Mr. Chair, Ladies and Gentlemen,

This statement has been drafted in consultation with, and is delivered on behalf of, a wide range of NGOs and aims to reflect the diversity of views within the NGO community.

NGOs thank UNHCR for its increasing attention to the detention of refugees, asylum seekers and stateless persons, including the recent adoption of a Global Strategy: Beyond Detention, which highlights the urgent need for states to explore, adopt and implement effective alternatives to detention.

I. Introduction

Globally, large numbers of refugees, asylum seekers and stateless persons are at risk of immigration detention each year, and this harmful practice continues to grow despite evidence that immigration detention is costly and seriously harms the mental and physical health of those detained.

Immigration detention can last for months, years or in some cases even be indefinite, during which time men, women and children are deprived of their liberty, often in overcrowded and unhygienic conditions falling below international standards. Many human rights violations can and do occur in these circumstances and the physical and psychological impacts of immigration detention are well documented.1

Immigration detention not only at times infringes fundamental rights to liberty and freedom of movement, it is simply not an effective way for states to manage migration. There is no empirical evidence that detention policies in countries of destination deters irregular migration, or discourages persons from seeking asylum, and research increasingly shows that detention hinders long-term integration and return prospects.2

II. Detention of children and families

Children are especially vulnerable to violence and abuse in immigration detention, and studies have shown that even short periods of immigration detention can have life-long health and developmental impacts. Because of these known harms, it is now clear that the use of immigration detention for children—whether accompanied or unaccompanied—is never appropriate.

In 2012, the UN Committee on the Rights of the Child stated unequivocally that: “the detention of a child because of their or their parent’s migration status constitutes a child rights violation and always contravenes the principle of the best interests of the child.”

Similarly, in 2014 the Committee on Migrant Workers recommended that:

“children should never be detained on the basis of their or their parents’ immigration status, and urges the State party to: […] Cease the detention and expulsion of migrant children on the basis of their migration status, and ensure that the best interest of the child and the principle of non-discrimination are taken as primary considerations.”

More recently, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment found that child immigration detention “exceeds the requirement of necessity, becomes grossly disproportionate and may constitute cruel, inhuman or degrading treatment of migrant children.” He added:

“The deprivation of liberty of children based exclusively on immigration-related reasons exceeds the requirement of necessity because the measure is not absolutely essential to ensure the appearance of children at immigration proceedings or to implement a deportation order. Deprivation of liberty in this context can never be construed as a measure that complies with the child’s best interests. Immigration detention practices across the globe, whether de jure or de facto, put children at risk of cruel, inhuman or degrading treatment or punishment.”

Furthermore, the Special Rapporteur on torture, the Committee on the Rights of the Child, the Committee on Migrant Workers and the Inter-American Court of Human Rights, among others, have agreed that the principle of the best interests of the child extends to the protection of the entire family from immigration detention. The Committee on the Rights of the Child has endorsed the recommendation that states “expeditiously and

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6 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Torture and ill-treatment of children deprived of their liberty, para. 80, A/HRC/28/68.
completely cease” the practice of child and family detention and “adopt alternatives to detention that fulfil the best interests of the child, along with their rights to liberty and family life through legislation, policy and practices that allow children to . . . be accommodated as a family in non-custodial, community-based contexts while their immigration status is being resolved.”7 They have also urged states to make clear in their legislation, policies and practices that the principle of the best interests of the child takes priority over migration policy and other administrative considerations.

III. There are alternatives

Despite the global increase in the use of immigration detention, more governments are now taking steps to explore and implement alternatives. These range “from scoping studies and small-scale pilot projects to significant policy developments and systemic change.”8 Interest in alternatives has stemmed from growing litigation against arbitrary detention practices, the inability of detention to meet complex migration challenges, public outcry over the placement of children and other vulnerable individuals in detention, and increasing evidence that alternatives can be highly effective in terms of cost and compliance.

When implemented properly, research finds that alternatives offer a range of benefits to states and migrants alike, including:

- **Compliance** – Alternatives maintain high rates of compliance and appearance, on average 90% compliance. A study collating evidence from 13 programs found compliance rates ranged between 80% and 99.9%.9 For instance, Hong Kong achieves a 97% compliance rate with asylum seekers or torture claimants in the community, and in Belgium, a pilot working with families facing removal had an 82% compliance rate.10

- **Cost Savings** – Alternatives cost less than detention, on average 80% cost savings with an annual daily cost of around $100/day. A cost saving of 93% was noted in Canada11 and 69% in Australia on alternatives to detention compared to detention costs.12 In addition independent returns in the EU and Australia save approximately 70% compared to escorted removals.13

- **Voluntary Return** – Alternatives increase independent departure and voluntary return rates for refused cases, an average of 65% with up to 82% reported. Examples in Canada, Australia and the US of both refused asylum seekers and

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9 Sampson et al., *There are alternatives, op.cit.*, p. 17.
10 Ibid.
11 Ibid., p. 44.
12 Ibid., p. 40.
13 Ibid., p. 52.
irregular migrants demonstrated return rates of between 60% and 69%, while Sweden reported an 82% rate of return from the community among refused asylum seekers. Additionally, successful alternative programs can reduce wrongful detention and litigation; reduce overcrowding and long-term detention; better respect, protect and fulfill the human rights of migrants; improve integration outcomes for approved cases; and improve migrant health and welfare.

IV. What are alternatives?
NGOs would like to draw the Standing Committee’s attention to the effective implementation of alternatives to detention (ATD), and urge the Standing Committee to promote a wide range of positive ATD practices as a matter of priority.

At the outset, we note that “alternatives to detention” is not a legal term of art, and there is no internationally recognized definition of ATD. The International Detention Coalition (IDC), a recognized global expert on immigration detention and alternatives, defines ATD as:

"any law, policy or practice by which persons are able to reside in the community, without being detained for migration-related reasons."

This broad definition is meant to take into account all areas of law, policy and practice that can help to prevent and reduce detention. It follows the guidance of other UN bodies that ATD should be conceived as broadly as possible in order to be an “essential part of all levels and stages” of a proper migration governance system.

This broader conceptual approach is also practically beneficial in that it allows states to explore areas of law, policy and practice that they might not traditionally consider ATD, and this can help to prevent unnecessary detention in the first instance or to otherwise reduce and limit the use of immigration detention and other restrictive immigration practices which are harmful to asylum seekers.

The term ATD is therefore appropriate to describe a wide spectrum of policies, practices, strategies, and approaches that states can use rather than resorting to detention, and which demonstrate that detention and other restrictive control measures are often not necessary at all.

The IDC has identified more than 250 examples of ATD being used across all regions of the world. Particularly, there are a number of effective screening mechanisms to help states identify who may be a risk to their safety or security and who can effectively be

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14 Ibid., p. 39.
15 Ibid., p. 35.
managed in the community. There are also a number of effective community-based care models: everything from intensive case management of unaccompanied minor children, through to minimal reporting requirements for families or individual migrants.

A key finding of the IDC’s research is that there are a variety of mechanisms currently in use internationally that prevent unnecessary detention and can effectively manage populations in the community. Many of these mechanisms may not even be considered “alternatives to detention” in a traditional, narrow, or legalistic understanding of the term.

In line with these findings, civil society organisations in all world regions have sought to expand current policy debates beyond a narrow interpretation of ATD by looking more broadly at a variety of mechanisms that successfully allow asylum seekers and irregular migrants to reside in the community, while ensuring safety, compliance and cost-effectiveness.

V. Key elements of successful alternatives

A number of key elements for ATD to be successful in terms of cost, compliance and well-being outcomes have been identified, including:

- Individuals are informed and feel they have been through a fair process
- There is a focus on engagement and early intervention
- The ATD aims at holistic case resolution, not simply a focus on removal
- Individuals are able to meet their basic needs (housing, food, etc.)
- Any conditions applied are not overly onerous / don’t set people up to fail

Many governments that do utilize ATD have focused on often unnecessarily restrictive or intrusive options, such as onerous reporting and monitoring requirements or various restrictions or conditions on liberty. However, overly onerous conditions actually have an adverse effect on compliance and successful case resolution outcomes.

On the other hand, a number of countries have had success with community-based models with a focus on early intervention, individual need and risk assessments, case management, welfare assistance and independent legal advice. Indeed, most successful ATD programmes that have been identified are those that use constructive engagement rather than enforcement to ensure individuals comply and cooperate with migration authorities, thus reducing and eliminating the need for detention at all.17

Although such programs sometimes make use of residential facilities as part of a management system, the location of the individual is not of primary concern. Instead, the focus is on assessing each case and ensuring that the community setting contains the

17 These findings have been supported by subsequent research in Europe and internationally, see Jesuit Refugee Service Europe, From Deprivation to Liberty. Alternatives to Detention in Belgium, Germany and the United Kingdom (December 2011) available online at http://www.jrseurope.org/JRSEuropeFromDeprivationToLiberty20122011.pdf; and Cathryn Costello & Esra Kaytaz, Building Empirical Research into Alternatives to Detention: Perceptions of Asylum-Seekers and Refugees in Toronto and Geneva (UNHCR, June 2013) http://www.refworld.org/pdfid/51a6fec84.pdf.
necessary structures and conditions that will best enable the individual to work towards a resolution of their migration status with authorities.

These programs tend to successfully screen and assess the migrant population so that they can better make informed decisions about management and ATD options. They use early intervention to support individuals throughout the bureaucratic administrative process via the provision of interpreters, legal assistance, and case managers who provide quality advice and assist the individual to explore all the legal options available to them, including both options to remain in the country legally and, if needed, avenues to depart the country safely. Finally, these programs treat individuals with respect and dignity, ensuring that basic needs are met and working with individuals as part of the same “team”, rather than through an adversarial process.

Many effective ATD use a social work or case management model to engage with individuals and work towards a resolution of their case without the need for detention. Case management can be understood as:

“a comprehensive and co-ordinated service delivery approach widely used in the human services sector to ensure a co-ordinated response to, and support of, the health and wellbeing of vulnerable people with complex needs.”

Case managers form working relationships with individuals and families to empower, enhance their wellbeing and problem-solving capacities, resolve outstanding issues, provide information on how to obtain services and resources in their communities, and work towards the protection of people who are not in a position to do so themselves. When used properly, case management can contribute to ensuring that the elements of successful ATD outlined above are in place. Satisfactory outcomes can therefore often be achieved without the imposition of onerous reporting or other restrictive conditions. A measuring rod for implementation of ATD should be a decrease in instances of immigration detention and other restrictions being placed on the liberty and free movement of individuals. Statistical data is necessary to carry out such an assessment.

VI. Positive ATD examples
There are a number of examples of ATD programmes internationally, which have incorporated some or all of the key elements of successful ATD mentioned above. These programs maintain high levels of compliance, are more cost-effective than custodial detention, and have been shown to have positive health and wellbeing outcomes for migrants:

18 Sampson et al., There are alternatives, op.cit., p. 30.
**Sweden**

The Swedish caseworker system for asylum seekers uses a case management model based on early intervention and a welfare and rights framework. In Sweden, there is a presumption against detention for asylum seekers, who are normally registered at a regional reception centre and supported with basic needs, legal assistance and in some cases have work rights. Asylum seekers meet regularly with a case worker, who is responsible for informing clients about the process and their rights, as well as ensuring their well-being through assessment, case planning and referral. Crucially, a strengths-based approach is used to support and build trust with asylum seekers as they are prepared for all possible immigration outcomes. This assists individuals to feel they are given a fair hearing and are empowered and supported to make their own departure arrangements with dignity. The effectiveness of this early intervention case management model means that Sweden rarely has to resort to coercion when removing failed asylum seekers. Indeed, in 2012, of 19,905 third country nationals ordered to leave Sweden, 12,988 returned voluntarily and 614 returned through an assisted voluntary return program.

**Australia**

In Australia, case management was introduced in a series of community-based alternatives to detention pilot projects (from 2005 to 2009), as part of a shift from a “one-size fits all” enforcement approach to one that engaged with individuals. A number of these programmes used social work-type principles borrowed from the Swedish caseworker system to inform, support and empower individuals to prepare for all possible immigration outcomes, rather than focusing exclusively on achieving return. They also included screening and assessment, access to legal advice, the provision of translated information and partnerships with civil society in implementation. These programmes proved highly effective in minimising the use of detention and meeting the interests of government, migrants and the community. They achieved high levels of voluntary departures and low levels of absconding, while ensuring the rights and dignity of asylum seekers and migrants were upheld. For example, one programme demonstrated a 99% compliance rate over five years, with 84% of refused asylum seekers voluntarily repatriating. On average, 94% of people within the programs complied with their reporting requirements and did not abscond. Furthermore, the use of alternatives to detention also proved a cost saving to government, at one-third the cost of traditional detention and removal practices.

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21 Asylum seekers are provided with housing and receive a daily allowance to cover their basic needs if they do not have sufficient financial means of their own. They also receive free legal assistance. See Swedish Migration Board, EMN Focussed Study 2013: The Organisation of Reception Facilities for Asylum Seekers in Sweden, p.11.


25 Ibid., p. 6.

26 Ibid., p. 10.
Belgium
In Belgium, an alternative to detention featuring case management and material, social and legal assistance has allowed the state to stop detaining families with children.\(^{27}\) Families are accommodated in individual open housing units, called “return-houses” and have freedom of movement with some restrictions and rules.\(^{28}\) Every family member receives support in terms of food, medical care and social and legal assistance. Within the return-houses, families receive counselling from a return-coach, who works for the Foreigners Office and whose role is to prepare families for all possible immigration outcomes while supporting them in their current situation. They provide families with information and coordinate the involvement of other actors working with the family, for example, lawyers, and help children enrol in school. The focus is on “informed decision-making, timely and fair status determination, and improved support for coping mechanisms for the individuals themselves.”\(^{29}\) As a recent review noted, “The preliminary outcomes of this programme are positive. The majority of the families did not abscond\(^{30}\) and remain in contact with their case manager, suggesting that there is no need to detain the people in question.”\(^{31}\)

Canada
The shelter system for asylum seekers in Toronto, Canada highlights the effectiveness of holistic support in enabling individuals to live in the community while their migration status is being determined. As recent empirical research explains: “In conjunction with the available legal rights and state entitlements, the shelters seemed to ensure the treatment of asylum-seekers with dignity, humanity and respect, in particular in providing a supportive environment with adequate material support and accommodation. The right to work, which seemed both practical and effective in Toronto, was crucial in this regard. The shelters facilitate access to legal advice and representation from the outset of the RSD process, subject to the limits of the legal aid system. Caseworkers in the shelters filled the role of providing a sort of advisor although this did not amount to formal case management. In this context, aside from some common minimal requirements regarding notification of change of address to the immigration authorities, most asylum-seekers lived at liberty, without restriction”. Crucially, the research found that it provides “all the key factors to ensure asylum-seekers’ cooperation, removing any need for detention at all.”\(^{32}\)

\(^{27}\) Launched in 2008, the project now accommodates families with children in return procedures, families with children at the border and families with minor children subject to the EU’s Dublin procedure. See for example, UNHCR, Alternatives to detention for Asylum seekers in Belgium, available at: http://www.refworld.org/pdfid/524fc3ef4.pdf.
\(^{28}\) For example one adult member of the family is normally required to remain present in the unit.
\(^{30}\) Absconding rates have hovered between 20% and 25% since the inception of the programme, see JRS Europe, From Deprivation to Liberty. Alternatives to Detention in Belgium, Germany and the United Kingdom (December 2011).
\(^{31}\) Schockaert, op.cit.
VII. Conclusion
These experiences suggest that there are new approaches states can explore, which have been used successfully in many countries to prevent unnecessary immigration detention and to effectively manage cases in the community in a humane, timely and effective manner.

Such reforms have already been welcomed by a broad range of international bodies and NGOs, who stand ready to help explore and implement ATD as a matter of priority.

Thank you, Mr Chair