sup> Ministry of Justice, [Press release](#), Jan 2022[Korean]

<sup>132</sup> Ibid

<sup>133</sup> Department of Home Affairs, [Immigration Detention and Community Statistics Summary](#), 31 Dec 2021.

Social Protection, not the line ministry of a security agency (as is the case in Australia for example), that is responsible for best interest assessments. The composition of the Working Group also reflects the whole-of-government approach.

Despite this significant progress in several countries, the use of ATD for children has nevertheless been limited in the region. Where used, there are several critical gaps:

1. Most ATD are centred on **immigration enforcement**, instead of ensuring that the **best interests of the child** are centred and fully taken into consideration in all decisions impacting them.<sup>134</sup> Some national laws or policies explicitly require that authorities, in responding to children in the context of migration, ensure that the best interests of the child are the primary consideration in all actions concerning them. In the majority of countries surveyed however, it is unclear the extent to which best interest assessments (BIAs), or determinations (BIDs) are conducted in practice. While there is more information on BIAs or BIDs in the context of children seeking asylum - particularly where these are conducted by UNHCR, with the support of child rights NGOs (such as is the case in Malaysia, Indonesia, Pakistan, Tajikistan, and Thailand), there is limited evidence of this being done for migrant children who are in an irregular status.
2. The **limited use of community-based, alternative care arrangements**. As noted earlier, in some countries where unaccompanied children are not placed in immigration detention facilities, they are nevertheless sent to institutional or even correctional facilities where they can be deprived of their liberty. There is an over-reliance on the use of institutions in the region, despite clear evidence showing that institutional care is detrimental to children's growth and development regardless of their age.<sup>135</sup> There are few examples of community-based measures such as foster or kinship care or supported independent living arrangements for older children.
3. The **right to family life and family unity** is also not consistently upheld, with children separated from their parents in a number of countries where restrictions on child immigration detention do not extend to the child's entire

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<sup>134</sup>On the fundamental importance of the best interests of the child in the context of immigration laws, policies and practices, see paras 27-33 of the [Joint General Comment No. 3 \(2017\) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 \(2017\) of the Committee on the Rights of the Child on the General Principles Regarding the Human Rights of Children in the Context of International Migration](#), UN Doc CMW/C/GC/3-CRC/C/GC/22, 16 Nov 2017.

<sup>135</sup> See for example, Williamson, J. & Aaron Greenburg for Better Care Network/UNICEF, [Families not Orphanages](#), 2010

family. This is the case for example in **Japan**, where ATD in the form of provisional release is often granted for children and their mothers, while fathers are often still detained. Sometimes both parents are detained, and children are sent to child welfare facilities. Children can also be separated from their fathers in **Thailand**, as described above.

4. There is very little information available regarding **age assessment procedures** and methods for migrant children across the region. In countries where there is known information about age assessment of migrant children, procedures are not holistic, and do not appear to be done with the child's best interests in mind. In **Turkey** for example, according to the guidelines of the State Agency for Forensic Medicine, for the purpose of age assessment examinations, physical examinations, and radiography data of the person (including of elbows, wrists, hands, shoulders, pelvis, and teeth) are listed as primary sources of evaluation. No reference is made to any psycho-social assessment of the child. This is even though Law on Foreigners and International Protection (Article 123) provides for the need to conduct the age determination that includes both physical and psychological assessment. **Azerbaijan** uses sexual maturity observation as a part of the age assessment methods; this practice is intrusive, degrading and potentially traumatising.

### **C. Gender-Responsive Approaches to ATD**

Across the region, laws and policies pertaining to the use of **immigration detention** do not take a gender-responsive approach. As noted earlier (see **Individual Screening and Assessment, including for Vulnerabilities**) there is little individual assessment of whether immigration detention is necessary, reasonable, and proportionate in the individual case; this includes considerations of gender diversity and the inherent and unique risks that women, girls, men, boys, and lesbian, gay, bisexual, transgender, and intersex communities face in detention.

While in some countries, the detention of specific groups of women is prohibited, this is limited to instances where women are pregnant, or where they are mothers to young children. In **Hong Kong** for example, pregnant women with no clear prospects of imminent removal cannot be detained.<sup>136</sup> In **Indonesia**, refugees and people seeking asylum are now exempted by virtue of an internal government circular (see **Immigration Detention Trends in the Asia-Pacific Region**), despite their irregular status in the country. However, detention of refugees and people seeking asylum is still legally permissible, and laws and policies provide that women who are pregnant can be placed outside of detention, to facilitate special care by medical personnel in

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<sup>136</sup> Hong Kong Policy on Exercise of Detention Powers Conferred by Section 32 of the Immigration Ordinance (Cap. 115) 2008.

accordance with their needs.<sup>137</sup> In **Kazakhstan**, pregnant women and women with children under the age of 14 cannot be subject to administrative detention.<sup>138</sup>

With regard to **ATD**, a gender-specific and gender-sensitive approach is similarly lacking. Where ATD references women and girls, they are framed within a lens of vulnerability rather than agency, and often referred to in the same category as children and other vulnerable groups.

In **Turkey** for example, the Law on Foreigners and International Protection (LFIP) provides that pregnant women and single mothers are included within the category of ‘persons with special needs;’ they are then entitled to be “given priority” in relation to their claims for international protection under the LFIP.<sup>139</sup> This includes the arranging of reception and accommodation, with dedicated reception facilities for “special needs” applicants including single women, victims of gender-based violence, torture or physical violence.<sup>140</sup>

Some countries have in place requirements that immigration screening interviews are conducted by a person of the same gender as the applicant. For example, in the **Republic of Korea**, where requested by a refugee applicant, the refugee status screening interview should be carried out by a person of the same gender as the applicant.<sup>141</sup>

In several countries, there are some forms of support for all migrant survivors of **sexual and gender-based violence (SGBV)** regardless of their status. In **Azerbaijan** for example, the Committee on Family, Women and Children carries the main responsibility for SGBV response, with both state-run and NGO shelters for SGBV survivors. In **Turkey**, SGBV survivors can be referred to women’s shelters run by the Ministry of Family and Social Services, and specific provision is made in the LIP for the support of survivors of torture, sexual assault, or other serious psychological, physical or sexual violence.<sup>142</sup> In some countries while laws and policies require that SGBV assistance is open to all persons, migrants with irregular status and persons seeking humanitarian protection can face barriers in accessing these services because of their **lack of a legal status** in the country which leads to fear and reluctance of reporting violence and abuse. Many survivors are faced with situations where they

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<sup>137</sup> Indonesia Law No. 6 2011 on Immigration, Article 4; Directorate General of Immigration Regulation No. IMI-0352.GR.02.07 (2016) on The Handling Illegal Migrant Claiming to be Asylum Seeker or Refugee, and the Presidential Regulation No. 125 of 2016 on the Treatment of Refugees and Asylum Seekers in Indonesia. These provide that persons who are pregnant, have disabilities, or who are children, or the elderly can, with the approval of the Ministry of Law and Human Rights, be placed outside of detention/shelters.

<sup>138</sup> Code of the Republic of Kazakhstan “On Administrative Infractions” 2014, Article 50.

<sup>139</sup> Turkey Law on Foreigners and International Protection, Article 67

<sup>140</sup> Law on Foreigners and International Protection, Article 95

<sup>141</sup> Republic of Korea, Refugee Act, Article 8(2)

<sup>142</sup> Turkey Law on Foreigners and International Protection, Article 67(2)

must choose between enduring violence or potential detention and deportation. In Malaysia, SGBV survivors are deterred from accessing assistance at the government's One Stop Crisis Centres due to the requirement that they must first lodge a police report; there have also been reports of SGBV survivors being reported to immigration authorities for failing to pay for medical treatment for harm suffered as a result of SGBV.<sup>143</sup>

Many countries also **lack specific policies or procedures** that consider the specific needs and circumstances of SGBV survivors who are undocumented migrants and persons seeking humanitarian protection. This includes failing to provide sufficient and high-quality translators, an absence of training for staff, and limited outreach among migrant communities to inform them of their rights and the availability of these services. This is the case, for example, in the **Maldives** where there are no specific standard operating procedures to assist and attend to migrant workers who experience different forms of violence, and a lack of translators as well as low awareness among female migrant workers of their rights and the protections they are entitled to under Maldivian law.<sup>144</sup>

In other countries there are laws, policies and programmes that specifically provide support for migrant SGBV survivors. For example, in the **Republic of Korea**, an Emergency Support Centre for Migrant Women provides services to migrant women who are survivors of domestic violence. Services are provided in 13 different languages.<sup>145</sup> The government has established the Danuri Helpline to provide a one-stop emergency counselling service that links migrants to emergency assistance including government-run shelters for migrant women who are family violence survivors, as well as to legal advisers or professional counsellors.<sup>146</sup>

As described earlier (see **Legal Identity and Adequate Documentation**) several countries provide a specific legal status to SGBV survivors, though there are significant gaps. In **New Zealand**, there are two visa categories for migrants who are survivors of family violence: the 'temporary victims of family violence visa' and the 'victims of family violence residence visa.' However, there are multiple barriers that have prevented migrants from accessing the visas, including the complexity and

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<sup>143</sup> Due to a directive issued by the Malaysian government that requires public hospitals to refer to immigration authorities undocumented migrants and people seeking asylum who have not yet registered with UNHCR. See Malaysia Ministry of Health, [Circular 10/2001](#), (see n.78). See also Women's Aid Organisation, [Sexual and Gender-Based Violence Among Refugee Communities in Malaysia](#), Jan 2021; Asylum Access Malaysia, [Independent Shadow Report to the Committee on the Convention on the Elimination of Discrimination against All Women \(CEDAW\): Refugee and Asylum-Seeking Women](#), Jan 2018

<sup>144</sup> Hope for Women, [Submission to the Universal Periodic Review of the Maldives](#), May 2020 (36th Session), 3 Oct 2019

<sup>145</sup> Republic of Korea, [National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21](#), UN Document A/HRC/WG.6/28/KOR/1, 4 Sept 2017

<sup>146</sup> More on the Danuri Helpline can be found [here](#)

length of the visa process, lack of legal aid and support, and absence of specialised family violence training for Immigration New Zealand staff. There is also a requirement that the perpetrator of violence are New Zealand citizens or residents (survivors of abuse by a perpetrator on a temporary visa is ineligible).<sup>147</sup>

In **Australia**, the Migration Regulations 1994 provide some migrants on temporary visas the opportunity to continue their applications for permanent residency where they have experienced family violence by a partner or spouse on whom their temporary visa is dependent.<sup>148</sup> However, there are key gaps in migrants being able to access these visas.<sup>149</sup> For example, they are only available to migrants who are on temporary partner visas, who would have been eligible for permanent residency had family violence not caused the relationship to end. They do not cover people on other temporary visas that are not attached to a sponsoring partner visa, such as people on bridging visas, including those who are seeking humanitarian protection. Violence that is perpetrated by family members other than a sponsoring partner is not recognised.

## 5. COVID-19 Related Developments

During 2020 and 2021, as governments responded to the pandemic, there have been both promising practices, as well as significant challenges across the region. On the one hand, there have been reports of promising practices being used as a measure to mitigate the spread of COVID-19. This included releases from immigration detention, suspension of new detention orders and deportation proceedings. Other measures put in place included amnesty measures, extension of stay and extension of work permits for migrant workers and other non-citizens in vulnerable situations whose visas, stay permits or/and work permits had expired or were going to expire during the pandemic. Many governments also made COVID-19 vaccines and treatment available to all persons, regardless of their migration status, and in some cases established a firewall between health and immigration authorities.

For example, in **Japan**, in early 2020 following the release by the Ministry of Justice of an official guideline to address the risk of COVID-19 outbreaks in immigration detention, the Immigration Services Agency was encouraged to release detained people via provisional release.<sup>150</sup> At the end of 2019, there were 1,054 people detained

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<sup>147</sup> Ministry of Business, Innovation & Employment, [Recent Migrant Victims of Family Violence Project 2019: Final Report](#), 2020

<sup>148</sup> Division 1.5 of the Migration Regulations 1994. See also Australia Department of Home Affairs, [Domestic and Family Violence and Your Visa](#)

<sup>149</sup> See for example National Advocacy Group on Women on Temporary Visas Experiencing Violence, [Blueprint for Reform: Removing Barriers to Safety for Victims/Survivors of Domestic and Family Violence who are on Temporary Visas](#), 2019; Segrave, M., & Pfitzner, N. [Family violence and temporary visa holders during COVID-19](#), Monash Gender and Family Violence Prevention Centre, Monash University, 2020

<sup>150</sup> Nippon.com, [Japan to Promote Provisional Release for Foreign Detainees](#), May 2020



in immigration detention facilities; this number decreased to 346 by the end of December 2020, and to 141 by September 2021.<sup>151</sup> 3,013 people detained in immigration detention were granted provisional release in 2020. This was more than a 300% increase from 2019.<sup>152</sup>

At the outset of the pandemic, **the Republic of Korea** suspended immigration operations to identify migrants without legal status and provided all migrants, regardless of their legal status, with free testing and treatment for COVID-19.<sup>153</sup> The Ministry of Justice initiated the temporary release of people from immigration detention in February 2022 to mitigate a spike in COVID-19 positive cases in detention facilities.<sup>154</sup>

In **Georgia**, a full moratorium on new immigration detention orders was instituted during the state of emergency that lasted from 21 March to 22 May 2020; as a result, there were only three remaining people detained in the country's only detention centre in June 2021. The government also suspended deportation until flight restrictions were lifted.<sup>155</sup>

In **New Zealand**, all but one person seeking asylum was released from the Mount Eden Prison facility into a community hostel run by the Asylum Seeker Support Trust, and all new arrivals of people seeking asylum who would have been subject to detention were also sent to this hostel.<sup>156</sup> The government provided free public healthcare screening, vaccines, and treatment for COVID-19 to everyone in New Zealand regardless of their immigration status, including those who had overstayed their visas and other migrants with irregular status who would be liable for deportation; a firewall was also established between health and immigration services.<sup>157</sup> In 2021, a special one-off residence visa was granted to everyone who was in New Zealand on a work visa and serving the country during the COVID pandemic.<sup>158</sup>

Releases from immigration detention were also reported in the following countries, as well as in some cases, a moratorium on immigration enforcement procedures and/or an automatic extension of temporary stay permits:

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<sup>151</sup> Immigration Services Agency of Japan, [Statistics on immigration detainees from 2016 to 2021](#), (see n.43)

<sup>152</sup> Immigration Services Agency of Japan, [2021 Immigration Control and Residency Management](#), Apr 2022, p.63

<sup>153</sup> The Korean Herald, [Seoul to plug undocumented migrants loophole in COVID-19 efforts](#), Apr 2020

<sup>154</sup> Hankyoreh, [\[단독\] 화성외국인보호소 확진자 급증하자...무작정 “나가라”](#), Feb 2022 [Korean]

<sup>155</sup> Global Detention Project, [Georgia Immigration Detention Data Profile](#), 2020

<sup>156</sup> Information provided by the Asylum Seeker Support Trust, New Zealand, Mar 2022

<sup>157</sup> Report of the Petitions Committee, [Petition of Makahokovalu Pailate for Pacific Leadership Forum: Provide Pathways for Overstayers to Gain Permanent Residency in NZ on Compassion](#), Mar 2022

<sup>158</sup> Hon Kris Faafoi, [One-Off Residence Pathway Provides Certainty to Migrants and Business](#), 30 Sept 2021

- In **India**, there have been reports of sporadic releases of people from places of detention to address overcrowding and reduce the risk of COVID-19 in detention facilities. For example, in April 2020, the Supreme Court of India ordered the release of migrants with irregular status in Assam state and relaxed the conditions for their release; this however has not led to a systematic release across the country or a moratorium on detention of undocumented migrants.<sup>159</sup> In March 2021, the Supreme Court rejected the extension of bail for those who were previously released, citing that the '[COVID-19] situation is improving.'<sup>160</sup>
- In **Pakistan** authorities reportedly took steps to mitigate the impact of the virus on the country's prison population by releasing people, which included non-citizens detained under the 1946 Foreigners Act.<sup>161</sup>
- In **Turkey**, there were also significant releases from removal centres to avoid overcrowding as well as in recognition of the fact that travel restrictions made the return of people impossible.<sup>162</sup> There was also more frequent use of some ATD in 2020, including reporting and placement in residential housing.<sup>163</sup>
- In **Azerbaijan**, suspension of detention and deportation was reported in 2020 for persons who had been refused refugee status or for migrant workers; temporary stay permits were automatically extended without the need for administrative procedures or documentation.<sup>164</sup>
- In **Kazakhstan**, in May 2020, the government adopted a resolution that allowed the exit, without administrative penalties, of non-citizens with expired or expiring identification documents permits (visas, registration cards, work or residence permits); this was initially for the period up to January 2021 but was subsequently extended to June 2021.<sup>165</sup> A moratorium on new detention orders related to violations of migration legislation was introduced in June 2020, and deportation proceedings temporarily ceased. Documents that had expired or expired within a specified period were recognized as valid, and the period of authorised stay for non-nationals was extended. As of November 2020, following these measures, the legal status of 146, 970 people was regulated, and 149, 217 others freely left Kazakhstan.<sup>166</sup>
- In **Thailand**, migrant workers from Myanmar, Cambodia, and Laos whose work permits were expiring but who were unable to return home due to COVID-19

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<sup>159</sup> Bar and Bench, [A crisis in the making: from de-congestion to re-congestion in prisons](#), Mar 2021

<sup>160</sup> Ibid

<sup>161</sup> See for example, Global Detention Project, [Pakistan: COVID-19 Updates](#), 8 Apr 2020

<sup>162</sup> Asylum Information Database, [Country Report: Turkey](#), May 2021

<sup>163</sup> Ibid

<sup>164</sup> Government of Azerbaijan, [The Regional Review Report on Implementation of the Global Compact for Safe, Orderly and Regular Migration](#)

<sup>165</sup> Eurasian Economic Commission, [Temporary Measures in the Field of Migration Provide an Opportunity for Citizens of Member States to Stay in the Territories of the EAEU Member States \[Kazak\]](#)

<sup>166</sup> Government of Kazakhstan, [Overview of the National Progress of Implementation of the Global Compact on Safe, Orderly and Regular Migration](#)

restrictions were able to extend their permits.<sup>167</sup> Work permits were extended in the first instance until 31 March 2022, and the Thai Cabinet on 15 March 2022, recently updated this to extend work permits for another two years until March 2024, subject to the validity of the migrant workers' travel documents.<sup>168</sup> However, NGOs reported that the fees associated with renewing these permits as well as other barriers in applying were likely to have deterred some workers from applying for the extension. Subsequently in September 2021, the Thai government also enacted changes allowing migrant workers with irregular status from Myanmar, Cambodia, and Laos to work legally for 2 years; migrants were required to register online, already have an employer, and undergo health checks at a cost of THB 7,200.<sup>169</sup>

- In the **Philippines**, the government also provided a 6-month grace period for people to file applications for renewal or extension of their visas, and temporarily suspended Orders to Leave for foreign nationals who overstayed their visas, though they were still required to pay penalties for overstay.<sup>170</sup>
- In **Australia**, a 'Pandemic event visa' was created for certain categories of migrants whose work visas were expiring in 90 days or less, or that had expired for 28 days or less at the time of application. This initially provided visa holders with the right to stay and work for up to 12 months in the agriculture, food processing, health care, aged care, disability care, childcare, and tourist and hospitality, and up to six months in any other sector. In March 2022, this was extended to cover all sectors.<sup>171</sup>

However, despite the large numbers of people released from detention into the community, in most cases this was done with **little to no government support** for people to live safely and securely in the community. Instead, civil society organisations, refugee and migrant communities stepped in to provide shelter, food, and other support.

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<sup>167</sup>Thai PBS World, [Cabinet Approves Two-Year Extension for Legal Workers from Neighbouring Countries](#), 15 Mar 2020

<sup>168</sup>Ibid

<sup>169</sup> Thailand Ministry of Labour, [Confirmation of the Cabinet Approval on Management of the Work of Foreigners of Three Nationalities \(Cambodia, Laos and Myanmar\) to Support the Control and Prevention of the Spread of the Coronavirus Disease 2019](#), 23 Sept 2021 [Thai]; Thailand Ministry of Labour, [Migrant Workers of Three Nationalities under Exemption Criteria Following Cabinet's Resolution Can Register Online Starting Today](#), 16 Jan 2021

<sup>170</sup> Philippines Bureau of Immigration, ['Press Release: BI to Decongest Alien Detention Center during COVID-19 Outbreak'](#), 22 Apr 2020; Bureau of Immigration, [Operations Order No. JHM-2021-002, Granting of 6 Months Grace Period From Expiry of Visa to File Extension/Renewal or Amendment of Visa Applications](#), 7 Jul 2021; Bureau of Immigration, [Operations Order No. JHM-2021-005, Temporary Suspension of the Order to Leave Under Immigration Memorandum Circular No. SBM-2013-003 During COVID-19 Pandemic](#), 7 Sept 2021

<sup>171</sup>Australia Department of Home Affairs, [Temporary Activity Visa \(Subclass 408\), Australian Government Endorsed Events \(COVID-19 Pandemic Event\)](#)

There were also significant challenges reported in several countries where little was done to reduce the COVID-19 related risks faced by people in immigration detention. In **Malaysia** for example, large-scale immigration raids, arrests and detention continued during the pandemic, including of vulnerable groups. This happened despite outbreaks of COVID-19 in numerous immigration detention facilities and several reported deaths.<sup>172</sup> Similarly in **India**, authorities also continued to arrest and detain individuals with irregular status. In March 2021, an estimated 170 Rohingya refugees were arrested and subsequently detained in a holding centre. Despite several of them holding UNHCR cards, they were informed that they will be deported to Myanmar.<sup>173</sup> In April 2021, the Supreme Court of India directed the Indian government to follow the prescribed procedure for their deportation.<sup>174</sup> In early 2022, the Indian government reportedly began to deport Rohingya refugees to Myanmar.<sup>175</sup> **Australia** increased the numbers of people detained by nearly 12% in the six months following the declaration of the COVID-19 pandemic in March 2020.<sup>176</sup> Although from December 2020, there was a growing number of people released on bridging visas into the community from hotels that had been designated as 'alternative places of detention,' it was unclear if the reasons for these releases were linked to the COVID-19 pandemic. Additionally, many people on bridging visas did not have access to government support packages offered during the pandemic. With no ability to work and being ineligible for COVID support packages, many people were left in situations of destitution, relying on NGOs and communities who had to bear the costs of food, accommodation, and counselling.

In many countries, immigration detention facilities were closed off to visitors, service providers and monitoring bodies. In **the Republic of Korea** for example, all detention visits were halted, and the mobility of people detained was minimised.<sup>177</sup> In **Hong Kong**, detention visits by family and friends were suspended on multiple occasions and as recently as February 2022.<sup>178</sup> In some countries, prompt deportation was considered as one of the measures to decongest the detention population and remove people with high health risks from the facility, instead of releasing them into the community. This was the case for example in the Philippines, Maldives, India, Malaysia, and the Republic of Korea.

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<sup>172</sup> See for example Human Rights Watch, Malaysia: [Raids on Migrants Hinder Vaccine Access: Policies Undermine Government's Calls for Global Vaccine Equity](#), 30 Jun 2017; Code Blue, [Hamzah: 0.13% COVID-19 Death Rate in Immigration Detention](#), 20 Sept 2021

<sup>173</sup> The Guardian, [India detains Rohingya refugees and threatens to deport them to Myanmar](#), Mar 2021

<sup>174</sup> Reuters, [India's top court paves way for Rohingya deportations to Myanmar](#), Apr 2021

<sup>175</sup> The Diplomat, [India Begins Deporting Rohingya Refugees – The Diplomat](#), Apr 2022

<sup>176</sup> Australian Human Rights Commission, [Management of COVID-19 Risks in Immigration Detention](#), Jun 2021

<sup>177</sup> Global Detention Project, [COVID-19 Updates: Republic of Korea](#), Apr 2020

<sup>178</sup> Hong Kong Immigration Department, [Further Suspension of Social Visits to Castle Peak Bay Immigration Centre and Ma Tau Kok Detention Centre of Immigration Department in Light of Epidemic Development](#), 11 Feb 2020; Hong Kong Immigration Department, [Suspension of Official and Social Visits at Ma Tau Kok Detention Centre of Immigration Department](#), 28 Feb 2022

## 6. Recommendations to States

The following recommendations are proposed for consideration by States in the Asia-Pacific, in partnership with all relevant stakeholders, to support implementation of the GCM, and in particular, Objective 13:

- Ensure that there are accessible regular pathways for undocumented migrants to attain a legal identity and adequate documentation so they can live safely and with access to fundamental rights and services.
- End the immigration detention of all children and ensure that migrant children are integrated into mainstream child protection systems and can access protection, education, health, justice, and social protection systems. The best interests of the child must be a primary consideration in all policies and practices in the context of migration, regardless of the child's status.
- Ensure that ATD, or alternative care arrangements, do not result in any child or family deprivation of liberty and are based on an ethic of care and protection, not enforcement. In supporting unaccompanied and separated children, residential or institutional care should always be the last resort and only considered where family-based care arrangements are not possible, or where this is not in the best interests of the child.
- Pilot and scale up rights-based and case management-based alternatives to detention that provide holistic, individualised support to people as they work to resolve their cases in the community. Where possible, partnerships should be established with civil society organisations and grassroots groups in order to ensure that case management provision is independent and reflects the needs of migrant communities.
- Establish screening, assessment, and referral mechanisms to enable regular screening of individual vulnerabilities, such as those related to age, gender, disability, health status, sexual orientation, and other protection needs. Ensure screening is used to determine if immigration detention is necessary, reasonable, and proportionate, and what placement options and ongoing support are needed to address vulnerabilities that are identified.
- Ensure that efforts to reduce and ultimately end immigration detention and implement ATD respond to the diverse and intersecting identities of people on the move, including by ensuring that they are gender-sensitive and gender-responsive. All policies relating to migration should recognise and support the agency and leadership of migrant women, girls, and gender-diverse people.
- In line with Objective 1 of the GCM, improve and invest in the collection, analysis, and dissemination of accurate, reliable, comparable data, disaggregated by sex, age, sexual orientation, disability, migration status and other characteristics relevant in national contexts, while upholding the right to

privacy under international human rights law and protecting personal data. This should include data on the numbers of people subject to immigration detention, which should be regularly disseminated to the public.

- Leverage and divert funds, including foreign aid, to non-custodial rights-based solutions rather than immigration detention.
- Avoid the use of alternative forms of detention – including use of certain types of technology, as well as camps and protection facilities – that still deprive people of their liberty.
- Engage in peer learning, to draw learning and ideas from practices in the region and internationally.
- Work closely with civil society organisations, grassroots groups, including leaders with lived experience of detention, local authorities, and UN agencies in order to further whole-of-society approaches to reducing and ending immigration detention and ensure coordination between government departments to put in place whole-of-government approaches to migration governance that respect migrants' rights.
- Where immigration detention is used, ensure it is in line with international legal standards, is necessary, reasonable, and proportionate, and not used arbitrarily. Repeal and reform laws that criminalise irregular migration.
- Ensure regular, independent, and impartial monitoring of places of immigration detention, with no restricted areas. Establish monitoring and accountability mechanisms for both places of immigration detention as well as the implementation of ATD and generate systematic reporting mechanisms. This can be achieved through effective cooperation between detention authorities and other stakeholders, such as national human rights institutions, parliamentarians, civil society, academia, and international organisations.
- Ultimately, take steps to end the use of immigration detention as a tool of migration governance, and explore other options to ensure that people can resolve their cases in the community with access to their rights and to the support and services they require.