



## European Alternatives to Detention Network

### Info sheet for civil society

#### Alternatives to immigration detention as a strategy for reducing immigration detention

##### 1. Why work on alternatives?

Current EU policy seeks to expand the use of immigration detention as a way to achieve migration management goals, and several Member States are making plans along these lines. The problems with detention are well known. It's harmful, expensive and largely ineffective: it reduces cooperation and case resolution. But it's often not enough to focus on problems in detention or telling governments not to detain.

To bring about change, we need to show what governments should be doing instead of detention, and how this works better both for the government and the individuals involved. Alternatives provide the basis for solution-based advocacy on immigration detention, to change mindsets and behaviour to bring about detention reform.

##### 2. What are alternatives to immigration detention?

The term 'alternatives to immigration detention' does not have an established legal definition, nor is it a prescriptive concept. With the goal of reducing and ending immigration detention, the European ATD Network uses the following working definition of alternatives: *"Any law, policy or practice by which persons are not detained for reasons related to their migration status"*.

Understood in this broad sense, alternatives respond to the question: how can governments achieve legitimate migration governance goals without the use of detention? It's about saying: instead of detaining, this is what you could and should be doing because it works better for everyone. In this way, alternatives allow us to bring forward a different vision: of how to build migration management systems that don't rely on immigration detention.

##### 3. Alternatives to detention as a strategy and process

The nature of alternatives can vary widely, according to the factors driving detention use in a given national context. Rather than focusing on definitions or typologies, it can be more useful to understand alternatives as a strategy and process for reducing and ending immigration detention. Alternatives are a way for civil society to:

- Show decision-makers that detention is not the solution: there are more effective and humane ways to resolve people's cases in the community at the fraction of the cost of detention.
- Change mindsets about the need to detain through dialogue and collaboration around shared objectives, including fair and timely case resolution.
- Be persuasive by framing our demands in terms of our government/EU target stakeholders' values and language
- Build government's confidence to release people and manage migration without the use of detention.

#### **4. Key messages on alternatives to detention**

**Detention is not the solution: with support and engagement people can resolve their cases in the community.**

**There are alternatives that are more effective, humane and cheaper than detention**

Global comparative [research](#), looking at 250 examples of alternatives to detention in 60 countries, found that alternatives achieve very high compliance rates of up to 95% and high rates of case resolution and independent departure (up to 69%), at a fraction of the cost of detention (up to 80% cheaper)<sup>1</sup>. Similarly, UNHCR research has shown that alternatives are significantly, up to 10 times cheaper than detention.<sup>2</sup>

**The most effective alternatives are those that engage people in immigration procedures**

A growing body of international research, best practice and evidence, shows that the most effective ATD are those that engage migrants in immigration procedures, in particular through tailored case management<sup>3</sup>. This involves a social work approach, empowering and building trust with migrants to work towards resolution of their case, thus achieving better results for both governments and the migrants involved.

**People are more likely to engage when they are treated fairly, as human beings**

Engagement-based alternatives work because people are more likely to stay engaged and comply with immigration requirements, including negative decisions on their status, when they feel they have been through a fair process, have been able to explore all migration outcomes and have their basic welfare needs met. As everywhere in society, people are more likely to respond well and cooperate if they are treated as human beings. This is particularly important in immigration governance, as case resolution often requires that individuals cooperate in addressing barriers.

**Detention reduces cooperation and case resolution**

In contrast, approaches based on coercion and detention can encourage migrants to resist perceived injustice, alienate people from engaging with immigration processes and [decrease their ability and motivation to cooperate](#) with government requirements. Detention is not effective in guaranteeing forced return. This is evident in the low return rates from long-term detention in the UK: only 29% of migrants leaving detention after more than a year in 2016 were returned.

**A need to shift the focus in Europe to alternatives that work: engagement not enforcement**

EU Member States have made insufficient use of alternatives to immigration detention, despite the requirement in EU law to use less coercive measures whenever possible. Discussions of ATD have focused on lists of restrictions or conditions placed on individuals. These “enforcement-based” alternatives allow governments to keep track of individuals and often run parallel to detention and seek to control migrants through varying levels of coercion. They are not in themselves beneficial to individuals, and there is little evidence that they are effective in achieving compliance or case resolution. We therefore need to shift the focus to alternatives that are proven to be effective: those based on developing trust and meaningful engagement with migrants in working towards the effective resolution of their cases.

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<sup>1</sup> Sampson, R., Chew, V., Mitchell, G., and Bowring, L. *There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention (Revised)*, (Melbourne: International Detention Coalition, 2015), pp 10 – 12 (hereinafter IDC, *There are Alternatives*).

<sup>2</sup> UNHCR's Options paper 2. <http://www.refworld.org/docid/5523e9024.html>

<sup>3</sup> IDC, *There are Alternatives* (2015)

## **The European Commission itself recommends engagement-based alternatives**

The European Commission itself has recognised that “early intervention and holistic case management focused on case resolution” is been proven to be successful as an alternative to detention. In its revised [Return Handbook \(2017\)](#), it recommends States aim at: “systematic horizontal coaching of all potential returnees, covering advice on possibilities for legal stay/asylum as well as on voluntary/enforced return from an early stage (and not only once forced removal decisions are taken)...”. But there has been very limited development of individual coaching or holistic case management as an alternative to detention in the region.

## **There are no one-size-fits-all models of alternatives**

While governments are keen to see “successful” examples of alternatives, there are in fact no universally transferable models. To be effective, alternatives need to be designed to meet the needs of the specific context and client group. To bring about change, it’s therefore more useful to understand the processes and principles that contribute to effective alternatives,<sup>4</sup> in order to support their design and development. Governments can be encouraged to take manageable steps by piloting alternatives, drawing on international positive practice. Proper qualitative and quantitative evaluation can then help to generate learning and strengthen models. The European ATD Network is currently building evidence through a series of case management pilot projects (see below).

## **Key role of civil society in developing alternatives**

Civil society and communities have a crucial role to play in advocating for and developing alternatives that can reduce the use of immigration detention. Civil society organisations already provide structured services to migrants in Europe and have expertise in trust-building, engagement and support. By getting involved in designing, piloting and advocating for alternatives, NGOs can enable individuals to avoid detention, while influencing the shape and tone of the wider implementation of alternatives – to build systems that rely on engagement rather than enforcement and detention.

## **Governments should develop case management-based ATD pilot projects**

Governments can develop small case management-based pilot projects working with defined categories of migrants, to test models and adjust approaches to meet the needs of their specific national contexts. The results of qualitative and quantitative evaluation can guide further development and expansion of effective alternatives to detention. Cooperation with civil society on alternatives can be a way to build on NGO capacity and expertise in case management, develop state-NGO partnerships and work together towards fairer and more effective immigration systems.

## **The Commission should provide support and guidance to Member States to develop ATD**

The Commission could use a combination of guidelines to Member States and funding through AMIF, operating grants and other funds to encourage States to develop case management-based ATD pilot projects, together with civil society organisations.

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<sup>4</sup> The International Detention Coalition’s [Community Assessment and Placement \(CAP\) model](#) incorporates elements of successful alternatives identified through global research.

## 5. Frequently asked questions on ATD

### Can ATD ensure returns?

It is important to be realistic about what ATD can achieve, both for governments and for campaigners. Governments need to have realistic expectations about rates of cooperation and return, particularly in the context of low trust in the system and / or transit populations. Alternatives should be evaluated against the baseline of existing practice, with recognition that increasing trust in the system will take time, and outcomes may improve incrementally. However, pilots need to be designed with achievable objectives of getting sufficient evidence of success to enable political support for further roll-out.

On the other hand, it should be recognised that alternatives are not a way to oppose returns in general. Detention advocacy has sometimes suffered from a close association with opposition to all returns, when detention reform is more politically achievable than open borders. In many countries, activists with radical long-term objectives have supported ATD as a first step towards delegitimising immigration enforcement and ultimately immigration control.

### How can civil society work on ATD when the aim is increased return?

The focus on increasing return rates is both challenge and opportunity for civil society. There is a risk that governments co-opt the language of alternatives for initiatives that are purely about coercing migrants to return. Likewise, governments may dismiss high-quality engagement-based alternatives if they do not lead to high rates of return, in the context of unfair and opaque immigration procedures. However, the sense of crisis around return rates, as well as generating momentum for more enforcement and detention, can also create opportunities for different approaches, particularly as many governments see the need to work more constructively with civil society.

In this context, ATD can be a basis for dialogue around the shared objectives of fair and timely case resolution, while shifting focus away from short-term return numbers towards longer-term systemic reforms that will increase cooperation. In particular, through qualitative evaluation, we can highlight the impact of case management on individual behaviour and outcomes, to help decision-makers to start seeing migrants as people and that it is in their interest to treat them as human beings. There is an opportunity to for civil society to take control of the narrative and shift the debate towards creating immigration systems that rely primarily on engagement with migrants, instead of enforcement and detention.

### Can ATD work in transit contexts? Won't everyone just move on if they are not detained?

Even in so-called “transit” contexts, people have different motivations and intentions and not everyone plans to move on. Research shows that people are more likely to stay engaged if they can meet their basic needs, if they are not at risk of detention or *refoulement*, and if they remain hopeful about the future prospects<sup>5</sup> - factors which governments can influence. Individualised screening and assessment will help authorities understand individual motivations and identify those who could be supported to engage in immigration processes. For example, a pilot ATD project working with people with a return order in Bulgaria has achieved a 96% engagement rate in a context traditionally viewed as “transit” (see page below).

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<sup>5</sup> IDC, There Are Alternatives (2015), p. IV.

## 6. Some messages from alternatives to detention in practice

### **Structured engagement can improve outcomes for government and families in the return process (UK)**

In the UK, the Family Returns Process has successfully reduced the detention of families with children, with 97% of the 1,470 families who left the country in 2014-16 returning without enforcement action or detention. The success of the family returns process demonstrates the benefits of face-to-face dialogue with migrants: the Family Returns Panel ascribes the improved rates of non-enforced return to improved engagement with families, noting that ‘The creation of the FEM role for example has greatly improved communication with families and helps them to understand the process and prepare for a return both practically and psychologically.’

### **Case management can enable compliance while treating people with dignity (U.S.)**

The US government worked with two Catholic networks in 2014 to pilot alternatives to detention in various communities. These pilots led in 2015 to the roll-out of government-funded alternatives to detention at a national level. The Lutheran Immigration and Refugee Service (LIRS) pilot was a supervised release and assistance programme based on individualised assessments of community ties, risks and previous compliance. LIRS coordinated a network of 20 local NGOs in seven communities around the US, providing community support to enable compliance with conditions of release. LIRS concluded that ‘case management is an effective tool to both assure compliance and treat people with dignity’.

### **Case management can contribute to reforms away from detention (Sweden)**

In Sweden asylum-seekers receive case management throughout the process from caseworkers employed by the Swedish Migration Board. In Sweden this support is simply part of the normal asylum system, and is not a formal alternative to detention as such, although reporting conditions can be applied in addition where considered necessary. Nevertheless, case management was developed as part of a shift away from detention around 2000, and Sweden makes exceptionally little use of detention, given the numbers of asylum-seekers received: only 2,900 people were detained in 2013, although 21,000 people were refused asylum during the year. In 2012, 68% of people who departed following an order to leave the country did so independently.

### **Holistic case management exploring all migration options achieves better outcomes (Australia)**

A series of alternative to detention pilot projects providing case management in Australia achieved over a 90% compliance rate<sup>6</sup> and [included](#) a 60% independent departure rate for those not granted a visa to remain. Among other things, the pilots expected that “all options and services available to the client will be explored from the outset”. The positive outcomes of this testing phase formed the basis for the integration and upscaling of case management across the national migration system.

### **Enforcement-based alternatives which focus exclusively on returns are less effective (UK)**

Conversely, two pilot projects in the UK, which focused exclusively on return with families with children whose asylum applications had been refused, produced poor outcomes “from the point of view of individuals’ welfare, voluntary return rates and engagement of the families”<sup>7</sup>. Evaluations have “suggested that the coercive and end of process nature of these alternatives led to a lack of trust between families and the project staff”<sup>8</sup>.

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<sup>6</sup> Department of Immigration and Citizenship, *Community Care Pilot and Status Resolution Trial* (2009).

<sup>7</sup> Detention Action, *Without Detention* (2016) p 22.

<sup>8</sup> Detention Action, *Without Detention* (2016) p. 23; The Children’s Society, Bail for Immigration Detainees, The Diana, Princess of Wales Memorial Fund, *An evaluative report on the Millbank Alternative to Detention Pilot*, 2009; ODS Consulting, Evaluation of the Family Return Project, May 2010; Scottish Refugee Council, *We*

## **Building evidence: the European ATD Network**

The “European Alternatives to Detention (ATD) Network” brings together NGOs running case management-based alternative to detention pilot projects in four European countries (Bulgaria, Cyprus, Poland and the UK) with regional-level organisations. Each adapted to their own national context, the pilot projects work with a range of migrant cohorts to provide case management as an alternative to immigration detention. The pilots aim to generate evidence and models for effective alternatives, in order to initiate discussions and partnership between civil society and governments around shared interests in fair and effective immigration systems in which immigration detention is only used as a last resort.

### **Protecting migrants with precarious status in Bulgaria**

In this pilot project, a case management team is engaging over two years with a total of 50-60 migrants with return orders, providing holistic support on an individual basis, with the goal of avoiding the need to detain them and decreasing the risk of absconding, while helping them stabilize in the community until case resolution (obtaining legal status or return to country of origin or third country) is attained. In its first year, the project worked with 50 people and achieved a 96% rate of engagement. At the end of the year, 42 people were still in the project; four people had returned voluntarily, two had obtained humanitarian status and two people had disengaged. The project is implemented by [Center for Legal Aid – Voice in Bulgaria \(CLA\)](#) with [Bulgarian Lawyers for Human Rights \(BLHR\)](#).

### **Pilot Implementation of Alternatives to Detention of Third Country Nationals in Cyprus**

The project aims to promote the adoption of alternatives to detention in Cyprus, through the use of a holistic approach, that includes capacity building to governmental and non-governmental stakeholders, advocacy on the adoption of ATDs and case management to 40 cases based on the Revised Community Assessment and Placement (CAP) model, developed by the International Detention Coalition (IDC). The project is implemented by Cyprus Refugee Council.

### **Pilot project on Alternatives to Detention of migrants in return procedures in Poland**

The project aims to promote and expand the use of alternatives to detention in Poland by introducing an engagement-based case management model based on the Revised Community Assessment and Placement (CAP) model, developed by the International Detention Coalition (IDC). The project team will engage a minimum of 25 migrants in return procedures who were released from detention or were imposed ATDs, supporting them through holistic case management, legal aid and psychological care. The project is implemented by [Association for Legal Intervention \(SIP\)](#).

### **The Community Support Project in the UK**

The project aims to demonstrate that alternatives to detention can be effective for migrants with complex needs and risk factors who would otherwise face indefinite detention. The project aims to reduce the risk of absconding and reoffending of young male ex-offenders with barriers to removal, assisting them to meet the conditions of their release and avoid long-term detention. Through one-to-one case management, participants develop skills and confidence to stabilise their lives, participate in the community and maintain contact with the authorities. Over the first three years of the project, the absconding rate is under 14% and the reconviction rate is 5%. The project costs only 5% of the cost of detention, or 17% if the costs of housing and support are taken into account. The project is implemented by [Detention Action](#).

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*respond to evaluation of the Glasgow Family Returns Pilot, 2011; Tribal, Review of the Alternative to Detention (A2D) Project, May 2009.*