

Alternatives to immigration Detention in Contexts with Transit Migration

**International
Detention Coalition**
Rights and dignity for all who migrate



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Presentation

This briefing paper was written to provide an overview of practical examples and recent developments in the field of alternatives to detention (ATD) in contexts with transit migration, in order to highlight promising practice and encourage further progress in this area. It aims to inspire and embolden governments, local authorities, international organisations, civil society and community actors and other stakeholders, with steps they can take to move away from the use of immigration detention.

About International Detention Coalition (IDC)

IDC is a powerful global network of organisations, groups, individuals, as well as representatives of communities impacted by immigration detention, based in over 75 countries. IDC members have a wide range of specialisations related to immigration detention and alternatives to detention, including academia, law, research, policy, direct service, advocacy, and community organising.

IDC staff work nationally and regionally in Africa, the Americas, Asia Pacific, Europe, the Middle East and North Africa, and at the global level. Staff coordinate with members and partners on advocacy, research, coalition and capacity building, as well as create opportunities for national, regional and global collaboration to reduce and end immigration detention, and further rights-based alternatives to detention (ATD).

Our Vision

A world where immigration detention no longer exists and people who migrate live with rights and dignity.

Our Mission

IDC advocates to secure the human rights of people impacted by and at risk of immigration detention. In partnership with civil society, UN agencies, and multiple levels of government, we strategically build movements, and influence law, policy and practices to reduce and end immigration detention, as well as implement rights-based ATD.

Our Values

- **Solutions-Focused** We strategically adapt our approaches to context, and develop pragmatic solutions that are grounded in everyday reality and experience
- **Innovation** We continually innovate our understanding and practices, through curiosity, learning, and exploring new possibilities
- **Collaboration** We engage in collective thinking and group-centred processes that facilitate an active exchange of ideas and contributions
- **Respect** We listen closely and with empathy to diverse perspectives, share and accept critique, and treat one another with dignity
- **Representation** We prioritise diversity, inclusion, and the leadership of people with lived experience of detention, in order to ensure accountability in our work

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1. Introduction

Geopolitical and domestic political and economic interests play a pivotal role in the use of immigration detention in so-called “transit countries.” However, short term control-focused migration policies that target people and communities based on the “transit” label fail to address the complexities of migration or the real needs of host communities. Most critically, immigration detention has long-term damaging impacts on individuals, communities, and whole societies.

One of the strategies utilised by civil society actors working in “transit contexts” is to advocate for rights-based alternatives to detention (ATD). This strategy aims to reduce and ultimately end immigration detention by building migration governance systems that ensure dignity and human rights. However, there are specific challenges and common questions about how ATD works in contexts with “transit migration” and mixed migration, including contexts with both large movements of people as well as limited resources.

This paper aims to support civil society and other actors advocating for ATD in contexts where “transit migration” and its accompanying policies negatively impact people on the move.

- **Section 2** unpacks the term “transit migration” and analyses the use of immigration detention in so-called “transit contexts.”
- **Section 3** addresses common questions that arise in relation to the application of ATD in contexts with “transit migration,” and suggests key ATD interventions to address these.
- **Section 4** considers how and when ATD can be useful as a strategy for civil society actors working to reduce and end immigration detention in these contexts.

For this paper, desk research and interviews were carried out between July and October 2022 with IDC’s team, members and partners, as well as other experts. Interviewees were based in Australia, Bulgaria, Cyprus, Egypt,

France, Greece, Jordan, Libya, Malaysia, Mexico, Poland, Switzerland and Thailand, and included interviews with team members of IDC's regional programmes in the Americas, Asia-Pacific, Europe and the Middle East and North Africa. Among other sources, the research

draws on IDC's experience working with members and partners to support ATD implementation and advocacy in countries including Mexico, Thailand, Malaysia, and focus countries of the European ATD Network (see below).

2. Background and Key Concepts

a) Unpacking the idea of “transit migration”

The term “transit migration” as it is used today originated in European Union (EU) policy documents in the 1990s. It is commonly used by richer, more powerful States to draw less wealthy neighbouring States into policies of migration control and containment in order to prevent people from entering their territories with irregular status.¹ States have also defined themselves as countries of “transit” to increase their bargaining power and to leverage resources from wealthier “destination countries,” as well as to serve domestic political interests.² Thus, the concept of “transit” is political, as it creates and influences power relations among and between States. This concept is also behind huge flows of capital supporting immigration detention and other criminalisation measures that impact people on the move everyday.

Due to increasing barriers to international migration³ people are compelled to undertake longer and more dangerous journeys. While there is no authoritative definition of “transit migration,”

the term is commonly used to mean “the temporary stay of migrants in one or more countries, with the objective of reaching a further and final destination.”⁴ However, this is not without its conceptual limitations. The idea of “transit” contains notions of temporariness, which raises the question of how long people can stay in a place and still be considered “in transit.” The concept is also linked to assumptions that people’s intentions are fixed and their journeys are unidirectional, which does not capture the diversity of mixed migration experiences. Therefore, “transit” is arguably not a useful term or concept for understanding or representing diverse experiences, nor should migration policies be based on this idea.

Nevertheless, States play a key role in creating “transit environments” by reducing channels for legal migration, and implementing strict border controls and policies that actively seek to discourage people from staying in their territories. As a result, people in “transit” - especially those with irregular status -

are exposed to “precarious, sometimes perilous” situations involving human rights violations.⁵

With this background in mind, IDC recognises the relevance of the “transit migration” concept as a “category of practice” which has important implications for the everyday experience of people on the move.⁶ Further, IDC recognises that people “in transit” have agency and undertake dynamic decision-making, with plans and intentions changing based on a range of uncontrollable factors. IDC also understands “transit migration” to include fragmented and multidirectional journeys, with people spending varied, sometimes extended lengths of time in places that are not necessarily their preferred destination.

b) Why do countries with “transit migration” use immigration detention?

Countries considered to have “transit migration” are diverse in their social, political and historical contexts, and vary in their approaches to migration management and immigration detention. Countries with “transit migration” might use immigration detention mandatorily, routinely, rarely or not at all. IDC’s research also indicates that in countries with high levels of mixed migration and migrants intending to tran-

This paper uses the phrase “transit contexts” in reference to States where geopolitical relations and/or policy-makers sometimes contribute to constructing “transit” situations. Further, such countries often experience “mixed migration” with people motivated to move for a variety of reasons. Additionally, those travelling on similar routes will have different legal statuses, intentions and face different situations of vulnerability.⁷ These States host people in a range of migratory situations, including people leaving the country, people staying temporarily, people at their destination, and those returning. As States recognised in the Global Compact for Migration (GCM), all countries are in fact “countries of origin, transit and destination.”⁸

sit, the majority of people were “at risk of detention, rather than actually being detained.”⁹



Non-Detention as Best Practice

A number of countries which experience “transit migration” do not include immigration detention as an element of their migration governance frameworks at all, instead placing the focus on guaranteeing freedom of movement with access to rights, services and support. These approaches constitute best practice, and are the ultimate source of inspiration for efforts to end immigration detention in “transit” and other contexts.

In January 2017, Ecuador closed all immigration detention centres, a decision followed by the adoption of the Law on Human Mobility, which operationalised the right to migrate as included in the Constitution.¹⁰ Ecuador has also rejected US interference in national matters.¹¹ Migrants in Ecuador, regardless of status, have the right to work and access social services and healthcare while their migration procedures are in progress.¹²

At the same time, geopolitics play a fundamental role in the increased use of immigration detention in a number of “transit countries.” Wealthier States externalise their migration control measures by funding immigration detention and border security in third countries, training local law enforcement, jointly participating in interception activities and broadly using deportation, with the aim of preventing people from irregularly entering their territories.¹³ States use a range of political processes and mechanisms to impose and incentivise

policies of migration control in neighbouring countries, including regional security processes, bilateral agreements and MoUs, readmission agreements, conditionality for development aid, and accession processes (to the EU) which support policies of immigration detention and other criminalisation-focused policies and practices. Implementation of these measures depends on specific regional and cross-regional power relations between States, as well as the domestic political and economic interests involved.

Externalisation and Immigration Detention in “Transit Countries”

The United States (US) has been described as “the world’s pioneer in offshore interdiction and detention...The country has used military bases located in host countries as staging grounds for migrant interdiction efforts (the Curts routinely used the now-closed US military base in Manta, Ecuador); funded detention centres that lacked basic living conditions in places like Guatemala City; used offshore detention facilities in the Caribbean long before Australia began implementing the Pacific Solution.”¹⁴ In recent years, the US has effectively “externalised” asylum, through policies known as “Title 42” and “Remain in Mexico,” offshoring migrant processing and immigration enforcement to **Mexico and Central America**.¹⁵ These policies have made US territory practically inaccessible to people travelling irregularly, including people seeking asylum.¹⁶ In this context, observers note that US influence on Mexico’s immigration detention policies “cannot be overstated.” President Trump’s harsh policies

on migration have been linked to Mexico's increased use of immigration detention, with 182,940 migrants reportedly being detained in 2018.¹⁷ In 2019, the US and Mexico signed a bilateral agreement under which Mexico agreed to reduce migration levels in exchange for the US not imposing tariffs on Mexican products.¹⁸ Mexico has developed one of the largest immigration detention systems in the world, with nearly 60 detention centres in 2020 for both long and short term periods,¹⁹ in which it registered 388,611 detentions in 2022 alone from January to November.²⁰

The highly criticised **“Australian model”**- including Australia's “Pacific Solution” and “Operation Sovereign Borders” policies - has involved at different times since 2001: intercepting boats carrying people seeking asylum, transferring asylum seekers to offshore processing and outsourcing immigration detention, as well as turning back boats to sea.²¹ Australia has also entered into a number of “agreements with its regional neighbours to deter, detain, and deport would-be asylum seekers.”²² Cambodia, Indonesia, Nauru and Papua New Guinea are some of the countries with which Australia has entered into agreements as part of these policies.

Indonesia is considered the main transit country for irregular migration to Australia.²³ Under a Regional Cooperation Agreement signed in 2000, Australia provided financial support for the interception and detention of migrants in Indonesia, including significant funding for IOM Indonesia.²⁴ The Indonesian authorities agreed to intercept refugees and other migrants and place them in detention, where they were supported by IOM.²⁵ In 2018, the Australian government ended funding for people newly arriving in Indonesia, citing the possible “pull-factor” of care provided by IOM.²⁶

Europe followed the “Australian Model” in its externalisation of migration control and immigration detention.²⁷ According to a 2022 report, the **EU and its member States** directly fund or otherwise support immigration detention in 22 countries in **Africa, Eastern Europe, the Balkans and West Asia**.²⁸ As Koiva notes “The EU uses economic and political conditionality, linking migration control in transit states with economic development, as in Morocco, Libya, and elsewhere in North Africa in addition to prospects for EU integration regarding Turkey and the Western Balkans.”²⁹

For example, the EU's cooperation and funding for the Libyan Coastguards has been criticised for “reinforcing trafficking and the arbitrary detention of refugees in ‘hellish’ conditions.”³⁰ Between 2015 and 2021, the EU provided 455 million Euro in funding to Libya through the ‘EU Emergency Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa.’³¹ Further, a bilateral 2017 MoU signed between Italy and Libya aims to enhance Libya's maritime surveillance capacity to intercept and return migrants crossing the Mediterranean to Europe. Since the MoU was signed, Italy has reportedly set aside 32.6 million Euro for international missions to support the Libyan coastguard, with most people who are intercepted being detained in notorious detention centres in Libya.³²

Türkiye is seen as an important route for people travelling with irregular status towards Western Europe, and migration has become a priority issue in the relationship between the EU and Türkiye. The EU has reportedly funded the construction of 14 ‘removal centres for illegal migrants’ in Türkiye under the country's 2015 National

Action Plan on Asylum and Migration, “with 84 million [Euro] under the Instrument for Preaccession Assistance (IPA).”³³ As part of the so-called EU-Turkey deal of 2016, the EU provided incentives including six billion Euro to Türkiye in exchange for preventing irregular migration to the EU through the Greek Islands. This led to an expansion of Türkiye’s detention estate “with the help of EU funding” and an increase in detentions and summary deportations.³⁴ Türkiye now has one of the largest immigration detention estates in the world, with a capacity of nearly 16,000.³⁵

The idea of “transit migration” is thus often related to a primary focus on limiting onward mobility on the one hand and deterring irregular migration on the other, through control-based means. Linked to racism and xenophobia, States also use the “transit” label to avoid developing long-term solutions for integration and to discourage people from remaining in their territories.

In practice, policies implemented by “transit countries” may aim to prevent, contain, disperse or informally allow onward movement of migrants at different times and in different situations, often arbitrarily and for political reasons that further false generalisations about migrants being a threat to security and public order. Additionally, migration policies based on ideas of “transit”

are often blunt, harsh, reactionary and short-term, with a singular focus on reducing migration through enforcement approaches, such as externalisation of borders, pushbacks, border exclusion zones, mass surveillance, deportation and immigration detention, as well other practices that violate human rights. Immigration detention is also used to prevent people from accessing rights, including the right to seek asylum. In some contexts, immigration detention is used symbolically to serve political interests by upholding the image of “crisis situations” related to migration. Business contracts and corruption can also make detention a lucrative endeavour, meaning that some government and private sector actors have a vested interest in continuing to detain.

c) Alternatives to Detention in Contexts with “Transit Migration”

At the same time, some countries that experience “transit migration” have introduced alternatives to immigration detention (ATD) and/or are shifting away from using immigration detention, including for certain groups of people in vulnerable situations. IDC understands ATD as 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.³⁶ ATD can involve a range of interventions in areas of migration governance that ensure liberty and rights, individual screening and assessment, placement options, and case management to facilitate fair and timely case resolution.

European Union Periphery States

In the European Union (EU), all Member States have ATD in law, including those with external borders to the EU often considered to be “transit contexts,” for people seeking to travel to Western Europe. European governments tend to focus on “traditional” or enforcement-based ATD. But in 2017, IDC and its partners established a civil society network bringing together organisations implementing case management-based ATD in seven European countries (Belgium, Bulgaria, Cyprus, Greece, Italy, Poland and the UK) in partnership with regional-level and international organisations.³⁷ The “European ATD Network” is collectively building evidence and momentum on rights-based approaches which are based on principles of case management in the community, in order to demonstrate how migration management without detention can be effective.

Indonesia

Since 2018, Indonesia has effectively ceased detaining refugees and people seeking asylum, including children.³⁸ The Australian government reduced funding to Indonesia, leading to shifts in the country’s approach to refugees and people seeking asylum.³⁹ With the issuance of 2018 ‘Circular Note of the Directorate General of Immigration, Ministry of Law and Human Rights on Restoring the Function of Immigration Detention Centres’ (the 2018 DGI Circular Note),⁴⁰ people seeking asylum and refugees are exempt from immigration detention despite having entered the country irregularly. This move away from using immigration detention is undoubtedly a positive development. However, for people now living in the community, actors have raised concerns regarding restrictions on rights and access to services, and discrimination in terms of protection and assistance, which has left some people in destitution.⁴¹

Mexico

In 2014, Mexico passed the Children’s Law establishing a National Child Protection system that covers all children irrespective of their migration status. This shifted some responsibility for migrant and refugee children to national, state and local child protection officers for the first time (where previously only immigration enforcement authorities had this mandate).⁴² This key structural change paved the way for new collaborations to develop policies, procedures and practices for the referral, reception and care of children in alternative community settings.⁴³ This change cemented important work led by IDC and its partners to develop and implement a joint government-civil society alternative to detention pilot programme⁴⁴ with the National Migration Institute and two children’s organisations, Covenant House (Casa Alianza) and SOS Children’s Villages (Aldeas Infantiles). The pilot operated in Mexico City and Tapachula in 2015-2016 and had successful outcomes in its evaluation not only for the children themselves, but the pilot also gave credibility to engagement-based community alternatives for children in a primarily “transit country.”

On the strengths of this experience, Mexico set up a second ATD pilot with immigration and refugee authorities to release detained people seeking asylum and their

families to UNHCR-sponsored NGO shelters or subsidised housing, with access to legal, psychosocial and economic assistance.⁴⁵ Finally, with the consolidation of Mexico's National Protection System, a national child protection protocol was developed with civil society support and approved in 2019, providing for screening, evaluation and referral to community alternatives for children, even before a law was passed in Congress in 2020 prohibiting the detention of children for immigration reasons. This protocol is currently being rolled out and being implemented at the state and local level in Mexico, a critical step for practical implementation of the community alternative for children across the country.

Thailand

Thailand is a mixed migration context for different populations of refugees, migrants and other people on the move.⁴⁶ Thailand has seen significant progress in recent years towards strengthening ATD in law, policy and practice, particularly in relation to children and families. There are several ATD mechanisms in place or are currently being developed, including:

- **ATD for children in immigration detention centres:** in January 2019, representatives of seven Thai Government agencies signed the “Memorandum of Understanding on the Determination of Measures and Approaches Alternatives to Detention of Children in Immigration Detention Centres” (the MOU-ATD),⁴⁷ with Standard Operating Procedures (SOPs) to implement the MOU-ATD following in July 2020. More than 300 children and families have been released under the MOU-ATD. Those released are supported by two NGOs, HOST International Thailand and Step Ahead.
- **A National Screening Mechanism (NSM)** to provide Protected Person Status to people unable to return to their country of origin for protection reasons.⁴⁸ The cabinet approved outlines of the plan in 2019, with specific criteria for vetting applicants approved in principle in 2022.⁴⁹
- **Nationality Verification for Migrant Workers.** The Thai government established the One Stop Service (OSS) and the Management Center for Migrant Workers (MCMW) as a mechanism to regularise undocumented migrant workers. 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).

Türkiye

In 2013, Türkiye passed a Law on Foreigners and International Protection (LFIP), a milestone in terms of putting in place a comprehensive migration management system. The law introduced the concept of alternatives to detention in Türkiye for the first time. Amendments in 2019 included seven specific alternatives to pre-removal detention.⁵⁰ The LFIP further establishes that the detention of asylum seekers is

an “exceptional measure,” the need for which must be “evaluated on an individual basis.” Furthermore, Türkiye currently hosts the world’s largest refugee population including 3.7 million Syrians under temporary protection and over 320,000 refugees and people seeking asylum under international protection, and provides some level of access to work, healthcare and education for these populations (see below).

Zambia

In July 2014, Zambia launched a National Referral Mechanism (NRM) and associated guidelines with clear procedures and protocols for frontline officials to identify and refer migrants in vulnerable situations to relevant authorities and service providers for assistance.⁵¹ The guidelines and NRM have been highlighted globally as a positive practice in preventing immigration detention through strengthened screening, referral, and placement of individuals in the community.⁵² They have also been drawn on by other governments developing their own NRMs for migrants in vulnerable situations.⁵³ Since their adoption, training has been rolled out to support implementation of the NRM, and Zambia has taken steps to further develop ATD in the country. In 2017, the government established five semi-permanent reception facilities in border areas as alternatives to detention for people seeking asylum from the Democratic Republic of the Congo.⁵⁴ In 2019, UNHCR reported that the Zambian government had adopted a practice of not detaining migrant children and mothers with young children on the basis of their immigration status, following joint efforts of UN agencies and partners.⁵⁵

Can ATD work in contexts with transit migration?

A growing body of international research and practice shows that ATD can achieve better outcomes for individuals, communities and governments. These outcomes include:

- **ATD can ensure improved respect for people’s rights and well-being:** ATD help avoid the harms of detention, which is well-documented as being extremely detrimental to people’s mental and physical health and child development. ATD can ensure better access to rights, support mechanisms and services, and prioritises safety and living in the community.⁵⁶

- **ATD can achieve better engagement:** IDC’s research shows that ATD can achieve up to 95% appearance rates and improve final immigration outcomes.⁵⁷ The effectiveness of ATD has been reaffirmed by the Committee on Migration Workers.⁵⁸



- **ATD are cheaper than detention:** Detention is expensive and research has shown that due to lower running costs, ATD are up to 80% less costly than immigration detention.⁵⁹ Applying ATD allows governments to avoid costly litigation and compensation claims relating to immigration detention, as well as other severe societal costs.⁶⁰

What about in contexts with “transit migration”?

There is limited publicly available data on the effectiveness of ATD in contexts considered to experience “transit migration.” However, a number of evaluations show that ATD can achieve positive results in so-called “transit contexts,” particularly community-based approaches that prioritise holistic case management and wrap-around support:

- A 2020 evaluation of case management-based ATD pilot projects in Bulgaria, Cyprus and Poland found that 86% of people stayed engaged with immigration processes, while 12% disengaged and 2% were forcibly removed.⁶¹ The pilots had an overall positive impact on strengthening resilience and well-being in 90% of cases.⁶²
- A 2019 evaluation of a community placement and case management programme run by SUKA Society for unaccompanied and separated children at risk of immigration detention in Malaysia found that the programme had significantly improved overall well-being, safety and stability

of children. The programme cost 90% less than immigration detention and achieved 100% appearance rates.⁶³

- Similarly, positive results were demonstrated through a recent independent evaluation of a community-based ATD programme implemented by HOST International Thailand. Between 2019 and 2021, the program supported 211 children and 110 adults who were released from immigration detention with case management and other services.⁶⁴ The evaluation found that the “community based Case Management programme has challenged immigration norms, influenced thinking in ATD,” and “made a significant difference in people’s lives.”⁶⁵

Restrictive Practices and De Facto Detention

At the same time, in some contexts, a focus on migration control has led governments in some “transit contexts” to apply measures that restrict movement and access to rights, including under the guise of “ATD.” Often used for the purpose of containing migrants and preventing onward movement, such practices include:

- Closed shelters or reception facilities
- Remote or physically isolated locations without community support/services
- Screening at international borders or transit zones

- Electronic monitoring or tagging
- Onerous conditions or restrictions

This highlights a risk that governments co-opt the term “ATD” for measures that are not rights-based and may have a very detrimental impact on people’s rights, health and well-being. As the Committee on Migrant Workers has noted, “measures that are **overly restrictive** are not appropriate in the context of migration...[they can] exacerbate the stigmatisation of migrants, unnecessarily interfere with personal freedom, generate excessively onerous requirements, and may even amount to de facto detention.”⁶⁶

Furthermore, IDC believes that measures that amount to any deprivation of liberty - either individually or cumulatively - are simply **de facto detention**, sometimes referred to as “alternative

forms of detention,” and this is regardless of whether they are labelled ATD by governments or not.

IDC believes that **adherence to the following principles** will ensure ATD are rights-based, and will contribute to reducing and ending immigration detention:

- ATD must respect **human rights**
- ATD must **reduce immigration detention**
- ATD must be **based on engagement not enforcement**
- ATD must **involve holistic support**
- ATD must **never involve deprivation of liberty**

An intersectional and gender-responsive approach that puts lived experience front and centre

Migrants in transit are at risk of a range of human rights violations and abuses. People at risk of discrimination or who lack access to material and financial resources are “more likely to experience dangerous journeys and a lengthier, more precarious time in transit than those who are able to pay for faster and safer transport to their destination.”⁶⁷ Migrant women in transit “often face specific gendered forms of discrimination and abuse, both in the public and private spheres,” while children can be particularly at risk.⁶⁸

An intersectional lens can help reveal the range and complexity in the lived experience of people who are considered to be “in transit.” ATD should acknowledge and address the specific experiences of migrant women, girls, transgender, gender diverse, and LGBTI+ communities, alongside the layered harms of also facing discrimination based on race, ethnicity, religion, culture, disabilities, among other factors.

For IDC, it is the leadership of our members, partners and people with lived experience of immigration detention that is key to developing successful alternatives to detention that truly work for the people and communities that we partner with.

For civil society, advocating for ATD is one of the strategies actors can use to work towards systems change to reduce and end immigration detention.⁶⁹ The long-term aim is for the term ATD

to become obsolete as non-detention approaches become the norm, and new, values-based and rights-based mechanisms and processes are integrated into everyday social systems.

3. Addressing Key Challenges for ATD in Contexts with “Transit Migration”

a) Implementing ATD in contexts with onward movement

Onward movement can be a significant concern for governments in contexts with “transit migration,” as well as for other actors implementing ATD programmes. How can ATD work in countries where it is assumed that significant numbers of people want to move on because it is not their preferred country of destination? Governments might ask: how can ATD ensure “compliance” and address the risk of “absconding” in “transit” contexts?

This section examines these challenges and suggests key interventions to address them. Illustrative examples are provided, keeping in mind that there are no perfect one-size fits all models of ATD and challenges exist in most contexts. The aim is to draw learnings and inspiration about what is possible, which can support developing ATD that moves systems towards reducing and ultimately ending immigration detention in different contexts with “transit migration.”

Understanding different populations, communities, and individual factors

In IDC’s experience, it is critical to recognise the diverse situations, motivations and intentions of people considered to be “in transit.” Although government approaches often assume similar motivations, such as migrants “intending to move on,” sources suggest that in fact:

- Some people arriving do intend to stay in the country long-term.
- People’s plans can change based on a range of factors. For example, some people do not intend to stay in the country when they arrive, but once they are informed of their options, they may decide that staying is a better choice.
- People stay for varied lengths of time, often extended periods and sometimes years in countries they may have intended to transit. For example, people undertake “stop-

- overs” to gain more financial stability before trying to move on.
- In some “transit contexts” people are not able to move on and are also unable or unwilling to return, and can thus be stranded in legal limbo for long periods including years, often in very difficult and potentially destitute situations.
 - Many migrants have strong links with destination countries, including familial, language and cultural ties, as well as information and support from diaspora communities and family members they aim to reunite with
 - However, many, if not most migrants travelling irregularly do not reach their preferred destination.

Poland

Different communities and people’s openness to engage

“Through implementing our case management ATD pilot, we learnt that it depends so much on the context in the country as well as where people are travelling from and their individual experiences. We saw that there were broadly three groups of people we were working with:

1. People who want to stay in Poland, often from neighbouring countries, they generally feel safe here but may think about moving on because of better job opportunities in the West, but they haven’t made up their minds yet. Our case management was highly successful with this group in terms of people staying engaged with the process.
2. People who are seeking asylum and at the point we meet them they just want to be safe. At first they trust the asylum procedure in Poland but the longer they are here they start to feel that they are being distrusted and mistreated by the system and hear that it’s easier in Germany. Our pilot had some success with this cohort, especially by building trust, offering proper case management and legal support for their asylum claim and explaining the implications of travelling to the West. But some people also decided to move on, for example out of fear of being found by people they were trying to escape, or in response to encouragement from family members abroad.
3. A third group were asylum seekers who were clearly intent on moving on, they may have been found in a van or landed in a detention centre. Such individuals were not open to working with us and we had little success - it doesn’t mean it’s not possible. But it’s very difficult to build trust in detention and it makes the urge to move forward stronger for people.

It also changes over time - people from Tajikistan used to be considered “transit” migrants - but now tend to stay in Poland. Screening and assessment is really key for understanding people’s individual motivations, plans and intentions, but it requires trust.”⁷⁰

Furthermore, despite the sometimes harsh control-based policies “transit” States employ to prevent migration and onward movement, people do arrive, and some will stay and some will decide to leave. To be successful, ATD must acknowledge this reality and be rooted in protecting rights and supporting agency, rather than controlling and containing people. Under international human rights law, every person has the right to leave any country, including their own.⁷¹

Factors contributing to disengagement and onward movement

A range of factors contribute to disengagement from processes or decisions to undertake onward movement, and these factors vary depending on specific personal, familial, social, political and structural contexts. These also include factors created by government policies which enable “transit environments” by inadvertently or actively discouraging people from staying. Designing successful ATD programmes in “transit contexts” therefore involves understanding and responding to these layered and complex impacts, starting with centering the perspectives and insights of migrant communities.

Based on IDC’s research, there are common factors that contribute to people’s decision making about engagement with authorities and possible onward journeys, and addressing these factors can lead to more successful ATD programmes. These elements include:

- Making people feel safe - Understand what threats, instability, conflict or persecution the person might be facing.
- Avoiding criminalisation and enforcement-based practices - Understand that coercive systems, including immigration detention and de facto detention, alienate individuals and cause mistrust and mistreatment.⁷²
- Addressing lack of access to livelihoods and services - Understand that people may not be able to meet basic needs, including housing, food, healthcare, education, potentially due to governments intentionally refusing support to migrant communities.
- Addressing limited regularisation pathways Understand that this can leave people in legal limbo (see above), including lack of access to asylum, low asylum seeker recognition rates, and long waits and lack of information which cause people to lose faith in the process.

Similarly, IDC’s global research found that people “appear less likely to abscond in a country they intend to transit if they can meet their basic needs through legal avenues, are not at risk of detention or refoulement, and remain hopeful regarding future prospects.”⁷³



Mexico

Reasons for people in ATD programme abandoning asylum procedures

A study on an ATD programme for people requesting refugee status in Mexico found that 41.5 % of interviewees had considered abandoning their refugee application procedure at some point. The reasons people gave were diverse, and included navigating situations of insecurity, experiencing persecution by agents from their country of origin in their current locations, health issues, lack of work, support networks being in other parts of Mexico, as well as other situations that intensify the longer resolution processes go on. Further, refugee applicants in Mexico are required to stay in the province where their application is lodged, meaning that if people feel compelled to move in order to feel safer, access livelihoods, support networks or essential services, they are forced to abandon their asylum procedures to do so.

Asylum Access Mexico report on alternatives to detention for persons requesting refugee status in Mexico (2021).

Key ATD interventions in contexts with onwards movement:

1. Screening and Assessment

Screening, assessment and referral mechanisms are key for States and other actors to understand the diverse situations, motivations and intentions of individuals, as well as their ability and openness to engage with ATD processes.

Countries such as Zambia have **developed national screening and referral mechanisms** (see box below). States have also developed screening processes for **specific groups** of people, for example refugee and migrant children and victims and survivors of trafficking (see below). A number of ATD **pilot projects** use their own screening and assessment tools to determine suitability, and better understand and respond to people's specific needs.⁷⁴ Particularly in contexts where onward movement is an issue and/or there is mistrust between migrant communities and the authorities, assessment may require time and rapport-building.

“In our context, one of the biggest challenges in implementing case management ATD in the community is that

people might decide to move on. That's why the screening process is very important, but it's not always easy to assess. It can take several meetings with a person before they feel comfortable to share information and we can get a good picture of their situation and intentions. Especially if there are no factors indicating that they might want to stay in Bulgaria - for example if they have family or children here, or a particular vulnerability - then it takes time to understand.”

Diana Radoslavova, Centre for Legal Aid - Voice in Bulgaria

Thus, **Protection actors** or those otherwise independent from immigration authorities, may be well-placed to conduct assessment. For example, in Egypt, the SOPs for child refugees, people seeking asylum, and migrants foresee initial identification and referral to child protection actors for in-depth Best Interest Determination (BID), care and assistance.⁷⁵ In Namibia, government social workers are responsible for identifying victims and survivors of trafficking at the “earliest possible moment,” as well as conducting risk assessments, according to a national referral mechanism for victims of trafficking and related SOPs adopted in 2019.⁷⁶

Bulgaria

ATD pilot assessment procedure

An ATD pilot run by Centre for Legal Aid in Bulgaria developed an assessment procedure to assess suitability for the project and identify the supports and services needed by each individual client, on the basis of the client's:

1. personal resources and skills;
2. social networks and resources, including family, friends and relatives; ethnic and faith communities; relationships established in the workplace with colleagues and employers; sports, arts and other interests;
3. vulnerabilities, including those related to age, mental and physical health circumstances, physical or cognitive disabilities, exposure to or experience of torture, sexual violence, trafficking or exploitation, and exposure to any other human rights abuses and/or discrimination;
4. risk factors, including risks of disengaging with the case management programme and/or absconding;
5. individual needs and expressed personal goals and aspirations.⁷⁷

2. *Case management and community-support*

Case management and other community-support programmes, which **build trust, support migrants' agency and people's ability to meet basic** needs have proved highly effective, including in working with people who are considering onward movement. Such programmes can:

- Help people find stability, build resilience and improve well-being;
- Build trust and encourage engagement with migration systems;

- Facilitate information sharing and informed decision making;
- Help respond to setbacks and crisis situations where there is a risk of disengaging.

In countries considered to be “transit contexts” governments often have limited **expertise, capacity and resources** to provide case management. To address this, ATD can draw on the experience of civil society organisations and community groups in working directly with migrants, for example through government and civil society partnerships.

EPIM Evaluation of ATD pilots in Bulgaria, Poland and Cyprus

A 2020 independent evaluation of civil society-run case management-based ATD pilots in Bulgaria, Poland and Cyprus found that:

- **The majority (86%) of individuals remained engaged with immigration procedures** through engagement-based ATD in the community and 25% achieved case resolution. 12% disengaged or absconded and 2% were forcibly removed.
- **Quality case management can increase an individuals' ability to work towards case resolution** from 80% to 99% in different areas.
- The positive impact of case management was particularly marked in terms of ability to participate in **informed decision making** (99% had some or huge benefit) and **ability to engage with the immigration procedures** over time (96%).
- In terms of the clients, **82%** of the sampled cases were individuals in situations of vulnerability, often of a severe nature, while **79%** of the sampled cases had **experience of detention**, which did not lead to their cases being resolved.

The evaluation noted that in Bulgaria, while overall absconding rates were estimated to be around 75%, the absconding and disengagement rate on the Bulgarian pilot was only 18%, “suggesting that case management for the pilot cohort achieved a dramatic reduction in the rate of absconding.”⁷⁸

The EPIM evaluation also **highlighted the importance** of trust built between clients and case managers, which can

lead to improved **resilience and well-being** and **people's willingness to engage** in immigration procedures:

The importance of building trust - individual experiences of ATD pilots

Interviewee 9: *'The fact that we can contact (the case manager) any time, whom we trust a lot, not only about our administrative cases, but also when we have problems with doctors or need assistance in our son's school, or about accommodation - this gives us hope and the feeling of safety.'*

Interviewee 7: *'After meeting (the case manager), I started having more hope in my life, and felt more optimistic in my case. I felt that someone is there that actually cares for me, and wishes to help me.'* *'(...) before meeting (the case manager), I did not know who to talk to about my situation, and what the documents that I possessed meant, how to receive help with my asylum, my rights and so on. Also my psychological well-being was not in a good state. In addition, I gradually learnt to trust people. ... They were always there for me whenever I needed anything, they helped me understand my situation better, advised me towards my choices concerning my stay, employment and so on. They also helped me in trusting more, and feeling more certain about my everyday life.'*⁷⁹

Supporting migrant agency

In a number of countries, community-based ATD programmes support people's agency by facilitating access to rights and information, and a safe environment for people to consider options and make informed decisions about their lives and futures.⁸⁰

The provision of proper information, for example about the realistic possibilities of legal stay or about the risks of disengaging or onward journeys, can help people make informed decisions. This also works to counteract the influence of less reliable sources, including people involved in human smuggling and trafficking.

“The feedback we had from people we talked to (in the temporary shelter) was that it gave them a safe place they could stay with dignity and time to think through and make decisions about next steps, with proper information”.

Carolina Carreño, IDC Childhood Project Officer, and former staff member of the Human Rights Commission of Mexico City.

ATD approaches may also involve facilitating safe and regularised movement for those in transit, recognising the agency people have in their decisions to move on, as in the “Operación Flujo Controlado” agreement between Costa Rica and Panama.

Costa Rica and Panama - Operación Flujo Controlado

In 2016, a migratory crisis that erupted in the region of Darien between Panamá and Colombia, brought to light the inability of the legal and policy frameworks to respond in a sustainable way to increased arrivals of people coming from Africa, Asia, and the Caribbean, particularly Haiti and Cuba, crossing through Panamá and Costa Rica.⁸¹ This crisis prompted the governments of Costa Rica and Panamá to sign a bilateral agreement known as “Operación Flujo Controlado” aiming to guarantee orderly, safe and regular migration for those in transit.⁸² The agreement operates with the support of IOM, UNHCR and the International Committee of the Red Cross (ICRC).

In Panamá, which has a system of mandatory immigration detention of migrants with irregular status,⁸³ those involved in “Operación Flujo Controlado” are prevented from automatically ending up in immigration detention centres. Instead, they are sheltered in one of the four open Reception Centres (Estaciones de Recepción Migratoria),⁸⁴ where people remain for a short period of time - approximately one week,⁸⁵ - receive medical attention, and are accompanied on their route to Costa Rica.

Once in Costa Rica, the Migration Police allow a previously agreed number of people to cross the border, provide them with humanitarian assistance if needed, and accompany them to the northern border, without resorting, at any stage, to immigration detention. According to civil society organisations on the ground and reports from IOM, migrants stay in the community or in open accommodation centres run by civil society while in transit.⁸⁶

Challenges include bottlenecks, which limit the accessibility and reach of this programme as the numbers of migrants far exceeds the capacity of the programme. Furthermore, the programme was suspended during the Covid-19 pandemic, and its reactivation is proving difficult due to lack of financial resources being allocated, leaving many in situations of irregularity and vulnerability.⁸⁷

b) ATD in contexts with large movements of people and/or limited resources

In contexts of mobility considered as “transit,” **large mixed movements of people** can present significant challenges to governments and other actors. “Migrants in these large movements are often vulnerable or in precarious situations, and in need of specific protection interventions.”⁸⁸ Securitised approaches, racism and “largely unfounded” fears about migration and transnational crime or terrorism have led to increased border controls and different forms of criminalisation and surveillance - all of which put people at risk of immigration detention.

A level of **preparedness** is required to ensure that ATD can respond to mass numbers of people migrating, on the part of sStates and other actors, to avoid immigration detention and better ensure rights in mixed migration contexts. This can involve establishing mechanisms and structures to both immediately respond to groups of people arriving in the country, as well as strategies to manage larger numbers of people in the medium and long term.

At the same time, governments in “transit countries” often have limited resources and rely on international support, particularly in situations with large refugee populations and communities. Policies based on “transit migration” tend to channel resources into control-based methods and/or actively avoid provid-

ing access to rights and services for migrants. Host communities may also face challenges meeting basic needs, and there is a risk of social tensions if programmes are seen to support or favour migrants.

Nevertheless there are opportunities for governments to build on existing strengths in their context, harness support and develop strategies for responding to large movements of people in a way that avoids criminalisation and immigration detention, and better ensures human rights and dignity.

Key ATD interventions in contexts with large movements and/or limited resources:

- 1. Screening and referral mechanisms*

In terms of first response, screening and referral mechanisms can support front-line officers and other actors to identify and refer people to responsible organisations and institutions for appropriate follow-up and placement, including in contexts of large movements of people (see also ‘Screening and Assessment’ above).

Screening should be carried out as early as possible, on first contact and should include identification of needs for immediate assistance, as well as responsi-

bilities and protocols for providing such assistance. For example, In Costa Rica, an Action Protocol for special migratory situations was developed, which establishes inter-institutional coordination mechanisms and procedures for the identification and attention of people in specific situations of vulnerability.⁸⁹

Screening and assessment should be holistic and look at individual needs and strengths as well as the community context, rather than focusing on security risks. Cyprus Refugee Council (CyRC) developed a vulnerability screening and assessment tool based on UNHCR and IDC's Vulnerability Screening Tool,⁹⁰ "noting that the authorities did not have an adequate procedure and were failing to route vulnerable individuals out of detention."⁹¹ An adapted version of the tool was adopted by the Asylum Service and is currently being used for joint screening at the First Reception Centre

by the authorities (CODECA), UNHCR and CyRC under the supervision of the European Union Agency for Asylum.

For mechanisms to be effective, operational referral pathways need to be established by identifying and coordinating with actors who have a role to play in placement, management and assistance for migrants, as seen in Zambia's National Referral Mechanism.



Zambia - National Referral Mechanism

Zambia's national referral mechanism for vulnerable migrants "provides guidance on the different stages of assistance to vulnerable migrants requiring protection assistance. The chart promotes coordination of national stakeholders for provision of effective and comprehensive protection assistance to selected categories of vulnerable migrants" including: refugees, people seeking asylum, victims and survivors of trafficking, unaccompanied and separated migrant children, and stateless migrants, among others.⁹²

The referral mechanism comprises the following stages:

- Initial interview;
- Status determination;
- Referral for service to lead service provider;
- Assistance (immediate needs);
- Assistance (medium- to long-term needs);

- Return; and
- (Re)integration.

The identification process begins with a first interview and registration. General data is collected by “first line officials” who include immigration and police officers, social welfare officers, civil society organisations, embassies and consular services. Based on the interview, first line officials identify migrants in vulnerable situations and refer them to nominated lead service providers for follow up and assistance. The mechanism sets out a range of governmental and non-governmental actors who have a role to play in providing assistance at each stage of the process.

The mechanism has helped the first contact authorities to avoid immigration detention by facilitating referral to other placement options in the community, including shelters managed by civil society. Guidelines have been developed for training front-line officials on the NRM.⁹³

2. *A whole of government, whole of society approach*

A whole of government, whole of society approach to ATD can help address resource limitations, avoid immigration detention and other forms of criminalisation, and ensure better rights-based responses to the complexities of mixed migration.

For example, in Mexico City, **inter-institutional and inter-sectoral coordination** was key to establishing a shelter which prioritised rights for people arriving in migrant “caravans” in 2018 (see Mexico City in box below). In Italy, **municipalities collaborate with civil society organisations** to implement a decentralised reception and integration system for people seeking asylum. The local authorities are free to select the types of services to be provided, as well as specific groups of beneficiaries (eg. adults, families, people with specific needs).⁹⁴ The system is managed by the *National Association of Italian Municipalities* (ANCI) and funded by the Ministry of Interior.⁹⁵

ATD can also build on strengths in the specific national context, channelling funding and expertise to strengthen existing systems rather than developing parallel structures or starting from scratch. In countries with large refugee populations and communities, including Jordan and Egypt, humanitarian actors working with refugee children have played a pivotal role in strengthening national child protection processes and systems.

There may be questions about the feasibility of case management in contexts with large movements of people. While consistency and regular contact is a foundation of case management, this principle can vary from limited engagement among migrants in more independent and self-supported situations, to intensive support for people experiencing complex situations that require responsive support to changing needs over time for example.

Mexico City - Humanitarian bridge and temporary shelter

In 2018, several thousands of people travelled from Honduras through Guatemala to Mexico in multiple large groups, in what was called the “migrant caravan” or migrant “exodus” due to its context of humanitarian crisis and forced displacement.⁹⁶ Mexico City authorities provided a “humanitarian bridge” assisting and accompanying people on their journey toward the capital: a positive practice for the care of people in human mobility.⁹⁷

In the capital, the Mexico City Human Rights Commission (an independent public institution) and the local authorities set up a temporary shelter which accommodated a total of 9,000 people who had arrived in different groups. The shelter prioritised three aspects:

1. Guarantee respect for the human rights of people on the move, especially to life, to asylum, to health, among others
2. Achieve inter-institutional and inter-sectoral coordination
3. Ensure that the space had the characteristic of being “open doors” and would not involve restricting liberty.⁹⁸

For the security of the migrants living in the shelter, there was registration and people were given paper bracelets. The aim was to protect people in the residence by preventing outsiders from entering who could do harm, for example criminal gangs or smugglers.

A key learning was the importance of **inter-institutional and inter-sectoral coordination**, to ensure people can meet their basic needs and access critical information in a safe space to make decisions and plans, whether they choose to stay in Mexico or move onwards. Mexico City Human Right Commission led coordination among authorities at different levels, including the federal authorities, Mexico city government and its 16 municipalities, as well as with a range of civil society and international organisations who provided services.

In terms of funding, in 2018 the shelter was supported by the local authority and drew heavily on existing or available services from civil society and UN actors. In 2019, the costs for a similar temporary shelter and services were covered almost completely by Mexico City with contributions from UN agencies.

Based on the learnings, a Protocol was produced as a practical tool for providing humanitarian aid for groups of people who have been forcibly displaced.⁹⁹ The protocol could likewise help local governments in cities with “transit migration” to develop similar spaces, with a focus on guaranteeing human rights.

3. *Drawing on community support mechanisms*

In some countries, informal community support mechanisms play a significant role in ensuring assistance for migrants, helping people meet immediate needs such as accommodation and food on arrival, as well as stability to navigate their situation and make plans for the future. Coordinating with such existing, community-based mechanisms can improve the quality and reach of ATD interventions, including where the presence and capacity of government and humanitarian actors is limited.

For example, community hosting practices exist in a number of countries in the Middle East and North Africa (MENA), including in Djibouti, Jordan and Sudan.¹⁰⁰ This includes practices whereby community hosts provide housing and alternative care for refugee and

migrant children. Community hosting practices are sometimes supported by the UN or NGOs, although this is relatively rare and often indirect. In Uganda, Rwandan refugees provide community support to people who have newly arrived in Kampala (see box below). Such informal support mechanisms may also exist in the absence of long-term settled migrant communities.¹⁰¹

In Bulgaria, local communities were pivotal in providing clients in an ATD pilot project with “logistical, linguistic, social and other support during the case management process.” Members of communities, which were often language or ethnicity based, were directly involved in securing suitable housing, temporary accommodation and/or employment for...clients, which was “instrumental in achieving better case outcomes for these individuals.”¹⁰²

Community support for refugees in Uganda

Previously in Uganda, accompaniment for refugees to navigate life in the city was nonexistent outside of refugee camps. In Kampala, Rwandan refugees serve as guides to support new arrivals to better understand the context and overcome the challenges of life in an unfamiliar environment. The intervention begins with a therapeutic conversation about issues that people might find difficult to express and would not be comfortable sharing with authorities or organisations. From this conversation, personalised emotional support is provided, as well as providing insight as a local guide to support newly arrived refugees learn more about the community environment. In a short period of time, a close relationship is built that allows guides to understand people’s situations, in order to be more effective in their support, including accessing services such as health and education, understanding rights, and interacting with the authorities or other people in the community, until newly arrived refugees and their families are in situations of greater stability and certainty. Significantly, it has been observed that the impact of this community-based work goes beyond the individual, and benefits whole families and social groups.¹⁰³

4. *Rights and resilience of host, migrant and refugee communities*

In the medium and longer terms, migration management approaches can focus on improving rights and resilience of both host communities and migrant and refugee populations, as set out in the Global Compact on Refugees

(GCR). In addition to humanitarian aid, involving the development sector may allow host governments to access larger funds as well as potentially offer a more effective response to large scale, prolonged displacement that also benefits host societies (see Jordan Compact below).¹⁰⁴

c) **Addressing structural gaps that put people at risk of immigration detention**

In so-called “transit contexts,” structural gaps and failures often contribute to “transit environments” and put people at risk of immigration detention. As discussed above, a lack of options for regular stay and precarious living situations are key factors that influence people’s decisions to disengage from immigration processes and move on. Often, people who lack legal status cannot access even the most basic services, such as healthcare and education. With limited options for case resolution, processes such as case management require longer engagement and resources in order to find solutions. In these contexts, systemic interventions may be necessary to ensure better ATD outcomes and build systems that avoid immigration detention and better ensure rights.

Key ATD interventions to address structural gaps

1. *Expanding possibilities for legal stay*

A number of countries have put in place temporary visa and humanitarian visa schemes to respond to particular situations of arrivals. For example, some South American countries introduced ad hoc schemes to grant legal stay and access to work for people fleeing the humanitarian crises in Venezuela,¹⁰⁵ and Mexico implemented a regularisation scheme for people arriving from Haiti in 2016 (see box below).

Regularisation for Haitians in Mexico

In 2016, thousands of Haitian people entered Mexico heading to the United States. The National Migration Institute (INM) implemented a special response to the situation, which prevented people being detained for migration-related reasons. Following preliminary identification, the INM issued Haitian migrants with an official document that allowed them to regularise their immigration status within 30 days or leave the country in the same period of time. Many Haitians travelled to the north of the country, but were unable to enter the United States, while others began to find opportunities to stay in Mexico which made them modify their original migration plans.

As a result of this approach, civil society and religious organisations supported Haitian people and families while they regularised their status in the country. The INM also supported the resolution of cases that presented challenges for migratory regularisation due to the fact that they had exceeded the deadline granted or due to various errors in the registration of persons or the issuance of work permits. Despite the challenges and several irregularities that the situation presented, the solution was adopted with the objective of not detaining and deporting people, but rather to manage their stay in a manner consistent with the type of resolution they received from the beginning.¹⁰⁶

Beyond emergency situations, there is also a need for longer term solutions that allow people to access rights and avoid sometimes repeatedly entering irregular status as their visas expire, particularly in contexts of protracted displacement. This includes improving access to asylum in countries with “transit migration.”

Thailand has introduced a mechanism to regularise undocumented migrant workers through which 1,827,096 peo-

ple regularised their status during the period from 2016 to 2018 (see box above).¹⁰⁷ Thailand is also developing a National Screening Mechanism (NSM) to provide Protected Person Status for those unable to return to their country of origin due to protection reasons.¹⁰⁸

Some countries have introduced amnesties which allow people with irregular status to regularise their stay more permanently, such as Tajikistan.

Tajikistan’s Amnesty Law for People with Irregular Status

An Amnesty Law, which came into effect on 7 January 2020, allows non-nationals who have entered Tajikistan before the end of 2016 and are living in the country with irregular status to regularise their stay and obtain a residence permit. After three years of living with a residence permit, it is also possible to apply for Tajik citizenship under this new law. Some 20,000 people, the majority being part of the stateless population in Tajikistan, are expected to be able to obtain legal status in Tajikistan through this provision and will therefore no longer be subjected to immigration penalties such as fines and imprisonment.¹⁰⁹

2. Improving access to livelihoods, support mechanisms and services

ATD programmes employ a variety of approaches to support people to meet basic material needs. While some provide accommodation, food and other material support, others draw on services and support available in the com-

munity, or rely on people being able to meet material needs on their own to a certain extent. ATD pilots have also included emergency funds for assistance in cases of sudden homelessness or medical care. At the same time, structural obstacles that prevent people from accessing rights and services can limit the impact of ATD programmes.

A number of countries which experience “transit migration” provide access to work, and rights, including access to education, healthcare and social assistance for certain categories of migrants and refugees. In Thailand, undocumented migrant workers who successfully undergo Nationality Verification and obtain a work permit can access the Health Insurance Card Scheme (HICS), regulated by the Division of Health

Economics and Health Security at the Thai Ministry of Public Health (MOPH).¹¹⁰ Türkiye, Egypt and Jordan also provide access to some essential services and work rights to refugees and people seeking asylum. Oftentimes, people will be able to support themselves to a certain extent if they are able to access livelihoods

Türkiye

In 2013, Türkiye adopted “a comprehensive, EU inspired Law on Foreigners and International Protection (LFIP), which establishes a dedicated legal framework for asylum in Türkiye and affirms Türkiye’s obligations towards all persons in need of international protection, regardless of country of origin.”¹¹¹ Within the law, Turkey established the Presidency of Migration Management¹¹² as the government agency responsible for migration and asylum, which is seen as a strength within the Turkish system.

Türkiye currently hosts the largest refugee population with 3.7 million Syrians under temporary protection and over 320,000 refugees and people seeking asylum under international protection.¹¹³ The Turkish asylum system has a dual structure with international protection and temporary protection schemes.

The Temporary protection framework for Syrians provides, first and foremost, “a domestic legal status to beneficiaries granting legal stay in Türkiye; protection from punishment for illegal entry or presence and protection from refoulement.”¹¹⁴ Temporary protection status holders with an ID card have the right to apply for a work permit and access healthcare services,¹¹⁵ and children can enrol in public schools free of charge.¹¹⁶ Temporary protection holders should, as a rule, not be detained¹¹⁷ (but there are reports of immigration detention in practice, see below).

International protection applicants have the right to apply for a work permit after 6 months¹¹⁸ and access elementary and secondary education.¹¹⁹ They can access health care services for one year, while people in vulnerable situations are not subject to this time limitation.¹²⁰ Türkiye uses a “dispersal” scheme by which people applying for international protection are assigned to a province, where they are required to secure their own accommodation and stay, including after obtaining status (“satellite city” system).

People who are registered as refugees and seeking asylum in Türkiye have access to the e-Government platform (e-devlet) - this is the Turkish government’s online resource providing access to government services, with an information portal for non-nationals.¹²¹ In terms of social assistance, refugees and people seeking asylum

“in need” can access financial allowance, social assistance and other benefits, subject to a means test.¹²² In practice, civil society provides refugees with social assistance using international funding.

The majority of refugees and people seeking asylum in Türkiye live in urban areas - this is generally seen as a positive strategy adopted to integrate refugees into society - and the largest refugee camps have been closed since 2019. Refugees live in accommodation they rent, sometimes with the support of NGOs, while a percentage live in vacant accommodation or other non-residential buildings often in harsh and unhealthy conditions.¹²³

It must be noted that people face barriers accessing rights, and overall the situation of refugees and people seeking asylum in Türkiye is very difficult.¹²⁴ Increasing xenophobic discourse and social rejection has had a critical impact on refugee communities as well as government behaviour, with recent reports of the Turkish authorities detaining and forcibly returning Syrian refugees under temporary protection.¹²⁵

However, Türkiye’s general response of welcoming and hosting large populations of people in need - and putting in place systems that provide people with (a level of) access to rights and essential services - could be instructive for other countries experiencing “transit migration” and large numbers of people arriving.

d) Addressing (geo)political influences supporting immigration detention

How can ATD work when geopolitical and domestic interests drive governments to use the “transit” label and related coercive migration policies, including immigration detention? Despite the vested interests often involved, it is clear that restrictive migration control policies do not benefit host societies themselves. Thus, there are important benefits for governments in shifting to rights-based approaches that avoid immigration detention.

The human cost of detention goes beyond extremely detrimental effects on individuals, to damaging families and communities as a whole. Control based policies, including immigration detention, disempower communities, causing

social conflict rather than preventing it.¹²⁶ Despite government rhetoric, migration has a positive role to play economically and culturally.

Furthermore, using international funding for immigration detention means that valuable resources, including international aid and investment, are being wasted on approaches which do not address the country’s real social and economic development needs. With international support, governments can move away from restrictive migration policies to regulate migration in a way that benefits migrant and host communities, responding to the foundational needs of societies.

Lessons from South America

According to Pablo Ceriani Cernadas, “[M]igration-detention policies have widely proved to be ineffective responses to irregular migration, a structural and multidimensional phenomenon of the current global context. On the contrary, as it happened in some South American countries, alternatives measures –such as regularisations - have not only proved to be more effective measures, but they also generate a number of positive outcomes in different public policies, such as preventing diseases, improving living conditions and social integration of migrants –and their contribution to economic and development policies—as well as reducing informality at work, labour exploitation, trafficking in persons and smuggling of migrants, among many others.”¹²⁷

Colombia exemplifies the non-detention approach of prioritising regularisation to address irregular migration. In response to close to one million Venezuelan refugees and migrants without regular migration status entering the country in early 2021, the Government of Colombia launched a temporary protection status that operates as a regularisation programme, granting work permits and access to basic services, as well as 10 years to apply for and acquire a residence visa, if so desired.¹²⁸ The UN Network on Migration has highlighted that this 10-year temporary protection status “reduces migrants’ vulnerability to exploitation, enables the authorities to know who is present on the territory, and creates opportunities for Venezuelan migrants to contribute economically and socially to their host communities.”¹²⁹ The programme has also been hailed as an “extraordinary example of humanity, commitment towards human rights, and pragmatism” by the UN High Commissioner for Refugees.¹³⁰ The scale of the initiative is particularly notable, and in January and February 2022 alone 500,000 Venezuelan refugees and migrants were issued with Temporary Protection Permits.¹³¹

Key approaches which support immigration detention reduction and ATD

1. *Shifting to rights-based approaches that benefit host societies*

It is possible for countries experiencing “transit migration” to prioritise rights

and non-detention to the benefit of host societies and migrants. ATD programmes have been shown to have a beneficial impact on social cohesion between migrant/refugee and local communities.¹³² ATD can support healthier

“The question is what alternatives? Publicly, Libyan authorities say they’re against migration. But the reality is it has a value and they must be thinking about how to regulate it. We need to understand what the government’s priorities might be - for example around labour migration - to draw upon. This is a long term work and depends on Libyan stability as well.”

Key informant in Libya

Furthermore, States where “transit migration” is an issue have used rights-based frameworks - rather than coercive approaches - to leverage resources to meet the needs of migrant and host communities (see Jordan Compact below).

In its relationships with other States, Egypt has shifted from a “transit” nar-

rative to emphasise refugee rights. While Egypt previously framed itself as a country of transit for refugees, it is increasingly presenting itself as a country that can host and manage the refugee populations that would otherwise want to move to Europe.

Egypt - shifting from a “transit” narrative to a focus on rights

In recent years, the Egyptian government has shifted from a “transit” narrative to increase its emphasis on inclusion and access to rights for refugees and people seeking asylum, in particular access to education and healthcare. Currently, Syrian, Sudanese, South Sudanese and Yemeni nationals have access to the public education system on par with Egyptians.¹³³ The government is rolling out a universal health insurance scheme which grants refugees and people seeking asylum access to primary health services, similar to Egyptian nationals.¹³⁴ Egypt has been praised for its social inclusiveness in providing refugees and people seeking asylum with similar access to public services as its citizens.¹³⁵ However, there are limitations and in reality people often face bureaucratic and other barriers - including racism - in accessing these services. While Egypt’s discourse has changed, challenges remain in the implementation of its inclusive policies in practice.

2. Regional solutions that reframe migration as an issue of human rights and development

Given the cross-border nature of “transit migration” and the influence of geopolitics on the use of immigration detention, solutions must also lie in regional cooperation between States, recognising pressures on both sides and reframing migration as an issue of human rights

and development. Some examples of regional cooperation include:

- In Africa, there is a move towards more free movement of people, recognising migration as a key driver of economic and social development for countries in the region. African governments have signed up to different regional and sub-regional freedom

- of movement initiatives, and a number of African countries, including lower to middle income States that experience “transit migration,” are improving visa openness (see box in Annex).
- In Southern Africa, States including Botswana, Eswatini, Mozambique, South Africa, Zambia and Zimbabwe have established cross border coordination processes for the protection of children on the move, including coordination on case management.¹³⁶
 - The Operación Flujo Controlado - a bilateral agreement between Panama and Costa Rica prioritising the protection and safety of migrants in transit (see above).
 - The EU - Jordan Compact: international funding and trade incentives directed to building the resilience of both migrant and host communities, opening up a restrictive policy environment rather than incentivising migration control and immigration detention.

Jordan Compact - a resilience framework

In 2016, the government of Jordan signed an agreement with the EU called the Jordan Compact, which provided Jordan with billions of dollars in financial grants, loans and preferential trade agreements, in exchange for Jordan improving access to education and legal work for Syrian refugees.¹³⁷

By increasing the resilience and independence of Syrian refugees, the Pact aimed to address the humanitarian situation of refugees as well as reduce onward movement to Europe. In addition, the Jordanian government has a policy of directing a portion of international aid to support local Jordanian communities experiencing vulnerabilities, which may have helped to pre-empt “more serious social tensions within the country.”¹³⁸

According to the Jordanian Government, the Jordan Compact attempted to “turn ‘the Syrian refugee crisis into a development opportunity’ for Jordan by shifting the focus from short-term humanitarian aid to education, growth, investment and job creation, both for Jordanians and for Syrian refugees.”¹³⁹

The Compact represented a paradigm shift in dealing with protracted displacement, and showed that “by building on existing political capital between donor governments, international organisations and host governments, as well as economic and political incentives such as trade deals, a restrictive policy environment can be opened up and funds can be mobilised in a short space of time.”¹⁴⁰

As actors consider the future refugee compacts, there are also limitations to consider. The Jordan Compact only provides rights to Syrian people - excluding refugees from other countries - and those eligible have faced barriers in accessing work permits and education. Gender discrimination factors also lead to women being less able to access work due to child care responsibilities.¹⁴¹ A key learning is that future refugee approaches need to integrate the perspectives of refugees themselves from the outset, starting with “*what refugees need and want, and be realistic about what such arrangements can achieve.*”¹⁴²

4. Using ATD as a strategy to reduce and end immigration detention in contexts with “transit migration”

Firstly, it must be noted that change is always context specific and depends on specific political, historical, and migratory contexts, including how contexts of “transit” migration are shaped by regional and domestic power dynamics and interests, and how these systemic factors impact the lives of people on the move everyday.

Additionally, IDC believes that to ensure a healthy and vibrant ecosystem of change, diverse approaches from a range of actors are absolutely necessary in the movement to end immigration detention as a whole. IDC members and partners working in contexts with “transit migration” and mixed migration movements are diverse actors involved in various innovative strategies to reduce and end immigration detention. ATD advocacy is one of the ma-

ny strategies that civil society can and does utilise to achieve progress, as well as advocacy to release people from detention or end corporate investment in detention or strategic litigation, and many more. None of these approaches should be seen as exclusive of one another, and they can and do complement each other in many contexts.

Importantly, when deciding which strategies to utilise as civil society, IDC believes that migrant and refugee-led groups, particularly leaders with lived experience of detention, must be supported and centred in these strategic decisions, as they are the ones driving change on the ground, and best understand the challenges facing their communities, as well as the potential solutions.

a) When can ATD be useful as a strategy in contexts with “transit migration”?

A strength of using ATD as a strategy is that it can be tailored to specific and complex realities, in order to address unique gaps and opportunities. However, it is critical to consider various con-

textual factors when considering ATD advocacy as an approach. Drawing on the experience of IDC members working in contexts with “transit migration” and large mixed migration movements,

the following are some key considerations:

- Is there opportunity to drive positive change by promoting solutions that benefit migrants, host communities and society as a whole? This could include e.g. reframing migration as an issue of development and rights, harnessing funding to strengthen the resilience of migrant and host communities through rights-based approaches, and building national systems to benefit people in need irrespective of nationality or migration status.
- As a process towards larger shifts in policy and systems change,¹⁴³ could incremental steps be achieved by engaging governments on technical ATD implementation?
- Is it possible to build broader civil society solidarity through support for rights-based ATD?
- Are there security concerns regarding direct action and/or open criticism of the government? If so, is there potential for government engagement on a more technical level related to the implementation of ATD programmes?
- Is there government interest to show progress on ATD at regional and/or global levels, and/or pressure not to be viewed as lagging on ATD?



b) Challenges to using ATD as a strategy in contexts with “transit migration”

At the same time there are many challenges civil society actors face when working on immigration detention and ATD in contexts with “transit migration” and large mixed migration movements. Some challenges include:

- Huge influence of geopolitical factors, and economic and political interests involved in detention
- Heavily coercive and reactive migration policy environments
- Racism and xenophobic rhetoric against supporting migrants
- Risks that governments co-opt the term ATD to define control-based measures
- Lack of knowledge, practice and resources to implement community-based ATD
- Security concerns for NGOs work on migration and immigration detention
- Potential assumptions from various actors, including government

and civil society, that ATD cannot work in “transit contexts”

- Immigration detention is not always a priority among civil society and other actors

- Obstacles to promoting and establishing government and civil society partnerships

c) Different approaches to ATD advocacy

Some of the ways civil society actors, including IDC members, have engaged in ATD advocacy in contexts with “transit migration” include:

- Organising alongside impacted communities and leaders with lived experience of immigration detention and ATD
 - Mapping existing context, gaps and strengths for ATD development
 - Creating dialogue and building support for ATD among government, civil society and other stakeholders including the UN, donors and embassies
 - Supporting legislative reform to include ATD in law
 - Providing input and technical advice on ATD development, and drafting laws, operational protocols, screening tools related to ATD
 - Piloting community-based case management ATD to build evidence and produce research on ATD impacts to encourage systemic change
 - Advocacy for government pilot projects
- Training civil society and government officials on ATD
 - Monitoring and evaluating ATD programmes
 - “Advocacy through doing” in every-day interaction with authorities¹⁴⁴
 - Peer learning at different levels (e.g. among ATD implementers/governments)
 - Partnering with champions within government who support ATD
 - Promoting government-civil society partnerships
 - Advocating for budgets and funding to resource rights-based ATD
1. *ATD pilot projects and programmes*

ATD pilot projects and programmes can develop community-based approaches for specific groups of migrants at risk of immigration detention, building evidence and dialogue among stakeholders and catalysing broader reform processes. For civil society working in “transit contexts,” piloting ATD

has been one strategy to build learning and evidence that community-based ATD works. For governments, ATD pilots can test new, and often unfamiliar approaches, building knowledge and capacity without large economic investment or political risk. Pilots can provide a vehicle for building dialogue

and interinstitutional cooperation, while shifting mentalities around the possibilities of managing migration without immigration detention. To have real impact, pilots need to be scaled up and/or mainstreamed so the tested approaches are converted into policy.

Asylum Access report - Mexico

“This pilot meant a watershed to establish an inter-institutional coordination route between different government actors, instrumented operations and care protocols for the identification and channelling from Immigration Stations to civil society shelters and Social Care Centers of the National System for Development Comprehensive Family (DIF). Likewise, it signified the political will and the practical possibility that exists to advance towards mechanisms that are tripartite between INM, COMAR and UNHCR in Mexico, with the aim of providing alternatives to detention for people subject to international protection and applicants for refugee status.”¹⁴⁵

At the same time, ATD pilot projects have limitations. Civil society programmes often have limited resources and struggle to scale up. It can be challenging for NGOs to secure formal government collaboration, meaning that referrals remain ad hoc. Implementing NGOs may need to consider how to respond to conditions imposed by governments, for example that ATD are only to be available for people who agree to return. Further, there is a risk that governments use ATD pilot projects to avoid permanent solutions and refrain from mainstreaming ATD approaches.

2. Systemic interventions

Stand-alone ATD pilot projects and programmes cannot themselves address the systemic gaps and shortcomings often present in the immigration systems of “transit contexts” which expose

people to a risk of immigration detention. Particularly in “transit contexts,” ATD advocacy may need to focus on broader actions directed at bringing about changes in the system to reduce people’s risk of immigration detention. For example, this could include developing national screening and referral mechanisms or working towards inclusive child protection processes and systems. It may also involve strengthening rights, including access to legal work, education and healthcare; or expanding possibilities for legal stay and strengthening the quality of, and access to, asylum procedures.

3. Building blocks for forward looking migration governance systems

In some contexts, civil society actors have used ATD advocacy to reduce detention for specific groups, while seeking to work towards more forward

looking migration governance systems that do not rely on immigration detention at all. Community-based ATD can demonstrate how programmes developed through a whole of government, whole of society approach can better respond to the complexities of mixed

migration, as linked to other policy areas including health, employment, economy, social security and pensions. Such ATD can provide the potential building blocks for migration systems with proactive integration policies that support more healthy and cohesive societies.

“We see our ATD work as a better way of regulating migration more generally. Bulgaria doesn’t have a real integration policy and the Ukrainian crisis has shown like never before how different institutions, government departments and agencies need to work together to address migration. It’s difficult to implement a whole new policy in one go, but our ATD work has helped test and build evidence around a new approach - we are working towards this in the longer term.”

Diana Radoslavova, Centre for Legal Aid - Voice in Bulgaria

5. Conclusion

The concept of “transit” and use of immigration detention are symptoms of current global approaches to migration governance, which have very real and detrimental impacts on the lives of people on the move. State policies create “transit environments” through stricter border controls and decreasing pathways for legal migration. Despite common assumptions, migrants in so-called “transit contexts” are diverse in their situation and motivations. People’s intentions can also be fluid based on a range of factors, including their experiences in the so-called “transit country” itself. “Transit” is therefore not a useful concept for understanding individual experiences or for developing migration policies.

Countries experiencing “transit migration” vary greatly in their approaches to migration governance and use of immigration detention - with some only using detention rarely or not at all. At the same time, geopolitics and domestic political interests play a fundamental role in the increasing use of immigration detention in a number of “transit countries.” The idea of “transit” is also

behind huge flows of capital as richer States seek to draw disadvantaged, poorer neighbouring countries into migration control measures, including immigration detention.

At the same time, ATD are being implemented in contexts experiencing “transit migration” and can achieve positive outcomes for individuals, communities and governments, including where limited resources and structural gaps put people at risk of immigration detention. Overall, integrating the perspectives of impacted people and communities from the outset can ensure ATD better responds to people’s needs and positively impacts their daily lives.

In terms of ATD processes - screening, assessment and referral mechanisms are key in States better understanding the diverse situations, intentions and motivations of individuals, and to ensure appropriate care, including in contexts of large mixed movements. Case management and other community-support programmes which build trust, support migrants’ agency and people’s ability to meet basic needs have proved

effective, including when working with people considering onward movement.

Standalone ATD programmes and pilot projects can develop community-based approaches for specific groups of migrants at risk of immigration detention, building evidence and dialogue among stakeholders and catalysing broader reform processes. At the same time, systemic interventions are often necessary to address structural gaps which contribute to “transit environments” and put people at risk of immigration detention (e.g. expanding options for regular stay and improving access to livelihoods, healthcare and education)

A whole of government, whole of society approach to ATD can help address resource limitations and ensure better, rights-based responses to the complexities of mixed migration. ATD can build on strengths in the specific national context, channelling funding and expertise to strengthen existing systems

rather than developing parallel structures or starting from scratch. Such ATD can provide the potential building blocks for forward looking migration governance systems which avoid immigration detention and support more healthy and cohesive societies.

Finally, this paper argues that it is possible for governments to shift from a “transit” narrative to approaches that focus on rights and benefit migrant communities and host societies. Solutions must also lie in regional cooperation between States, recognising various pressures, and reframing migration as an issue of human rights and development. Rather than incentivising migration control and immigration detention, international funds can be directed to building the resilience of both migrant and host communities, and to addressing the real foundational challenges that societies face.



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