



# Global Trends in Immigration Detention and Alternatives to Detention: Practical, Political and Symbolic Rationales

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## Executive Summary

Immigration detention is a growing threat to the well-being of migrants worldwide. While the use of this tool continues to increase, there is a growing consensus by governments on the need to pursue alternative programs. This paper examines the nature of these apparently contradictory developments and the reasons for tension in this area of migration policy. Drawing from research conducted by the International Detention Coalition and La Trobe University, this paper describes the Community Assessment and Placement (CAP) model, which seeks to prevent unnecessary detention, while allowing governments to meet the rationale offered for detention. It argues that the global trends of growth in detention and an increased emphasis on alternatives reflect competing political, policy and operational objectives. For example, governments wish to ensure compliance with deportation orders; alleviate political pressures regarding the harms associated with detention; and demonstrate control of territorial borders. Understanding the multiple rationales that shape this area of migration policy can help make sense of contradictory policy developments and identify the most effective ways to safeguard those who might be subject to detention.

<sup>1</sup> Robyn Sampson was supported by a La Trobe University Post-Graduate Award. The authors gratefully acknowledge the financial support of the Myer Foundation, the Oak Foundation and the Open Society Institute for this research. We would like to thank Katherine Wright and Lucy Bowring for their insightful comments and suggestions on an earlier version of this paper.

## Introduction

*In detention our son was bored, he didn't play with the other kids, he cried, he just said, "I want to get out." But here he is doing much better. It has made a big difference being in the community.*

Stateless asylum seeker in an alternative to detention program, Melbourne, Australia (Australian Human Rights Commission 2012, 16)

Immigration detention has emerged as a significant policy through which governments seek to control irregular migrant populations and eject unwanted migrants. Detention has increasingly become a preferred means for states to maintain and assert their territorial authority and legitimacy, and respond to mounting political pressures regarding border security.

Notwithstanding the growth in policies of containment and control, government interest in alternatives to detention has recently increased as well. Alternatives to detention are seen as a way to achieve effective migration management, while protecting the rights and dignity of migrants. More governments are taking steps to explore and implement alternatives, ranging from scoping studies and small-scale pilot projects to significant policy developments and systemic change.

This paper reconciles these apparently competing trends by identifying the practical, political and symbolic rationales underlying this area of migration policy. It presents research on alternatives to detention drawn from the study conducted by the International Detention Coalition<sup>2</sup> (IDC) and La Trobe University, *There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention* (Sampson, Mitchell and Bowring 2011), and it supplements these findings with recent data and cases.

## Immigration Detention

Immigration detention has increased globally as migration, both regular and irregular, has increased. According to recent United Nations (UN) estimates, the number of international migrants worldwide grew from 154 million in 1990 to 232 million in 2013 (UNDESA 2013). As the number of migrants crossing state borders has grown, governments have responded to the social and economic benefits of migration by developing avenues to enable legal migration for employment, education, family reunification and tourism. However, significant migration occurs outside of legal channels. The International Labour Organization (ILO) estimated that in 2004 between 10 and 15 percent of the world's immigrants were unauthorized (ILO 2004).

<sup>2</sup> The International Detention Coalition (IDC) is a global network of over 300 non-governmental organizations, faith-based groups, academics and practitioners in more than 50 countries that advocate for and provide direct services to refugees, asylum-seekers and migrants in immigration detention. Further information is available at [www.idcoalition.org](http://www.idcoalition.org).

Despite the success of many systems of governance in managing large flows of people, a perception of unregulated, out-of-control migration has magnified concerns regarding security and crime, job availability and the maintenance of cultural heritage (UNDP 2009). The issue has been further politicized in situations where it has been framed as an issue of state security and associated with the spread of international terrorism since September 11, 2001 (Adamson 2006; Coutu and Giroux 2006; Kerwin 2005). In these situations, irregular migration can become a particular focus of public concern.

The increase in migration flows and the perceived link of migration with issues of national security have coincided with the rise of globalization in the late 20th century. Some have argued that globalization would lead to the end of the nation-state (Albert 1998; Ōmae 1995). In fact, the emergence of transnational corporations (Edwards 2005), supranational political bodies (Guild 2006), regional free trade agreements (Turbeville III and Bradbury 2005) and cyberspace (Brunn 1998) have increased the power of global and virtual bodies at the expense of the state. Issues of territory, sovereignty and political authority are being recalibrated in light of these changes, resulting in new articulations of territorial control (Dauvergne 2008; McNevin 2011).

“Immigration detention” is a contested term, but is generally viewed as a form of administrative confinement, as opposed to criminal incarceration.<sup>3</sup> A number of inter-governmental documents have defined the term (UNHCR 1999, 2012).<sup>4</sup> Silverman and Massa define it as:

[T]he holding of foreign nationals, or non-citizens, for the purposes of realizing an immigration-related goal. This definition is characterised by three central elements: first, detention represents a deprivation of liberty; second, it takes place in a designated facility; and third, it is being carried out in service of an immigration-related goal. (2012, 679)

This definition is both broad and practical, although it loses some of the legal specificity found elsewhere. As with other definitions, it draws our attention to the place in which an individual is confined. By contrast, alternatives to detention are not tied to a particular location but rather refer to a set of tools that can be applied no matter where the individual is located (Sampson 2013).

Migrant populations who are subject to detention vary considerably across contexts, and are thus difficult to categorize. The most consistent use of detention is of those who are about to be deported including those refused entry and those who have lost a valid status due to committing an unrelated criminal offence. Additionally, unauthorized migrants including asylum seekers can be detained on arrival for screening processes such as identity,

<sup>3</sup> It is worth noting that irregular migration is considered a criminal offense in some countries and, as such, the migrant is convicted and imprisoned for this crime. This imprisonment is arguably a form of detention, but is not discussed in this paper. In addition, there is some debate over whether refugee camps that deny freedom of movement should be considered a form of detention but, again, these have not been included in this paper.

<sup>4</sup> Council Directive 2003/9/EC, Laying Down Minimum Standards for the Reception of Asylum Seekers, 2003 O.J. (L31) 18.

health and security checks. Others are detained during an expedited determination process<sup>5</sup> or throughout a full refugee status determination process. This population also includes growing numbers of asylum seekers subject to the “Dublin” agreement<sup>6</sup> who are awaiting return to the country of entry into the European Union (EU) for processing. Additionally, detention is sometimes used for migrants located in a state, but without a valid permit or visa. These may include unauthorized migrants, stateless persons, victims of human trafficking and UNHCR-recognized refugees.

Immigration detention facilities vary widely in size and condition, both internationally and within individual states. Facilities range from centers built exclusively to detain migrants that are very similar to prisons, to makeshift camp sites (Flynn 2011). Detention can also occur in airport transit zones, closed screening facilities, prisons and police stations. In addition, individual houses, hotels, motels, barges, and cargo containers have been used in some instances. Many facilities are located in regional or remote areas that are difficult to reach from the nearest city, including on islands, in forests and in deserts. Conditions range from newly-built and clean facilities to dilapidated and dirty structures, including some never intended for human habitation.

The length of time individuals are subject to detention also varies significantly depending on the individual case and the country in which the detention occurs. Detention can range from a few hours to days, weeks, months and years. In some contexts, it is indefinite. The length of time a person is detained is subject to legally prescribed limits in some countries. For example, the maximum length of detention for the purposes of removal in EU member states ranges from 32 days in France to two years in Romania, with no set time limits in nine EU countries (EU FRA 2010). The duration of detention may depend on the reasons for detention; the length of an administrative process, such as a refugee determination process; or practical issues in achieving release or deportation including difficulties negotiating with a country of return. Stateless people are often subject to the longest periods of detention (The Equal Rights Trust 2010).

## **Global Trends in Immigration Detention**

The IDC observed several trends when it undertook global consultations<sup>7</sup> in 2011-12. A central concern was increased use of immigration detention in all regions, including the increased use of prisons and the building of new detention facilities. We focus in this section on the trend of global detention growth.<sup>8</sup>

5 Some countries have established an accelerated process which applies when officers believe they will be able to make a decision to refuse or grant refugee status in a short timeframe. In the UK, this is called the Detained Fast Track.

6 The Dublin Regulation (also known as “Dublin II”) provides a legal framework by which EU Member States determine which state is responsible for processing an asylum claim and provides for the transfer of the applicant to that country for processing.

7 The IDC undertook regional and national consultations with its members and stakeholders between 2011 and 2012. The consultations covered more than 250 individuals from 67 countries and included regional workshops in Africa, Asia, Americas, Europe and the Middle East and North Africa (IDC 2012).

8 In addition, the IDC consultations highlighted the growing use of private companies to manage facilities (Golash-Boza 2009); the criminalisation of irregular migrants (Bosworth and Guild 2008; Healey 2004);

The best evidence of the growing global population of detainees can be found in estimates of the total detention capacity for individual countries.<sup>9</sup> The overall global detention capacity and number detained at any one time is unknown.<sup>10</sup> “Detention capacity” is the number of people who can be detained at any given time within a country’s dedicated detention facilities. Detention capacity in the United States – believed to detain the largest number of immigrants worldwide – has increased substantially in recent years from 6,785 in 1994 (Global Detention Project 2009e) to 34,000 by 2013 (Berger 2013).<sup>11</sup> On the other side of the Atlantic, the United Kingdom has expanded the capacity of its facilities from 250 in 1993 to 3,500 in 2011 (Global Detention Project 2011b). The Netherlands’ detention capacity expanded from 45 in 1980 to 3,310 in 2006 (Broeders 2010). Between 2010 and 2011, Australia expanded from operating 10 to 21 detention centers. As of late 2012, Australia maintained the capacity to detain 6,929 persons on its territory with a “contingency” capacity of 8,957 (Department of Immigration and Citizenship 2012).<sup>12</sup>

Other countries that maintain significant detention regimes include Malaysia with a capacity of 11,400 (Global Detention Project 2009c), Spain with a capacity of 7,000 (Global Detention Project 2010a), and South Africa, whose major detention facility holds 6,500, with hundreds more detained in ad hoc facilities (Global Detention Project 2009d; Lawyers for Human Rights 2008). Israel detains many hundreds of migrants in prisons (Global Detention Project 2011a) and detention centers (Hotline for Migrant Workers 2012) and is reportedly building an 8,000-bed facility (Stewart 2012). Greece has a detention capacity of 2,500, which it augments through detention at other sites such as police stations (Global Detention Project 2009a; Pro Asyl 2007). Meanwhile, Italy has a capacity of 1,900 (Global Detention Project 2012a) and Germany’s facilities hold approximately 2,250 (Broeders 2010).

Additionally, increased global detention numbers are caused by increased investment by destination countries in the detention infrastructure of transit countries (Aubarell, Zapata-Barrero and Aragall 2009; Lutterbeck 2006; Taylor 2010b). This externalisation of border control is best documented in the EU, which has been investing in the capacity of its neighbours to detect, detain and deter migrants who are likely planning irregular onward travel to Europe (Aubarell, Zapata-Barrero and Aragall 2009; Lavenex and Uçarer 2004; Zapata-Barrero, Zaragoza and Aragall 2009). For example, Ukraine received 30 million Euros from the European Union in 2011 to build nine new detention centers, despite a drop in irregular migration numbers in that country (Global Detention Project 2012b; Human Rights Watch 2010). Libya detains between 4,000 and 6,000 persons at any given time

and the “extra-territorialisation” of detention (described in more detail below). Worldwide, the practice of detaining refugees, asylum seekers and irregular migrants was noted. Many raised issues regarding the detention of children, the elderly, disabled and other vulnerable groups. Prolonged detention in poor conditions, often with little or no access to asylum procedures or judicial oversight, was a common area of concern.

9 We note that many countries do not regularly publish these data and so figures provided for each country are as recent as possible at the time of writing.

10 The Global Detention Project aims to document immigration detention infrastructure internationally but as yet has not produced a global estimate. For individual country estimates see [www.globaldetentionproject.org](http://www.globaldetentionproject.org).

11 A total of over 429,000 persons were detained in the year 2012 (Koulish and Noferi 2013).

12 The detained population on Australian territory in May 2013 was 11,341 people including 3,057 children (Department of Immigration and Citizenship 2013).

(Amnesty International 2013; see also Global Detention Project 2009b) while Turkey is expanding its detention capacity from 900 to 2,500 with the construction of two new facilities (Global Detention Project 2010b; Helsinki Citizens Assembly 2007; Human Rights Watch 2008; Kirişçi 2004).

A similar dynamic is seen in the political and financial investment of the United States in the detention capacity of Guatemala (Flynn 2006) and Mexico (Global Detention Project 2013), although the evidence for direct US funding of detention in Mexico is mixed (Kimball 2007, 107). Mexico maintains a detention capacity of 3,500 and detained almost 90,000 migrants during 2012 (Global Detention Project 2013). Meanwhile, in the Asia-Pacific, Australia has similarly wielded its influence and resources to increase the detention capacity of Indonesia, Nauru and Papua New Guinea (Nethery, Rafferty-Brown and Taylor 2012; Taylor 2010a; 2010b).<sup>13</sup>

## **Global Trends in Alternatives to Detention**

A number of countries are undertaking detention reform including legislative and policy changes to limit the use of detention, avoid detention of certain vulnerable groups, and introduce community-based<sup>14</sup> supervision options. These include greater release mechanisms in North America, Australia and New Zealand, new reporting and case management models in Europe, provisional release mechanisms in East Asia, judicial release in South Asia, and shelter models in the Middle East and Central America. This section describes examples of developments that augment the findings of the IDC's 2011 study in order to illustrate recent trends.

### *Alternatives to detention in law – the European Union*

There has been an increase in legislation providing for alternatives to detention in the EU. By the end of 2011, all member states had introduced alternatives to detention into national legislation except Malta (EU FRA 2012, 52). This development is generally considered to be linked to two key contextual factors: transposing the EU Return Directive<sup>15</sup> into national law and an increased interest in reducing detention (EU FRA 2011, 48). Such interest

13 As of May 2013, Nauru was detaining 430 migrants delivered by Australian authorities, while Papua New Guinea held 302 such persons in detention camps on Manus Island, with ongoing expansion (Senate Legal and Constitutional Affairs Legislation Committee 2013, 27).

14 We use the terms “community” and “community-based” to refer to the general society of the local area or host country and to indicate that a particular alternative to detention program involves the placement of an individual amongst that broader society. This is in contrast to the placement of an individual in a detention center or other place of confinement. The term “community” is sometimes taken to mean the cultural community of co-nationals for the migrants in question, but this is not our intended interpretation of the term. However, there are times when the cultural community may play an important role in offering alternative to detention options.

15 The EU Return Directive was agreed by member states in 2008 and entered into force at the end of 2010. It sets forth common standards on the return and removal of irregular migrants which include limiting the use of detention. See Council Directive 2008/115/EC, On common standards and procedures in Member States for returning illegally staying third-country nationals, 2008 O.J. (L348) 98.

was evident during discussions at the Western European roundtable held by UNHCR and supported by the IDC in November 2011 (UNHCR 2011).

### *National screening and assessment tool – the United States*

As part of a larger detention reform process emerging after a change in government (DHS 2009; Schriro 2009), the United States developed a risk assessment tool, called the Risk Classification Assessment (RCA), designed to inform immigration officers' decisions regarding detention during the intake process (ICE 2013; UNHCR 2013, 6). The tool is designed to screen for needs (i.e. vulnerabilities) and risks (i.e. flight risk and danger), and enable officers to identify appropriate release options and types of conditions required, if any. The US government announced in March 2013 that the risk tool was deployed nationally. It is hoped the tool will improve consistency in decisions nationally and divert vulnerable and low-risk individuals from detention. That said, human rights advocates who reviewed an early version of the tool criticized it for being weighted towards over-detention. Moreover, although supervisory officers retain ability to overturn a determination after a qualitative assessment, it is unclear whether this occurs in practice, as supervisors must presumptively follow the automated recommendation unless they state reasons on the record otherwise (UNHCR 2013, 6).

### *Policy changes including a reduction in detention numbers - Japan*

Japan has made considerable progress on alternatives to detention after experiencing serious challenges within detention facilities (including riots and self-harming) and increased pressure from advocacy groups. Following a regional roundtable in April 2010 (at which the preliminary results of this research were presented), Japan decided to release all children from detention and introduce a policy to prevent the detention of children in the future (IDC 2011a). It has since reduced its overall detention numbers, developed working partnerships with local non-governmental organizations and supported an alternative to detention pilot project for vulnerable groups.

### *Piloting alternatives to detention – the Netherlands*

The Netherlands is piloting four alternatives to detention that are due to be evaluated in 2013 (EU FRA 2012). One of these pilots works with migrants who are obliged to leave the country. The pilot is testing the effectiveness of a program that meets their basic needs, but also requires residency with a reliable individual and regular reporting to authorities (EU FRA 2012, 53).

### *Alternatives to detention for children and vulnerable groups*

The UN Committee on the Rights of the Child has called on States to “expeditiously and completely cease the detention of children on the basis of their immigration status” (2012, 18). Belgium has promoted alternatives in this area following a significant reform in 2009

which ended its detention of children in the face of sustained criticism (Jesuit Refugee Service Europe 2011). Several countries in Europe, such as Finland, Poland and the UK, have now made similar commitments. The French President made a campaign pledge to end the detention of children and to expand alternatives (Vie Publique 2012). Subsequently, a circular from the Ministry of the Interior limited the detention of minors to exceptional circumstances (Henry 2012).

In Thailand and Malaysia, the *ad hoc* release of vulnerable groups, such as refugees registered with UNHCR, has been increasing as those governments seek to reduce pressures on their detention networks, deal with intractable cases, and respond to civil society advocacy. Meanwhile, in Tanzania, where detention is often in prisons, the government is working with local and international groups to develop alternatives for vulnerable groups including children.

## **International Human Rights Focus on Alternatives to Detention**

Additionally, alternatives to detention have become a priority for international human rights bodies. This section highlights the work of four United Nations bodies in order to illustrate the international political context that is shaping global trends.

### ***United Nations General Assembly (the Assembly)***

The Assembly has recognized the serious problem of immigration detention in two resolutions. In resolution 63/184, the Assembly called upon States “to respect the human rights and the inherent dignity of migrants and to put an end to arbitrary arrest and detention” (UN General Assembly 2009, para. 9). It called for alternatives to detention to be implemented and for periods of detention to be reviewed. The Assembly also noted with approval State measures that reduce the detention of irregular migrants (UN General Assembly 2009, para. 13). In 2010, the Assembly again adopted a resolution on the protection of migrants and repeated its calls for States to reduce the detention of unauthorized migrants (UN General Assembly 2010, para. 4). In October 2013, the Assembly held the second High Level Dialogue on International Migration and Development, at which the Secretary General stated, “We need to create more channels for safe and orderly migration, and to seek alternatives to the administrative detention of migrants” (IDC 2013).

### ***United Nations Human Rights Council (the Council)***

In September 2009, the Council held a special panel discussion devoted to the human rights of migrants in detention due to “human rights concerns related to the recourse to detention of migrants and the duration and conditions of their detention” (Council 2009, 17). The Council further recognized the problem of immigration detention in two resolutions in 2010: one on arbitrary detention and the other on the human rights of migrants. Resolution 15/16 calls upon states to “put an end to arbitrary arrest and detention and ... to adopt, where applicable, alternative measures to detention” (Council 2010, para. 8).

***United Nations Office of the High Commissioner for Human Rights (OHCHR)***

In September 2009, the UN High Commissioner for Human Rights remarked that the plight of “migrants, and particularly migrants in an irregular situation, is one of today’s most critical human rights challenges” (2009, 2). The Strategic Management Plan for 2010-2011 subsequently notes the office will “continue to ... address concerns related to migration detention” (OHCHR 2009, 54). In 2010, OHCHR released a study on the rights of the child in the context of migration which concludes that children should only be detained as a last resort (OHCHR 2010, paras. 51-53). The study encourages the use of alternatives and refers to the IDC research (OHCHR 2010, para. 54; see Corlett, Mitchell, Van Hove, Bowring and Wright 2012). More recently, the High Commissioner called on states to “explore effective alternatives to immigration detention, particularly for children and other vulnerable groups of migrants” (UN High Commissioner for Human Rights 2012).

***United Nations High Commissioner for Refugees (UNHCR)***

Although the UNHCR has been concerned about the detention of refugees and asylum seekers since at least 1997 (UNHCR 2009, 136), the issue has been prioritized in recent years. At the 2009 Executive Committee (ExCom) meetings, UNHCR and the IDC held a side meeting on alternatives to detention attended by 30 governments. The following year, ExCom stated that to “address unjustified detention, UNHCR advocates strongly for the use of effective alternatives to detention” (ExCom 2010, para. 40). UNHCR also commissioned three studies on detention (Costello and Kaytaz 2013; Edwards 2011a; Field and Edwards 2006), held a Global Roundtable on Alternatives to Detention with OHCHR (Turk and Edwards 2011), hosted several regional roundtables, and revised its Guidelines on Immigration Detention (UNHCR 2012).

## **The Practical, Political and Symbolic Rationales of Detention Policy**

Recent receptivity to alternatives to detention fits somewhat awkwardly alongside the long-standing trend of investment in detention. Based on our observations in the field and the literature on detention, we contend that detention policy is shaped by three major rationales, discussed below.

### ***Practical***

The “formal” purpose (Leerkes and Broeder 2010) of immigration detention is to achieve particular practical outcomes, such as departure from the country. There are many alternative options that enable governments to fulfill these management objectives without resorting to detention (Sampson, Mitchell and Bowring 2011; Edwards 2011a, 2011b; Costello and Kaytaz 2013). As demonstrated in the following section, these range from open centers for asylum seekers on arrival while undertaking initial checks (Sweden) to holistic monitoring and supervision programs for high risk deportees (Canada).

Interest in alternatives to detention rises when they are demonstrated to meet the same practical policy objectives of detention—i.e. high rates of compliance and case resolution (see Sampson, Mitchell and Bowring 2011). Thus pilot programs in a number of countries (described earlier) are used to test the ability of alternatives to fulfill set practical objectives.

Alternatives that fulfill practical policy objectives can often be put into effect without a formal modification of policy or law. However, barriers to implementation can include the amount of energy and money that may be required to introduce and establish new modes of operation and the level of investment in existing detention policy and infrastructure (a form of institutional path dependency, see Tavan 2012).

### *Political*

As the use of detention has grown, so has the corresponding criticism of the policy and the advocacy for change in many countries. The policy of detention is highly controversial due to its impacts on health and human rights (Coffey et al 2010; Green and Eagar 2010; Lorek et al 2009; Robjant, Hassan and Katona 2009) and this brings with it significant and specific political pressures from a range of critics (Gryll 2011; Silverman 2012; Flynn 2012). Detention has even become a campaign issue in some countries, as noted earlier in relation to the French president. Nationalistic groups press for heightened border controls and reduced (irregular) migration (Grillo 2005; Karner 2011; Mavroudi 2010), creating a noisy political arena for this area of policy negotiation.

Adding to these domestic political pressures are those of international human rights bodies described earlier. International bodies in this area of policy represent an important political force and, in some countries, have coalesced with domestic political pressures to achieve change. For instance, the UNHCR's engagement on the issue in Japan, including facilitation of the regional roundtable discussion with peer countries, was an important development in the process of change in that country. Similarly, the UNHCR's involvement in lobbying for the release of registered refugees in countries such as Thailand and Malaysia has achieved some success.

Political pressure is heightened when it comes to the detention of vulnerable groups, particularly children. Advocacy, including from international bodies, often focuses on children and other vulnerable groups.<sup>16</sup> Governments are often responsive to these concerns. While there are important reasons for prioritizing these groups for release (or non-detention), alternatives for vulnerable groups arguably enable governments to assuage political pressures without dismantling the fundamental system of detention. This resonates with broader critiques of the role of compassion in migration policies (Fassin 2005, 2011). The result is that alternatives may be achieved for a small group while the majority of detainees – usually single men – are left behind bars. Despite these concerns, the development of alternatives for vulnerable groups can lead to broader changes. For instance, Australia developed an alternative to detention program for children and vulnerable groups in 2005 and this has since grown into a national system of release and community management for all asylum seekers (IDC 2009).

<sup>16</sup> For example, the International Detention Coalition was intimately involved in establishing the advocacy campaign “End Immigration Detention of Children.” See <http://endchilddetention.org/>.

### *Symbolic*

Despite the possibilities for practical and political pressures to achieve change, detention remains a potent symbol of sovereign authority over territory. Broad social and political changes have all worked to increase the significance of border control for modern governments. Increased migration flows, heightened security concerns and processes of globalization have coalesced to create a context in which border control and territorial integrity are central concerns for governments. It is within this context that detention has come to take on important symbolic functions by demonstrating control of borders for citizens and potential future arrivals alike (Leerkes and Broeders 2010; Mainwaring 2012; Pugliese 2008; Welch and Schuster 2005). These “informal” (Leerkes and Broeders 2010) or “noisy” (Welch and Schuster 2005) functions of detention are not codified in law but nevertheless remain crucial to its ongoing use (Mainwaring 2012; Welch and Schuster 2005). Immigration detention thus continues a tradition in which administrative detention is used to address social anxiety and maintain social order, as seen historically in reservations for indigenous populations and internment of enemy aliens (Bashford and Strange 2002; Nethery 2009).

We suggest there are two ways in which alternatives gain traction despite the symbolic logics of detention. First, some of the symbolic potency of detention can be diluted by shifting the language of “border control” to that of “migration management” (Taylor 2005). Throughout its work, the IDC has reframed the narrative implicit in this area of policy by moving away from control to management. In this framework, governments regulate (irregular) migrant populations through processing, management and targeted enforcement rather than controlling migrants through segregation and confinement. Governments can thus manage migration well by using a range of strategies to oversee migrants in the community while fulfilling expectations regarding compliance and case resolution outcomes, without the human and financial costs of detention. Such a shift in narrative (while ambitious) can provide legislators and bureaucrats with a new way of talking about alternatives that moderates popular anxiety about border transgressions and promotes confidence in systems of governance.

Second, detention is not the only policy by which governments symbolically evoke control. Alternatives to detention may well gain support in places where other policies or practices are successfully asserting authority and control in ways that are highly visible and/or hotly contested, such as the fortification of land borders or the interception and repatriation of migrants in boats. Many deterrence and containment measures are used to secure the border (Kaiser 2012; Parsley 2003; Wonders 2006) and alternatives to detention may gain ground when other policies or actions are serving this purpose. For instance, the expansion of alternatives in Australia noted above has occurred alongside increased deterrence measures, including transfer of boat arrivals to the countries of Nauru and Papua New Guinea. This example highlights the complex political environment in which the trend towards alternatives occurs in spite of competing logics of control.

In identifying the ways that detention and its alternatives are shaped by practical, political and symbolic rationales, we acknowledge that we have not incorporated every possible explanatory factor at work. Rather, we have attempted to account for global trends based

on our observations as they relate to debates about the role of detention in society. Further work is needed to identify and analyze additional factors which contribute to this complex area of policy.<sup>17</sup>

## **The Community Assessment and Placement Model**

To respond to the increasing interest in the use of alternatives to detention, the IDC and La Trobe University undertook an in-depth study in 2009-2011 on community-based alternatives to detention that utilizes survey and field data from over 20 countries (see Sampson, Mitchell and Bowring 2011).<sup>18</sup> The analysis of the data led to the development of the Community Assessment and Placement model (the “CAP model”). This section presents the model, offers examples from the case studies and discusses the model in relation to the rationales influencing the use of detention and its alternatives identified above.

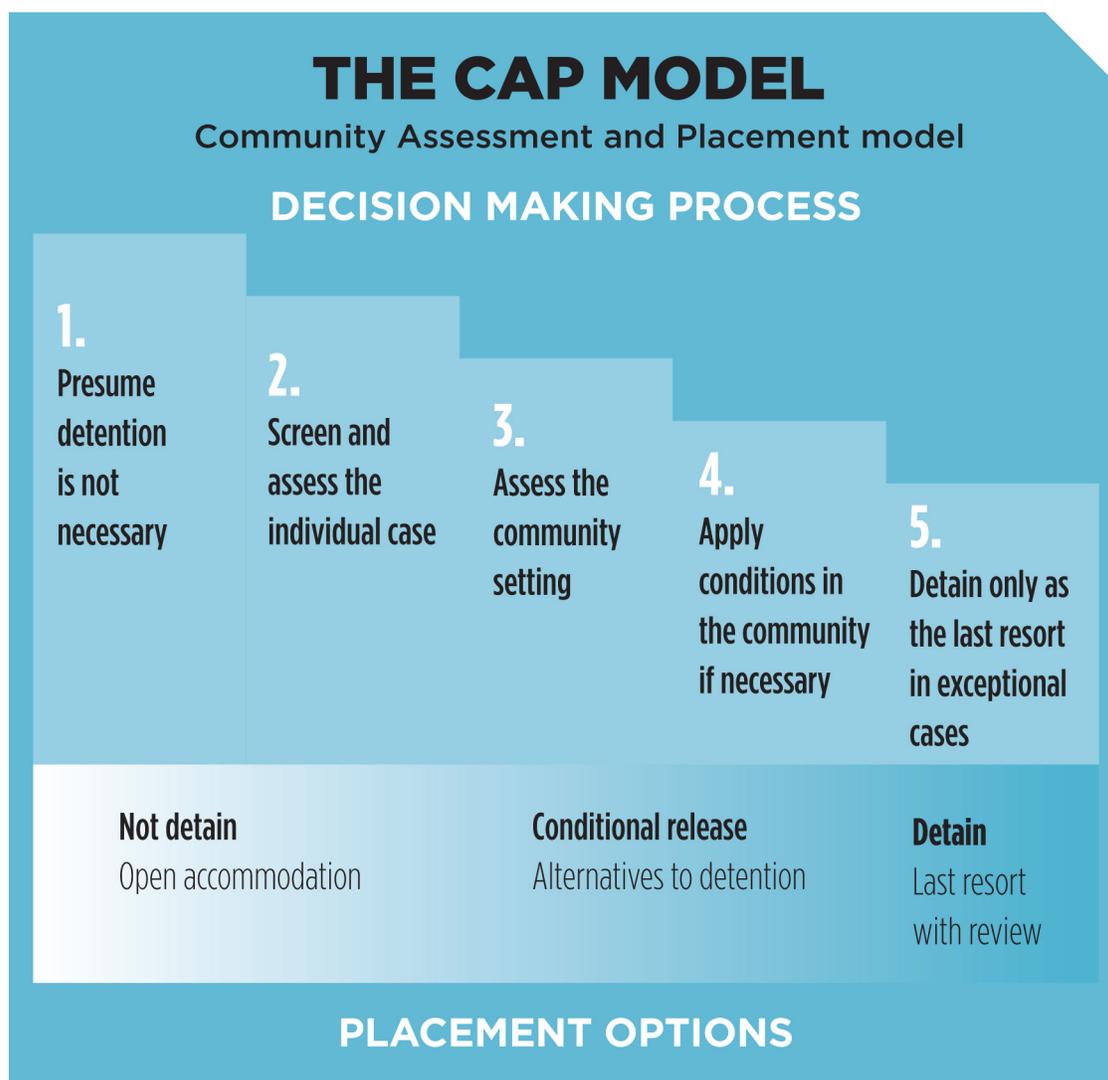
For the purposes of the research, alternatives to immigration detention were defined as any legislation, policy or practice that allows asylum seekers, refugees and migrants to reside in the community with freedom of movement while their migration status is being resolved or while awaiting deportation or removal. This very open definition allowed the research to include all examples in which migrants retain freedom of movement while resolving a migration matter with authorities. This contrasts with other definitions of the term that focus on degrees of restrictions on freedom of movement (Field and Edwards 2006; Edwards 2011a). From this perspective, the research employed comparative policy analysis to explore the differing reasons that people are held in detention and to attempt to address those reasons by alternative means. The definition also incorporates policies that reduce reliance on detention or reduce the length of detention.

The CAP model identifies five steps governments can take to prevent unnecessary detention and improve the effectiveness of community-based programs (see Figure 1). The bottom layer of the model describes the related placement options. The model is briefly explained here; however, we note a more detailed description, including eighteen detailed case studies, is available elsewhere (Sampson, Mitchell and Bowring 2011).

<sup>17</sup> We note that the paper is a joint endeavour between the director of a non-governmental organization engaged in international advocacy work (Mitchell) and a scholar of forced migration (Sampson). While our dual positions as scholar and advocate have inevitably shaped the arguments in the paper, we note that there is a long tradition of scholarly debate engaging with issues of social justice (Farmer 2005; King 2011; Streib 1988) and we believe readers are well-placed to judge our analysis based on the evidence.

<sup>18</sup> Data collection consisted of in-depth literature review, an internet-based survey of 88 participants in 28 countries, and fieldwork in nine countries within Europe, the United States and Hong Kong. The fieldwork was undertaken between January and March 2010 and involved 43 interviews with 57 participants and eight site visits. Further data on alternative to detention policies were derived from international meetings and IDC members. A more detailed description of the methodology, including details of analysis, can be found in Sampson, Mitchell and Bowring 2011.

*Figure 1: The Community Assessment and Placement model*



***Step 1: Presume detention is not necessary***

The research identified a number of laws, policies and practices that presume detention is not necessary when resolving an individual’s migration status. The “presumption against detention” can uphold each individual’s right to freedom of movement and helps to prevent immigration officials from resorting to confinement when other options may suffice (Edwards 2011a; EU FRA 2010, 80-81). This presumption against detention can be reinforced when alternative measures are established in law or policy, thus directing officials to consider less intrusive options, as seen in Section 315 of New Zealand’s *Immigration Act* 2009. It is notable that some countries do not make use of immigration detention at all, such as Venezuela, Brazil, Peru and Uruguay.

***Step 2: Screen and assess the individual case***

The research found that screening and assessment of individual cases are important in avoiding unnecessary detention, as authorities identify and assess levels of risk and vulnerability as well as the strengths and needs of each person. Assessment enables authorities to make an informed decision about the most appropriate way to manage and support the individual to resolve their migration status and to make case-by-case decisions about the need for detention. The four key areas of assessment are: legal obligations; identity, health and security checks; vulnerability; and individual case factors. These areas of screening and assessment were observed in Canada (Citizenship and Immigration Canada 2007), Hong Kong (Security Bureau Immigration Department n.d.) and the United Kingdom (UK Border Agency 2011).

***Step 3: Assess the community setting***

In order to best match an individual with an appropriate and effective program of response, the research found it is also necessary to assess those factors in the community setting that can either support or undermine a person's ability to comply with immigration authorities and resolve their migration case. Both governments and civil society groups can invest in programs that support migrants in the community in order to boost outcomes. Four key elements of a strong community setting are: case management; legal advice and interpretation; the ability to meet basic needs; and documentation. For example, Spain maintains an integrated reception system to support eligible asylum seekers in the first six months of a refugee determination process. This system includes accommodation, food and provision for other basic needs, identity documentation, case management by trained staff and access to legal advice (Sampson, Mitchell and Bowring 2011, 34).

***Step 4: Apply conditions in the community if necessary***

If authorities remain concerned about the placement of an individual in the community, there are a range of additional mechanisms that can be introduced to promote ongoing engagement with authorities. These conditions include: individual undertakings; monitoring; supervision; intensive case resolution; and negative consequences for non-compliance. These mechanisms can be used to construct a program of management that is appropriate for the individual case. It is important that the application of conditions is independently monitored to ensure that any conditions are applied in limited circumstances and only when necessary (Edwards 2011a). The Toronto Bail Program in Canada provides intensive supervision of migrants who would otherwise be detained, such as those facing deportation after completing a prison sentence. This comprehensive case management program achieves high rates of compliance and return from outcomes with a "high-risk" population (Sampson, Mitchell and Bowring 2011, 44; Edwards 2011a, 56-60; Costello and Kaytaz 2013).

***Step 5: Detain only as a last resort in exceptional cases***

International human rights legislation and standards make clear that immigration detention

should be used only as a last resort in exceptional cases after all other options have been shown to be inadequate in the individual case (IDC 2011b). As a result, the CAP model provides that detention is to be used only as a last resort in a small number of cases after all other options have been exhausted. If authorities can show before a court that detention is a necessary and proportionate mechanism in the case and that they have come to that decision after a thorough and non-discriminatory assessment of the individual and have tried all other options, then detention in appropriate conditions, of limited duration and with regular judicial review in line with international standards, may be considered as the last resort. Limited use of detention in appropriate conditions was observed in Sweden (Sampson, Mitchell and Bowring 2011, 49).

The CAP model was primarily designed to identify and describe alternatives that meet the policy objectives of detention while supporting the well-being of migrants. It provides governments with steps to achieve practical outcomes through less harmful means. However, it also responds to political and symbolic rationales. It increases the political saliency of alternatives by providing a forum for data sharing and dialogue on alternative to detention policies among governments, while serving as a resource for advocates. The model has been the basis for IDC engagement with over 50 governments and has helped to raise the profile of alternatives within international human rights organizations. It thus contributes to creating the “buzz” necessary to attract political attention and stimulate action. Finally, the model addresses the symbolic rationale that underpins detention by using the language of migration management and targeted enforcement to address issues of government authority and territorial control.

### Conclusion

Immigration detention threatens the well-being of migrants. Yet the number of people subject to detention is likely to continue to increase as the countries using detention expands and their detention capacity grows. Despite this trend, government policies regarding territorial borders are not absolute but rather are responsive to a range of broader rationales. Rather than focusing solely on control through confinement, governments are also concerned with achieving practical, political and symbolic outcomes. These competing rationales explain why government interest in alternatives to detention has grown in recent years. The symbolic potency of detention is a significant political tool in reassuring voters of control of borders in uncertain times, but detention also comes with serious human and financial costs that expose governments to criticism on moral and human rights grounds. Criticism can be partly assuaged by the introduction of alternatives which can fulfil the practical objectives of detention, especially for vulnerable groups. However, such changes risk “tinkering at the edges,” thus allowing the bulk of the detention regime and the logic of border control to remain intact. In the face of these challenges, this paper offers important tools for understanding the factors influencing government policy decisions regarding alternatives to detention and identifies opportunities to shift from harmful policies towards more productive options that support the dignity and security of migrants.

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