

International Detention Coalition

Human rights for detained refugees,
asylum seekers and migrants

Seeking to Implement Alternatives *Written evidence to the UK Parliamentary inquiry into the use of immigration detention*

IDC SUBMISSION

www.idcoalition.org

Envisioning a world without unnecessary immigration detention

CONTACT

International Detention Coalition (IDC)
C/Hub, Level 3, 673 Bourke Street
Melbourne, Victoria, 3000, Australia
Tel: +61 3 9999 1607
Fax: +61 3 9629 7213
Website: www.idcoalition.org
Follow us on twitter [@idcmonitor](https://twitter.com/idcmonitor)

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 65 countries that advocate for and provide direct services to refugees, asylum-seekers and migrants in administrative 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).

INTRODUCTION

1. The International Detention Coalition (IDC) welcomes the opportunity to make the following submission to the UK Parliamentary Inquiry on immigration detention. This submission focuses on the second part of the following question asked by the inquiry (emphasis added):

How effective are the current UK alternatives to detention (e.g. bail, reporting requirements)? *Are viable alternatives to immigration detention in operation in other countries?*

About the IDC

2. The International Detention Coalition is a unique global network, of over 300 civil society organisations and individuals in more than 70 countries that advocate for, research, and provide direct services to refugees, asylum-seekers and migrants affected by immigration detention. The IDC works to ensure that the human rights of refugees, asylum seekers and migrants impacted by immigration detention are respected, protected and fulfilled. It aims to bring about changes in legislation, policy and practice that prevent, mitigate and respond to the harms associated with immigration detention and that promote alternatives to detention. The IDC does this through network and capacity building, advocacy, awareness raising and campaigns, research and reporting.
3. In 2011, the IDC published the results of its unprecedented research into alternatives to detention. Entitled *There are Alternatives*,¹ this research was achieved through an extensive review of existing literature; an international online survey of 88 participants in 28 countries; and international field work in nine countries, including in-depth interviews with 57 participants and eight site visits. This submission is based on the results of this research as well as the IDC's experience working with IDC members, governments, international and intergovernmental organisations, and a range of other key stakeholders at the international, regional and national levels.

ALTERNATIVES TO DETENTION (ATD)

What are alternatives to detention?

4. Based upon our global research, the IDC understands alternatives to detention to mean:

*“any legislation, policy or practice that allows for asylum-seekers, refugees and migrants to reside in the community with freedom of movement while their migration status is being resolved or while awaiting deportation or removal from the country.”*²

5. Both international and European law clearly provide that the detention of refugees, asylum seekers and migrants should be an exceptional measure of last resort. This includes, most importantly, the fundamental right to liberty and security of person found in article 9 of the ICCPR and article 5 of the ECHR. The right to liberty and security of person obliges states to consider in the first instance less intrusive alternatives to detention (ATD).
6. The IDC has identified more than 50 types of ATD being used across all regions of the world. Particularly we have found 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 managed in the community. We have also found a number of very effective community-based care models: everything from intensive case management of unaccompanied minor children, through to minimal reporting requirements for families or individual migrants.
7. 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, the IDC has 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.

Global trends in the use of alternatives to detention

¹ Sampson, R., Mitchell, G. and Bowring, L., *There are alternatives: A handbook for preventing unnecessary immigration detention* (The International Detention Coalition, 2011).

² *Ibid.*, p. 2.

8. Despite the global increase in the use of immigration detention, “more governments are taking steps to explore and implement alternatives, ranging from scoping studies and small-scale pilot projects to significant policy developments and systemic change”³. There is also growing consensus on the need to research and understand the elements of successful alternatives to detention at the UN level and regional levels, as well as in a number of domestic contexts.⁴
9. This can be linked, among other things, to the mounting recognition that detention is expensive, damaging to individuals and does not deter irregular migration.⁵ Interest in ATD has also stemmed from growing litigation on the illegal and arbitrary application of immigration detention, from challenges in managing complex cases and vulnerable individuals in places of immigration detention, and from increasing evidence that ATD can be highly effective in achieving the migration management objectives of the state without resorting to the use of custodial measures.

Benefits of alternatives to detention

10. When implemented properly, the IDC’s research finds that ATD offer a range of benefits to states and migrants alike, including:
 11. Compliance – ATD 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%⁶. 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.⁷
 12. Cost Savings – ATD 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 Canada⁸ and 69% in Australia on alternatives to detention compared to detention costs⁹. In addition independent returns in the EU and Australia save approximately 70% compared to escorted removals¹⁰.
 13. Voluntary Return – ATD 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 irregular migrants demonstrated return rates of between 60% and 69%¹¹, while Sweden reported an 82% rate of return from the community among refused asylum seekers¹².
14. Additionally, successful ATD programs can reduce wrongful detention and litigation; reduce overcrowding and long-term detention; better respect, protect and fulfil the human rights of migrants; improve integration outcomes for approved cases; and improve migrant health and welfare.

Key elements of successful ATD

15. The IDC’s research identified a number of key elements for ATD to be successful in terms of compliance (including with negative immigration decisions) and well-being outcomes. These include:
 - 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

³ Sampson, R.; Mitchell, G., *Global Trends in Immigration Detention and Alternatives to Detention: Practical, Political and Symbolic Rationales*, Journal on Migration and Human Security (2013), p. 98.

⁴ See generally, Sampson et al., *There are alternatives*; see also, Alice J. Edwards, *Back to Basics: The Right to Liberty and Security of Person and "Alternatives to Detention" of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants*, UNHCR, available at <http://www.unhcr.org/refworld/docid/4dc935fd2.html>.

⁵ International research has found that immigration detention is not an effective deterrent of asylum seekers and irregular migrants in either destination or transit contexts. Detention is not only expensive and harmful, it also fails to impact on the choice of destination country and does not reduce numbers of irregular arrivals. Studies have shown asylum seekers and irregular migrants either are: not aware of detention policy or its impact in the country of destination; may see it as an inevitable part of the journey, and do not convey the deterrence message to other back to those in country of origin.

⁶ Sampson et al., *There are alternatives, op.cit.*, p. 17.

⁷ *Ibid.*

⁸ *Ibid.*, p. 44.

⁹ *Ibid.*, p. 40.

¹⁰ *Ibid.*, p. 52.

¹¹ *Ibid.*, p. 39.

¹² *Ibid.*, p. 35.

- 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
16. Many governments that do utilize alternatives have focused on often unnecessarily restrictive or intrusive options, such as onerous reporting and monitoring, or on different forms of deprivation or restriction on liberty, such as electronic tagging and curfews. However, the IDC's findings indicate that 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 individual early intervention, need and risk assessments, case management, welfare assistance and independent legal advice.
 17. Indeed, most successful alternative to detention programmes identified by the IDC were those that used constructive engagement rather than enforcement to ensure individuals comply and cooperate with migration authorities, thus reducing and eliminating the need for detention at all.¹³ 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 necessary structures and conditions that will best enable the individual to work towards a resolution of their migration status with authorities.
 18. These programs tend to successfully screen and assess the migrant population¹⁴ 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.
 19. A key element of the most effective ATD is the use of holistic case management 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."¹⁵ 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.¹⁶ Satisfactory outcomes can therefore often be achieved without the imposition of onerous reporting or other restrictive conditions.
 20. These experiences suggest that there are new approaches the UK could explore, which have been used successfully in other countries to prevent unnecessary immigration detention and to effectively manage cases in the community in a humane, timely and effective manner.

POSITIVE ATD EXAMPLES

21. 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:
22. 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

¹³ 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>

¹⁴ Step 2 of the IDC's Community Assessment and Placement Model (CAP). See page 7 below.

¹⁵ Sampson et al., *There are alternatives, op.cit.*, p. 30.

¹⁶ For key components of successful case management in the migration context, see: International Detention Coalition (IDC), *Case management as an alternative to immigration detention: The Australian Experience* (2009), p. 11. Available online at: <http://www.refworld.org/pdfid/4f3cc2562.pdf>

normally registered at a regional reception centre and supported with basic needs,¹⁷ 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 referral¹⁸. Crucially, a strength-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 program¹⁹.

23. 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 individuals²⁰. 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 repatriating²¹. On average, 94% of people within the programs complied with their reporting requirements and did not abscond²². 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.
24. In Belgium, an alternative to detention featuring case management and material, social and legal assistance has allowed the state to stop detaining families with children²³. Families are accommodated in individual open housing units, called “return-houses” and have freedom of movement with some restrictions and rules²⁴. 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”²⁵. As a recent review noted, “The preliminary outcomes of this programme are positive. The majority of the families did not abscond and remain in contact with their case manager, suggesting that there is no need to detain the people in question.”²⁶
25. The shelter system for asylum seekers in Toronto, Canada highlights the effectiveness 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

¹⁷ 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 Focused Study 2013: The Organisation of Reception Facilities for Asylum Seekers in Sweden*, p.11.

¹⁸ See IDC, *Case management as an alternative to immigration detention: The Australian Experience* (2009), p. 5.

¹⁹ European Migration Network, *Country Factsheet: Sweden 2012*.

²⁰ IDC, *Case management as an alternative to immigration detention: The Australian Experience* (2009).

²¹ *Ibid.*, p. 6

²² *Ibid.*, p. 10.

²³ Launched in 2008, the project now accommodates families with children in return procedures, families with minor 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>

²⁴ For example one adult member of the family is normally required to remain present in the unit.

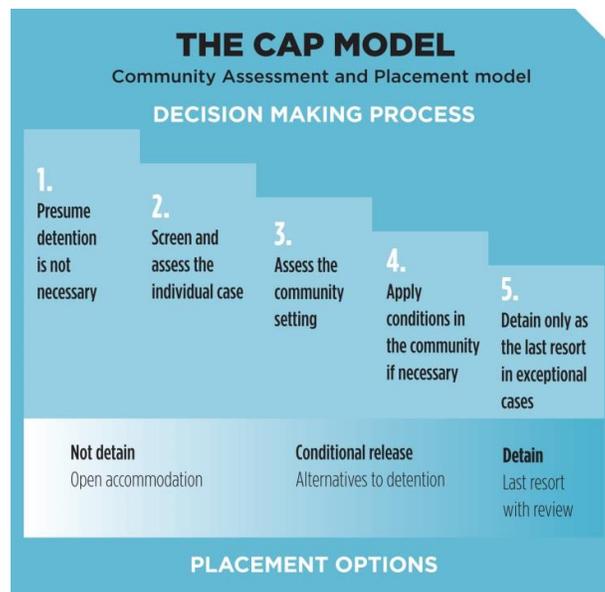
²⁵ Liesbeth Schockaert, “Alternatives to detention: Open family units in Belgium,” *Forced Migration Review* (September 2013), available at: <http://www.fmreview.org/detention/schockaert>

²⁶ *Ibid.*. 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).

minimal requirements regarding notification of change of address to the immigration authorities, most asylum-seekers lived at liberty, without restriction”²⁷. Crucially, the research found that it provides “all the key factors to ensure asylum-seekers’ cooperation, removing any need for detention at all”²⁸.

THE COMMUNITY ASSESSMENT AND PLACEMENT (CAP) MODEL

26. Although governments have a legal obligation to pursue alternatives to detention, there is very little guidance available on how this should be done. To assist in this area, the IDC has identified and incorporated a number of positive examples globally into a single framework, the Community Assessment and Placement Model (CAP). This model has been designed as both a theoretical and practical framework to assist governments in their exploration and development of preventative mechanisms and alternatives to detention.²⁹



27. The model highlights five steps that can be taken to ensure detention is used as a last resort, while providing reassurance and confidence for the government and community on effective support and management of individuals in the community.

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

The research identified a number of laws, policies or practices that presume detention is not necessary when resolving an individual’s migration status. A ‘presumption against detention’ can uphold an individual’s right to freedom of movement and prevent immigration officials from using detention when less restrictive alternatives are available. A presumption against detention can be reinforced when alternative measures are also established in law or policy, clearly directing officials to consider and use less intrusive measures.

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

Individualized screening and assessment are important tools in reducing unnecessary detention, as authorities can identify and assess levels of risk and vulnerability as well as the strengths and needs of each person. This in turn enables them to make informed decisions about the best way to manage and support an individual to resolve their migration status, and to make case-by-case decisions about whether detention is truly necessary. The research identified four key areas of assessment: legal obligations; identity, health and security checks; vulnerability; and individual case factors.

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

²⁷ Cathryn Costello & Esra Kaytaz, *Building Empirical Research into Alternatives to Detention: Perceptions of Asylum-Seekers and Refugees in Toronto and Geneva* (UNHCR, June 2013), p. 18. Available at: <http://www.refworld.org/pdfid/51a6fec84.pdf>

²⁸ *Ibid.*

²⁹ Although designed in this way, these five mechanisms are also steps that could be taken in individual cases to assess the need for detention and to ensure detention is only applied as a last resort in exceptional cases.

In order to best match an individual with an appropriate and effective programme of response, it is necessary to assess those factors in the community setting that can either support or undermine a person's ability to comply with immigration authorities. These are also areas that can be improved upon through government or non-governmental organisations' investment, in order to strengthen the community context and increase the number of people who are spared unnecessary detention. Four key aspects of a community setting are: case management, legal advice and interpretation, ability to meet basic needs and documentation.

31. Step 4: Apply conditions in the community setting if necessary

If authorities remain concerned about the placement of an individual in the community, there are a range of additional mechanisms that can be introduced to promote engagement with authorities that do not require undue restrictions on freedom of movement. These conditions include: individual undertakings, monitoring, supervision, intensive case resolution, and negative consequences for non-compliance .

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

As articulated above, international human rights laws and standards make clear that immigration detention should be used only as a last resort in exceptional cases after all other options have been shown to be inadequate in the individual case. Detention should be avoided entirely for vulnerable groups and be in accordance with international, regional and national law and standards.

IDC
SEPTEMBER 2014