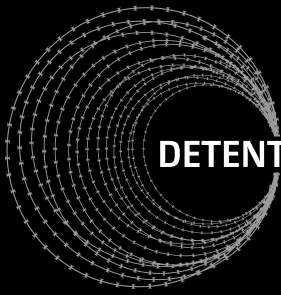


WITHOUT DETENTION

Opportunities for alternatives



DETENTION ACTION



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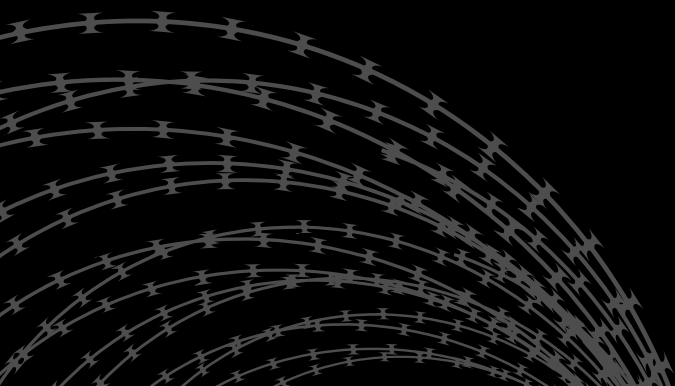
© Detention Action, September 2016
Unit 3R, Leroy House
436 Essex Rd
London N1 3QP
Tel: 020 7226 3114
Twitter: @DetentionAction
admin@detentionaction.org.uk
www.detentionaction.org.uk
Charity registration number: 1065066

Written by Eiri Ohtani and Jerome Phelps

Photography by Justine Roland-Cal / <http://www.justinerolandcal.co.uk>
Design by Louis Mackay / www.louismackaydesign.co.uk
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In memory of Ester Gluck.



WITHOUT DETENTION

Opportunities for alternatives



September 2016

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Executive summary

The UK has been at the forefront of the growth of immigration detention, across Europe and the world. Detention has come to be seen as central to a response to irregular migration based on enforcement, coercion and deterrence. The UK now has one of the largest detention estates in Europe and is the only State to use detention without time limit.

Yet there appears to be a growing realisation that the focus on detention and enforcement is expensive and often ineffective, causing incalculable harm to migrants and their families whilst often failing to achieve migration governance objectives. Detention alienates individuals and communities, making them see immigration and asylum systems as hostile and unjust. Yet migration governance requires a certain level of trust and cooperation; it cannot be effective if it does not have some level of consent of communities affected.

The UK Government has hinted at a shift towards a new approach with less reliance on immigration detention. The Government has committed to a programme of detention reform that should lead to a reduction in the numbers of people detained and the length of their detention. Two detention centres were closed in 2015; numbers of migrants detained for long periods are falling. The Detained Fast Track asylum process remains suspended, following Detention Action's legal challenges. The Government has legislated to limit the detention of pregnant women and introduce some automatic judicial oversight of detention for the first time.

These steps could remain piecemeal, fragmented changes, to be easily reversed in the next cycle of political controversy. Or they could mark the start of a shift towards a different approach to migration governance, based on engagement with migrants, rather than enforcement. The UK could play a leading role at a regional level in developing and implementing alternatives to detention that meet government objectives and respect the rights and dignity of migrants.

There is ample international evidence that this approach can work. The International Detention Coalition's Community Assessment and Placement (CAP) model is based on extensive good practice by States around the world. The model involves a holistic approach, using screening and assessment, a range of placement options and intensive case management to support migrants to resolve their immigration cases in the community. Without detention.

As yet, little of this holistic approach has been implemented in Europe, with the exception of Sweden. The UK could be a case study for the exploration of alternatives in the region, applying the CAP model to the specific regional and national contexts.

This report applies the CAP model to the main contexts in which detention is used in the UK: in return procedures, the asylum process and for ex-offenders with barriers to removal.

The UK could play a leading role at a regional level in developing and implementing alternatives to detention

In each situation, it sets out how alternatives to detention can allow a different approach, meeting the needs of Government and migrants. It analyses relevant international good practice, as well as unsuccessful pilots, whilst recognising that models from other national contexts can never be imposed wholesale, but must be adapted to different practical and political considerations.

Alternatives to detention in the returns process should use the learning from previous alternatives for families in the UK, adapting them for the similar and different situations of adults. But they should go further, recognising the international evidence that alternatives are most effective when they engage migrants throughout the immigration processes. In countries including Australia and Sweden, such practices have led to reductions in detention and high levels of cooperation with immigration processes, with voluntary return rather than enforcement the main form of return.

In the context of the UK Government's desire to replace the Detained Fast Track asylum process, alternatives offer a way for asylum claims to be processed quickly without the use of detention. Providing support to asylum-seekers in the community can help them to engage with the process, reducing the risk of absconding or delays to the process through missing interviews. Other States like Switzerland have addressed similar political objectives through processing some asylum claims quickly in the community, without detention or unfair appeals deadlines.

Detention Action's Community Support Project adapts international models to show that alternatives can work even for the most complex situations, those of ex-offenders with barriers to return. Alternatives to the long-term detention of these people can be based on well-established principles of post-prison rehabilitation. One-to-one, person-centred support can help ex-offenders facing deportation to stabilise their lives in the community, avoiding re-offending or absconding while their cases are resolved.

One thing is clear: for alternatives to work, they cannot be left to governments alone. Only where civil society, migrant communities and experts-by-experience are involved from the start in developing and implementing alternatives, are alternatives likely to prioritise the engagement with migrants that can build trust. Only where alternatives focus on engagement, can they succeed in promoting cooperation with immigration systems and reducing the use, and harm to individuals, of detention. The opportunities for detention reform in the UK require civil society and migrant communities to get involved in developing solutions as well as critiques, in showing that working with migrants in the community can be the way forward.

This report sets out how that change could happen. It calls for civil society to get involved in designing, piloting and developing alternatives. These pilots can both enable individuals to avoid detention, and influence the shape and tone of the wider implementation of alternatives. They can be the start of a systemic shift away from detention and a break from the enforcement culture.

The stakes are high: detention reform in the UK is fragile, while European migration systems are under unprecedented strain. The risk is of detention on a scale never before seen in the region. There has never been a greater need for alternatives.

The opportunities for detention reform in the UK require civil society and migrant communities to get involved in developing solutions

Freed Voices' Foreword

I was detained in prison under immigration powers, and then in Harmondsworth and Colnbrook IRCs, for over two years altogether. The "IRC" stands for "Immigration Removal Centre". "Removal" is the key word here. From the very first day I was detained pending deportation, I knew I could not be returned because of Home Office Country Guidance. I asked my solicitor, the courts, and the Home Office the same question: "Why are you locking me up when you yourself acknowledge you cannot deport me?" The answer was always the same: "You cannot be released because of the risk that you re-offend."



Kasonga

'Immigration is immigration. Asylum is asylum. A criminal court is a criminal court. They are three separate things. In this country, however, the Government is very happy to confuse them all. Once you've served your sentence, you've paid your debt to society. You should be freed. But migrants with convictions to their name serve double sentences. Although, this is detention and this is the UK, so no time limit means it is actually more of a life sentence.

'The sense of injustice swells inside of me when I think about it. I felt like the specifics of my case were completely ignored – my long-term detention came down to the fact I was a foreigner, little else. My experience in detention broke the trust I had in the Government, and the country I have lived in for the last twenty years.

'The first time I heard about alternatives was in a Freed Voices session after I'd been released. I was shocked. I could not believe it. "You are telling me there is another way to control immigration that is cheaper, more humane, and more efficient for the government, and they aren't using it?" I was very angry. And confused. Detention clearly doesn't work and the way out is sitting in a drawer! Alternatives can be a win-win, for everybody – for the Government, for the taxpayer, for people whose lives are otherwise broken by detention.

'So what is stopping them?

'In 1994, there were 300 or so people in detention. Last year, nearly 33,000 people were

detained. This feels like the biggest obstacle going forward in the push for alternatives. The routine must become the rare. In 1994, it was exceptional to put someone in detention. In 2016, it is exceptional as a migrant in this country to not experience detention, in one way or another, directly or indirectly.

'But alternatives are a way for the Government to meet their immigration controls without criminalising migrants or depriving them of their liberty. They are cost effective and efficient. They offer the Home Office a way to actually practice the policy they preach: to use detention as a last resort, not as a first resort. They are a way of addressing the inhumanity of the UK's current approach.

'The Government need to ask themselves whether they are more interested in doing a good job or winning votes. Civil society needs to push alternatives as the answer and hold the Government accountable for not introducing them when they said they are committed to reform. Just as importantly, people with experience of detention need to speak out about the reality of detention and shape what alternatives look like in light of their experiences. We understand the real problems at the root of the detention system in a way others cannot and we must be part of the solution.'

– Kasonga

I*'ve done the same cycle three times - prison, then detention, then released back into the community. Add it up and I was detained three years plus.*

'When I was in prison the first time, I did lots of courses to prepare me for life outside. I was prepping job interviews. I was gonna be a painter, decorator. I was ready to reintegrate. But then I moved to detention, and there was nothing like that. The stress of detention popped that balloon. My confidence went. My self-esteem went. It made me feel all the studies I did were useless, waste of time. I started to get big mental health issues. I needed help but I had nowhere to turn.

'I was very, very stressed when I came out the first and second times. It was like starting from minus-zero. I had nothing. No support at all. The second time I even went to the probation services in Newcastle. I begged them to help me like they do other ex-offenders. I knew that they could give me some structure, help me with housing, help me with being a better person. They said because I just come from detention, they cannot work with me. I didn't understand why because I obviously needed it.

'Detention had mashed up my head. I was drinking to forget the pain of detention. I was waking up at night-time. When I saw security guards in Tesco, I was thinking they're not Tesco, they're Tascor [the private security company responsible for transferring people in detention]. I was so scared of being re-detained, again. Detention destroyed all my trust in the system. It made me think twice about reporting just in case they handcuff me up again. I absconded. I re-offended.

'But it was different when I was released this time. I got involved with Freed Voices and the Community Support Project. I had someone to speak to. I saw a path. I remembered the light at the end of the tunnel. I got a bit of stability.

'Really, it's simple: when someone invests in you as human, you respect them. You respect what they say. It made me think different about running off. If you have a future, you don't

**'Really, it's simple:
when someone
invests in you as a
human, you respect
them. You respect
what they say.'**

– Jalloh



Members of
Freed Voices

run off. I get my trust back. I haven't done no re-offending or absconding since I was released this time. I feel more calm now. If I have a problem or mental health issue I can get help speaking to the right people. I am better dealing with my own problems.

'A few months ago was the first time I saw anyone from the Home Office working on my case. For the first time ever! That made a big difference for me. Someone was actually asking me questions! I was so happy. I felt part of the process.'

– Jalloh

Freed Voices are a group of experts-by-experience committed to speaking out about the reality of immigration detention in the UK and campaigning for detention reform. Migrants with experience of detention have in the past had little influence due to their extreme marginalisation and the stigma of detention. However, through an innovative model of activism based on self-advocacy training, the Freed Voices group have established themselves as a vital part of the detention reform movement. They engage Parliamentarians and policy-makers, mobilise support and do media work. They speak as experts – they do not just reflect on their time in detention, they demand change in light of those experiences.

Introduction

After decades of relative obscurity, immigration detention has come to be widely and officially recognised as a political problem in the UK. This unprecedented level of criticism started in March 2015, when the cross-party Parliamentary Inquiry into the Use of Immigration Detention delivered the damning verdict that the UK detains far too many people for far too long and recommended that the UK introduce a legal limit on the length of time that migrants can be detained as part of a radical overhaul of the entire detention system.¹ The Government responded by commissioning former Prisons and Probation Ombudsman Stephen Shaw to investigate the welfare of vulnerable people in detention. Stephen Shaw's review, published in January 2016, reiterated the need for detention reform, urging the government to begin the process of reducing detention 'boldly and without delay'.²

These robust critiques of the current immigration detention system identify the excessive use of detention - long term, often resulting in release rather than removal and involving very vulnerable individuals - as a symptom of a wider enforcement-focused immigration control system and poor caseworking by the Home Office. The emphasis placed on enforcement results in a failure to sufficiently engage individuals going through immigration procedures, with the result that the system is inefficient for the authorities and inhumane and alienating for migrants.

In January 2016, the Government accepted the broad thrust of the Shaw review and hinted at a wide-ranging reform programme,³ but so far it appears that only piecemeal changes have been introduced. Under political pressure, the Government used the Immigration Act 2016 to introduce limited changes in law: a detention time limit of 72 hours for pregnant women, and for the first time automatic judicial oversight of detention every four months for some categories of migrants. Separately, the Detained Fast Track asylum process has been suspended, following successful legal challenges by Detention Action and individual asylum-seekers. Nevertheless, these changes could amount to the early stages of a shift away from detention: two detention centres were closed in 2015, and the Government has indicated that the number of people detained and lengths of detention will both decrease in the future.⁴ In particular, the promise of removal plans for all migrants in detention⁵ could bring a move away from detaining migrants whose removal is not imminent.

1 All-Party Parliamentary Groups on Refugees and Migration, *The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom*, March 2015.

2 Stephen Shaw, *Review into the Welfare in Detention of Vulnerable Persons: A report to the Home Office by Stephen Shaw*, January 2016.

3 James Brokenshire (the Minister of State for Immigration), 'Immigration Detention: Response to Stephen Shaw's report into the Welfare in Detention of Vulnerable Persons: Written statement' - HCWS470, 14 January 2016.

4 *Ibid.*

5 *Ibid.*

However, this reform programme, if such it is, will remain fragile as long as its focus is restricted to detention. Immigration detention can only be understood holistically in the context of the broader immigration and asylum systems, within which it is one tool among others. It is a symptom, as well as prime example, of an approach that places too much reliance on enforcement and too little on engaging migrants to help them fully participate with immigration procedures. A sustained reduction in detention would need to be accompanied by improving engagement with migrants in the community. Such alternatives to detention can assist migrants to understand and participate better in immigration procedures, enabling their cases to be resolved in a fair, timely and humane manner in the community, with the minimum use of enforcement. This shift in approach, from enforcement to engagement, can build greater fairness, accountability and trust into the system and produce better outcomes for individuals, communities and the Government.

Indeed, the Parliamentary Inquiry called for the development of a much wider range of community-based alternatives to detention, ‘affecting the entire process of the immigration system’, as part of a culture change from enforcement to engagement, which could in time enable further changes such as a time limit on detention. The inquiry heard extensive evidence from individuals who had gone through the detention system, as well as UK and international experts, which showed that the ineffectiveness and inefficiency of the current approach is the result of failing to sufficiently engage and support individuals going through the system.

However, for many reasons, community-based alternatives to detention that go beyond the existing ‘very traditional’⁶ types (such as reporting to the authorities, or release on bail conditions) remain generally under-explored and under-discussed in the UK, by the government, by the judiciary, by legal practitioners, by civil society organisations, by migrant support groups and by migrants themselves. Even where alternatives to detention are mentioned in the context of detention reform by politicians, the Home Office and other commentators, there is often no substantial explanation of what is meant by them, what they should deliver, how they should be developed and who should be involved.

This report offers a conceptual tool to support proactive detention reform through the development of alternatives, considering how the UK could reform its migration governance system so that it relies far less on detention, while respecting the dignity and rights of migrants. The aim of the paper is to start more robust and practically-oriented conversations about developing a wider range of alternatives to detention which will reduce the use of immigration detention in the UK.

While the focus of this paper is on the UK, the implications of and for the regional context are also vital. Notwithstanding the UK’s prospective departure from the EU, British immigration control systems will continue to be closely tied in to those of the rest of Europe and global migration trends. The UK faces similar challenges to other European countries, particularly those which consider themselves to be destination as opposed to transit countries, and learning can be shared elsewhere in Europe. Likewise, plans in the UK need to take account of learning from the rest of the region.

The Parliamentary Inquiry called for the development of a much wider range of community-based alternatives to detention, ‘affecting the entire process of the immigration system’

6 All-Party Parliamentary Groups on Refugees and Migration, *The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom*, March 2015, p25.



Community
Support Project
participant Abdal.

Sustainable momentum in developing alternatives will require collaboration and sharing of good practice between states, but also amongst civil society organisations across the region.

This report investigates possible routes to the expansion of alternatives to detention in order to reduce detention, paying special attention to the process that is required for such a change. This sensitivity to the process is important: developing alternatives to detention is challenging and requires the participation of many different stakeholders in different roles, as well as continuous learning and evaluation.

In doing so, this report applies to the UK context the Community Assessment and Placement (CAP) model, developed by the International Detention Coalition (IDC).⁷ IDC is an international NGO whose technical expertise on alternatives to detention has been used and sought by governments across the globe. The CAP model 'is a practical tool for governments and other stakeholders to develop effective and humane systems for governing irregular migration... reviewing and analysing their current migration governance framework and... exploring alternatives that work in their context.'⁸

In this evolving area of social and migration policy, this report is one of many contributions to the discussion. The report is influenced not only by previous papers, but also by the authors' own experience of implementing alternatives, discussions with international colleagues and lobbying governments around the world to develop alternatives. Our focus is the practical and pragmatic one of analysing the scope for development and implementation of alternatives in a given national context, that of the UK.

This report will first trace the international and regional legal contexts surrounding alternatives to detention, and the discussion and implementation of alternatives to date. It will introduce the CAP model developed by the International Detention Coalition. Using the CAP model, the report then explores opportunities for developing alternatives in the UK, in the returns procedure, instead of the Detained Fast Track and for ex-offenders exposed to long-term detention. The report will conclude by outlining opportunities and risks in civil society involvement in developing alternatives and possible steps that the UK can take to develop a wider range of alternatives to reduce immigration detention.

Developing alternatives to detention is challenging and requires the participation of many different stakeholders

The UK detention system at a glance

- There are nine Immigration Removal Centres (IRCs): Dungavel, Morton Hall, Yarl's Wood, Campsfield House, Colnbrook, Harmondsworth, Brook House, Tinsley House and The Verne. They are also several small Short Term Holding Facilities.
- Women are detained in Yarl's Wood and Dungavel IRCs. There is also a small short-term unit for women in Colnbrook and a family unit in Tinsley House.
- Children are currently detained in Cedars Pre-Departure Accommodation and Tinsley House IRC; Cedars is due to close, and a new Pre-Departure Accommodation will be constructed at Tinsley House.
- Two IRCs (Morton Hall and The Verne) are operated by the Prison Service under contract to the Home Office. The remainder are contracted by the Home Office to private sector operators.

7 There is already a significant international literature on alternatives to detention, providing extensive discussion of the international and regional legal standards and detailed descriptions of particular practices and projects. We do not intend to duplicate these publications, some of which are listed at Further Reading. For more information about the IDC, visit www.idcoalition.org.

8 The International Detention Coalition, *There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention* (Revised), 2015, p17.

- Number of migrants detained between July 2015 and June 2016⁹: 31,596
- Number of migrants detained in Immigration Removal Centres at 30 June 2016¹⁰: 2,878
- Number of migrants detained in prisons at 27 June 2016¹¹: 427
- The main monitoring mechanism is the HM Inspectorate of Prisons, which conducts regular announced and unannounced inspections of all IRCs, as well as prisons. Each IRC is also monitored by a local Independent Monitoring Board.
- There is no time limit on immigration detention in the UK. As at 30 June 2016, the longest length of time a person currently detained had been held for was 1,156 days.¹²

9 National Statistics, Immigration statistics, April to June 2016, 25 August 2016.

10 *Ibid.*

11 *Ibid.*

12 *Ibid.*

Part I

Ideas and experiences

NO BALL
GAMES
BY ORDER M.B.C.



Abdal –

'I was detained for nearly 6 years and for nothing. That's £200,000 wasted that could have been spent on alternatives that actually work.'

1 The international legal context

The importance of alternatives to immigration detention is well established in international legal standards. The European Court of Human Rights has found that immigration detention can only be justified as a last resort after other less severe measures have been considered and found to be insufficient.¹³ It has been found that for immigration detention to be lawful, it must be proportionate and avoid arbitrariness.¹⁴

The EU's recast Reception Conditions Directive, which is not applied in the UK, goes even further, requiring that detention be not only proportionate but necessary, on the basis of individual assessment of each individual case.¹⁵ The Reception Conditions Directive, the Returns Directive and Dublin III Regulation all stress the need for the use of less coercive measures than detention whenever they can be applied effectively.¹⁶

The United Nations Human Rights Committee has similarly interpreted the International Covenant on Civil and Political Rights as requiring that detention be used only when there are not less invasive means of achieving the same ends in the light of the particular circumstances of the case.¹⁷

The Committee of Ministers of the Council of Europe has urged that 'alternative and non-custodial measures, feasible in the individual case, should be considered before resorting to measures of detention.'¹⁸ Detention should only be resorted to after careful individual consideration, 'where other measures have failed or if there are reasons to believe that they will not suffice.'¹⁹

The European Court of Human Rights has found that immigration detention can only be justified as a last resort

13 *Witold Litwa v. Poland*, European Court of Human Rights, no.26629/95, 4 April 2000. § 78; Return Directive, Art. 15.1.

14 *Saadi v. the United Kingdom*, No. 13229/03, GC, 29 January 2008, para 74; *Louled Massoud v. Malta*, No. 24340/08, 27 July 2010; Return Directive, Art. 15.1.

15 Directive 2013/33/EU of the European Union and the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast). Article 8 (2) combined with Recital 15.

16 Reception Conditions Directive, Article 8(2) and Recitals 15 and 20; Return Directive, Article 15(1) and Recital 16; Dublin III Regulation, Article 28(2) and Recital 20.

17 *C. v. Australia*, Communication No. 900/1999, views adopted on 28 October 2002, CCPR/C/76/D/900/1999, § 8.2.

18 Committee of Ministers, Recommendation Rec (2003)5 on measures of detention of asylum-seekers, adopted by the Committee of Ministers on 16 April 2003 at the 837th meeting of the Ministers' Deputies, § 6.

19 Committee of Ministers, Twenty Guidelines on Forced Return, 925th Meeting of the Ministers' Deputies, 4 May 2005, including the comments on [the] guidelines drafted by the Ad hoc Committee of Experts on Legal Aspects of Territorial Asylum, Refugees and Stateless Persons (CAHAR) September 2005, p. 24.

The Special Rapporteur on the Human Rights of Migrants of the UN Human Rights Council has emphasised that ‘fully sustaining the implementation of a human rights-based framework for regular migration across the European Union therefore involves... developing alternatives to detention.’²⁰

The Detention Guidelines of the UN High Commissioner for Refugees (UNHCR) also stress the importance of alternatives, stating that alternatives should be accessible in practice, and their design should be based on the principle of minimum intervention. The availability, effectiveness and appropriateness of less coercive measures than detention should be considered in every case.²¹ Expansion of alternatives is a key objective of UNHCR’s Global Detention Strategy, which includes the UK as one of its twelve focus countries.²²

The requirement to consider alternatives is absolutely central to the lawfulness of detention in international law

It is clear that the requirement to consider alternatives is absolutely central to the lawfulness of detention in international law. Yet for this safeguard to be meaningful, a range of effective alternatives must be available in practice for each individual at risk of detention. This is simply not the case in the UK, or the vast majority of European countries. The small scale and limited range of alternatives mean that they cannot address the numbers of potentially eligible migrants, or the range of needs. This failure to develop alternatives can arguably render detention arbitrary, if individuals are detained because suitable alternatives have not been implemented on the necessary scale.

20 François Crépeau, UN Human Rights Council, Report of the Special Rapporteur on the human rights of migrants ‘Banking on mobility over a generation: follow-up to the regional study on the management of the external borders of the European Union and its impact on the human rights of migrants’, 8 May 2015.

21 UNHCR, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, Guideline 4.3.

22 UNHCR, Beyond Detention: A Global Strategy to support governments to end the detention of asylum-seekers and refugees, 2014.

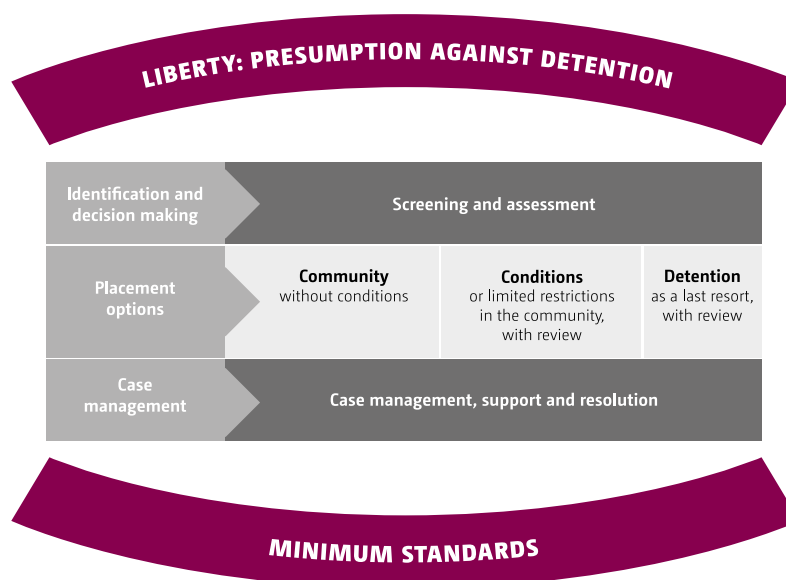
2 What are alternatives?

Introducing the Community Assessment and Placement (CAP) model

There is no established legal definition, but the IDC has defined alternatives to detention as ‘any law, policy or practice by which persons are not detained for reasons relating to their migration status.’²³ IDC developed this definition after documenting the use of a range of alternatives to detention across the globe that prevent unnecessary detention.

IDC has also developed a tool, the CAP model, which enables governments, civil society organisations and others to review current migration governance systems and identify how they can be improved to reduce the use of detention. IDC’s report *There Are Alternatives* provides a detailed account of their research findings, reasoning, evidence and case studies and is used extensively by IDC members and other institutional practitioners and policy makers around the world. The analysis in this report is based on the IDC model, which is explained in more depth in Part II.²⁴

Figure 1. The Community Assessment and Placement (CAP) model



23 The International Detention Coalition, *There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention* (Revised), 2015, p7.

24 This report cannot convey all aspects of IDC’s *There Are Alternatives*; it is strongly recommended that interested readers refer to the original report to deepen their understanding of the IDC approach.

There are two principles which underpin the CAP model: the right to liberty and minimum standards.

Liberty – presumption against detention

- The right to liberty is protected by international and regional human rights instruments, irrespective of an individual's immigration status.
- States can only interfere with this right when detention is justified by a legitimate purpose, is lawful and is not arbitrary.

Minimum standards

- When these standards are not adhered to, alternatives are less likely to produce positive outcomes in respect of human rights, case resolution²⁵ and compliance. They include:
 - Respect for fundamental rights
 - Basic needs
 - Formal status and documentation
 - Legal advice and interpretation
 - Fair and timely case resolution
 - Regular review of placement decisions

There are three components of the CAP model: identification and decision-making (screening and assessment), placement options and case management. It is important to note that they are all interlinked.

Identification and decision-making (screening and assessment)

- Screening and assessment goes beyond decisions to detain to carefully consider each individual's risk, needs, vulnerabilities and strengths in order to make an informed case-by-case decision, not just on where the individual would be placed but how that person is going to be supported to enable effective engagement with immigration procedures. Such screening and assessment must take place regularly throughout the immigration process.

Placement options

- There are three types of placement options available. Some involve the imposition of conditions, such as the requirement to live in a designated place.
 - Placement in the community without conditions is the preferred option and applicable in the majority of cases
 - Placement in the community can involve the imposition of conditions if necessary and proportionate based on individual screening and assessment

²⁵ Case resolution refers to the conclusion of the person's immigration case, either in grant of a form of leave to remain, travel to a third country or return to country of origin.

- Placement in detention is a measure of last resort, to be used only in exceptional circumstances, provided that the standards of necessity, reasonableness and proportionality have been met in the individual case

Case management

- Case management is a social work approach which is ‘designed to ensure support for, and a coordinated response to, the health and wellbeing of people with complex needs.’²⁶ Many countries use this approach in their alternatives to detention programmes, including Sweden and Australia. Case management models involve a case manager, who is not a decision-maker, working with the migrant to provide a link between the individual, the authorities and the community. The case manager ensures that the individual has access to information about the immigration process and can engage fully, and that the government has up-to-date and relevant information about the person.

The unique advantage of the CAP model is that it draws attention to elements other than detention laws, practice and conditions and facilitates a more holistic approach to detention reform. This will include, for example, ensuring minimum standards and conditions such as basic living needs and access to legal advice are met and scrutinising screening and assessment processes that should determine placement options for individuals. It also encourages examination of types of placement options currently available and how non-custodial options can be strengthened by case management to reduce the need for detention. Moreover, it places migrants at the centre of the process.

The unique advantage of the CAP model is that it facilitates a more holistic approach to detention reform

Types of alternatives

In terms of overall approach, alternatives can broadly be divided into those that rely on reduced degrees of coercion and those that focus on engagement with migrants to promote cooperation with immigration systems.

Enforcement-based alternatives involve reduced coercion compared to detention, but are still based on the principle of getting migrants to comply by force through imposing rules and conditions. Applying conditions in the community allows the authorities to monitor the individual and consider the option of detention in the event of breaches. Enforcement-based alternatives broadly fall into the following categories:

- Registration with the authorities and surrender of documentation
- Reporting conditions
- Residence requirements
- Provision of a guarantor or surety for release on bail or bond
- Community supervision arrangements

²⁶ IDC, p47.

By contrast, engagement-based alternatives do not in themselves involve coercion, although they can be used alongside the imposition of conditions. They go beyond reducing the degree of coercion by providing additional support in the community to encourage people to participate fully in their case resolution. They are particularly valuable for vulnerable people and children, who may be unsuitable for detention and require additional support to meet their needs and enable them to participate in immigration and asylum proceedings. They can also be used to meet risk factors associated with non-detention, such as risk of absconding or offending.

3 Existing alternatives in the UK

What practices are understood to be alternatives to detention in the UK?

Discussion of alternatives in the alternatives in the UK has been hampered by a lack of clear consensus on what is meant by the term. Nevertheless, certain practices can be identified as alternatives to detention, although no definitive list is available. Below we map the terrain of the discussion of alternatives to date, whilst recognising the need to explore a wider range of alternatives.

The policy framework is set out in Chapter 55 of the Home Office's Enforcement Instructions and Guidance, which states that 'there is a presumption in favour of temporary admission or release and, wherever possible, alternatives to detention are used.'²⁷ Chapter 55.20 further states that 'a person who is liable to detention under the powers in the Immigration Acts may, as an alternative to detention, be granted temporary admission or release on restrictions... Another alternative to detention is the granting of bail.'²⁸

In his written evidence to the Detention Inquiry, the then Immigration Minister, James Brokenshire, outlined three mechanisms that the government regards as alternatives to detention: reporting, bail and electronic monitoring. The Government has stated that reporting requirements, by which individuals are obliged to report at regular intervals to an immigration office or police station, is the 'primary default alternative to detention.'²⁹ It allows the Home Office to maintain regular contact with individuals, and is used on occasion to detain them. However, reporting is generally not used to sustain a dialogue with individuals or seek to resolve their cases. Approximately 60,000 people report regularly; the compliance rate is 95%. The Government has estimated costs at £8.6 million per year (£1.6 million for office accommodation costs and £7 million for staff costs).³⁰

The Government has also cited bail as an alternative to detention. Bail is a release mechanism by which people already in immigration detention can seek release through the First-Tier Tribunal, sometimes with the guarantee of a financial surety by a supporter. It does not operate as an alternative that can prevent detention. Given that the Immigration Act

Approximately 60,000 people report regularly; the compliance rate is 95%

27 Enforcement Instructions and Guidance, Chapter 55, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/537065/Ch55_detention_and_temporary_release_v20.pdf.

28 *Ibid.*

29 James Brokenshire, Minister for Immigration, letter to the Detention Inquiry, 13 October 2014.

30 *Ibid.*

2016 will re-categorise all non-detained migrants without leave to remain as being on bail, it will not make sense to consider bail as an alternative to detention,³¹ although arguably the financial surety system could be regarded as such.

Electronic monitoring, via a tag placed on the ankle, has also been presented by the Government as an alternative to detention, although it later clarified that ‘in itself, it is not an alternative to detention’ but ‘an enhanced contact mechanism.’³² The Government has also observed that it is not fully effective as an alternative, as it ‘cannot guarantee an individual will not abscond.’³³ Nevertheless, although no evidence of its effectiveness has been published, the Immigration Act 2016 requires that electronic monitoring be imposed on all non-detained individuals subject to deportation (usually ex-offenders), unless it is impractical or would breach their rights. Just over 500 individuals were subject to electronic monitoring at October 2014, at a cost of approximately £515 per person per month.³⁴

According to the Chief Inspector of Prisons, there is ‘little evidence’ that these alternatives have been considered by the Secretary of the State for detained individuals before the decision to detain an individual has been made or when their cases are reviewed whilst in detention.³⁵

There is no systematic evaluation of these traditional alternatives in the UK

There is no systemic evaluation of these traditional alternatives in the UK; JRS Europe is the only organisation which has conducted a qualitative analysis of migrants’ experience of these alternatives.³⁶ A small sample of subjects reported an erosion of trust in the immigration system as a result of their detention experience. Practical and psychological difficulties encountered while being on alternatives such as destitution, depression and stigma acted as a barrier when trying to remain engaged with their own immigration cases. They felt that they were not well-informed of the immigration procedures, and being on alternatives did not improve their communications with the authorities. These traditional alternatives do not incorporate the elements of good practice identified by IDC,³⁷ and appear to alienate rather than engage migrants.

Past alternatives to detention pilots: the Millbank and Glasgow pilots

In the late 2000s, in response to growing criticism of the detention of children, the Home Office twice piloted alternatives to detention for families. Both programmes operated on a relatively small scale, targeting families with children whose asylum applications had been refused, with an overall aim of encouraging them to leave the UK voluntarily, without the need for detention or forced removal.

Outcomes of these two pilots were poor, from the point of view of individuals’ welfare, voluntary

31 *Ibid.*

32 James Brokenshire, Minister for Immigration, letter to the Detention Inquiry, 26 January 2015.

33 James Brokenshire, Minister for Immigration, letter to the Detention Inquiry, 13 October 2014.

34 *Ibid.*

35 All-Party Parliamentary Groups on Refugees and Migration, *The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom*, March 2015, p25.

36 JRS Europe, *From Deprivation to Liberty* (2011).

37 See Part II for more information.

return rates and engagement of the families. 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.³⁸ Both reported a high degree of confusion among participants as to the processes involved.

Both pilots involved transferring families at the end of the asylum process, who would otherwise be detained, to separate, open accommodation in a different part of the country (Millbank in Dover) or of the city of Glasgow respectively, taking them away from the community and support networks that they were accustomed to. This approach was based on the assumption that moving families would mark a clear break between the asylum and returns processes, and encourage them to engage with voluntary return.

The Millbank Project, which ran from November 2007 to July 2008, aimed at 'setting up an alternative removal process that encouraged closer case work activity with families in supported accommodation, rather than in detention facilities, while meeting the needs of children. It was planned that the removals would take place through the Assisted Voluntary Returns process.'³⁹ Families were free to come and go in the accommodation, but lost support if they moved out. An on-site doctor and key-workers were provided, and children could attend local schools. An NGO, Migrant Help, was involved with project delivery.

The evaluation found that 'the project failed to promote the anticipated increase in Assisted Voluntary Returns (AVR) with only one family choosing to take that option' because of 'the very low number of families referred to the project and further legal representation by the families that were selected.'⁴⁰ Poor implementation appears to have been critical: 68% of the 524 families referred to the project turned out not to be eligible. The evaluation concluded that 'the concept of independent key workers... worked well up to a point',⁴¹ and recommended that qualified social workers should have been involved, given the vulnerability of families and complexity of their needs.

The Glasgow Project,⁴² targeting the same profile of migrants, ran from June 2009 to 2010, when it was abandoned after the Coalition Government pledged to end the detention of children. It was run as a child-centred, residential programme supported by Social Services. Families were accommodated in four flats in Glasgow, although during the project outreach services began to allow families to stay in their original homes. The families were expected to work closely with the project to plan voluntary return and arrange a resettlement package where appropriate. Only 25 families entered the project and most were removed from the project for medical or legal reasons, or because they refused to engage. When the project ended, although four families had agreed to return, no voluntary returns had taken place.

The evaluation found barriers to engagement including the long length of these families' stay in the UK; their view that return was not safe; ongoing legal challenges because families believed that the asylum decision they received was not fair; and 'word of mouth' encouragement not to leave the UK. It also found that strong partnership with social workers was a positive experience which enabled better quality of support.

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

39 Tribal, *Review of the Alternative to Detention (A2D) Project*, May 2009, p4.

40 *Ibid.*

41 *Ibid.*

42 ODS Consulting, *Evaluation of the Family Return Project*, May 2010.

The Family Returns Process

The process was introduced in 2010 following the new Government's pledge to end the detention of children.⁴³ While it is not generally described as an alternative to detention, the process allows more families with children facing return to remain in the community, instead of routinely being detained. Statistics show that the number of children detained has declined sharply since the introduction of this process from over a thousand a year to 117 in the year ending June 2016.⁴⁴ The length of time such families with children are detained has been reduced to a maximum of 72 hours, extendable to up to seven days with ministerial authorisation. There are several components of the process which distinguish it from the previous system:⁴⁵

- More intensive contact with families with children, with a view to safeguarding the child and to assisting families to explore their options;
- A three-tiered system for returns, with forced return as the last resort;
- The oversight of the Independent Family Returns Panel of the use of detention;
- The use as a last resort of the Cedars Pre-Departure Accommodation (PDA).

After a family is refused leave to remain in the UK, the Home Office arranges a Family Return Conference with the family to discuss barriers to return, family welfare and medical issues and the option of Assisted Voluntary Return. Two weeks later, a Family Departure Meeting takes place, to discuss the family's options and views. If they do not agree to take voluntary return, they are given two weeks' notice of a Required Return, which usually involves families being

asked to make their own way to the airport for removal without enforcement. If the family does not comply with the Required Return, a return plan is drawn up by the Home Office and enforcement options are reviewed by the Independent Family Returns Panel. With the approval of the Panel, detention can be used as a last resort, in specially designed Cedars 'Pre-Departure Accommodation' (PDA).

Recently, the Government has referred to 'the overall success of the family returns process and, in particular, to the fact that more families are accepting voluntary

assistance to leave the UK.'⁴⁶ Between 2012 and 2014, 76% of families who returned left without enforcement action.⁴⁷ This means that only 88 out of 407 families who returned did so via detention.

In July 2016, the Government announced the planned closure of Cedars on costs grounds; a new, discrete unit will be built instead at Tinsley House Immigration Removal Centre, near

The process allows more families with children facing return to remain in the community instead of routinely being detained

43 Melanie Gower, *Ending child immigration detention*, House of Commons Library, 4 September 2014.

44 National Statistics, *Immigration statistics*, April to June 2016, 25 August 2016.

45 Independent Family Returns Panel, *Annual Report 2012–2014*.

46 Robert Goodwill (The Minister of State for Immigration), *Cedars pre-departure accommodation: Written statement - HCWS114*, 21 July 2016.

47 Independent Family Returns Panel, *Annual Report 2012–2014*.

Gatwick Airport.⁴⁸ In its final inspection report of Cedars, published after the government announcement, the HM Inspector of Prisons observed that ‘the facility was little used. Since the time of our last inspection 46 family detentions had taken place there, of which a mere 16 led to removals from the UK.’⁴⁹

The Family Returns Process does not correspond to international good practice in alternatives. It starts after families’ asylum applications have been refused, and focuses only on returns, rather than exploring all potential options. It has little involvement of civil society organisations, apart from support services provided by Barnardo’s in Cedars. However, it demonstrates that engaging in a structured way with migrants in the returns process can reduce the need for detention. While the return of families raises specific issues around child safeguarding, there is much scope to adapt some of the learning to the return of adults.⁵⁰ Indeed, given the complexities of returning families, alternatives to detention for single adults could be more straightforward and less costly. These are the issues which remain unexplored in the UK.

48 Robert Goodwill (The Minister of State for Immigration), *Cedars pre-departure accommodation: Written statement - HCWS114*, 21 July 2016.

49 HM Chief Inspector of Prisons, *Report of an unannounced inspection of Cedars pre-departure accommodation*, 4 – 26 April 2016. The previous inspection took place two years ago.

50 This point has been noted by the HM Chief Inspector of Prisons and the Parliamentary Inquiry panel.

4 Why have alternatives not taken off in the UK and Europe?

The story of alternatives to detention so far in the UK is one of limited progress and false starts. The positive side of the story is that far more asylum-seekers and irregular migrants live in the community with some form of conditions than are detained. Yet, considered as a process of further reducing the unnecessary use of detention, it is clear that alternatives have not yet reached their potential. In this, the UK is typical of Europe as a whole. Alternatives are emphasised in regional legal standards and stressed by institutions and governments, but there is little sign of systematic implementation or development. The gap between rhetoric and action is substantial.

There are a number of reasons for the limitations to alternatives in the UK and across Europe. Some of the shortcomings lie in the nature of implementation to date, which has largely consisted of ‘traditional’ alternatives and small-scale projects for specific groups of migrants. ‘Traditional’ enforcement-based alternatives such as reporting are not associated with reductions in the use of detention, more often operating alongside continuing or expanding detention. Most small-scale projects, like the UK alternatives for families, have their

origins in pilots addressing specific political crises. Pilots allow governments to experiment with new approaches on a small scale, mitigating some of the political risks. They demonstrate that alternatives can work, and generate important good practice. However, across Europe, they have remained limited in scale and reach; none has led to wider implementation for the full range of migrants who could benefit. The resultant lack of established good practice acts as a disincentive for other states to explore alternatives.

It is striking that, in the UK, alternatives pilots designed to reduce the use of detention have focused exclusively on families with children. No such attention has been paid to the complex needs of vulnerable individuals whose physical or mental health may make them unsuitable for detention. No specialist

alternatives exist that can cater for the needs of such people, with the result that, as Stephen Shaw has observed, highly vulnerable people continue to be detained. Indeed, globally, there has been little discussion or evaluation of the extent to which the learning from the family projects could be adapted to reduce the detention of adults.

Further, across Europe, the limitations of the alternatives implemented are qualitative as well as quantitative. None involve all of the elements of good practice that have been formulated by the IDC. Many operate only at the end of the asylum or immigration process, for migrants who have already been refused, and focus on returns. As a result, they find it

It is striking that, in the UK, alternative pilots designed to reduce the use of detention have focused exclusively on families with children

more difficult to develop trust, compared to projects that work with migrants throughout the process and explore all potential outcomes and options.

This reflects a wider tendency for immigration policymakers to focus on enforcement. Few of the European examples of good practice involve full case management, despite evidence that it is the crucial element of the most effective alternatives. Many have focused on reduced levels of coercion, rather than working with and supporting migrants to address barriers to proactively resolving their cases. For example, the Millbank and Glasgow pilots involved little collaboration with civil society in their developmental stage, and focused on conveying a message to families that they needed to return, while uprooting families from local communities that they were living in. These unsuccessful enforcement-based projects have contributed to civil society's lack of interest in alternatives to detention.

The limited scale and quality of implementation has been matched by limitations in the evaluation of existing alternatives. Commonly used alternatives such as reporting and residence restrictions, which are frequently part of the normal running of immigration systems, have been almost entirely without systematic and qualitative evaluation, despite States' reliance and spending on them. These techniques have been repeatedly described in the regional literature on alternatives, but the available information is generally superficial and decontextualized, making it difficult to establish their effectiveness or their influence on migrants' experience of immigration procedures. Qualitative data on compliance with reporting, bail with

surety and designated residence could provide an evidence base for analysis of the use of detention and alternatives. Statistical data on compliance alone would in any case fail to take account of how and why these measures encouraged or discouraged individuals to engage with procedures.

There has been much greater evaluation of small-scale projects. These evaluations generally indicate a close relationship between the extent of prioritisation of engagement with migrants, and effectiveness in terms of compliance and case resolution. However, there has been a lack of systematic evaluation in terms of a clear framework of the objectives sought,



Community Support Project participant Jalloh.

The limited scale and quality of implementation has been matched by limitations in the evaluation of existing alternatives

and a lack of guidance for States. Thus, for example, the process for limiting the detention of pregnant women, introduced by the UK in 2016, makes no reference to the learning from the Family Returns Process, which seeks a similar objective for families with children.

This lack of definitions, data and frameworks for evaluation has generated considerable confusion about what alternatives are or ought to be. This confusion has also led to reluctance amongst civil society organisations to get involved. Given the emphasis placed on alternatives in regional legal standards, case law and institutional pronouncements, there has been surprisingly little discussion or activity amongst civil society organisations.

This has had the result that alternatives discussion has largely been shaped by States and regional bodies, with little input from communities or migrants themselves. The consequent emphasis on returns as the primary objective has further discouraged civil society from engaging with the debate. Yet the international evidence suggests that the most effective alternatives are precisely those that place migrants at the centre of the process, feature heavy involvement of civil society in design and delivery, and prioritise the rights and welfare of migrants alongside migration governance objectives. Without civil society involvement, the risk is that the alternatives debate peters out, leaving a legacy of unsuccessful government-led pilots and entrenching the enforcement culture.

Meanwhile, migrants remain in detention on a large scale throughout the region. The legal standards remain in place, requiring that the least coercive options be used. The opportunities are there to reframe the debate and develop ways that these migrants can live in the community instead while their cases are resolved.

Part II

Opportunities in the UK



Jalloh –

‘This is the grave of my friend who committed suicide. He was asylum seeker but the stress of it was just too much. He was a lonely man. When I go there I am always thinking - this could be me.’

5 Three areas where alternatives are needed

We now consider what steps the UK can take to develop and implement a wider range of alternatives. For alternatives to be effective in reducing the use of detention, they must address the contexts and reasons for which detention is used.

The first part of this section looks at how detention can be minimised in the returns process and explores the possibilities of the development of alternatives, based on the IDC's Community Assessment and Placement model and international precedents. The same principles are then applied in examining two focus areas that are specifically relevant to the UK: the Detained Fast Track and the detention of post-sentence ex-offenders.

The three sections in this chapter therefore deal with:

1. **Case resolution for migrants in the returns process.** Refused asylum-seekers and migrants with irregular status are frequently detained for removal from the UK, often following enforcement activity, and released if it becomes clear that there are barriers to removal. However, where immediate removal is not possible, community-based alternatives to detention based on case management could assist migrants to work towards resolving their cases without an unnecessary period of detention that can increase distrust and alienation and damage their wellbeing. Even where removal is imminent, placement in an alternative should be considered as a first option. Preparation for departure should be supported with case management in the community so that individuals can depart direct from community, with dignity, without going through detention.
2. **Quick processing of asylum claims.** The UK has in the past relied on detention to process asylum claims considered suitable for a quick decision. However, various aspects of the Detained Fast Track have been ruled unlawful by the courts, and the process is currently suspended, although some detention of asylum-seekers continues. By contrast, other States successfully process claims quickly and efficiently in the community while managing any risk of absconding, demonstrating that the use of detention in such procedures is unnecessary.
3. **Managing public protection issues of ex-offenders.** Ex-offenders who have finished prison sentences are routinely detained for long periods even where there are intractable barriers to deportation. They occupy a significant proportion of the detention estate, at

Community-based alternatives to detention based on case management could assist migrants to work towards resolving their cases without an unnecessary period of detention

substantial expense, yet 57% of migrants detained for over a year (the great majority of whom are ex-offenders) are released.⁵¹ Community-based alternatives to detention based on good practice in criminal justice rehabilitation have proven successful in managing risks of absconding, reoffending and disengagement from the immigration procedures. The model developed by Detention Action in the UK enables ex-offenders to be supported in the community with structured intensive support while barriers to return are addressed, avoiding the reoffending risks of sudden and unplanned release from long-term detention.

51 National Statistics, Immigration statistics, April to June 2016, 25 August 2016.

6 Alternatives to detention in returns procedures

Context

In the UK, refused asylum-seekers and migrants with irregular immigration status are frequently detained for removal and released when it becomes clear that there are barriers to removal. In year ending June 2016, only 44% of migrants leaving detention were removed or voluntarily departed from the UK; nearly half of them, 45%, were released back into the community.⁵² Yet in most cases, detained migrants have come to the end of asylum or immigration processes and are in the returns process. They are detained for removal, but it subsequently becomes clear that removal is not sufficiently imminent and the person is released. This happens because barriers to removal, including lack of travel documents, further representations and judicial reviews, only become apparent after detention.

This situation is problematic for all sides. From the authorities' point of view, space in Immigration Removal Centres is used for migrants who are not removed. Given the expense of detention, the high political priority assigned to increasing returns, the highly complex operation of managing vulnerable individuals in custody and the cost of unlawful detention claims, such inefficient use of detention is unsustainable. On the other hand, detention is often harmful for individuals and their families. The unnecessary detention of migrants who are released sends a flow of people with often traumatic experiences of detention back into their communities. These experiences increase migrants' alienation and distrust in the Home Office, making case resolution even more difficult.

Release from detention on bail with conditions is already an available option for those in detention and its greater use must be encouraged. However, this in itself does not reduce the number of individuals going into detention in the first place.

It subsequently becomes clear that removal is not sufficiently imminent and the person is released

Benefits of alternatives to detention

The IDC research shows that developing alternatives to detention is a practical solution to the overuse of detention. The UK already has traditional types of alternatives, such as reporting and release on bail with conditions, so the challenge for the UK is to develop a wider range of alternatives. This can enable more migrants to be supported in the community to resolve their cases outside detention, and the overall use of detention can be reduced.

Alternatives involving high-quality case management can ensure that decision-makers

⁵² National Statistics, Immigration statistics, April to June 2016, 25 August 2016.

The evidence suggests that detention reduces migrants' trust in the system, as well as their wellbeing and mental health

have accurate, up-to-date information about individuals' circumstances, including barriers to removal or vulnerabilities that would make detention unsuitable. Individuals can also be assisted to access a range of advice, services and support in the community to fully engage with immigration procedures and take control of their lives as much as possible. This strength-based approach helps individuals to, for example, submit any further applications in a timely

manner, without waiting for detention and removal directions. They can increase trust in immigration processes which can better equip migrants to come to terms with negative decisions and make plans for the future, after they are satisfied that all options to remain in the UK have been fairly explored.

By contrast, the evidence suggests that detention reduces migrants' trust in the system⁵³ as well as their wellbeing⁵⁴ and mental health⁵⁵. It separates individuals from their families, communities, health care providers, support groups and lawyers, and disrupts case resolution process. Overuse of detention can therefore impede speedy and durable case resolution, to the extent that it depends on the participation and cooperation of the individual migrant. Research by UNHCR has found that 'detention impedes access to the sorts of advice and support that create trust in, and understanding of the [asylum] process, and accordingly alternatives "work" better in this sense both for individuals and the system as a whole.'⁵⁶ Depending on their design, alternatives to detention can either reinforce or negate asylum-seekers' predisposition to cooperate with the process. The UNHCR found that effective alternatives 'entail suitable reception conditions; fair... legal processes [including access to legal advice]; and holistic support to navigate legal processes and life in the host country.'⁵⁷

Alternatives bring an inevitable risk of some absconding, but the IDC research suggests that high-quality case management can reduce this risk, while increasing participation in immigration procedures, easing the process of integration for individual given the right to remain, and increasing take-up of voluntary return for those receiving negative decisions on their immigration cases. Even where removal is imminent, placement in an alternative should be considered as a first option; preparation for departure should be supported with case management in the community so that individuals can depart direct from the community, with dignity, without going through detention.

According to the IDC, the benefits of alternatives to detention are that they:⁵⁸

- Improve compliance with immigration and case resolution process
- Cost less than detention

53 Costello C. and Kaytaz E., *Building Empirical Research into Alternatives to Detention: Perceptions of Asylum-seekers and Refugees in Toronto and Geneva*, UNHCR, June 2013.

54 Jesuit Refugee Service, Europe, *Becoming Vulnerable in Detention*, 2010.

55 Stephen Shaw, *Review into the Welfare in Detention of Vulnerable Persons: A report to the Home Office by Stephen Shaw*, January 2016.

56 Costello and Kaytaz, p7.

57 *Ibid*, p5.

58 IDC, p9.

- Reduce wrongful detention and litigation
- Reduce overcrowding and long-term detention
- Increase voluntary return or independent departure rates
- Respect, protect and fulfil human rights
- Can help stabilise vulnerable individuals in transit
- Improve integration outcomes for approved cases
- Improve individual health and wellbeing
- Improve local infrastructure and other migrant support system

Key elements of successful alternatives to detention

IDC's research shows that there are a variety of alternatives to detention and their outcomes show different degrees of success. Those alternatives which contain the following elements are found to deliver more positive outcomes in terms of cost, compliance and wellbeing:⁵⁹

- Using screening and assessment to tailor management and placement decisions
- Providing holistic case management focused on case resolution
- Focussing on early engagement
- Ensuring individuals are well-informed and trust they have been through a fair and timely process
- Ensuring fundamental rights are respected and basic needs are met
- Exploring all options to remain in the country legally and all avenues for voluntary or independent departure
- Ensuring any conditions imposed are not overly onerous.

The UK's use of 'traditional' alternatives, such as reporting, release on bail with conditions and the use of electronic monitoring does not score well against this list.⁶⁰ The high proportion of detained individuals released from detention, and the fact that vulnerable individuals are regularly found in detention, indicate that screening and assessment are not leading to appropriate placement decisions. Many detained migrants are not aware of why they are detained and feel that they have been dealt with unfairly. For many non-detained migrants with irregular immigration status, meeting basic needs is challenging, since many of them are destitute. Some of the conditions imposed on individuals are onerous, creating fear and disengaging individuals from immigration procedures.

⁵⁹ IDC, p13.

⁶⁰ There is no systemic qualitative evaluation of these 'traditional' alternatives, particularly that assesses the level of engagement of those who are placed on such alternatives. However see JRS Europe's *From Deprivation to Liberty* (2011).

Case management

Research by IDC has concluded that the most effective alternatives to detention are based on case management to keep individuals engaged in immigration procedures. As noted earlier, case management is a social work approach which is ‘designed to ensure support for, and a coordinated response to, the health and wellbeing of people with complex needs.’⁶¹ Many countries use this approach in their alternatives to detention programmes, including Australia and Sweden. It involves a case manager, who is not a decision-maker, working with the migrant to provide a link between the individual, the authorities and the community. The case manager ensures that the individual has access to information about the immigration process and can engage fully, and that the government has up-to-date and relevant information about the person.

The case manager also facilitates access to support and services in the community, enabling the migrant to meet their basic needs and addressing any particular vulnerabilities. Migrants are screened and assessed as early as possible in the process, and the level of case management support is adjusted according to the level of vulnerability and needs through regular assessment.

The case manager uses information gathered in the assessment process to work with the migrant on case planning, setting goals and developing agreed action plans. The case manager supports the migrant to explore all immigration outcomes, including the possibility of return. As a result, migrants are better informed about their options and are in a better position to integrate into the community if they are granted status, or to return to their country of origin if refused.⁶²

IDC has found that case management can promote informed decision making, timely and fair case resolution and improved coping and wellbeing of individuals.⁶³ Acknowledging that not all case management is the same, IDC identified the foundations of good case management as:

- Early intervention, face-to-face, one-on-one contact
- Regular assessment and review
- Confidentiality and information management
- Consulting key stakeholders
- Trust, building rapport, consistent relationships and information provision
- Explore all available options to empower individuals to make decisions
- Clear roles and expectations
- Resources and options for individuals as needed.

61 IDC, p47.

62 *Ibid.*

63 *Ibid.* p49.

Examples of systemic use of alternatives in the returns context

Australia

One country that has developed case management-based alternatives on a large scale is Australia. Australian law foresees a much wider use of detention than would be lawful in Europe, as the detention of irregular migrants is mandatory until they obtain a visa or are removed. Indeed, Australia continues to operate one of the world's most draconian detention regimes for migrants arriving by boat, using off-shore facilities. However, Australia implemented alternatives widely for in-country asylum applicants and visa overstayers from 2006, dramatically reducing the use of detention in the process. Most such migrants with barriers to removal are released on short-term Bridging Visas, which allow migrants to live in the community pending the resolution of their cases.⁶⁴

Many migrants are released onto a range of alternative to detention projects. The Status Resolution Support Services (SRSS) assist vulnerable people with complex needs to live in the community, engage with the immigration system, and seek to resolve their cases. Migrants are supported throughout the asylum and immigration processes. Case managers, employed by NGOs, help migrants to access welfare assistance, housing, healthcare, legal advice, English classes and information on voluntary return.⁶⁵

The service is based on a pilot with a group of migrants with high welfare needs and long residence in Australia. The pilot had a compliance rate of 93%, with 60% of those not granted a visa returning voluntarily. Only 7% absconded. The programme cost around AUD38 per day, compared to around AUD125 per day for detention.⁶⁶

Australia implemented alternatives widely for in-country asylum applicants and visa overstayers from 2006

Sweden

The closest comparison in Europe to such a systemic use of alternatives is to be found in Sweden, where asylum-seekers also receive case management throughout the process, this time from caseworkers employed by the Swedish Migration Board. However, in Sweden this support is simply part of the normal asylum system,⁶⁷ 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

64 Edwards, Alice, *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 Legal and Protection Policy Research Series, 2011, p61.

65 Department of Immigration and Border Protection, 'SSRS Program', <https://www.border.gov.au/Trav/Refu/Illegal-maritime-arrivals/status-resolution-support-services-programme-srss> Individuals are referred to the SRSS Program by 'bands', which determine what types of support they are eligible for.

66 IDC, p52.

67 We have not confirmed, however, whether the same system continues to apply since 2015 when Sweden has received a significantly increased number of asylum applications.

21,000 people were refused asylum during the year.⁶⁸ In 2012, 68% of people ordered to leave the country departed voluntarily.⁶⁹

The Australian and Swedish examples demonstrate that the systemic implementation of alternatives based on engagement is possible, and can bring dramatic reductions in the use of detention. Despite the rhetoric around alternatives, political will has not yet developed elsewhere in Europe to go down the same path.

Belgium

The importance of sufficiently investing in case management is demonstrated by the Belgian 'return houses'. The Belgian government developed the 'return houses' for migrant families with children in 2008, following judgments in the European Court of Human Rights. Families are legally detained, yet in practice have freedom of movement, although they are required to agree to spend the night at the houses. Each family receives support from a 'coach', employed by the immigration authorities. They provide practical support and advice to the families, mainly relating to information around return. The return houses comprise 23 housing units spread over four sites, with a capacity of 169 places. In 2014, the return houses accommodated 217 families (a total of 754 people, including 429 children) at a cost of €90 a day per person.⁷⁰

Each year from 2008 until 2013, the absconding rate stayed within the range of 20% to 28%, and the project was deemed a success and expanded. However, the absconding rate has recently increased to 43% in 2014 and 53% in the early part of 2015, with the majority of the families leaving within 48 hours of arrival. Although no detailed evaluation has been undertaken, it appears that the increasing absconding rate is due to the increased numbers of families in the returns houses and consequent understaffing. Eight coaches have been criticised as inadequate for 27 housing units, and it appears that trust-building case management activities have been abandoned due to lack of time, such as putting families at their ease, dealing with practical problems and questions, and informing them about their situations and options. The project has throughout focused exclusively on returns, like the failed UK family pilots, instead of building trust by exploring all options throughout the process.⁷¹

The United States

The US government worked with two faith networks in 2014 to pilot alternatives to detention in various communities. These pilots have led in 2015 to the roll-out of government-funded alternatives to detention at a national level. The Lutheran Immigration and Refugee Service (LIRS) pilot⁷² 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. The immigration authorities would

68 European Migration Network and Migrationsverket, *The use of detention and alternatives to detention in the context of immigration policies in Sweden*, 2014, p27.

69 IDC, p62.

70 *Asylum Information Database Country Report: Belgium*, ed. by European Council on Refugees and Exiles, 2015, p80.

71 Van der Vennet, Laetitia, *Détention des enfants en famille en Belgique: analyse de la théorie et de la pratique*, Plate-forme Mineurs en Exil, 2015, pp95-96.

72 Lutheran Immigration and Refugee Service, *Family Placement Alternatives: Promoting Compliance with Compassion and Stability through Case Management Services*, 2015.

identify detainees as suitable for release, and LIRS coordinated referrals to local partner organisations. The local NGOs provided community support to enable compliance with conditions of release, in particular appearance at removal hearings. Case management enabled migrants to access services including legal, medical, mental health, housing and education. Upon completing the second pilot, LIRS concluded that ‘case management is an effective tool to both assure compliance and treat people with dignity’.⁷³

Learning for the UK in developing a wider range of alternatives

A wider range of alternatives, involving competent screening and assessment, can allow decision-makers to refer more individuals to appropriate alternatives to detention that meet their needs. Civil society organisations with experience of case management could develop small scale pilot projects to test the feasibility of different models, with a view to wider roll-out. Given the impact of detention on the significant numbers of vulnerable people who continue to be detained, there is a pressing need to develop specialist alternatives that can support them in the community.

Screening and assessment

Screening and assessment of individuals’ needs and circumstances must inform placement decisions so that the person can be referred to an appropriate alternative. All individuals in the return context who are facing detention should be considered for alternatives.

Placement options

It is crucial that a wider range of community-based alternatives to detention become available so that they can be meaningfully considered as options by the decision-makers both before and after decisions on detention. The development of this wider range of placement options should be based on evidence of what support is effective and required for different groups. For example, while the detention of vulnerable people and adults at risk has been a long-running concern in the UK, there has been little focus on developing specialist alternatives to detention for them. Such vulnerabilities are likely to make it harder for these individuals to fully participate in immigration procedures and work towards case resolution.

There are many projects in the UK that provide specialist support for certain groups for whom detention is likely to be detrimental to their wellbeing, including survivors of torture, sexual violence and trafficking, people with mental health issues, and LGBTI and women asylum-seekers. Complex needs are better addressed in the community, where people can access a range of necessary medical and psychosocial services for their vulnerabilities, access legal advice and take advantage of informal help from friends and families and other available community support. However, projects that provide such support have not to date been set up as alternatives that can enable the release or non-detention of suitable individuals.

The development of this wider range of placement options should be based on evidence of what support is effective and required for different groups

⁷³ *Ibid.* p15.

Case management

Effective case management depends on building trust and requires profound understanding of migrants' needs and circumstances. This will be challenging for the authorities in a UK context, given the polarised nature of the immigration debate and the opposition of many communities to aspects of immigration control. As a result, the Home Office would not be in a strong position effectively to implement case management-based alternatives alone. It is vital, therefore, that a diverse range of actors, particularly civil society organisations and migrants themselves are consulted and involved in developing alternatives because of their expertise in supporting migrants and understanding of what is needed for smooth case resolution.

Despite severe funding cuts experienced by the main national refugee charities and many groups being overstretched to cope with rising demand for services, the UK still has a dynamic civil society that has tenaciously continued to support migrants at all stages of the immigration process. Many NGOs already use case management models in working with people in the returns context in one way or another. These practices do not carry a label of 'alternatives to detention' or 'case management' but can potentially facilitate proactive case resolution in the community. They include community projects which provide short-term accommodation, mentoring and access to legal advice to enable destitute migrants to either re-open their immigration cases or explore voluntary return. They also include specialist psychosocial or medical support addressing specific vulnerabilities, including protection needs arising from trafficking, torture and sexual violence. Other NGOs also have specialist expertise in addressing the needs arising out of gender and sexual orientation in a sensitive manner.

Such organisations have the trust of migrants, and with adequate investment of resources, can support them to engage constructively with immigration processes and work towards case resolution. While many organisations regard the Home Office with distrust, the shift away from detention already initiated, and the Government's commitment to explore alternatives, potentially provide an unprecedented opportunity to develop a different way of working with NGOs and civil society. We will consider in more depth the potential role of civil society in developing alternatives more in Part III.

Recommendations

- 1. There should be more in-depth investigations into and discussions about alternatives to detention, by the government, by the judiciary, by legal practitioners, by civil society organisations, by migrant support groups and by migrants themselves.**
- 2. Alternatives to detention should be developed with the capacity and range to meet the needs of all migrants for whom less coercive measures than detention are appropriate.** Initially, this could involve one or more small-scale pilots for specific groups who would otherwise be detained. There should be a clear and transparent process for decisions to place a person in alternatives. Qualitative and quantitative evaluation should support the incremental expansion of case management-based alternatives towards becoming the norm in the returns process.

- 3. Alternatives should be based on evaluation of and learning from existing models and past experience, as well as international good practice.** The learning from the strengths and weaknesses of previous pilots and projects should be used to inform the design and delivery of future alternatives to detention. In particular, thorough and independent evaluation of the Family Returns Process should identify principles and practices that could inform the development of alternatives for other groups. International examples should also be studied to identify areas of learning.
- 4. These new alternatives should include elements of case management, meet basic needs of individuals and involve a clear referral mechanism that links screening and assessment with placement decisions.** Good practice in case management in other contexts, e.g. adult social care, should be studied.
- 5. Alternatives to detention should be developed and implemented in discussion with civil society organisations and migrant communities, utilising their experience in supporting migrants.** Such organisations have the trust of migrants and understanding of their situations that are essential to successful implementation of case management. Migrants' perspectives need to be taken into account to understand what acts as barriers to engagement with immigration procedures. If pilot programmes are to be initiated, they should be fully evaluated, both quantitatively and qualitatively, to enable learning and adjustments.
- 6. A study should be conducted to identify the current support and services available in the community that assist migrants' engagement with immigration procedures and can be developed into alternatives pilots or programmes.**
- 7. Investment in alternatives should accompany a reduction in the scale of the detention estate.** While alternatives do bring costs, they are considerably cheaper than detention. Reducing the use of detention will also encourage NGOs and communities to support the development of alternatives. The savings made by detention reduction should be reinvested in the community to support alternatives.
- 8. Where detention is considered, screening should examine in depth the vulnerabilities, needs and strengths of individuals in working towards case resolution, and the scope for alternatives to address any risks and concerns.** Such screening should ensure that vulnerable people are not detained, and that people whose mental and physical health is disproportionately affected by detention are released onto appropriate alternatives.
- 9. Where migrants are detained, regular assessment and monitoring should review the impact on the individual of detention, likelihood and timescale of removal, and prospects of compliance with alternatives.** Even when removal is imminent, alternatives should be considered first and adequate case management provided to make independent departures possible without detention.

7 Alternatives to detention in the asylum process

Context – why alternatives to detention for asylum-seekers?

The detention of asylum-seekers is exceptional in the UK and throughout Europe – supporting asylum-seekers in the community is the norm. But the UK Government’s continuing desire to reintroduce a Detained Fast Track asylum process (DFT), after its suspension following court rulings, means that there is a need to show how the objectives of fast processing of asylum claims can be better met in the community.⁷⁴

European States rarely detain asylum-seekers throughout the asylum determination process. Asylum-seekers are sometimes detained for a short initial period for example for the purpose of verification of identity. A few European States interpret the Schengen Rules as requiring them to detain asylum-seekers who are refused entry at the border. The EU’s ‘hot-spots’ in Greece have operated as detention for asylum-seekers arriving on the islands from Turkey. Yet the Reception Conditions Directive (not applied in the UK) limits the power to detain, requiring that detention of asylum-seekers be necessary, proportionate and restricted to ‘very clearly defined exceptional circumstances.’⁷⁵ Research suggests that the detention of asylum-seekers in the countries of their destination should rarely be considered necessary or proportionate, as asylum-seekers are predisposed to cooperate with asylum procedures which they perceive as fair, since they are the only route to their objective of refugee status and legal residency.⁷⁶

Until 2015, the UK was unique in Europe in operating a large-scale detained asylum process for in-country asylum applicants, based on suitability for a quick decision or (latterly) absconding risk and the likelihood of imminent return. 4,286 asylum-seekers per year were detained on the DFT in 2013 and 3,865 in 2014.⁷⁷ In July 2015, the process was suspended by the Government after a series of findings of unlawful unfairness in litigation brought by *Detention Action*.⁷⁸ The High Court in July 2015 found that the process was ‘systemically unfair and unlawful.’⁷⁹ At the time of writing, the DFT has

74 Between 2003 and 2015, asylum-seekers on the DFT were detained throughout the asylum. They faced extremely tight deadlines to gather evidence and submit appeals.

75 Recast Reception Conditions Directive, Article 8(2) combined with Recital 15.

76 See for example *Costello and Kaytaz*.

77 National Statistics, Immigration statistics, April to June 2016, 25 August 2016.

78 The Minister of State for Immigration (James Brokenshire), House of Commons: Written Statement (HCWS83), 2 July 2015.

79 *The Lord Chancellor v Detention Action*, [2015] EWCA Civ 840, 29 July 2015.

been suspended for over a year, but the Government continues to maintain that it will be reintroduced in some form.

In the meantime, asylum-seekers continue to be detained in the UK, in much smaller numbers, where they are considered to meet the normal criteria for detention. In the vast majority of cases, it appears that they have been picked up in enforcement action and made asylum claims in detention. 1,413 asylum-seekers were detained between July 2015 and January 2016, 6% of total asylum claims in the period. 40% of a sample of these cases had their claims certified as manifestly unfounded, and were refused a right of in-country appeal. Few went through the full asylum process in detention: only around 1% had appeals heard in detention.⁸⁰

There appear to be two main reasons for the UK's detention of asylum-seekers. The first reason, addressed by current practice, is the reluctance to release late asylum applicants who are considered to have claimed asylum to delay removal, and therefore to be at risk of absconding.⁸¹ The second reason, addressed by the former DFT, is the desire to process quickly a significant proportion of asylum claims, in the context of politically sensitive backlogs. Given the longstanding difficulties in meeting targets for resolving asylum claims within six months, the DFT was popular with successive governments as a means to achieve fast removals.

The *Detention Action* judgements have shown the costs of this mechanism for quick removals in terms of the fairness and integrity of the process (although the true costs for individual asylum-seekers will never be known).⁸² The resulting case law means that any future detained accelerated asylum process is unlikely to be the quick route to removals that the DFT was for so many years. But in any case, it is by no means clear that detention was responsible for whatever efficiency the DFT generated. Detention will always be more expensive than alternatives; detaining an asylum-seeker who is not at risk of absconding cannot in itself be an efficient use of resources. If the DFT was efficient from the Home Office point of view, this was most likely due to the concentration of resources, including decision-makers, interview rooms, interpreters and lawyers, in a single location. There is no reason why that location should be a detention centre. Indeed, as other states have found, asylum processes can operate quickly, efficiently and fairly in the community.

Detention will always be more expensive than alternatives

The international evidence: Switzerland

The political imperative to speed up asylum processing is not unusual. In many European states, increasing numbers of asylum claims have put asylum systems under pressure, and generated pressure to resolve a proportion of claims quickly. Unlike the UK, other states have developed a range of ways of processing claims quickly in the community. These are not seen as alternatives to detention, since they replace the mainstream asylum processes rather than detention. But in the UK context, they indicate scope for alternatives to the DFT, if Government were to consider bringing it back. They suggest that, just as in returns procedures, elements of alternatives, such as case management, early legal advice and building trust in the process, can be helpful in resolving asylum cases.

80 *R (Hossain and Ors) v Secretary of State for the Home Department* [2016] EWHC 1331 (Admin).

81 However, since around half of late applicants are released immediately, the Home Office appears to accept that there is no automatic link between a late application and risk of absconding.

82 See however *Detention Action, Fast Track to Despair*, 2011.

Switzerland, for example, has piloted a non-detained accelerated asylum process, based on a model from the Netherlands, which aims to resolve asylum claims within 100 days. It has similar objectives to the DFT, and was introduced in January 2014 in a similar political context of criticism of delays that harmed applicants and reduced integration, voluntary return rates and efficiency.⁸³

The principle of the accelerated procedure is that all relevant personnel and services should be under the same roof: the asylum-seekers themselves, immigration officials, legal representatives, interpreters and general advice-providers, including on voluntary return.⁸⁴



'Life outside is not easy but its not mental torture of detention. With some support, I sorted myself out.' – Jalloh

legal representatives, interpreters and general advice-providers, including on voluntary return.⁸⁴ In practice, it was not initially possible to host the asylum accommodation and procedure in the same building. Asylum-seekers are accommodated in the 300-bed Juch reception centre in Zürich, run by Asylorganisation Zürich, while their interviews with immigration officials and other advisers are held at offices a short distance away. It was found that asylum-seekers, new to Switzerland, were getting lost and arriving late at their interviews, but the problem was resolved by the provision of a shuttle-bus linking the two locations. In the longer term, there are plans to build a new reception centre opposite the test centre.

Asylum claims are allocated to the pilot at random. The initial preparation phase of the process lasts up to three weeks. Advisers, employed by a state-funded NGO, Verband Schweizerischer Jüdischer Fürsorgen, are based in the reception centre and provide initial legal orientation but not legal representation. They work with asylum-seekers at this stage to provide general advice about the process, clarify their personal situation without exploring the asylum claim, and explain the role of the legal representative. Meanwhile, immigration officials gather information about the applicants, including verifying their identity, examining documents, arranging for medical examination and taking fingerprints. The asylum-seekers also have their first meeting with their legal representative and their first interview with immigration officials during the preparation phase. Unlike in the regular asylum process, applicants are entitled to automatic free legal representation for the initial stage of the accelerated process, provided by an NGO, Berner Rechtsberatungsstelle für Menschen in Not.

The pilot falls short of providing end-to-end case management, although it includes elements of it. The legal advisors provide early intervention, working with asylum-seekers

The pilot falls short of providing end-to-end case management, although it includes elements of it. The legal advisors provide early intervention, working with asylum-seekers

83 Simonetta Sommaruga, Federal Counsellor, 'Restructuration du domaine de l'asile : pour des procédures rapides et équitables', press conference 14 June 2013.

84 *Ibid.*

from the start of the process to support them to understand and engage with it. They are based in the reception centres, so develop familiarity with the asylum-seekers. However, their structural role is limited to the preparation phase; they have no formal input once the asylum process begins, or post-decision in helping prepare for integration or return.

According to the independent evaluation, this preparation stage has an impact that is ‘fundamentally positive on the understanding and acceptance of the pilot process. The advice function appears particularly valuable in that it allows the same information to be given to asylum-seekers by different actors, including those independent of Immigration. This affects ... the possibility of voluntary return.’⁸⁵

After the preparation phase, asylum-seekers are routed into either the accelerated, extended or Dublin procedures. If it is judged that more time is required to investigate a claim or seek evidence, the applicant goes into the extended asylum procedure.

Where asylum and any appeals have been refused, asylum-seekers are notified that they are likely to be detained and removed. In most cases, an attempt is made to arrange return without detention by holding a formal meeting where an official explains that they must leave and what the options are, including detention. Previously returnees to another EU State under the Dublin Convention were automatically detained, but more recently a process has been developed for conducting Dublin returns without detention where the person is cooperating.

The accelerated process has led to a rate of absconding of 23.5%. The evaluation assessed that better information about the process was leading some applicants with poor chances of asylum to make a realistic assessment of their prospects and decide to abscond.⁸⁶ However, it should be noted that Switzerland is a transit country for many asylum-seekers, which inevitably increases the likelihood of absconding, since some will choose to continue their journey to another EU State in order to seek asylum there. Absconding rates in Switzerland, where migrants can easily cross the border to Germany or France, are likely to be much higher than in the UK, so it is significant that over three-quarters of asylum-seekers chose not to abscond, in a process that makes no use of detention. Case management could contribute to reducing the rate of absconding, as research shows that it increases trust in and cooperation with asylum processes.

The external evaluation of the protection of rights found that asylum-seekers were better informed about the process, including from independent sources, had a clearer sense of their chances of asylum, and had a more positive perception of the asylum system. ‘With few exceptions the asylum-seekers welcomed the accelerated procedure. All asylum-seekers with good, and many with poor, chances of asylum expressed in the focus-group interviews their

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85 Schweizerisches Kompetenzzentrum für Menschenrechte (SKMR), *Externe Evaluation der Testphase für die Neustrukturierung im Asylbereich*, December 2014, p3. <https://www.bfm.admin.ch/dam/data/bfm/aktuell/news/2015/2015-02-16/eval-zwber4-d.pdf>.

86 *Ibid.*

appreciation of the fact that in the pilot procedure they would not remain long in uncertainty.’⁸⁷

According to the Secretary of State for Migration, the evaluation of the pilot shows that ‘the asylum procedures tested in the pilot centre are undertaken and resolved faster than in the mainstream process, as was the objective. This acceleration of procedures has not had a negative influence on the quality of decisions: the improvement in legal protection has contributed to ensuring that the procedures are carried out correctly. This leads also to improved acceptance of decisions by asylum-seekers, as shown by the low level of appeals of only 15%.’⁸⁸

Learning for the UK

Alternatives based on international models such as the Swiss pilot could address both reasons for the detention of asylum-seekers in the UK: reducing absconding and facilitating quick processing. Asylum-seekers in detention who are granted appeal rights could be immediately released onto alternatives, instead of facing delays before the vast majority are released anyway. Evidence from Australia has shown that case management can reduce absconding rates after release, including of vulnerable people who are unsuitable for detention.⁸⁹ The Swiss model demonstrates that quick processing of asylum claims in the community is possible, without the harm to migrants and expense of detention.

Using placement options to process claims quickly

The political objective of resolving some asylum claims quickly could be achieved in the community through the use of strengthened placement options, without the need to bring back the DFT. Many asylum-seekers are accommodated in the community by the Home Office throughout the asylum process. Based on screening, the Home Office could identify a cohort of asylum-seekers whose claims are more likely to be possible to resolve quickly, for example because there are no credibility issues so no need to obtain evidence to support their cases. They could include people who are likely to be quickly granted asylum. These asylum-seekers could be housed in one or more areas close to existing locations of case owners. Arrangements could be made for interview facilities, legal advisers and interpreters to be available at short notice, so that an initial decision can be reached quickly. Where it is justified based on individual assessment, asylum-seekers who would otherwise be detained could be subject to conditions to support their engagement with the asylum process.

This arrangement would remove the need not only for detention, but also for Fast Track Rules governing the appeals process, which were judged *ultra vires* on the grounds of unfairness in the *Detention Action* litigation. The Home Office could seek expedition of appeals where appropriate, and Tribunal judges could assess in the normal way the time needed by appellants, allowing longer periods where necessary to obtain evidence or where a case is complex. The fact that the person is not detained removes the artificial need for extreme speed in the appeals process, which contributed to making the Fast Track Rules unlawful,⁹⁰ as there is no question of unlawful detention.

87 SKMR, op. cit., p16.

88 Staatssekretariat für Migration, *Neustrukturierung Asylbereich: Erste Evaluation des Testbetriebs liegt vor*, 16 February 2015, <https://www.news.admin.ch/message/index.html?lang=de&msg-id=56234>.

89 Only 7% of migrants on the Australian pilot program absconded. IDC, p52.

90 See *The Lord Chancellor v Detention Action*, [2015] EWCA Civ 840, 29 July 2015.

Screening

The fact that asylum-seekers are not detained also reduces the pressure on screening. The High Court repeatedly found that the Home Office was failing to screen out vulnerable people who were unsuitable for the DFT.⁹¹ The objective of processing quickly a designated group will only be met if screening is able to identify unsuitable cases; but there should be no disadvantages to individuals with complex cases if they are wrongly included in this cohort, since they live in the community, not in detention, and face the same asylum procedure as everyone else. Judicial oversight over the appeal timescales should ensure that appeals are only processed quickly when the case is not complex and requiring further time.

The Home Office has the power in law to detain as a last resort, based on individual assessment, but this does not require that asylum-seekers be detained throughout the process. In the current approach, the decision on detention is made at initial screening, the point at which least information is available about the individual, and asylum-seekers in principle spend the whole asylum process either in detention or in the community. Screening and assessment needs to take account of a range of factors, including the wide range of vulnerability factors, complexity of the case and risk of absconding, which may not be fully assessable at the point of the initial asylum claim.

Case management and early legal advice

Case management could be used to provide and coordinate additional support, both to those considered to be at risk of absconding, and to vulnerable people with special needs who need specialist assistance to engage with the asylum process. Indeed, these may often be the same people; 19 out of 42 vulnerable people released from the detained asylum process absconded in October 2015.⁹² Case management could involve regular review and ongoing assessment of needs, vulnerability and risks, in order to support the person to engage with the process. Civil society has proved particularly effective in different national contexts at building trust with vulnerable people and supporting them to engage and participate in asylum processes. The learning from the Key Workers Pilot, operated by Refugee Action between October 2010 and March 2012, could be used to design case management support. The project provided additional support to around 100 families throughout the asylum process, through a trust relationship with a single key worker, helping them to be aware of likely outcomes and options.⁹³ Moreover, many asylum organisations around the country provide versions of case management to asylum-seekers going through the process.

Early access to legal advice can also support engagement and participation in the asylum process. The UK explored front-loading of legal advice in the Solihull Pilot and the Early Legal Advice Project. These experiments were inconclusive due to issues with implementation, and were conducted in isolation from other aspects of alternatives such as case management.⁹⁴ As part of a structured support programme for asylum-seekers with additional needs, early legal

Early access to legal advice can also support engagement and participation in the asylum process

91 Garden Court Chambers, 'Home Office defeated again at the High Court over Fast Track asylum process', 3 July 2015.

92 R (Hosseini and others), para 108.

93 Ceri Hutton, *Evaluation of Key Worker Pilot*, April 2012.

94 Home Office, *Evaluation of the Early Legal Advice Project*, May 2013.

advice could be highly beneficial both in terms of supporting people to engage fully with the process, and in increasing trust and reducing risks of disengagement and absconding, as well as in getting decisions right first time and reducing costs of appeals.

Recommendations

- 10. Asylum-seekers should go through the asylum process in the community, with alternatives supporting participation and compliance where there are particular risks such as of absconding.**
- 11. If quick processing of certain cohorts of asylum claims is a priority, instead of bringing back DFT, this could be achieved by housing asylum-seekers in specific areas close to existing facilities including caseworkers, legal representatives, interpreters and courts, with civil society organisations providing a range of psychosocial support. First-Tier Tribunal judges should retain the authority to determine appropriate time-scales for individual cases, with expedition where appropriate.**
- 12. Independent support and generalist advice, which have been shown to improve trust in the system, should be included in the process.**
- 13. High quality immigration advice should be available throughout the process, as far as possible front-loaded at the start of the process.**

8 Alternatives to detention for ex-offenders with barriers to removal

Context – use of detention and need for alternatives

The detention of ex-offenders who have completed prison sentences with barriers to removal is one of the most complex and difficult areas of detention policy. Their detention can be distinguished from that of other migrants in returns procedures in that Home Office policy allows their detention with a view to public protection when deportation is not imminent, on grounds of public protection.⁹⁵ Successive governments have been keen to emphasise their commitment to detaining and deporting foreign nationals who have completed prison sentences in the UK. The issue has remained high on the political agenda since 2006, when Home Secretary Charles Clarke lost his job following media exposure of failures to consider deportation for some ex-offenders. For several years, the Home Office operated an unlawful blanket policy of detention for such ex-offenders;⁹⁶ even after the return to case-by-case assessment, detention has been criticised as having become ‘the norm’ rather than a last resort.⁹⁷

Routine use of detention is particularly problematic where migrants cannot be returned. Unreturnability is often due to the lack of travel documents, since countries like Iran and Eritrea routinely refuse to issue documents to their nationals. Others, like Zimbabwe, will only accept voluntary returnees.⁹⁸ Court judgments have prevented returns to parts of Somalia, Iraq and Afghanistan on the basis that they are too dangerous. Some ex-offenders cannot return because they have lived lawfully for decades in the UK, often since they were children, and can no longer prove their original nationality.

In such cases, detention can stretch on for years, with little apparent prospect of deportation taking place. Long-term detention without time limit can have a serious impact on mental health: research has found that the longer detention continues, the greater the harm caused.⁹⁹

Long-term detention is also a highly inefficient use of Home Office resources. The longer detention continues, the less chance there is that deportation will ensue: only 43% of people

95 The Enforcement Instructions and Guidance Chapter 55.

96 *Lumba (WL) v Secretary of State for the Home Department* [2011] UKSC 12 (23 March 2011).

97 HM Inspectorate of Prisons and Independent Chief Inspector of Borders and Immigration, *The effectiveness and impact of immigration detention casework*, December 2012, para 1.15.

98 Flemish Refugee Action, Detention Action, France Terre d'Asile, Menedek and ECRE, *Point of No Return: The futile detention of unreturnable migrants*, January 2014.

99 Kathy Eagar, Janette Green, Kerry Innes, Lauren Jones, Carmel Cheney-Fielding, Peter Samsa, and Peter Eklund, *The Health of People in Australian Detention Centres - Health Profile and Ongoing Information Requirements*, (Wollongong, NSW: Centre for Health Service Development, University of Wollongong, 2007).

leaving detention after more than a year in 2015 were deported. Independent research by Matrix Evidence has found that £76 million per year is wasted on the long-term detention of migrants who are ultimately released.¹⁰⁰ The Home Office paid out almost £15 million between 2011 and 2014 in compensation following claims for unlawful detention.¹⁰¹

The over-reliance on detention of ex-offenders also undermines public protection. Ex-offender migrants are frequently detained throughout their period of licence, and are released with little or no notice. They miss out on important safeguards that are normally available for ex-offenders leaving prison, including probation monitoring and preparation for release. In addition, protracted detention without time limit, with its potentially serious impact on mental health, can undermine the rehabilitative effects of prison when combined with other factors. Instead, ex-offender migrants are frequently released with little or no warning, and with no structured reintegration support in place. Most have no right to work. It appears likely that this manner of release can only increase the risk of reoffending.¹⁰²

Evidence of benefits

Community-based alternatives to detention could enable more ex-offender migrants to be safely supported in the community while their cases are resolved. Few alternatives internationally have addressed these particular needs, but models and evidence exist which suggest that alternatives can successfully address concerns around absconding and reoffending, whilst avoiding long-term detention. These models are based on practices in criminal justice rehabilitation, a field in which managing risks of ex-offenders in the community is routine.

The Toronto Bail Program

In Canada, the Toronto Bail Program is a well-established project which facilitates the release of detained migrants onto the support of an NGO in the community. The Program's work has developed out of its long-standing work assisting people in the criminal justice system to be released on bail.

The Program works with migrants detained in prison in Toronto who do not have an individual 'bondsman' able to guarantee their release on bail, and who consequently face protracted detention. The Program interviews detained migrants to assess their suitability for the project. Migrants accepted by the Program are almost automatically released onto its supervision, which involves regular attendance at the organisation's offices and participation in activities. The Program provides support with issues including housing, applying for work permits and health coverage, accompaniment to appointments, and reporting to the immigration authorities. Many participants have mental health or addiction issues, and the Program provides specialist support and community connections. The Program has a very high rate of compliance with release: only 3.65% of participants absconded in 2009-10.¹⁰³ In 2011 it cost \$10-12 CAD per person per day, compared to \$179 CAD for detention.¹⁰⁴

100 Matrix Evidence, *An economic analysis of alternatives to long-term detention* (September 2012).

101 HC Deb, 1 December 2014, cW.

102 Extensive research into this issue has already been conducted, including by the Social Exclusion Unit. For example, see The Social Exclusion Unit, *Reducing re-offending by ex-prisoners*, 2002.

103 UNHCR, *Back to Basics*, p57.

104 *Ibid.*, p60.

Detention Action's Community Support Project in the UK

The Detention Action Community Support Project has been working since April 2014 with male ex-offender migrants aged 18 to 30, who have barriers to removal and have experienced or are at risk of long-term detention. Participants have a range of issues, including severe mental health problems, complex family situations, substantial offending histories, lack of confidence, precarious accommodation and subsistence situation and low self-esteem. Participants had been detained for periods ranging from three months to four years, following completion of prison sentences that ranged from four months to eight years.

Most participants have lived for long periods in the UK, and many have children, partners and close family members in the country, many of whom are British citizens. In many cases, barriers to return relate to the difficulty of establishing their identity, after so many years out of their countries of origin. Most are from countries which are in any case routinely reluctant to issue emergency travel documents to their nationals, including Liberia, Sierra Leone, Côte d'Ivoire, Ethiopia, Algeria and Sudan.

The project coordinator conducts a risk assessment in order to establish suitability for the project, based on a set of criteria designed to establish levels of risk of reoffending and absconding and willingness to engage actively. Risk is assessed over the course of several meetings or telephone conversations, and is constantly monitored and formally reviewed at key points.

After migrants in detention are accepted onto the project, the project coordinator works with them to support their release. This can include providing a written report for use in bail hearings before the First Tier Tribunal, with a structured post-release case management plan to manage any risks of absconding and reoffending. The project has in 2016 begun working closely with the Home Office to facilitate the release of migrants assessed as suitable by the Home Office.

After the person has been admitted to the project, the project coordinator and the participant draw up a transition plan which sets out goals, actions and steps the participants can take. In most cases, options are severely limited, given that participants have no legal status in the UK, no right to work and no resources apart from accommodation and (in some cases) a supermarket card from the Home Office that allows them to buy permitted items, from specified shops. Some participants identify goals, such as study, that are not currently achievable due to lack of funds. However, the project coordinator works with them to identify small steps that can be achieved. The loss of self-esteem associated with prison and detention, combined with the shock of release and the poverty of their life prospects, make challenging even basic planning. Working collaboratively with the project coordinator to draw up a transition plan is an important assertion of agency which in itself contributes to developing the self-confidence necessary to coping in the community.

The quality of the trust relationships developed is absolutely critical to the success of the project. The project uses a person-centred model, tailoring the approach to the needs and issues of the individual. The project has learnt from the most successful international alternatives to detention projects studied by IDC, which prioritise one-to-one case management with a single trusted independent case worker. Participants invariably felt that they had been badly treated by the system, and had responded accordingly. Their perception that the project

The project has in 2016 begun working closely with the Home Office to facilitate the release of migrants assessed as suitable by the Home Office

treated them with respect and took their issues seriously had a significant impact in terms of their positive response to it.

The project coordinator contacts the participant at least once a week, but the intensity and frequency of engagement varies depending on circumstances and needs. One-to-one support focuses on the immediate challenges facing participants, based on consequential thinking techniques. For example, if the participant is particularly frustrated or angry, the project coordinator might support them to think through the consequences of acting out such frustrations, and what steps could be taken to reduce the causes of their anger. These discussions support participants to develop strategies for managing these stressful situations.

The project coordinator also seeks to address the issues raised by participants by advocating on their behalf to a range of statutory and non-statutory bodies. This has included extensive liaison with the Home Office to discuss issues with accommodation, and regular dialogue with Home Office case owners. For example, the project coordinator successfully negotiated for two participants to be offered re-housing in regions closer to their family members. This evidence that their views were being taken seriously had a dramatic impact on both participants' attitudes and worldviews.

The project coordinator facilitates communication and exchange of information between participants and their case owners, in order to defuse potential flashpoints. For example,

The project coordinator facilitates communication and exchange of information between participants and their case owners, in order to defuse potential flashpoints

on several occasions participants were thrown into panic by being summoned unexpectedly to interview or following incidents at reporting, leading them to contemplate absconding. The project coordinator was able to clarify the situation with case owners and provide reassurance, leading participants to continue reporting.

The project assists participants to establish support networks in the areas where they are living, to reduce dependency on the project. During the one-year period of support from the project, the intensity of support is gradually decreased so that participants are ultimately able to rely on local networks and support.

The project has to date worked post-release with 21 participants. There has been rate of compliance with conditions of at least 90%.¹⁰⁵ Two participants have been reconvicted of offences, both receiving non-custodial sentences for offences far less serious than those of their previous convictions. One participant returned voluntarily to his country of origin. The project is estimated to save between 83% and 95% of the costs of detention, depending on whether participants need housing from the government.¹⁰⁶ Independent evaluation has found that the model used in the project is in line with the latest models of best practice developed in the context of criminal justice rehabilitation.¹⁰⁷

105 Two participants lost contact with the project before completing the full year of support, and it was not possible to establish whether they continued to comply with their conditions.

106 Detention Action, *Alternatives to detention for public protection*, April 2016.

107 IARS, *Evaluation of the Detention Action Community Support Project*, 2015, available at <http://www.iars.org.uk/content/iars%E2%80%99-evaluation-detention-action-community-support-project>.

Learning

Screening and assessment

Screening and assessment is a crucial part of any alternative to detention, but it is particularly important in the cases of ex-offenders, given the range and complexity of issues. However, effective assessment of ex-offenders should be far more feasible than for other groups of irregular migrants, given that most have detailed prison records and often have often lived for many years in the UK. Decision-makers should be able to make carefully considered and rigorous assessments of risks, vulnerabilities and prospects of deportation before deciding on detention or alternatives.

Assessments of risk should not simply be based on the fact and nature of the offence, but take into account prison records and evidence of rehabilitation. The Toronto Bail Program and Community Support Project models emphasise the importance of face-to-face interview in assessing the person's attitude to their offending and plans for reintegration on release. There are advantages in involving NGO representatives in making this assessment, but wherever possible decision-makers should also have direct communication with the person concerned.

Decision-makers should also undertake detailed assessment of any barriers to return and likely timescales for overcoming them. Such assessments should be made before the person completes their sentence, so that a decision on detention or alternatives can be made without delay. As far as possible, deportation orders can be served, appeals considered and travel documents sought before the end of the sentence, with provision of legal advice. Where deportation is unlikely to be possible within a lawful and reasonable period of detention, with the result that the person will be released anyway, release should take place in a planned and ordered manner at the end of the sentence.

Placement options

Many ex-offenders have friends or family who can accommodate them after release, without relying on the statutory accommodation available to migrants leaving detention. Alternatives based on supporting migrants in their own accommodation will be the cheapest for the Government, and in many cases mean the essential support of friends and family (though those without friends or family and available accommodation should not be disadvantaged when being considered for alternatives). However, particularly where there are long-term barriers to removal, there should be careful assessment of the sustainability of such arrangements, particularly where people are returning to the locations of previous offending. In some cases, it may be preferable to house people in accommodation in a different area so as to lower the chances of reoffending. But in other cases, subsistence support may enable migrants to live in a sustainable way with friends or family, without being drawn back into crime by destitution.

Conditions such as regular reporting can be applied where necessary, based on case-by-case assessment. However, it is important that conditions are not too onerous, as conditions perceived as punitive are more likely to alienate people who feel that they have already served the sentence for their offence. Where conditions are applied, they should be regularly reviewed, with cooperation explicitly linked to gradual reduction in conditions.

Case management

The successful models of alternatives for ex-offenders focus heavily on case management. The evidence suggests that a relationship of trust with an independent case manager, providing support and guidance throughout the reintegration period, is vital to minimising risks. The case manager can work in a joined up way with the decision-maker, probation officer and mental health and other service providers to ensure that the person is supported to avoid reoffending and comply with the conditions of their release, without taking part in the decision making process. Civil society organisations are particularly well-placed to develop such trust relationships with migrants. Indeed, NGOs working in the criminal justice sector have a wealth of experience in supporting ex-offenders to reintegrate into the community, and could be well placed to adapt services to meet the needs of migrants facing deportation.

Recommendations:

- 14. Alternatives to detention for ex-offenders should take into account learning from good practice in post-prison rehabilitation services, whilst recognising the specific situations of migrants facing deportation.**
- 15. Opportunities should be taken to develop and expand the Community Support Project model to enable more ex-offenders to be released.** This could include the involvement of organisations experienced in mainstream post-prison rehabilitation work. Partnership between the Home Office and civil society is particularly important and achievable in this area, given the complexities involved and the clear common interest in avoiding re-offending. **Where appropriate, accommodation should be provided away from previous areas of offending.**

Part III

The process of change



Abdal –

**‘Detention creates
separation and suspicion.
We need a immigration
system based on
engagement and trust.’**

9 The role of civil society?

Many emerging examples of alternatives to detention around the world involve the active participation of civil society organisations. For example, in Mexico where 35,704 children were detained in 2015, the Mexican government and three civil society organisations (the International Detention Coalition, SOS Children's Villages Mexico and Covenant House) set up a working group to develop an alternative for such children. After much negotiation, a small but successful pilot programme took place between August 2015 and April 2016.¹⁰⁸ Likewise, in Japan, a Memorandum of Understanding was agreed between the Immigration Department of the Ministry of Justice, Japan Bar Association and Forum for Refugees Japan (a local NGO) to pilot an alternative to detention in 2012. For the following two years, a referral mechanism was set up and a number of NGOs collaborated to provide a comprehensive support package to those who were routed out of detention on arrival at the airport.¹⁰⁹

Most recently, during the oral evidence session before the Home Affairs Committee on 12 July 2016, the Government has confirmed that 'harnessing the processes in community' is a 'building block' of the detention reform agenda.¹¹⁰ Given the many controversies surrounding the 'hostile environment' measures embedded by the Immigration Act 2016 and other historical reasons, forging a constructive working relationship with the authorities is extremely challenging for civil society organisations in the UK. In this section, we will explore opportunities and risks for civil society in being involved in developing alternatives.

The Government has confirmed that 'harnessing the processes in community' is a 'building block' of the detention reform agenda

Opportunities for involvement in developing alternatives

Alternatives to detention pose a unique opportunity for civil society to influence and participate in the reform of migration governance systems. As governments begin to acknowledge that over-use of detention is problematic, windows open for civil society to show that community-based alternatives can work better for both immigration management

108 IDC and SOS Children's Villages Mexico, *Practical Step Towards Ending Immigration Detention of Children* (Pamphlet produced in 2016 on file).

109 Immigration Department of Ministry of Justice, Japan Bar Association, Forum for Refugees Japan, *Alternative to Detention Pilot Project Report*, 24 Sep 2014 (unpublished document; redacted version in Japanese on file).

110 House of Commons, Home Affairs Committee, Oral evidence: The work of the immigration directorates HC151, 12 July 2016.

and migrants themselves. This shift from challenge and criticism towards solution-based advocacy is inevitably controversial, but it may pose the greatest opportunities to shift policy away from the focus on enforcement.¹¹¹

The evidence so far strongly suggests two related conclusions: alternatives that involve the active participation of civil society have a stronger focus on engagement with migrants, and



Jalloh, out of detention.

they have better outcomes for both migrants and governments. This connection is unsurprising: civil society organisations have usually worked on alternatives projects alongside existing services for migrants in the community. Often these services approximate the case management that appears to be the key element in the most successful alternatives. Successful alternatives like the Community Support Project in the UK and Australian case management are based closely on existing good practice in other contexts of social work and probation. Civil society organisations have a wealth of experience on which alternatives can be based, minimising the risks of trial and error. Unlike government departments, they can be more flexible in meeting individuals' needs.

By contrast, alternatives that have not involved civil society often appear to have been developed in a void, and tend to be less successful. It is unclear how far the Belgian returns houses and the UK Millbank pilot, for example, were based on evaluation of previous models. This model of alternatives development appears to start with the physical accommodation, and then assemble services in an ad hoc manner. The evidence is clear: starting from buildings, rather than existing holistic models, gets it the wrong way around.

The key, of course, is that civil society organisations are far better placed to have the trust of migrants and better understand migrants' needs. It is self-evident that migrants will be more predisposed to trust community organisations that have already been supporting them than the authorities that have been detaining them. The involvement of civil society organisations, supporting migrants in the community, means that trust can be established far more quickly.

This means that civil society organisations have significant scope to influence the development of alternatives. This was demonstrated in Australia, where the government expanded and implemented the model developed by Hotham Mission, a small NGO.¹¹² More

¹¹¹ See Grant Mitchell, 'Engaging Governments on Alternatives to Immigration Detention', Global Detention Project, July 2016 for more detailed discussion of the opportunities and risks of this approach.

¹¹² IDC, *The Australian Experience: Case management as an alternative to immigration detention*, June 2009.

recently, the US pilots have formed the basis for the national roll-out by the authorities.¹¹³ In a field where civil society has frequently struggled to have an influence, alternatives to detention are an unprecedented opportunity to shape the discussion and get involved in the process of reducing detention.

These examples also show how civil society can use alternatives to set the agenda. Small pilots by NGOs can test and refine models and develop an evidence base, at a point when the authorities are not ready to commit to implementation. Such pilots are usually initiated without government funding, some with support from charitable foundations, reinforcing their independence.¹¹⁴ The models and learning generated can be used to start conversations with government, of a different kind to the oppositional and sometimes hostile discourse that has often dominated dialogue. Governments generally welcome interventions by civil society that address migration governance objectives as well as the welfare of migrants. If the pilots are deemed successful, then the savings made by closing detention centres can be reinvested into the community to implement larger scale alternatives.

For maximum effect, pilots can be designed to address key strategic issues where detention is particularly problematic both for governments and for civil society. Governments are usually cautious about committing to alternatives across the board, given the cost and political risks involved,¹¹⁵ whereas small projects addressing specific groups or issues are politically less risky. The most common starting point has been with families with children, often following campaigning or litigation. This has the advantage of being politically more straightforward, and can help to establish the principle that children should not be detained. However, the exclusive focus on children has tended to limit the influence of such pilots over wider immigration enforcement systems: it can entrench the view that detention is suitable for adults but just not for children.

The Community Support Project, following the Toronto Bail Program, took the opposite approach of focusing on ex-offenders with barriers to removal. This focus allows for common interests with government, as long-term detention followed by release of ex-offenders without support structure is seen as a problem by both sides. Additionally, it can be argued that what works for ex-offenders, a group with particularly complex needs and risks, can be easily transferred to different groups of migrants. The focus of the Australian Status Resolution Support Services on vulnerable people is particularly relevant to the UK, where the Government has committed to reducing the detention of vulnerable people. The failure of the Fast Track has meant that vulnerable asylum-seekers are being released, even where there are risks of absconding; alternatives could play an important role in making a non-detained approach politically sustainable.

The good practice models can be seen to divide roles neatly between the authorities and

For maximum effect, pilots can be designed to address key strategic issues where detention is particularly problematic, both for governments and for civil society

113 After the pilot stage, the government contract for the national programme, Family Case Management Programme, was awarded to a private company, GEO Care, which is partnering with community organisations to provide holistic care.

114 For example, the Lutheran Immigration and Refugee Service (LIRS) pilot mentioned above was supported by the Oak Foundation and the Ford Foundation. See Lutheran Immigration and Refugee Service, Family Placement Alternatives: Promoting Compliance with Compassion and Stability through Case Management Services, 2015.

115 The Millbank pilot cost £1 million over 10 months. See Tribal, *Review of the Alternative to Detention (A2D) Project*, May 2009, p iv.

civil society agents. Governments need to be responsible for decision-making on immigration and asylum cases and screening and assessment of needs and risks. The authorities also need to be responsible for decisions on suitable placement options, and imposing conditions where they judge necessary. Civil society organisations, by contrast, are best placed to provide case management and support migrants to engage with asylum and immigration processes, meeting whatever conditions have been imposed. They can work with migrants on case resolution, helping them to explore all options for their futures, including voluntary return where appropriate. This should not however tip over into pushing people to return voluntarily, which can lose the trust of migrants and the credibility of the organisations. In some cases, organisations have committed to monitoring compliance themselves and informing the authorities of breaches. However, this should not be necessary, as governments can maintain their own reporting regimes alongside community support.

Risks and limitations of civil society involvement in alternatives

There are also risks in civil society involvement in alternatives alongside governments. NGOs' independence can potentially be compromised, particularly if they agree to accept government funding, an almost inevitable element of wider roll-out of alternatives. This could undermine organisations' perceived integrity amongst migrants and wider civil society and reputation among peer organisations. However, these risks can be managed to a certain extent by clear delineation of roles in service level agreements. In principle, implementation of alternatives should not require NGOs to act in any way against the interests of the people they support.

At the systemic level, there is nothing automatic about the development of alternatives leading to reduction in detention. Alternatives can risk effectively becoming additions to detention, bringing more migrants into the ambit of returns procedures and control without reducing the use of detention. This highlights the need to win the argument against detention as well as for alternatives; the benefits of alternatives will be limited if governments remain reliant on detention. This is particularly the case for traditional enforcement-based alternatives, which have little track record of leading to reduction in detention: the UK, for example, over many years expanded the use of reporting, bail, designated residence and electronic monitoring without any reduction in detention. By contrast, engagement-based alternatives both require more investment, and manifest a different overall approach, so tend to be developed as part of a shift away from detention. In the UK at least, that shift appears to already be happening due to various pressures; alternatives can accelerate it and make it sustainable.

At the individual level, there is a risk that alternatives can be a further precondition of liberty for migrants who would otherwise be released anyway. For example, the accusation has been levelled against the Toronto Bail Program that it raises the threshold for release amongst decision-makers, who may be more reluctant to release migrants in detention who are not on the project. The Program is small and operates in only one city, so cannot assist all eligible migrants.¹¹⁶ This risk can be minimised, if not eliminated, by effective screening to identify suitability for alternatives, and a clear plan for expansion to enable all eligible migrants to have access to alternatives.

A related concern is that alternatives can become alternative forms of detention. The most

116 Edwards, p59.

coercive alternatives, electronic monitoring and home curfews, involve significant curtailment of liberty, and can in some cases be considered to amount to forms of detention.¹¹⁷ There is also little evidence that they work, in any meaningful sense, since they make compliance unpleasant for migrants, who can simply remove monitoring devices and abscond. As they actively undermine trust and predisposition to comply, they are not recommended.¹¹⁸

There is never a guarantee that civil society will be able to keep control of the process of developing alternatives. For example, the US pilots led to wider roll-out of alternatives by the Government, but the contract for implementation was awarded to a private company, GEO Care. It remains to be seen whether this will lead to a greater focus on enforcement and less trust with migrants, or whether GEO Care will maintain the ethos of the initial civil society pilots.¹¹⁹

Finally, it should be recognised that alternatives, at best, prevent detention or get people out of detention and improve their experience of immigration and asylum procedures; they do not absolve them of immigration control altogether nor guarantee there will not be future periods of detention or forced removal. Many migrants' rights groups regard opposing detention as inseparable from opposing immigration control in general. This can lead to alternatives being seen as a dilution of the right to liberty, and a distraction from principled opposition to immigration control. However, while not every organisation will judge it appropriate to get involved in alternatives, there is no necessary contradiction. Alternatives contribute to de-legitimising detention and over-use of enforcement in general. They tend to be associated with increased grant rates of leave to remain and better wellbeing outcomes for migrants, as well as increased rates of voluntary return.¹²⁰ For migrants today, immigration control is a fact of life, and it is essential that pragmatic strategies be developed to minimise the harm it is causing right now.

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117 See for example *Gedi v SSHD* [2016] EWCA Civ 409.

118 UNHCR Guidelines, p24.

119 GEO World, 2nd Quarter 2016, 'GEO Care's New Family Case Management Programme'. For criticism, see American Immigration Lawyers Association, 'Obama Administration Again Hands Families Over to Private Prison Company', 18 September 2015.

120 See the evidence of the SRSS project in Australia. IDC, p52.

10 Possible theory of change

The UK government's commitment to reducing the extent and length of detention, combined with financial pressure to save money on the detention estate, creates opportunities for alternatives that meet migration governance objectives without detention. Based on the discussions in this report, the process of developing alternatives could involve the following stages:

- Wider discussion of alternatives in civil society leads to growing awareness of the opportunities and risks and willingness to engage, directly or indirectly;
- Civil society develops a series of small pilots for specific groups of migrants, in conversation with individuals with direct experience of immigration procedures and detention, based on screening, assessment and case management, with initial funding from charitable trusts or other independent sources;
- The Home Office feeds into design, development and implementation of pilots, to ensure that they address specific concerns that drive the use of detention;
- The Home Office agrees to release or divert migrants from detention onto the pilots, based on effective screening and assessment;
- Monitoring and evaluation captures the learning of the pilots, in terms of impact on:
 - Welfare of individuals;
 - Immigration outcomes and drivers of detention;
 - Costs;
- The Government commits to wider roll-out of alternatives, through reinvesting some of the savings of reductions in the detention estate;
- The development of a range of alternatives, able to meet the range and scale of needs of migrants at risk of detention, enables a significant reduction in the use of detention, and a shift towards migration governance tactics based on engagement with migrants;
- Ongoing monitoring and evaluation captures and feeds back in the learning from this process;
- Engagement with migrants, rather than detention, becomes mainstreamed as normal practice for UK immigration systems.

The process of change in the UK would influence and be influenced by developments across Europe. Civil society can potentially make a positive contribution to this process:

- Sharing of experience between NGOs across Europe, in particular of the pilot(s) developing in the UK, leads civil society organisations to implement strategies for reducing detention through the development of alternatives which respect the rights and dignity of migrants;
- NGOs in several states develop small pilots, initiating the process of change;
- This leads to growing regional interest and momentum, with sharing of experiences and learning between states and civil society across Europe;
- Regional and international bodies, including the EU, Council of Europe, UNHCR and International Organisation for Migration, increasingly focus on the implementation of engagement-based alternatives in policy statements, guidelines and reviews of directives;
- Involvement of civil society in alternatives to detention becomes common;
- Europe develops a growing range of good practice, evidence, learning and expertise, which enables states across the region to restrict detention to a genuine last resort after less coercive measures have been assessed as unsuitable.

If there is one certainty in a globalised world, it is that migration is not going to stop

The process of replacing detention with community-based support mechanism will take time, patience and creativity. If there is one certainty in a globalised world, it is that migration is not going to stop. It's time that governments, civil society, migrants and other institutions take seriously the task of creating a safe, orderly process of migration governance, with a particular focus on reducing the harm caused by immigration detention. We hope this report will encourage UK and European stakeholders to start serious conversations about alternatives to detention, begin to imagine the world without immigration detention and begin to take steps towards a world without immigration detention.

11 Summary of recommendations

1. There should be more in-depth investigations into and discussions about alternatives to detention, by the government, by the judiciary, by legal practitioners, by civil society organisations, by migrant support groups and by migrants themselves;
2. Alternatives to detention should be developed with the capacity and range to meet the needs of all migrants for whom less coercive measures than detention are appropriate;
3. Alternatives should be based on evaluation of and the learning from existing models and past experience, as well as international good practice. Thorough and independent evaluation of the Family Returns Process should identify principles and practices that could inform the development of alternatives for other groups;
4. These new alternatives should take account of IDC's CAP model, including providing case management, meeting the basic needs of individuals and involving a clear referral mechanism that links screening and assessment with placement decisions;
5. Alternatives to detention should be developed and implemented in discussion with civil society organisations and migrant communities, utilising their experience in supporting migrants. If pilot programmes are to be initiated, they should be fully evaluated, both quantitatively and qualitatively, to enable learning and adjustments;
6. A study should be conducted to identify the current support and services available in the community that assist migrants' engagement with immigration procedures and can be developed into alternatives pilots or programmes;
7. Investment in alternatives in the community should accompany a reduction in the scale of the detention estate. The savings made by detention reduction should be reinvested in the community to support alternatives;
8. Where detention is considered, screening should examine in depth the vulnerabilities, needs and strengths of individuals in working towards case resolution, and the scope for alternatives to address any concerns. Such screening should ensure that vulnerable people are not detained, and that people whose mental and physical health is disproportionately affected by detention are released onto appropriate alternatives;

9. Where migrants are detained, regular assessment and monitoring should review the impact on the individual of detention, the likelihood and timescale of removal, and prospects of compliance with alternatives. Even when removal is imminent, alternatives should be considered first and adequate case management support provided to make independent departures possible without detention;
10. Asylum-seekers should go through the asylum process in the community, with alternatives supporting participation and compliance where there are particular risks, such as of absconding;
11. If quick processing of certain cohorts of asylum claims is a priority, instead of bringing back DFT, this could be achieved by housing asylum-seekers in specific areas close to existing facilities including caseworkers, legal representatives, interpreters and courts, with civil society organisations providing a range of psychosocial support. First-Tier Tribunal judges should retain the authority to determine appropriate time-scales for individual cases, with expedition where appropriate;
12. Independent support and generalist advice, which have been shown to improve trust in the system, should be included in the process;
13. High quality immigration advice should be available throughout the process, as far as possible front-loaded at the start of the process;
14. Alternatives to detention for ex-offenders should take into account learning from good practice in post-prison rehabilitation services, whilst recognising the specific situations of migrants facing deportation.
15. Opportunities should be taken to develop and expand the Community Support Project model to enable more ex-offenders to be released. This could include the involvement of organisations experienced in mainstream post-prison rehabilitation work. Partnership between the Home Office and civil society is particularly important and achievable in this area, given the complexities involved and the clear common interest in avoiding re-offending. Where appropriate, accommodation should be provided away from previous areas of offending.

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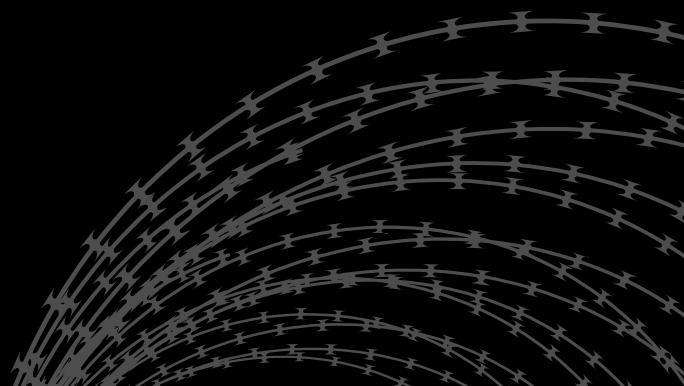
Our thought process behind this report benefited immensely from conversations with a number of international and UK colleagues who are tackling the complex issue of immigration detention in many different contexts. With some, we have conducted government-facing lobbying and advocacy work together and with almost all, we have debated about alternatives to detention.

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The authors

Eiri Ohtani is Project Director of the Detention Forum in the UK since 2009. She was also European Regional Coordinator of the International Detention Coalition between May 2015 and August 2016. She has over 15 years of experience working with asylum seekers and migrants, including directorship of a specialist legal advice agency.

Jerome Phelps is the Director of Detention Action, and has led the organisation since 2004. He has been the regional advisor for Western Europe of the International Detention Coalition for ten years. He has written or co-written Detention Action's five previous reports, as part of campaigns against indefinite detention and the Detained Fast Track.





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