



# International Detention Coalition

Human rights for detained refugees,  
asylum seekers and migrants

## Reframing immigration detention in response to irregular migration

# Does Detention Deter?

April 2015 No. 1

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### Executive Summary

This briefing paper reviews the international research literature on the effectiveness of border control policies – particularly immigration detention – in reducing irregular migration. The brief first provides a short overview of the concept of deterrence in migration and criminal justice settings. It then reviews the evidence to critique claims that detention deters new arrivals and that beneficial reception policies increase new arrivals. It further considers how conditions in countries of origin and transit influence the movement of migrants. The brief concludes by drawing together insights from the research literature to elaborate on policy interventions that are both effective and that respect human rights. It suggests a way forward through multi-layered regional cooperation that focuses on increasing the stability and future prospects of people on the move.

The brief argues that detention is not only ineffective at reducing irregular migration to desired levels, but also weakens other migration management outcomes such as case resolution, departure for refused cases and integration for approved cases. Given these weaknesses, governments would be better placed prioritizing alternatives to detention. The brief further shows policy development and targeted resource allocation could improve the prospects of migrants by increasing avenues for legal migration and improving life chances in countries of origin and transit. The brief shows destination countries must consider big picture, multi-layered responses to address root causes of irregular movement and reduce the pressures on migrants to undertake risky journeys in an irregular manner.

### KEY POINTS

- Stricter border control measures of interdiction and deterrence do not reduce the numbers of irregular migrants but rather result in migrants undertaking greater risks.
- Domestic reception policies in destination countries have little to no overall effect on arrival numbers.
- Migrants are less likely to undertake onwards movement from a country of ‘transit’ if they:
  - can meet their basic needs;
  - are not at risk of detention or *refoulement*; and
  - remain hopeful regarding future prospects.

## I. Background

Domestic border control policies aimed at reducing irregular migration encompass a wide range of laws, technologies and infrastructure. Among them, immigration detention is a restrictive measure that uses confinement to control unauthorised migration. There has been a significant expansion in the use of immigration detention in recent years. For example, the detention capacity of the United States has grown from 6,785 places in 1994 to 34,000 places by 2013.<sup>1</sup> As a result of such trends across the globe, hundreds of thousands of migrants are now now detained every year.<sup>2</sup>

Immigration detention is meant to be used merely to ensure compliance with immigration procedures, but is often wielded with an intent to limit and prevent unwanted migration.<sup>3</sup> However, there is a striking disconnect between the increase in immigration detention and the intended impact on migration numbers. There is a wide and growing gap between the goal of many governments to reduce irregular migration and their ability to achieve expected outcomes.<sup>4</sup> Government rhetoric often promises substantial outcomes that are difficult to achieve, resulting in public discontent with authorities' poor performance. This, in turn, places pressure on governments to introduce even more restrictive policies to demonstrate action, but which continue to have modest or no long-term impact on public perceptions and overall numbers.<sup>5</sup>

Many governments appear to believe that they can unilaterally to control unwanted migration. Such simplistic and staid thinking about migration has resulted in ineffective policy responses. Individual acts of migration take place within large and complex international processes that are not easily influenced by domestic governments acting unilaterally.<sup>6</sup> As Stephen Castles argues:

Migration policies fail because policy makers refuse to see migration as a dynamic social process linked to broader patterns of social transformation. Ministers and bureaucrats still see migration as something that [can] be turned on and off like a tap through laws and policies.<sup>7</sup>

This briefing paper shows that domestic deterrence policies, and particularly immigration detention, have limited scope to shape the volume and composition of unauthorised migration. The following section presents evidence from a range of contexts demonstrating the limitations of border control policies on arrival numbers. The briefing paper then describes those policies that have greater influence on migrant intentions and overall arrival numbers.

## II. What is deterrence?

Deterrence is any mechanism designed to discourage the performance of an activity not yet accomplished. The concept of deterrence is central in criminal justice systems tasked with reducing rates of crime. It relies on the presumption that criminal behaviour is the result of a reasoned decision in which the potential offender weighs up the costs and benefits of a crime and chooses an action based on this assessment. Within this framework, penalties for crime – such as incarceration – take on the dual role of punishing the convicted criminal and reducing criminal activity through deterrence.

Critics of the deterrence-through-punishment approach argue such frameworks fail to achieve desired outcomes because they do not take into account broader issues that influence criminal behaviour. In particular, there is much evidence that the motivations for crime stem from socio-economic factors that are not easily moderated by the threat of punishment.<sup>8</sup> Indeed, there is little evidence that custodial sanctions reduce recidivism and at least some evidence to suggest they promote greater illegal involvement.<sup>9</sup> As one Australian study concluded, “The best crime prevention tool in the long run is not tougher penalties or more police or better rehabilitation programs, it's a strong and vibrant economy.”<sup>10</sup>

Deterrence strategies developed in criminal justice systems have recently been adopted in migration contexts.<sup>11</sup> This approach conceptualises migration as a rational choice that can be discouraged by the threat of major risks or penalties.<sup>12</sup> Within this framework, immigration detention is constructed as a deterrence

<sup>1</sup> Sampson, R. and Mitchell, G., (2013). Global trends in immigration detention and alternatives to detention: Practical, political and symbolic rationales. *Journal on Migration and Human Security*, 1(3), 97-121.

<sup>2</sup> 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).

<sup>3</sup> See generally, Sampson and Mitchell (2013).

<sup>4</sup> Cornelius, W. A., Martin, P. L., & Hollifield, J. F. (2004). Introduction: The ambivalent quest for immigration control. In W. A. Cornelius, P. L. Martin & J. F. Hollifield (Eds.), *Controlling immigration: A global perspective* (2nd ed.). San Diego: Stanford University Press; Lutterbeck, D. (2006). Policing migration in the Mediterranean. *Mediterranean Politics*, 11(1), 59 - 82.

<sup>5</sup> Cornelius, Martin & Hollifield (2004).

<sup>6</sup> Cornelius, Martin and Hollifield (2004); Lindley, A. (2010). Leaving Mogadishu: Towards a sociology of conflict-related mobility. *Journal of Refugee Studies*, 23(1), 2-22.

<sup>7</sup> Castles, S. (2003). Towards a sociology of forced migration and social transformation. *Sociology*, 37(1),

12-34, p. 12.

<sup>8</sup> Chen, M. Keith, and Jesse M. Shapiro. (2007). Do harsher prison conditions reduce recidivism? A discontinuity-based approach. *American Law and Economics Review*, 9(1), 1-29.

<sup>9</sup> Cullen, Francis T., Cheryl Lero Jonson, and Daniel S. Nagin. (2011). Prisons do not reduce recidivism: The high cost of ignoring science. *The Prison Journal*, 91(3 suppl), 485-655.

<sup>10</sup> Weatherburn in Patty, A. (2012) When it comes to crime, harsher punishment doesn't pay, *The Sydney Morning Herald*, March 14<sup>th</sup>, available at: <http://www.smh.com.au/nsw/when-it-comes-to-crime-harsher-punishment-doesnt-pay-20120313-tuykb.html> referring to Wan, W-Y, Moffatt, S., Jones, C. & Wetherburn, D. (2012) The effect of arrest and imprisonment on crime. *Crime and Justice Bulletin*, 158.

<sup>11</sup> This is known as 'cimmigration'. See Pickering, S., and Ham, J. (eds.), (2014) *The Routledge Handbook on Crime and International Migration*, New York, Oxford University Press.

<sup>12</sup> See Arrigo, B., and Bersot, H. (eds.) (2014). *The Routledge Handbook of International Crime and Justice Studies*, New York, Oxford University Press.

mechanism that discourages migrants from irregular entry and stay.

Human rights laws and instruments make it clear that detention can only be applied after a full assessment demonstrates detention is necessary and proportionate in the individual case and when all other options have been shown to be inadequate. An individual cannot be detained in order to influence the choices of other potential migrants. Detention is arbitrary and unlawful if applied for the purposes of deterrence.

### III. Does detention deter new arrivals?

This briefing paper takes its cue from critical analyses of the criminal justice field to question the foundations of detention policy in migration settings. This section critiques the myth that domestic border control policies such as detention are effective in eliminating unwanted migration.

#### More restrictive border controls do not reduce arrival numbers

Scholars agree that restrictive border control measures focused on deterrence do not have a lasting impact on the number of arrivals but rather result in changes to the ways in which migration occurs. This is because migration is a complex social process that extends well beyond the reach of domestic border control policies. Czaika and de Haas, among many others, argue that "the effects of migration policies on immigration are relatively small compared to other social, economic, and political determinants."<sup>13</sup> Instead, restrictive measures introduce greater risks as people seek assistance from people smugglers and undertake more dangerous journeys.<sup>14</sup> This is seen in the effects of more stringent border control measures in the United States that limit land-crossings along its southern border with Mexico:

[B]order enforcement has resulted in rechanneling flows of unauthorized migrants to more hazardous areas, raising fees charged by people-smugglers, and discouraging unauthorized migrants already in the US from returning to their places of origin. However, there is no evidence that the strategy is deterring or preventing significant numbers of new illegal entries...<sup>15</sup>

Immigration detention is one tool within a broader set of border control policies. Yet there is little research that specifically evaluates the effectiveness of detention in achieving deterrence outcomes. The author of one large international

comparative study concluded "there is no empirical evidence to suggest that the threat of being detained deters irregular migration, or more specifically, discourages persons from seeking asylum ... Detention is largely an extremely blunt instrument to counter irregular migration."<sup>16</sup>

The Australian government similarly acknowledges detention does not deter new arrivals. During an inquiry by the Australian Human Rights Commission in 2014, the former and current Ministers for Immigration each stated under oath that holding children in detention does not deter new arrivals.<sup>17</sup> The Australian Human Rights Commissioner subsequently questioned the basis of the country's policy of mandatory detention, particularly for children.<sup>18</sup> As the Australian Minister for Immigration had previously acknowledged in 2010:

We already have the toughest mandatory detention regime in the Western developed world, yet people still come to Australia...So I don't think mandatory detention should be seen as a deterrent.<sup>19</sup>

#### Reception policies have little influence on destination preference

More broadly, numerous studies have attempted to establish those factors that most impact the destination choices of asylum seekers and refugees.<sup>20</sup> According to this research, obtaining

<sup>16</sup> Edwards, A. J. (2011) *Back to Basics: The Right to Liberty and Security of Person and "Alternatives to Detention" of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants*, Geneva, UNHCR, p. v.

<sup>17</sup> Australian Human Rights Commission. 2014. *The Forgotten Children: National Inquiry into Children in Immigration Detention*. Sydney: Australian Human Rights Commission.

<sup>18</sup> Triggs, Gillian. 2014. "Human Rights Commission: Keeping asylum seeker children in detention doesn't stop people smugglers - so why do we do it?" *The Sydney Morning Herald*, 8th October 2014.

<sup>19</sup> Owen, M. and T. Barrass. (2010). Getting tougher 'won't stop boats' says Chris Bowen. *The Australian*. November 2nd.

<http://www.theaustralian.com.au/news/nation/getting-tougher-wont-stop-boats-says-chris-bowen/story-e6frg6nf-1225946353586>

<sup>20</sup> Crawley, H. (2010). *Chance or choice? Understanding why asylum seekers come to the UK*. London: UK Refugee Council; Day, K., & White, P. (2002). Choice or circumstance: The UK as the location of asylum applications by Bosnian and Somali refugees. *GeoJournal*, 56(1), 15-26; Gilbert, A. and Koser, K. (2006). Coming to the UK: What do asylum-seekers know about the UK before arrival? *Journal of Ethnic and Migration Studies*, 32(7), 1209-1225; Havinga, T., & Bocker, A. (1999). Country of asylum by choice or by chance: Asylum-seekers in Belgium, the Netherlands and the UK. *Journal of Ethnic and Migration Studies*, 25(1), pp 43-41; Holzer, T., Schneider, G., & Widmer, T. (2000). The impact of legislative deterrence measures on the number of asylum applications in Switzerland (1986-1995) *International Migration Review*, 34(4), 1182; Neumayer, E. (2004). Asylum destination choice: What makes some west European countries more attractive than others? *European Union Politics*, 5(2), 155-180; Richardson, R. (2010). Sending a message? Refugees and Australia's deterrence campaign *Media International Australia* (135), 7-18; Robinson, V., and Segrott, J. (2002). *Understanding the decision-making of asylum seekers*. London: Home Office; Thielemann, E. (2004). *Does Policy Matter? On Governments' Attempts to Control Unwanted Migration*. UC San Diego: Center for Comparative Immigration Studies.

<sup>13</sup> Czaika, M., and H. De Haas (2013). The effectiveness of immigration policies. *Population and Development Review*, 39(3) p. 503.

<sup>14</sup> Cornelius, W.A. (2001) Death at the border: Efficacy and unintended consequences of US immigration control policy. *Population and Development Review*, 27, 661-685; Cornelius, W. A. (2005). Controlling 'unwanted' immigration: Lessons from the United States, 1993-2004. *Journal of Ethnic and Migration Studies*, 31(4), 775-794; Lutterbeck, D. (2006). Policing migration in the Mediterranean. *Mediterranean Politics*, 11(1), 59 - 82; Spijkerboer, T. (2007) The human costs of border control. *European Journal of Migration and Law*, 9, 127-139.

<sup>15</sup> Cornelius (2001) p. 661.

protection in a place of safety is the main aim of asylum seekers and refugees.<sup>21</sup> Most asylum seekers have very limited or no understanding of the policies of destination countries before arrival and are often reliant on people smugglers to choose their destination.<sup>22</sup> Choices, if any, are extremely limited and diminish further in acute situations when personal security is compromised.

Research has identified some themes despite this complexity. Rather than being influenced primarily by immigration policies such as detention, those refugees who have some control over their destination prefer countries where they will be reunited with family or friends; they believe they will be in a safe, tolerant and democratic society; there are historical links between their country and the destination country; they can already speak the language of the destination country; or they believe they will be able to find secure work quickly due to general levels of prosperity.<sup>23</sup>

One major study compared asylum seeker numbers against key restrictive migration policies in 20 industrialised countries over a 14-year period. It found asylum seekers' destinations are determined largely by historical, economic and reputational factors that cannot be influenced by immigration policy makers.<sup>24</sup> The only domestic policy found to have any statistically significant impact on arrival numbers in more than one study was a reduction in the refugee recognition rate. However, this impact was small-scale, of short duration and undermined the Refugee Convention.<sup>25</sup>

The research literature reveals a complex set of factors impact the destination outcomes of asylum seekers and irregular migrants. As Havinga and Bocker found:

[I]t is not so much the characteristics of the countries of destination as the situation of the asylum-seekers or the circumstances of the flight which appear to determine the destination of the asylum-seeker's flight. The picture which emerges from this study is rather complex. No single or even restricted number of factors can explain the patterns of origin and destination for asylum seekers.<sup>26</sup>

This casts doubt on the effect of reception policies and other 'pull factors' on arrival numbers. Political claims about the effectiveness of hardline border control measures usually overlook contributing factors outside of the country, such as a global downturn in displaced populations or changes in the situation in countries of transit. Cause-and-effect arguments

about domestic policies do not stack up against the evidence. Alternative explanations of migration variability are possible – and necessary – in order to adequately understand this phenomenon.

### **Stable populations in countries of transit are less likely to pursue dangerous journeys**

More stringent border control policies have been ineffective in preventing the arrival and onwards transit of refugees, asylum seekers and migrants. As one expert on transit migration concluded:

Increasing restrictions in migration and asylum policy evidently do not stop or even diminish the flow of people, nor do they prevent their transit stay. Instead, restrictions have only managed to add to the human suffering without any real impact on migration flows.<sup>27</sup>

Indeed, most asylum seekers and irregular migrants who make it to a country of 'transit' do not complete their onwards journey due to a complex range of factors including, *inter alia*, perceived levels of risk, finances, state of health, social networks, availability of people smuggling and personal circumstances such as employment.<sup>28</sup> As one author concluded:

Transit migration is characterized by ambiguity and rarely follows set plans. It is hard to predict its outcome. This makes it difficult to measure and quantify, or develop effective policy responses.<sup>29</sup>

However, it is clear that "[b]eing in transit is a condition of increased vulnerability, characterized by poverty, semi-protection, insecurity and social exclusion."<sup>30</sup> My own research built on such findings to conclude that irregular migrants and asylum seekers appear less likely to undertake onwards movement from a country of 'transit' if they:

- can meet their basic needs;
- are not at risk of detention or *refoulement*; and
- remain hopeful regarding future prospects.<sup>31</sup>

This is supported by the "common-sense conclusion" that better reception for asylum seekers and improved integration prospects will encourage asylum seekers to remain engaged with procedures in transit states.<sup>32</sup>

<sup>21</sup> Robinson and Segrott (2002).

<sup>22</sup> Day and White (2002); Gilbert and Koser (2006); Havinga and Bocker (1999); Robinson and Segrott (2002).

<sup>23</sup> Black, R., Collyer, M., Skeldon, R., and Waddington, C. (2006). Routes to illegal residence: A case study of immigration detainees in the United Kingdom. *Geoforum*, 37(4), 552-564; Havinga and Boecker (1999); Neumayer (2004); Robinson and Segrott (2002).

<sup>24</sup> Thielemann, (2004).

<sup>25</sup> Havinga and Bocker (1999); Neumayer (2004); Thielemann (2004).

<sup>26</sup> Havinga & Bocker (1999).

<sup>27</sup> Papadopoulou-Kourkoula, A. (2008). *Transit Migration: The Missing Link Between Emigration and Settlement*. Basingstoke: Palgrave Macmillan p. 149.

<sup>28</sup> de Haas, H. (2008). *Irregular migration from West Africa to the Maghreb and the European Union: An overview of recent trends*. Geneva: International Organization for Migration; Papadopoulou-Kourkoula (2008).

<sup>29</sup> Papadopoulou-Kourkoula (2008) p. 141.

<sup>30</sup> Papadopoulou-Kourkoula (2008) p. 141.

<sup>31</sup> Sampson, R. C., Mitchell, G., & Bowring, L. (2011). *There are alternatives: A handbook for preventing unnecessary immigration detention*. Melbourne: International Detention Coalition.

<sup>32</sup> Field, O., & Edwards, A. (2006). *Alternatives to detention of asylum seekers and refugees*. Geneva: United Nations High Commissioner for Refugees.



#### IV. Does detention support case resolution, departure, or integration?

Immigration detention not only fails to deter new arrivals; it also affects migration management outcomes such as case resolution, departure for refused cases and integration for approved cases. Most notably, detention has been found to be counterproductive to government objectives of achieving compliance with immigration outcomes, including returns.<sup>33</sup>

##### Impacts of detention on case resolution

Detainees are held in detention during an administrative process associated with their migration status. This may include (initial) assessment of protection claims, assessment of reasons to remain in the country and preparation for departure from the country. Detention does not, in and of itself, contribute to the resolution of these administrative issues. As one study in the Netherlands shows, detention does not change the intentions of detainees to either stay or leave the country. However, if a detainee was already predisposed to depart the country, detention will sharpen this intention.<sup>34</sup>

Moreover, detention can reduce the ability of detainees to contribute to case resolution processes by reducing their access to the outside world and eroding mental health and energy levels.<sup>35</sup> This can reduce their ability to organise administrative issues, such as sourcing documents to prove their identity, or to access legal advice regarding future prospects.

##### Impacts of detention on departure

Detention fails to guarantee departure outcomes for those migrants with no right to remain in the country. Many factors influence a person's willingness to return to their country of origin, most of which fall outside the influence of domestic policies.<sup>36</sup> Detention does not easily overcome these broader issues to affect return decisions.<sup>37</sup> In terms of deportation, there is a gap between the number of migrants detained in order to be deported and the number of those who are actually deported.<sup>38</sup> This is because deportation is a complex process involving multiple countries, agencies and companies. People who are stateless are most likely to stagnate in detention for long periods with little

to no control over the blockades preventing their deportation.<sup>39</sup> Research in the United Kingdom has shown indefinite detention does not usually lead to deportation; instead, if deportation has not been achieved within one year, it is unlikely to occur.<sup>40</sup> Further, migrants who are facing punitive restrictions such as detention are more likely to feel they have nothing to lose and seek unlawful avenues to stay in the country.<sup>41</sup>

##### Impacts of detention on integration

A significant proportion of detained migrants are released with temporary or permanent residency, taking their experience of detention with them as they re-enter society. Immigration detention affects integration upon release in a range of ways. Detention has significant impacts on mental health and sense of self that subsequently affect integration.<sup>42</sup> Detention is associated with higher rates of depression, anxiety and post-traumatic stress disorder (PTSD).<sup>43</sup> These conditions affect a person's ability to live satisfying and productive lives and to develop trusting relationships. Work, study, family and friendships are all affected. Concentration and memory are also affected by long periods in detention, subsequently impacting language acquisition and work and study outcomes.<sup>44</sup> There is anecdotal evidence that lapses in concentration result in a higher rate of workplace accidents amongst former detainees.<sup>45</sup>

Impacts such as these not only affect the life experiences of former detainees; they also create a greater burden on the receiving society. For example, mental health impairment increases reliance on health care and, potentially, social

<sup>33</sup> Sampson, Mitchell and Bowring (2011), 41-43.

<sup>34</sup> Kox, M. (2011) *Leaving detention? A study on the influence of immigration detention on migrants' decision-making processes regarding return*. The Hague: IOM.

<sup>35</sup> Coffey, G. J., Kaplan, I., Sampson, R. C., & Tucci, M. M. (2010). The meaning and mental health consequences of long-term immigration detention for people seeking asylum. *Social Science & Medicine*, 70(12), 2070-2079.

<sup>36</sup> Black, R. et al. (2004) *Understanding voluntary return*. Home Office Online Report 50/04. London: Home Office; Sampson, R. Correa-Velez, I. and Mitchell, G. (2007) *Removing seriously ill asylum seekers from Australia*. Melbourne: Refugee Health Research Centre;

<sup>37</sup> Van Wijk, J. (2008) Reaching out to the unknown: Native counselling and the decision-making process of irregular migrants and rejected asylum seekers on voluntary return in IOM (eds) *Out of sight: Research into the living conditions and decision-making of irregular migrants in the main cities of The Netherlands, Germany and Austria*. The Hague: IOM.

<sup>38</sup> Bathily, A. (2014). *Immigration detention and its impact on integration - A European approach*: Fondazione ISMU.

<sup>39</sup> Equal Rights Trust (2010). *Unravelling anomaly: Detention, discrimination and the protection needs of stateless persons*. London: The Equal Rights Trust.

<sup>40</sup> London Detainee Support Group (2010). *No return, no release, no reason: Challenging indefinite detention*. London: LDSG.

<sup>41</sup> Leerkes, A, Boersema, E, *Het lot van het inreisverbod*, (2014), Memorandum 2014-2, Wetenschappelijk Onderzoek- en Documentatiecentrum (WODC), Ministerie van Veiligheid en Justitie, The Hague, available at: [www.wodc.nl/images/mem2014-2-volledige-tekst\\_tcm44-555776.pdf](http://www.wodc.nl/images/mem2014-2-volledige-tekst_tcm44-555776.pdf); Alphen, B van, Molleman, T, Leerkes, A, Hoek, J van, *Van bejegining tot vertrek - Een onderzoek naar de werking van vreemdelingenbewaring*, (2014), onderzoek en beleid 308, Wetenschappelijk Onderzoek- en Documentatiecentrum (WODC), Ministerie van Veiligheid en Justitie, The Hague, P.150. Provera, M. (2015) *The criminalisation of irregular migration in the European Union*. CEPS Paper in Liberty and Security in Europe No. 80/February 2015.

<sup>42</sup> Coffey et al. (2010); Klein, A. and Williams, L. (2012). Immigration detention in the community: Research on the experiences of migrants released from detention centres in the UK. *Population, Space and Place*, 18(6), 741-753.

<sup>43</sup> Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture (2003). *From persecution to prison: the health consequences of detention for asylum seekers*. Boston & New York: PHR and The Bellevue/NYU Program for Survivors of Torture; Robjant, K., Hassan, R. and Katona, C. (2009). Mental health implications of detaining asylum seekers: Systematic review. *The British Journal of Psychiatry*, 194, 306-312; Steel, Z., and Silove, D.M. (2001). The mental health implications of detaining asylum seekers. *eMedical Journal of Australia*, 175, 596-599.

<sup>44</sup> Coffey et al. (2010).

<sup>45</sup> A number of people working with former long term detainees in Australia have raised this issue with the author.

welfare systems. The lifetime health costs of long-term detention have been estimated at an additional AU\$25,000 per person.<sup>46</sup>

### V. What are the ways forward?

As shown, detention fails to fulfil governments' deterrence objectives, while also introducing obstacles to other important government objectives such as case resolution, departure and integration. The following section reviews alternative policy options that more effectively address key government objectives in a less harmful manner.

#### Using alternatives to detention

Notwithstanding the recent expansion of immigration detention, there are alternatives to detention that provide effective, humane and less costly migration management options. Alternatives to detention allow migrants to remain at liberty or be released from detention on a conditional basis. As immigration detention is not effective in deterring new arrivals, and has only limited application for other purposes, these less-harmful measures present an attractive alternative solution. Finding ways to manage migrants outside of detention is now a well-recognised issue in many regional and domestic contexts, as well as at the UN level.<sup>47</sup>

Alternatives to detention have been shown to be surprisingly effective at achieving government objectives such as compliance and voluntary departure. Community based programmes maintain high compliance rates with a range of migrant populations. They are most successful when migrants are able to meet their basic needs and are supported with case management, legal advice and other supports necessary to make realistic and informed decisions about their future.<sup>48</sup>

Alternatives to detention are also significantly more cost-effective than custodial detention, with an average 80 per cent cost-benefit. If cases can be managed in community settings without an increase in immigration application processing times, cost savings will be inevitable. Avoiding unnecessary cases of detention, or reducing the length of time someone is detained, is a key strategy in reducing the costs associated with detention.<sup>49</sup>

Finally, alternatives to detention better respect the human rights of refugees, asylum-seekers and migrants. Appropriate non-custodial, community-based options help prevent unlawful or arbitrary detention practices. Effective management in the community is also more likely to respect fundamental civil, political, economic, cultural and social rights, thereby contributing to refugee, asylum-seeker and migrant well-being and self-sufficiency. The respect for fundamental human rights, therefore, allows individuals to contribute fully to society if residency is secured or to better face difficult futures, such as the possibility of return.<sup>50</sup>

<sup>46</sup> Ward, T. (2011). *Long-term health costs of extended mandatory detention of asylum seekers*. Melbourne: Yarra Institute for Religion and Social Policy.

<sup>47</sup> See generally, Sampson, Mitchell and Bowring (2010); see also, Edwards (2011), Sampson and Mitchell (2013).

<sup>48</sup> Sampson, Mitchell and Bowring (2010), 51-52.

<sup>49</sup> Sampson, Mitchell and Bowring (2010), 52.

<sup>50</sup> Sampson, Mitchell and Bowring (2010), 52.

#### Developing regional responses

Domestic border control policies have limited capacity to reduce the movement of asylum seekers and irregular migrants when countries *en route* lack adequate protections.

A proposal for a comprehensive regional solution in the Mediterranean region identifies a cohort of policies that could make substantial impacts in countries of transit, countries of first asylum and countries of origin.<sup>51</sup> A panel of European experts considering such a 'Mediterranean solution' concluded:

[T]he emphasis [of a regional solution] should be upon 'joined up' political, diplomatic and development initiatives rather than upon extraterritorial processing.<sup>52</sup>

The European Union has since started to develop a comprehensive approach that promotes protection in countries of transit and first asylum.<sup>53</sup> These Regional Protection Programmes, implemented since 2005, are comprised of:

- o projects to improve the general protection situation in the host country;
- o projects to establish an effective procedure for determining refugee status;
- o projects with direct benefits for refugees;
- o projects which benefit the local community hosting the refugees;
- o projects to promote training in protection issues for persons working with refugees and migrants;
- o a voluntary commitment on the part of the Member States to provide durable solutions for the refugees in their countries. Resettlement of refugees in Member States will be essential in order to reinforce the partnership component of programmes.<sup>54</sup>

These arguably provide an important avenue to reduce pressures on transit migrants and protect vulnerable groups from the risks of irregular migration. However, critics claim the programmes are neglecting their core aim of promoting protection and, instead, being used to fund new detention facilities.<sup>55</sup>

In Australia, experts also reached the conclusion that the most effective solutions require regional approaches. As Crock and Ghezelbash state, regional cooperation will be required to effectively tackle people smuggling:

<sup>51</sup> Betts, A. (2006). Towards a Mediterranean Solution? Implications for the region of origin. *Int J Refugee Law*, 18(3-4), 652-676.

<sup>52</sup> Kneebone, S., McDowell, C., & Morrell, G. (2006). A Mediterranean Solution? Chances of success. *Int J Refugee Law*, 18(3-4), 492-508.

<sup>53</sup> Haddad, E. (2008). The external dimension of EU refugee policy: A new approach to asylum? *Government and Opposition*, 43(2), 190-205.

<sup>54</sup> European Commission (2005) *Communication from the Commission on Regional Protection Programmes*. COM/2005/0388 final.

<sup>55</sup> For instance, in Ukraine. See Human Rights Watch (2010) *Buffeted in the borderland: The treatment of asylum seekers and migrants in Ukraine*. New York: Human Rights Watch.

We argue that no Australian government, acting alone, will be able to beat the people-smugglers now plying their trade out of Indonesia. What is needed are cooperative arrangements with 'source' or or transit governments, coupled with targeted resettlement programs to provide refugees with viable protection options.<sup>56</sup>

The effectiveness of such regional approaches will rely on the development of multiple protection interventions at the local, national, regional and international level and the involvement of numerous international actors including governments, UNHCR, international migrant support organisations, local NGOs and - most importantly - refugee, asylum seeker and migrant communities. However, a response that takes in to account the conclusions of the international literature will need to go further and address the underlying causes of forced migration through peace-building and conflict resolution and by supporting development through trade, aid and migrant remittances.

### Addressing root causes

Forced and irregular migration are triggered by large-scale systematic issues such as major conflict, poor quality of life and gross inequality. The most effective responses to migration will address these root causes. This requires investment in development and peace-building effects, including through trade and aid, and facilitation of remittances from established migrants to promote development in their region of origin.<sup>57</sup> As Neumayer found in his study of the determinants of asylum migration to Europe:

If Western European countries want to tackle the root causes of asylum migration, then they need to undertake policy measures that promote economic development, democracy, respect for human rights, and peaceful conflict-resolution in countries of origin.<sup>58</sup>

The government of the United States recently announced a major funding initiative to address the root causes of irregular migration by unaccompanied children.<sup>59</sup> The program aims to support the security, good governance and economic prosperity of countries in the Northern Triangle. As the Vice President, Joe Biden, stated in his announcement of the plan, "the cost of investing now in a secure and prosperous Central

America is modest compared with the costs of letting violence and poverty fester."<sup>60</sup>

Such a response reframes issues of border control and irregular migration as an issue of international development and security, requiring the cooperation of various government and intergovernmental agencies already working on these issues.

Regional responses requires a multi-layered response including targeted protection interventions to stabilise vulnerable groups; an increase in places available for direct resettlement of recognised refugees from key states of transit; investment in development activities in countries of transit; investment in conflict-resolution and peace-building efforts in countries of origin; and expanded support for aid, development and trade activities in unstable regions to support communities and reduce human insecurity. These measures have been shown in the literature to address the causes of forced migration and reduce the pressures on people to undertake dangerous journeys in order to seek a better life.

## VI. Conclusion

This policy brief seeks to debunk the myth that certain domestic border control policies, such as immigration detention, effectively deter asylum seekers, refugees and irregular migrants. The brief shows that domestic reception policies and border control measures are not effective in shaping migration in the desired direction. Detention fails to deter new arrivals and introduces new barriers to case resolution, departure and integration. Further, domestic reception policies do little to affect overall arrival numbers over the long term. There are effective alternatives available to manage migrants in the community without the need for detention. The evidence further demonstrates complex international processes are implicated in the movement of migrants, requiring strategic responses at national, regional and international levels. The policy brief highlights the importance of efforts to tackle the root causes of forced migration and to reduce sources of insecurity in countries of transit as productive avenues for managing migration and protecting national borders. Any substantive response to these issues needs to focus on promoting peace and development and on achieving protection and stability in regions of transit.

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<sup>56</sup> Crock, M., and Ghezelbash, D. (2010). Do loose lips bring ships?: The role of policy, politics and human rights in managing unauthorised boat arrivals. *Griffith Law Review*, 19(2), 238-287.

<sup>57</sup> Martin, P., & Zuercher, G. (2008). Managing migration: The global challenge. *Population Bulletin*, 63(1), 3-20; United Nations Development Programme (2009). *Human development report 2009: Overcoming barriers: Human mobility and development*. New York: UNDP.

<sup>58</sup> Neumayer, E. (2005). Bogus refugees? The determinants of asylum migration to Western Europe. *International Studies Quarterly*, 49(3), 389-410.

<sup>59</sup> Biden, J. (2015, January 29th). A plan for Central America, *The New York Times*, retrieved 06.02.2015, from: [http://www.nytimes.com/2015/01/30/opinion/joe-biden-a-plan-for-central-america.html?smid=pl-share&\\_r=1](http://www.nytimes.com/2015/01/30/opinion/joe-biden-a-plan-for-central-america.html?smid=pl-share&_r=1).

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<sup>60</sup> Biden (2015).

## About the Author



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## ABOUT THE IDC

The International Detention Coalition (IDC) is a unique global network of over 300 non-governmental organisations, faith-based groups, academics and practitioners in more than 70 countries that advocate for and provide direct services to refugees, asylum-seekers and migrants in immigration detention. We are the only international organisation focused explicitly on immigration detention and alternatives to detention. With an international Secretariat based in Melbourne, Australia, the IDC works globally through Regional Coordinators in Africa, the Americas, Asia-Pacific, Europe, and the Middle East & North Africa (MENA). To learn more about the IDC, including our Mission, key areas of work, and Strategic Priorities, please visit [www.idcoalition.org](http://www.idcoalition.org).

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The International Detention Coalition (IDC) works closely with state policymakers, multilateral agencies, and civil society to seek practical, rights-based migration management solutions. This Briefing Paper series seeks to challenge common misconceptions about the use and effectiveness of immigration detention in migration management; to highlight global ATD positive practices; and to provide pragmatic guidance to state policymakers on how to effectively govern migration while upholding human rights

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**Solutions focused.** Briefing Papers will focus on providing a number of pragmatic and positive practice examples from around the world that state policymakers can directly apply to their own migration context.

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ISBN Paperback: 978-0-9924831-0-4 ISBN PDF version: 978-0-9924831-1-1

Published by International Detention Coalition Melbourne, Australia

Recommended citation: International Detention Coalition (2015), *Briefing Paper: Does Detention Deter?*

The views expressed in this document are those of the author.

This Briefing Paper is available online at [www.idcoalition.org](http://www.idcoalition.org)