



Advocating for Alternatives to Detention in the Context of Migration

Toolkit for NGOs



European Alternatives
To Detention Network

International
Detention Coalition

Human rights for detained refugees,
asylum seekers and migrants

 PICUM

PLATFORM FOR INTERNATIONAL COOPERATION ON
UNDOCUMENTED MIGRANTS

Most European Union countries systemically detain undocumented people, often for repeated or prolonged periods. Current EU policies seek to further expand this practice, by creating new grounds for detention¹. This leads to **violations of individuals' fundamental rights**, and has a severe impact on their lives, exacerbating their level of vulnerability² and the incidence of mental health issues such as anxiety, depression and post-traumatic stress disorder.

To challenge immigration detention, it is key to propose concrete solutions on what a migration system without detention would look like. **Alternatives to detention show decision-makers that there are more effective and humane ways to resolve people's cases in the community.**

In this process, the journey matters as much as the destination: advocating for and implementing alternatives contribute to a narrative **shift from a focus on enforcement and coercion to one on engagement and rights-compliance**, paving the way for migration management systems that don't rely on immigration detention.

Alternatives to detention show governments that **engagement-based solutions** can benefit **both the individuals and the authorities**. This means building migration policy implementation processes and systems that respect human rights.

Thanks to their experience with building trust with and providing support to undocumented people, **civil society organisations can play a crucial role** in designing, piloting and advocating for alternatives to detention.

NGOs can **advocate** for governments to support the development of case management-based pilot projects* targeted to their national context, and to conduct **qualitative and quantitative evaluation** of the pilots with a view to further improve and expand them. Collaboration between civil society organisations and governments for the development and implementation of projects can contribute to shifting the focus of migration policies and ensure that alternatives are based on engagement rather than enforcement.

Talking points:

1. Focus on common grounds

While advocating for case management-based alternatives to detention*, working towards **fair and timely case resolution*** can be a shared objective and a basis for constructive dialogue between NGOs and governments. While governments often focus on the number of returns, emphasising the importance of case resolution encourages a shift towards an evaluation of the impact of alternatives to detention on **individuals' will and ability to comply with migration decisions**.

2. Show that alternatives are better for everyone

Alternatives to detention are **more effective, humane and cheaper than detention**. Individuals are more likely to comply with migration decisions if they are treated fairly, they can meet their basic needs and all available options have been considered.

The evaluation of existing ATD projects has showed extremely **positive results in terms of compliance**, at significantly lower costs than detention. For instance, global research by the International Detention Coalition (IDC) based on 250 ATD examples in 60 countries found compliance rates of up to 95 per cent³. In three pilot projects in Bulgaria, Cyprus and Poland, 97 per cent of the participants remained engaged or achieved case resolution.⁴ Moreover, a study by UNHCR found that ATDs are **significantly cheaper**, costing up to 90 per cent less than detention.⁵

3. Remind that alternatives are a legal obligation

Under the EU Directive on Returns, **States have an obligation to assess the effectiveness of less coercive measures** before applying detention.⁶ As clarified by the European Commission, this entails an obligation for Member States to **establish effective alternatives to detention in their national legal systems**.⁷ Moreover, the Commission explicitly recognizes that *"early engagement and holistic case management focused on case resolution has proven to be successful"*.⁸ Since the publication of this guidance, the Commission has encouraged and supported Member States in the development of alternative to detention programmes, including through dedicated funds under the 2021-2027 Asylum and Migration Fund.

*Glossary:

Alternatives to detention

IDC defines alternatives to detention (ATD) as *"any law, policy or practice by which persons are not detained for reasons related to their migration status"*.

Case management

Case management is a structured social work approach which implies personal support throughout a person's immigration procedure, with the aim to work towards case resolution. In this model, the case manager, who is not a decision-maker, develops a one-to-one working relationship with individuals, supporting and empowering them to engage fully with immigration procedures to work towards the resolution of their case. The case manager facilitates contacts between the individuals and relevant stakeholders (e.g. health professionals, legal advisors and authorities), while monitoring the development of the case as well as individuals' wellbeing.⁹

Case resolution

Case resolution refers to any temporary or permanent migration outcome, and can refer to a variety of solutions, such as a visa, regularization scheme, re-migration or voluntary return.¹⁰

Effectiveness

As stated by the Council of Europe¹¹, there is broad consensus to evaluate the effectiveness of alternatives to detention based on the following three criteria:

- I. Ensuring compliance with immigration procedures;
- II. Respecting human rights and meeting basic needs;
- III. Promoting cost-effectiveness.

Research has shown that the most effective alternatives are those that build trust and support individuals to engage with immigration processes towards the resolution of their case. Some key elements, identified by the Council of Europe¹²

(CoE), IDC¹³ and UNHCR¹⁴, contribute to the design of successful alternatives:

- Individual screening and assessment (CoE; IDC)
- Access to information (CoE; IDC; UNHCR)
- Trust building and feeling of having gone through a fair process (CoE; IDC)
- Respect for fundamental rights and ability to meet basic needs (CoE; IDC; UNHCR)
- Individual support through personalised case management (CoE; IDC; UNHCR)
- Access to legal advice and early engagement (CoE; IDC; UNHCR)
- All possible options are assessed (IDC)
- Conditions are not overly onerous (IDC)

Resources

- ATD Network, 2018: [Info sheet for civil society](#)
- ATD Network, 2018: [Interim Evaluation Report](#) and [Briefing Paper](#)
- Detention Action, 2016: [Without detention](#)
- IDC, 2015: [There are alternatives](#)

Endnotes

- 1 See articles 6 and 19 of the proposed Recast EU Returns Directive, available [here](#).
- 2 Jesuit Refugee Service - Europe (2010) "Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular Migrants in the European Union (The DEVAS Project)", available [here](#).
- 3 International Detention Coalition, 2015, "There are alternatives. A handbook for preventing unnecessary immigration detention (revised edition)", available [here](#)
- 4 In 94 per cent of the cases, the pilot project had increased the individuals' ability to participate in informed decision making, and in 93 per cent of the cases it had improved their coping and well-being. EPIM, 2018, "Alternatives to Detention: from theory to practice. Evaluation of three engagement-based alternative to immigration detention pilot projects in Bulgaria, Cyprus and Poland", available [here](#).
- 5 UN High Commissioner for Refugees (2015), "Options Paper 2: Options for governments on open reception and alternatives to detention", available [here](#).
- 6 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals OJ L 348, 24.12.2008, art. 15, available [here](#). The same provision is maintained in article 18 of the proposed Recast EU Returns Directive, available [here](#).
- 7 Annex to the Commission recommendation establishing a common "Return Handbook" to be used by Member States' competent authorities when carrying out return related tasks, p. 67, available [here](#).
- 8 Ibid, p. 68.
- 9 International Detention Coalition (2015), "There are alternatives; A handbook for preventing unnecessary immigration detention (revised edition)", available [here](#)
- 10 Ibid, p. 52.
- 11 Council of Europe, Steering Committee for Human Rights (2018) "Analysis of the legal and practical aspects of effective alternatives to detention in the context of migration", p. 57-58, available [here](#).
- 12 Council of Europe, Steering Committee for Human Rights (2018) "Analysis of the legal and practical aspects of effective alternatives to detention in the context of migration", available [here](#).
- 13 International Detention Coalition, 2015, "There are alternatives. A handbook for preventing unnecessary immigration detention (revised edition)", p. IV, available [here](#).
- 14 UN High Commissioner for Refugees (2015), "Options Paper 2: Options for governments on open reception and alternatives to detention", available [here](#).



PLATFORM FOR INTERNATIONAL COOPERATION ON
UNDOCUMENTED MIGRANTS



SIGRID RAUSING TRUST



This report has received financial support from the European Union Programme for Employment and Social Innovation "EaSI" (2014-2020). For further information please consult: <http://ec.europa.eu/social/easi>. The information contained in this publication does not necessarily reflect the official position of the European Commission