



ALTERNATIVES TO DETENTION

MODULE 1 – Definition and Rationale of ATDs



UNHCR
The UN Refugee Agency





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MODULE 1



CHAPTER 1

LEARNING OBJECTIVES AND MODULE STRUCTURE



BY THE END OF THIS MODULE, YOU WILL BE ABLE TO:

- Explain the benefits of using ATDs;
- Explain the difference between reception, detention and ATDs;
- Recognise and qualify reception, detention, and ATDs.

In this Module, you are asked to read carefully the materials provided in the text and complete interim assignments and a self-check.

Reading the materials and completing assignments in this Module should take you 45 minutes of work.



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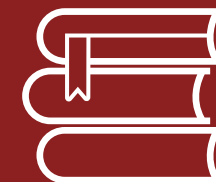
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While there is no internationally agreed definition of the term “alternatives to detention” and it is not a legal term in itself, UNHCR defines them as “any legislation, policy or practice that allow asylum-seekers to reside in the community subject to a number of conditions or restrictions on their freedom of movement” (UNHCR Detention Guidelines, para. 8).

It is important for UNHCR to highlight that alternatives to detention for asylum-seekers would only be relevant when there are legitimate grounds to impose a detention measure in the individual case, as explained in the Fundamentals of Immigration Detention e-Learning. Otherwise, the imposition of such alternatives would be arbitrary. Reception and open accommodation arrangements for asylum-seekers are always the first option.



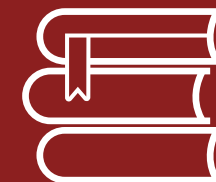
THE ATD DEFINITION IS THUS COMPOSED OF THE FOLLOWING ELEMENTS:

Residence in the community

Conditions or restrictions of movement

Applied when grounds for detention exists

This approach to alternatives differs from that taken by other organisations and NGOs in the case of irregular migrants, where the focus is on any mechanisms to support and manage individuals in the community without the use of detention. This being basically because, unlike asylum-seekers and refugees, irregular migrants lack the protection from specialised international and national legal frameworks that prevent them from being, among other things, penalised for the way in which they entered the country of asylum. The rationale of ATDs for asylum-seekers is based on the non-penalization principle for asylum-seekers and refugees, as outlined in Article 31 of the 1951 Refugee Convention.



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SEE OTHER VARIOUS DEFINITIONS AVAILABLE INTERNATIONALLY AND REGIONALLY ON ATDs:

Definitions of Alternatives to Immigration Detention

Internationally	ATDs as migration management tool Any legislation, policy or practice that allows for asylum-seekers, refugees and migrants to reside in the community with freedom of movement while their migration status is being resolved or while awaiting deportation or removal from the country.	International Detention Coalition, 2015
	'Alternatives to detention' refer to in the global migration context to non-punitive administrative measure ordered by an administrative or judicial authority(ies) in order to restrict the liberty of a person through confinement so that another procedure may be implemented. Reception facilities can be considered an alternative to detention only in cases where the individual concerned has to report regularly to the competent authorities, or if there are residency requirements.	European Migration Network, 2014
Regionally	ATDs as protection tool Non-custodial measures, applied when an individual is exceptionally liable to detention, but which is less restrictive and might involve various levels of coerciveness.	EU Reception Conditions Directive (recast)
	ATDs refer to a range of different practices, which may be utilised to avoid detention and, thus, respect the principle of proportionality.	Council of Europe, 2017

As we see, the ATD definition is used in at least two distinct senses. In the narrow sense, it refers to a practice used where detention has a legitimate basis, in particular where a justified ground for detention is identified in the individual case, yet a less restrictive means of control is at the State's disposal and should therefore be used (UNHCR approach). In the broader sense, ATD refers to any of a range of policies and practices that States use to manage the migration process, which fall short of detention, but typically involve some restrictions (See [Cathryn Costello & Esra Kaytaz's article](#)).



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As explained before, as there is no universally agreed definition, alternatives to detention might be sometimes confused with some other, related concepts, in particular when applied to asylum-seekers. Thus let us with: Click on each box for more details.

ATDs are NOT:

reception
arrangements

accomodation
modalities

alternative forms
of detention

only relevant
for vulnerable persons



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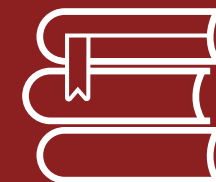
ATDs are not accommodation modalities

Alternatives to detention are not always nor only residential in nature; as defined in the Detention Guidelines, they refer to any legislation, policy or practice that allows asylum-seekers to reside in the community subject to number of conditions or restrictions on their freedom of movement. This means that while some alternatives will entail accommodation arrangements, such as placement on open reception centres or designated residence, others will not, such as reporting requirements or the surrender of documentation.

ATDs are not reception arrangements

In the asylum context, “reception arrangements” refers to a set of measures related to the treatment of asylum-seekers from the time they arrive in the country, while their asylum claims are being determined and until a final decision is taken as regards the substance of their claims. These measures range from adequate reception conditions upon arrival at the border, access to legal counselling, freedom of movement, accommodation, and adequate means of subsistence, to access to education, medical care and employment, as well as special arrangements to cover the specific needs of persons in situations of vulnerability and risk.

As a default position then, asylum-seekers should be free to live in the community and/or placed under appropriate reception arrangements. Nevertheless, reception arrangements may sometimes entail conditions, including some restrictions to freedom of movement for asylum-seekers, but this sole fact does not make them “alternatives to detention”. ATDs should not become substitutes for normal open reception arrangements that do not involve restrictions on the freedom of movement of asylum-seekers ([UNHCR Detention Guidelines](#), guideline No. 4.3, para. 38). The critical difference resides in the fact that reception arrangements (any form of initial reception and/or accommodation measures for asylum-seekers, with or without conditions) applies to all asylum-seekers, while alternatives to detention would apply only to some of them, when there is a legitimate ground for detention as explained in the Fundamentals of Immigration Detention e-Learning.



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ATDs are not alternative forms of detention

Alternatives to detention imply some conditions and/or restrictions on freedom of movement, but do not amount to deprivation of liberty. ATDs are non-custodial and shall respect the principle of minimum intervention, thus they should not be used as alternative forms of detention (see [UNHCR Detention Guidelines](#), guideline No. 4.3 paras. 38-39).

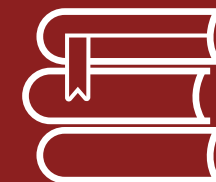
Thus if the restrictions imposed are as intense as (or cumulatively so) to amount to detention, these measures could not be considered as ATDs. For example, certain forms of electronic monitoring can amount to alternative forms of detention due to the substantial limitations they impose on liberty and freedom of movement; usually movement is strictly limited to certain areas of a specified residence or location and/or at particular times of day. A number of states have used the concept of ATD to simply expand their control and surveillance over populations currently not detained while maintaining existing detention capacity (see Grant Mitchell's [paper](#)).

Alternative forms of detention could be authorised only in the same circumstances as detention and following the same guarantees (see [UNHCR Detention Guidelines](#), guideline No. 4.3 paras. 36-37). The fact that a person is not held at a detention facility does not necessarily mean that he/she is not deprived of his/her liberty. In addition, the characterisation or understanding by national authorities that a scheme constitutes an alternative to detention is not in itself enough to conclude that it is non-custodial (see Odysseus Network's [report](#)).

ECRE denounces the “risk of automatic alternatives to detention”, as there are concerns that some countries understand and use ATDs systematically, including in cases when detention is unlawful, as an instrument of migration control rather than a tool to avoid deprivation of liberty or a less coercive means of pursuing the specific objectives linked to detention in individual cases (see ECRE's [report](#)). Thus ATDs should not become alternatives to release ([UNHCR Detention Guidelines](#), guideline No. 4.3, para. 38).

ATDs are not only relevant for persons in situation of vulnerability or at risk

Alternatives to detention are relevant not only for persons in situation of vulnerability or at risk. They can be applied to any asylum-seeker who is liable for detention, but for whom deprivation of liberty is not considered necessary or proportionate to the objectives sought and less strict measures could help to achieve the same aims.



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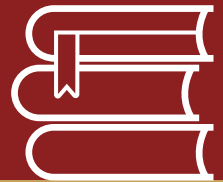
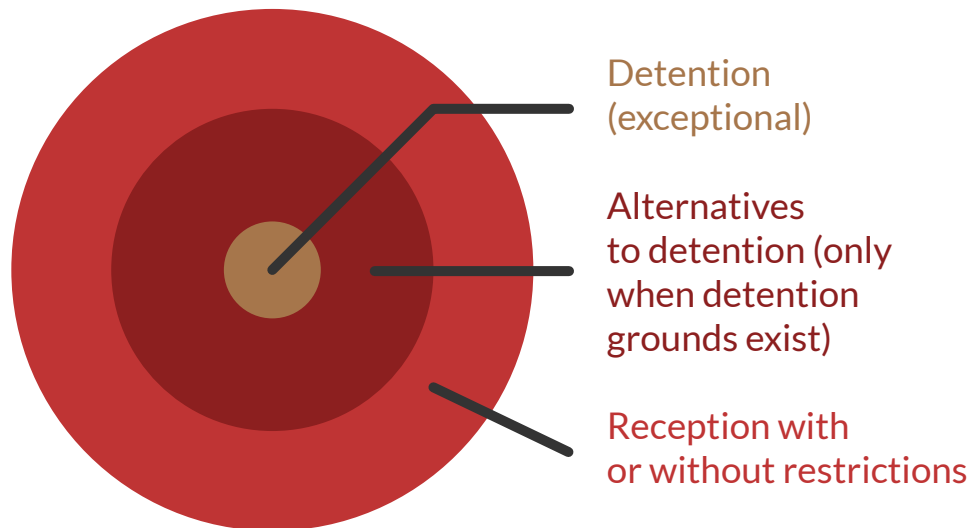
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SCALE OF RESTRICTIONS IN RECEPTION, ATDs AND DETENTION

Reception arrangements encompass a number of measures and entitlements that every asylum-seeker needs to receive upon arrival to the country of asylum in order to meet their immediate needs. Normally, reception arrangements are free from any restrictions on freedom of movement. Alternatives to detention, on the contrary, imply restrictions on the freedom of movement/liberty, and detention is a form of deprivation of liberty, thus a serious restriction on the right to liberty.

Please read “*The Refugee Protection and Mixed Migration: 10-Point Plan in Action*”, chapter 4 (reception arrangements) and chapter 6 (differentiated processes and procedures).



SEE THE TABLE OF FACTORS THAT DIFFERENTIATE ATDs FROM RECEPTION AND DETENTION

Reception	ATDs	Detention
Entitlement	Restrictions on the freedom of movement	Deprivation of liberty
Can be with or without conditions or restrictions, might be grounds to limit the freedom of movement	With restrictions on the freedom of movement/liberty. These restrictions need to be adjusted according to the personal circumstances of the asylum-seeker, adjusted and reduced over time, based on the compliance of the person. At a certain stage, these restrictions should stop: ATD are only transitory mechanism.	Last resort in the range of measures, always most serious restrictions
Applies when there are no grounds to detain	Applies only when there are grounds to detain	
Conditions may include: reporting to the immigration office, residency requirements, supervision in the community, etc.	Measures applicable may include: reporting requirements, registration at police, surrender of documents, bails/guarantees, designated residence, etc.	Confinement in a closed place, or cumulative measures, which amount to deprivation of liberty.
Examples		
<p>All asylum-seekers are hosted in an open reception centre, which is operated by the government and which is responsible for reception and promotion of integration. Residents are free to come and go from the centre as they like. Asylum-seekers can be hosted in the centre for up to six months.</p> <p>Another example is when asylum-seekers are living in the community in private accommodation and are able to choose their place of residence within a certain rent/month allowance. Different accommodation types might be available including supervised shelters, an elderly home, emergency guesthouses, rented flats, government facilities and private apartments. All asylum-seekers are required to report in person to the authorities once a month or as scheduled.</p>	Asylum-seekers whose identity is not disputed, but who are subject to detention as they are considered to be at risk of absconding due to previous attempts, are placed by court order in an accommodation within the reception centre, where they can only leave during the day, but must stay during the night. The measure is imposed for a period of 3 months as it is expected that the asylum procedure will be finalised by that time. For an extension of this measure, the authorities need to obtain formal judicial authorization. Non-observance of the rules imposed might result in resorting to detention measure.	<p>Asylum-seekers for whom the court has taken a decision to detain are moved from an open reception centre to a closed facility, where detained migrants are accommodated. Rooms are locked during the night, there are bars on the windows and the facility is surrounded by fences and guards with dogs. The regime during the day is strictly regulated: times of food serving, time for exercise in an open air outside the building, visits by lawyer, doctor and social worker. There is no possibility to leave from the closed area, unless there is an interview carried out by the asylum officer.</p> <p>You may wish to watch this short video on a typical day in detention.</p>



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ASSESSING SITUATIONS AS ATDS BASED ON RESTRICTIONS TO FREEDOM OF MOVEMENT/LIBERTY

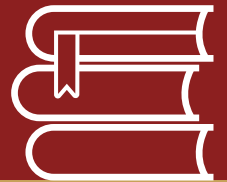
Read the situations below and determine whether it is reception, alternatives to detention or detention based on the restrictions to freedom of movement/liberty imposed. Choose one of the options of the answer below:

A number of asylum-seekers who were detained under an absconding risk argument, have just been released from detention and are placed in rented accommodation of community housing. The conditions for their release, as imposed by the competent authority, were that twice a week they should report to the local immigration office and comply with the regime of the housing (stay at night there). In addition, the organizer of the community housing has a duty to report to the immigration office if the asylum-seekers do not comply with these conditions. If the asylum-seekers do not comply with these conditions they risk re-detention.

- a) Reception arrangement
- b) Alternative to detention
- c) Detention situation

Based on a recent order of the Director of Immigration on ending immigration detention of children, all unaccompanied minors are released from detention and directed to reside at a State-run orphanage. Each child is assigned a guardian who is in fact a social worker in the orphanage working at certain hours. Children cannot leave the center without the permission of the administration, which they can do only in very rare circumstances and need to be accompanied by their guardian all the time. They are offered educational and recreational activities within the limits of the center.

- a) Reception arrangement
- b) Alternative to detention
- c) Detention situation



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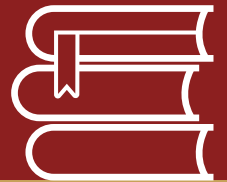
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Asylum-seekers are placed in a holding center on a small island as a way of better controlling their movements and limiting their interaction with local communities while their claims for asylum are examined. They can move freely within the holding center, but cannot leave the island. There are very few inhabitants on the island and almost no gainful activities there.

- a) Reception arrangement
- b) Alternative to detention
- c) Detention situation

Upon registration by the competent authority, asylum-seekers are referred to shelters run by civil society and financially supported by UNHCR. Asylum-seekers have the obligation to stay in the shelters and be available to asylum officials for the purpose of asylum procedures. However, there is no control of their presence in the centre, they are only issued weekly food vouchers that they need to pick up in person. In these spaces, humanitarian assistance, as well as legal, medical and psychosocial aid is provided.

- a) Reception arrangement
- b) Alternative to detention
- c) Detention situation



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BENEFITS OF ATDs

The Fundamentals of Immigration Detention e-Learning analysed the negative effects of detention on the individuals and States themselves. Various reports have proven that detention policies and practices have no deterrent effect on irregular migration or impact on the numbers of persons seeking international protection, while **particularly harsh or arbitrary detention practices can undermine, rather than enhance, security by encouraging people to live clandestinely**. Furthermore, harmful physical and mental effects of detention for asylum-seekers are well-documented and make them less able to cope with integration. Detention is costly for States not only due to its actual costs but also considering costs related to cases of unlawful or arbitrary detention, as well as litigation (see [summary](#) of the Second Global Roundtable on Reception and Alternatives to Detention).

Irregular entry can create challenges for the operation of national asylum and migration systems. However, State practices show that alternatives to detention can meet the needs of States while taking account of the rights and particular circumstances of the individuals concerned.

In some cases, the escalating costs of immigration detention and the well-documented harmful effects on those detained have prompted governments to review their detention policies and to consider a range of less coercive options appropriate to the individual case. Some States manage their migration and asylum systems with no or minimal recourse to detention. In certain countries, legislation explicitly exempts asylum-seekers from being detained. Other States have adopted reception arrangements, which effectively preclude any need for detention (see the [conference room paper](#) on ATDs).

Alternatives to detention are part of the solution to prevent unnecessary instances of detention and their use is in line with international refugee and human rights law. Thus alternatives to detention are beneficial to individuals and the States. It is well documented that when alternatives are implemented effectively this can bring a range of benefits to the States and the asylum-seekers, in terms of compliance with immigration and asylum procedures, cost-effectiveness and respect for human rights and welfare needs. Studies and actors in the field have consistently emphasized the added value of alternatives (see Council of Europe's [analysis](#) on ATDs).



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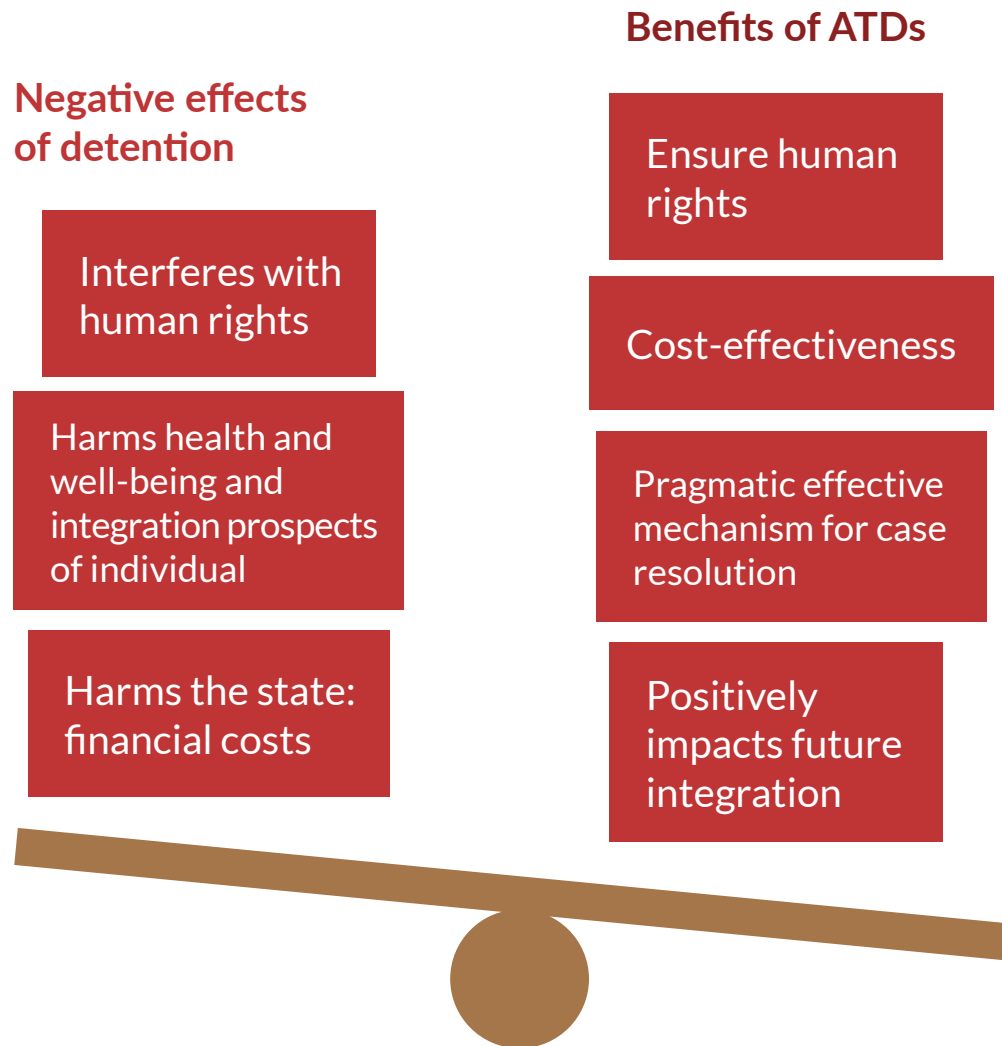
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THE FOLLOWING BENEFITS OF ATDs WILL BE ANALYSED IN THIS MODULE:



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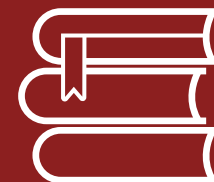
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It is also important to note that alternatives work in practice, when asylum-seekers are (see [UNHCR Options Paper No. 2](#)):

1. treated with dignity, humanity and respect throughout the relevant immigration procedure;
2. provided with clear and concise information about rights and duties under the alternative to detention and consequences of non-compliance;
3. referred to legal advice including on all legal avenues to stay;
4. given access to adequate material support, accommodation and other reception conditions; and
5. offered individualized ‘coaching’ or case management services.

It is also very important that ATDs are:

- applied in partnership between governments and civil society;
- addressing individual needs in a comprehensive way;
- developed and implemented in a way that is context-specific.

See also this [conference room paper](#) on ATDs.

These ‘success factors’ of ATDs will further be examined in Module 4.

ENSURE HUMAN RIGHTS

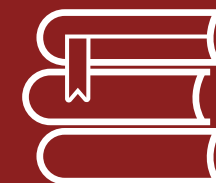
The use of alternatives to detention might be necessary to meet human rights standards in particular cases, which could otherwise not be met while in detention, including European and international human rights law and the relevant jurisprudence of the European Court of Human Rights, the CJEU and the UN Human Rights Committee. These standards require that special attention be given to vulnerable individuals and groups, particularly children (see [Council of Europe's analysis on ATDs](#)).

Failure to ensure compliance with human rights standards (for example, in terms of accommodation, health care or contact with the outside world, among others) may turn a lawful decision to place an asylum-seeker under an alternative to detention into an arbitrary one, resulting in litigation costs and condemnation by national and international human rights bodies.

There are many benefits that alternatives can bring in ensuring human rights of asylum-seekers and migrants on the one hand and ensuring the objectives the authorities seek to achieve by imposing restrictions of freedom of movement (to better manage asylum and migration processes, for example) on the other. Alternatives to detention permit asylum-seekers to reside in the community, with general freedom of movement and support services, allowing them to enjoy a dignified stay. This is beneficial not only for the asylum-seekers, but also for States, because such arrangements encourage asylum-seekers to develop and strengthen their links with the community and help preserve family life, which facilitates their further integration and mitigates physical and psychological problems that asylum-seekers may have.

Contrary to detention, ATDs may help to address risks to the following rights when restrictions are indispensable (list not exhaustive):

- freedom from torture, inhuman and degrading treatment
- right to dignity
- freedom of movement
- right to family life
- right to access health care, social and other services, and others



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COST-EFFECTIVENESS

'Alternatives to detention have proved to be considerably less expensive than detention, not only in terms of direct costs but also when it comes to longer-term costs associated with detention, such as impact on health services or migrant integration.'
(François Crépeau, UN Special Rapporteur on the human rights of migrants, UN General Assembly, 2012)



COST OF DETENTION



COST OF ALTERNATIVES

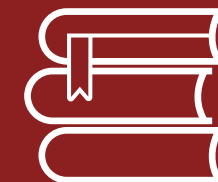
Source of the picture: Alternatives are up to 80% less expensive than immigration detention (IDC, 2015, <http://idcoalition.org/news/did-you-know-alternative-to-detention-facts-from-mena/>)

It is well-established that keeping asylum-seekers and others in detention is costly. Empirical evidence demonstrates that alternatives to detention are considerably less expensive.

Generally, ATDs are considered 10 times cheaper than detention because of:

- lower operational costs (for instance, no security and specialized staff, security devices and technologies, which are expensive, lodging costs, medical and legal assistance, etc.);
- no direct costs involved, if individual is released into the community and allowed access to basic rights (including right to work), or lower costs, as reporting or similar arrangements cannot be compared with the costs of confining the person;
- less cases brought for litigation and compensation;
- improves cooperation and compliance rates, including those related to voluntary returns of unsuccessful asylum-seekers.

Several studies carried out at national level confirm these findings. Considering that the methodology of calculating the total costs of detention differs from State to State, there is no easily comparable statistics and we can only rely on national data. Community-based alternative to detention programmes have demonstrated per person/per day cost savings of USD 49 in the United States of America, AUD 86 in Australia and CAD 167 in Canada (see [conference room paper on ATDs](#)).



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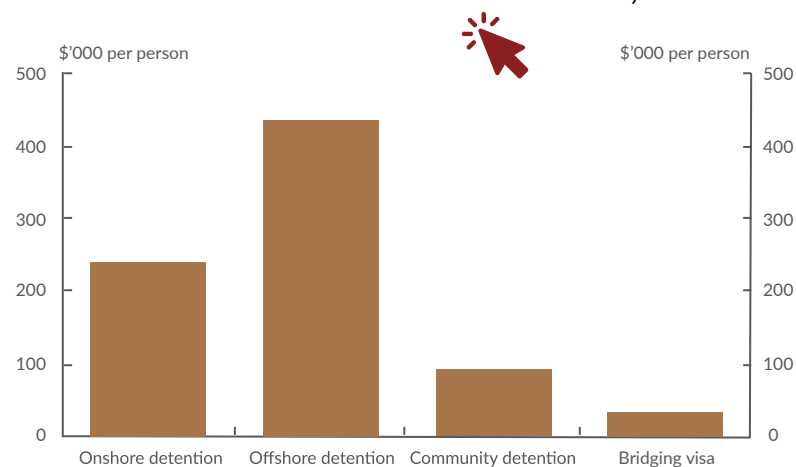
See various calculations from different countries on the cost of ATDs in comparison to detention

1. Cost of detention in comparison to ATDs

Country	Cost of detention (person/day)	Cost of ATD (person/day)
Australia	AU\$655	AU\$8,80 - 38
Austria	EUR 120	EUR 17-24
Belgium	EUR 180-190	EUR 90-120
Canada	CA\$179	CA10-12
United States	US\$158	US\$10,55

Source: IDC, There are alternatives. A handbook for preventing unnecessary immigration detention, 2015, p. 11, <http://idcoalition.org/wp-content/uploads/2016/01/There-Are-Alternatives-2015.pdf>

2. Relative cost per person for 12 months in detention 2013 in comparison with onshore, offshore, and community detention, Australia



Source: Department of Finance.

Source: Towards Responsible Government - The Report of the National Commission of Audit: Phase One, February 2014, p. 196, http://www.ncoa.gov.au/report/docs/phase_one_report.pdf



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Using alternatives to detention can also assist States in preventing or reducing cases of wrongful or arbitrary detention, avoiding costly litigation (see [conference room paper](#) on ATDs). Australia paid out over 16 million Australian dollars in compensation to former detainees over a ten year period (see [IDC's handbook](#)). The UK Home Office paid out almost £15 million between 2011 and 2014 in compensation following claims for unlawful detention (see [Detention Action's paper on ATDs](#)).

It should be noted that the cost-benefits of more frequent recourse to ATDs will only be realized if alternatives are used instead of detention and not merely as alternatives forms of detention. To the contrary, if alternatives to detention are merely expanded in addition to maintaining or even expanding the existing immigration detention capacity of States, they will unavoidably increase overall costs and will not reduce the harm or impact of detention either (see [Council of Europe's analysis on ATDs](#)).

For example, while there is a visible trend to increase in detention infrastructure across Europe, high costs associated with detention were recalled by the European Parliament in the proposal for the so-called Dublin IV Regulation and such costs have often been denounced as disproportionate to the migration control objectives it pursues (see [ECRE's report](#)). Thus, ATDs as complementary measures only will unlikely significantly reduce the costs of public spending. Strategic shift in overall Government policies from detention to less coercive measures is needed if significant cost-effectiveness is sought.

In addition, the most restrictive enforcement-based alternatives, like ankle bracelets, are also the most costly. That kind of restriction on liberty is rarely necessary for an asylum-seeker. Community-support ATD models are thus far more appropriate (see: [Women's Refugee Commission's flyer](#)).



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PRAGMATIC: EFFECTIVE MECHANISM FOR CASE RESOLUTION

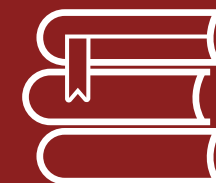
Research underscores that ATDs are beneficial for the States also because they have been effective at achieving migration governance objectives (like security or ensuring the cooperation of asylum-seekers with procedures and, eventually, the departure of those found not to have a right to stay) without jeopardizing fundamental rights. For example, if individuals believe they may be detained should they apply for asylum or ask for any form of help, they may feel compelled to avoid contact with the authorities. ATDs, on the other hand, are premised on individuals engaging with asylum and other processes, rather than seeking to evade them.

Alternatives that build trust in the fairness of the asylum and the immigration process can promote compliance, more efficient and sustainable immigration decisions, as well as reduce the number of unmeritorious appeals (see *IDC's handbook*). Alternatives to detention put in place by States in recent years have seen high rates of cooperation. A 2010 UNHCR-commissioned study of 13 alternatives to detention implemented in different countries around the world found that the rate of absconding was between 1 and 20 per cent, with 10 of the 13 projects enjoying cooperation rates above 94 per

cent. Research commissioned by UNHCR in 2014 found that asylum-seekers are predisposed to comply with immigration procedures and that perceptions of fairness in the asylum procedure were far more important for ensuring compliance than the use of detention (see *conference room paper* on ATDs). According to the data available, ATDs achieve high cooperation and compliance with procedures rates (between 80-95%) (*UNHCR Options Paper No. 2*)

Another study focusing on alternatives to immigration detention in the EU found that alternatives in Belgium, Sweden and the UK had compliance rates ranging from 77% to 96% (see *IDC's handbook*). By contrast, mandatory, prolonged, or unnecessary detention practices have been found in some contexts to be counterproductive to government objectives of achieving compliance with immigration outcomes, including returns (see *Grant Mitchell's paper*).

Existing research shows that asylum-seekers rarely



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See some concrete evidence for compliance rates in case of alternatives and/or reception arrangements for various groups of persons: migrants, asylum-seekers and unaccompanied or separated children (see IDC's handbook).

The United States

Migrants in the community supervision programme appeared at scheduled court hearings 99% of the time and at removal hearings 95% of time

The United Kingdom

People released from immigration detention on temporary admission, temporary release or bail had a compliance rate of 91.9% between January-September 2014

Alternatives may be as effective also in a transit country situation, see for example:

Indonesia

Shelters for unaccompanied asylum seeking children have seen very low absconding rates of 14% in 2013 and 6% in 2014

Thailand

NGO-run programme providing community assistance to unaccompanied asylum seeking children has seen very low absconding rates of 3% between September 2014-May 2015



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abscond if they are in their destination country and awaiting the outcome of status determination procedures. Research also shows that in some cases asylum-seekers with a perceived higher risk of absconding—such as those supposed to be in transit—may be less inclined to move on when ATDs allow them to meet their basic needs and do not put them at risk of detention or refoulement. Subjectively, persons feel they had no alternative but to comply with the legal processes in order to secure protection (See [Cathryn Costello & Esra Kaytaz paper](#)).

HAS A POSITIVE IMPACT ON FUTURE INTEGRATION PROSPECTS

The use of alternatives to detention results in enhanced trust and co-existence between asylum-seekers and their host communities. Asylum-seekers have better chances to adapt while living in the community rather than in segregation. It gives the possibility to develop and strengthen the links with the local community and preserve family life, if the asylum-seeker has family outside detention. The possibility to learn the language, engage in gainful activities and building social networks all foster integration, experiences that would not be fully possible while in detention. Furthermore, staying outside detention helps to prevent various negative consequences of detention, like mental and health problems, which frequently hinder integration following release.

As these measures that involve the community are more likely to respect fundamental civil, political, economic, cultural and social rights, it in turn contributes to individual well-being and self-sufficiency. The respect for rights also enables individuals to better contribute to society if granted residency or to better face difficult futures, such as the possibility of return (see [Grant Mitchell's paper](#)).

Some ATDs practical models implemented at country level confirm positive effects for future integration. For example, the shelters in Canada assist asylum-seekers in many domains, including with their work permit applications and in ensuring access to healthcare. The provision of holistic support on starting a new life in Canada, and assistance in integration from the outset, are key features of the shelter system there. The result of this holistic support appears to be that asylum-seekers in Toronto seem to integrate into normal city life quickly. If they are recognized as refugees, this is clearly beneficial for them and for the host community. If their claims are not recognised, it seemed that they nonetheless tended to remain cooperative with the authorities (See [Cathryn Costello and Esra Kaytaz's article](#)).



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CHAPTER 7

CONSIDERING ATDs IS A REQUIREMENT UNDER INTERNATIONAL LAW

Besides that it is good for States and individuals to apply ATDs as we have seen from various benefits it entails, considering ATDs is also an obligation of States. International law requires that States always assess the application of alternatives before resorting to a detention measure. The consideration of ATDs is part of the overall assessment of the necessity, reasonableness and proportionality of detention. The requirement of necessity of detention (see the Fundamentals of Immigration Detention e-Learning) ensures that detention of asylum-seekers is a measure of last, rather than first, resort. It must be shown that in light of the asylum-seeker's particular circumstances, there were not less invasive or coercive means of achieving the same ends (see [UNHCR Detention Guidelines](#), guideline No. 4.3, para. 35).

International and regional framework of alternatives to detention will be examined in more details in the next Module 2.



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ASSESSING SITUATIONS AS ATDs



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Compile short description of one example each of reception, alternatives to detention and detention from your own country or operation. Use the table below for compiling your example:

Description of situation	Why do you consider it as reception, ATD or detention (include 2-3 sentences of explanation)
Reception situation	
Alternatives to detention	
Detention situation	



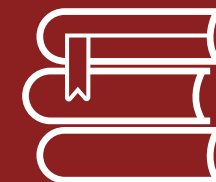
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SELF-CHECK

1. READ THE FOLLOWING QUESTION AND SELECT ONE ANSWER FROM A MULTIPLE CHOICE:

If you need to apply alternatives to detention, which pre-condition would you have to establish before assigning it?

- a) Establish the identity of the asylum-seeker;
- b) Establish a ground for detention;
- c) Establish the availability of reception arrangements.



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2. READ THE SITUATIONS BELOW AND ANSWER WHAT IS MORE APPROPRIATE – ALTERNATIVE TO DETENTION OR DETENTION IN A PARTICULAR SITUATION, BASING YOUR JUDGMENT ON THE CRITERIA OF COST, FACILITATION OF IMMIGRATION PROCESS AND INTEGRATION PROSPECTS.

2.1. Nadir was detained for the purpose of establishing the elements of his asylum application, as authorities had assessed that there was a risk that he absconds. Three months later his family also arrived at the country of asylum, but did not know each other's whereabouts. They were helped by an NGO to trace each other. Nadir's wife Naihma and their two minor children are staying with distant relatives in the asylum country. Their lawyer is asking to apply an ATD to Nadir instead of detention. Which decision should be taken in the case of Nadir?

- a) Apply alternative to detention;
- b) Extend detention.

2.2. Adele arrived as single women to the asylum country and was initially detained for irregular entry. When she submitted her asylum application, she was directed for screening and it was found by a doctor that she is five-months pregnant. The authorities are interested to keep her in detention because her asylum application revealed that she had helped the extremist groups that operated in the area of her residence in the country of origin and as a result faced problems with the authorities of that country. Which decision should be taken in the case of Adele?

- a) Apply alternative to detention;
- b) She should stay in detention.



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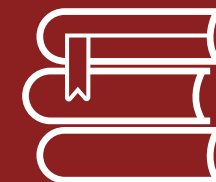
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Liberty and freedom of movement for asylum-seekers are always the first options.

ATDs can only be applied when a ground for detention exists.

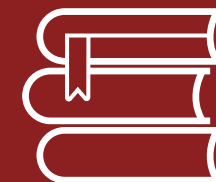
Alternatives to detention are more reasonable way than detention to manage asylum and migration processes, more effective in reaching migration management and asylum procedures' objectives and less costly than detention.

ATDs shall not replace the reception arrangements for asylum-seekers and not be used as alternative forms of detention.



CHAPTER 11

READINGS



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Alternatives to Detention



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The views expressed herein can in no way be taken to reflect the official opinion of the European Union.