

Written Submission ahead of the Regional Review of the Global Compact for Safe, Orderly and Regular Migration in the UNECE region: implementation of rights-based alternatives to immigration detention in Europe

October 2020

The International Detention Coalition (IDC) welcomes the opportunity to contribute to the Regional Review of the GCM in the UNECE Region with this voluntary written submission.

IDC is a global network, of over 400 civil society organisations, groups, individuals, as well as representatives of communities impacted by immigration detention, with presence in over 100 countries across the world. IDC and its members have a wide range of specializations related to immigration detention and alternatives to immigration detention, including advocacy, policy, law, research, and direct service provision.

As a network of experts on alternatives to immigration detention, IDC actively engaged in the negotiations of the Global Compact on Safe, Orderly and Regular Migration (GCM), with a specific focus on Objective 13. Further, IDC currently plays a key role in supporting GCM implementation at national, regional, and global level, including through its co-leadership of the UN Network on Migration Working Group on Alternatives to Immigration Detention, alongside UNHCR and UNICEF.

IDC is present nationally and regionally in Africa, the Americas, Asia Pacific, Europe, the Middle East and North Africa, as well as at the global level often working in collaboration with government partners and other stakeholders on implementation of alternatives to immigration detention.

In Europe, the [European Alternatives to Detention Network](#) (European ATD Network), facilitated by IDC and PICUM, brings together national NGOs working to reduce and ultimately end the use of immigration detention through the implementation of rights- and community-based alternatives to immigration detention. Members of the European ATD Network deliver quality, holistic case management in order to build evidence on the effectiveness of alternatives to immigration detention grounded on engagement. In this context, the European ATD Network has been building collaboration and trust relationships with governments and local authorities in their national contexts since 2017.

This submission provides a brief overview of the current momentum and setbacks on the implementation of alternatives to immigration detention in Europe. It highlights how the activities and evidence generated through the work the European ATD Network could contribute to the scaling up and expansion of alternatives to immigration detention across the region, thus supporting the implementation of the existing global and regional commitments which were reaffirmed by States under Objective 13 of the GCM.

Objective 13. Use migration detention only as a measure of last resort and work towards alternatives

With the negotiation and adoption of the GCM, governments across the world, and across Europe, renewed and reinforced commitments to prioritize alternatives to detention that are in line with international law and to take a human rights-based approach to any detention of migrants. Governments agreed on specific actions to realise these commitments including, in particular, to expand alternatives to detention, favouring non-custodial measures and community-based care arrangements, and to work to end the practice of child detention in the context of international migration.

In Europe, there is increasing regional evidence and momentum regarding the effectiveness of alternatives to immigration detention, particularly when it comes to the work of the European ATD Network. The Network was founded in 2017 to fill a gap in knowledge and evidence on how migration can be governed without the use of detention by implementing, informing and inspiring the development and expansion of alternatives to immigration detention that are rights-based, community-based, and engagement-based. Under the frame of the Network alternatives to immigration detention pilot projects are running in (now) seven European countries - Belgium, Bulgaria, Cyprus, Poland, the UK, Italy, and Greece -.

Despite the global commitments and the growing practical evidence in several European countries, European Union policy over the past years has been continually contributing to the gradual expansion of the use of immigration detention. More recently, the new [EU Pact on Migration and Asylum](#) fails to uphold the aforementioned commitments included on the GCM, likely leading to increased and lengthy use of immigration detention, including for children. Regrettably, alternatives to detention are almost absent in the Pact, with the term appearing only once in the whole package, in a non-normative section which applies only to children.

In this prevailing context, members of the European ATD Network are not only actively problematising detention, but also acting on the need for new and creative approaches to achieve change on policies resorting to immigration detention in their respective countries and region-wide. For pilot implementers in the European ATD Network and for civil society, UN and government partners, community-based alternatives to immigration detention that are centred on rights, engagement and case management:

- provide the basis for constructive and evidence-based advocacy, proposing and showcasing in practice solutions on ways governments can meet migration governance goals, without the use of detention.
- have transformative potential that aligns with the guiding principles of the GCM by providing the building blocks for migration governance systems based on humanity and dignity, that are people centred and do not rely on detention.

In Europe, the focus of governments has traditionally been on “enforcement-based” alternatives, which apply restrictions and conditions to control and keep track of migrants (e.g. reporting requirements, bail, surrender of documents), and which are therefore not in line with human rights and international law. There was a lack of practice of rights-, community- and engagement-based alternatives that seek to work with individuals to promote agency, well-being and active participation in the process. Accordingly, the pilot projects of the European ATD Network seek to address the gap by providing demonstrable practice and evidence.

The case management model of the European ATD Network suggests that exploring all options available during immigration procedures is key to promoting case resolution, achieving better outcomes for both individuals and societies. This focuses on exploring pathways to regularization and case resolution as shared objectives between civil society organisations and governments. For States in the European region this will mean moving away from enforcement-focused alternatives which are exclusively focus on returns, and respecting the human rights and dignity of those who migrate while fulfilling migration management goals.

In that sense, the latest independent [evaluation](#) of two-year engagement-based alternative to immigration detention pilot projects in Bulgaria, Cyprus and Poland confirms that case management can indeed have a positive impact on individuals’ ability and capacity to work towards case resolution and can help them to stay engaged in migration processes. For example, 99% of individuals had improved ability to participate in informed decision making and 96% had

improved ability to engage with the immigration procedures over time. A key aspect for sustaining and amplifying progress on alternatives to immigration detention is evaluation. As such, the findings of this evaluation are a useful tool for governments and other stakeholders working to explore in practice implementation of Objective 13 h of the GCM.

In addition to building evidence on the effectiveness of rights-based alternatives to immigration detention, members of the European ATD Network have been building **collaboration and trust relationships with governments and local authorities in their national countries to support in the development and expansion of alternatives**. The results of such constructive interactions range from MoUs between network members and the border police of their respective countries, some authorities adopting IDC's and UNHCR's vulnerability screening tool, to even government adoption, funding, and implementation of our case management model.

However, this is not sufficient to maximise the effectiveness of engagement-based alternatives to detention. The evaluation of pilots also identified that what case management can achieve for individuals is to a significant degree determined by the context and the system in which the alternative to immigration detention pilots are operating, and that barriers primarily derive from inadequacies of the immigration and asylum systems.

Regardless of the quality of case management provided, there are external factors that can negatively influence its impact. Structural deficiencies in the migration management system, including lack of transparency, basic services and legal pathways can undermine people's trust and discourage engagement, for example. This highlights the high importance for governments to create trustworthy migration systems that respect human rights, are people centred and protect migrants from unnecessary detention.

In the current context, it is very often perceived as challenging to govern migration in a way that reflects sovereignty over national territory while also ensuring the human migrants in a humane and dignified manner. Nevertheless, evidence shows that with holistic and people centred laws and policies, clear systems, multistakeholder involvement and adequate implementation, migration governance goals can be more efficiently achieved in most instances by respecting the rights of migrants in community-based systems. By learning to screen, assess and refer the case of each individual subject to or at risk of detention for migration related purposes, authorities can learn to govern migration without the financial, human and social cost that detention incurs.

The learnings and reflections brought by the evaluation of the European ATD Network pilot programmes can support progress towards reducing the use immigration detention and ending it for children and groups in vulnerable situations by building evidence and momentum, expanding practice, and shifting narratives on the topic of immigration detention and on the use of alternatives to immigration detention.

The work of the European ATD Network, including collaboration with governments, civil society organizations and UN agencies, has the potential to constitute a solid starting point for European countries to develop, evaluate and scale up the use of alternatives to immigration detention across national contexts and at a regional level, thus moving away from a worrying trajectory contributing to the expansion of detention for migration related purposes. In this regard, IDC stands ready to keep supporting European States and stakeholders towards implementation of Objective 13 of the GCM by overcoming challenges and sustaining progress through collaboration, peer learning, and technical support.