

IOM Quick Guide on Alternatives to Detention (ATD)



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a) Why is a guide on alternatives to detention needed?

1. Discussions around alternatives to detention (ATD) have been ongoing at the global level for a few years now. It is one of those areas where the joint advocacy of many international organizations and CSOs has been particularly effective in shaping international jurisprudence and, to some extent, also States’ approaches.
2. The right to liberty, set forth in article 9 of the International Covenant on Civil and Political Rights (ICCPR), requires States to ensure that any deprivation of liberty, including in the context of immigration control proceedings, is “justified as reasonable, necessary and proportionate in light of the circumstances.”¹
3. States can detain irregular migrants only based on the permissible grounds of detention established by law. One of the common grounds for detention used by States is the existence of a risk of absconding. Objective criteria used by States to establish this risk include: lack of documentation, lack of cooperation in determining the person’s identity, use of false identity and repeated failure to report to the authorities.
4. When the use of detention is not justified based on legal grounds, States have an obligation to establish alternatives to detention in law and to apply them in practice.
5. Some States have begun to develop ATD. However, alternatives are generally still used on a small scale, primarily for vulnerable migrants. The renewed commitment to use detention as a last resort and increase the use of alternatives to detention in Global Compact for Migration (GCM), Objective 13, provides an opportunity to continue working towards the expansion and systematization of alternatives to detention as the customary means of addressing irregular migration.
6. IOM has been assisting States in implementing different forms of alternatives around the world over the years. Yet, IOM projects are not always framed as ATD projects.
7. This quick guide contains an excerpt of a mapping of relevant IOM projects, called “Alternatives to Migration detention – building on IOM experience” (2019 – *internal document*). The mapping was produced with the intention of consolidating IOM expertise and increasing the Organization’s capacity to support States in implementing ATD. The mapping was not meant to exhaustively survey all IOM

¹ CCPR, General Comment No. 35, para. 18. See also CCPR, *Danyal Shafiq v. Australia*, Communication No. 1324/2004, CCPR/C/88/D/1324/2004 (31 October 2006), para. 7.3; CCPR, *C. v. Australia*, Communication No. 900/1999, CCPR/C/76/D/900/1999 (28 October 2002), para 8.2.

projects that are relevant to alternatives, but rather to collect a sample of projects that could facilitate the development of an ATD framework.

8. This quick guide contains the essential elements of the ATD framework developed in the mapping. This document also complements the IOM Instruction Internal Guidance Note 'Immigration Detention and Alternatives to Detention' (IN / 228 / 2015 – *internal document*), which affirms IOM's commitment to promoting alternatives to detention.
9. Following the introduction (a), the guide is organized in three parts: it explains how IOM understands alternatives to detention (b); it describes the various elements of alternatives to detention used in IOM projects (c); and, through a flowchart, it visually depicts how the various elements of alternatives to detention can be used together to create a coherent and comprehensive ATD system (d).

b) What do we mean by “alternatives to detention”?

10. IOM defines alternatives to detention as follows:

‘Any legislation, policy or practice, formal or informal, aimed at preventing the unnecessary detention of persons for reasons relating to their migration status’

Source: Adapted from International Detention Coalition, *There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention* (revised edition, 2015).

Note: International human rights law provides that detention, including in the migration context, must only be used as a last resort, that is when alternatives cannot be applied. Examples of alternatives to detention include measures ranging from policy or legislative developments that have an impact on preventing unnecessary detention, effective screening and identification procedures, community-based or casework-oriented models, bail, bond and surety options, open or semi-open centres, reporting requirements and case resolution options.

Source: IOM Glossary on Migration, IML Series 34, 2019

11. The broadness of the definition is shaped by IOM’s comprehensive approach, which takes into consideration the interconnectedness of all aspects of migration. To prevent unnecessary detention, the focus needs to be on all relevant policy areas surrounding migration and not only on immigration detention policy itself. Effective strategies require changes in law, policy and practice in a variety of areas of migration governance and should focus on enhancing coherence among various aspects of the system and effective cooperation of all actors involved. The broad definition referenced above encourages a holistic approach that is necessary for effective ATD advocacy, development and implementation. When the various elements of alternatives to detention are combined, the absconding rates have proven to be generally very low.²
12. The table below reflects the various elements of alternatives to detention. These are normal elements of migration governance or migration management, which can fall under the above definition if they pursue the aim mentioned therein. Next to the elements, the table provides examples of interventions that can be instrumental in achieving the goal of preventing unnecessary detention.
13. The cross-cutting measures at the bottom of the table ensure that legal standards and minimum safeguards are considered when implementing any of the elements of alternatives to detention.

² See, for instance International Detention Coalition, *There are Alternatives*, 2015, pp. 9-11 and sources quoted therein. More recently see E. Ohtani, [Alternatives to detention from theory to practice](#) (July 2018), European Programme for Integration and Migration (EPIM), p. 26 stating that out of the three pilots evaluated 97% of the individuals remained engaged with immigration procedures through case-management-based ATD in the community.

14. Together with the table outlining the elements of alternatives to detention, a flow-chart has also been developed. The aim of this chart is to show how the different elements of alternatives to detention can be combined to create a coherent ATD system.

c) What are the elements of effective alternatives to detention?

Elements of alternatives to detention	Interventions that support alternatives to detention
<p>Adoption/amendment of policies and legislation or change in operational procedures that have an impact on preventing unnecessary detention</p> 	<ul style="list-style-type: none"> • Conducting, consolidating, and sharing research on migration detention and alternatives to detention for a solid empirical foundation on which policy development and practical interventions can be based. • Promoting policy, legal developments, or operational procedures that ensure detention is used only as a last resort and that alternatives to detention are always considered first for all migrants, particularly for children and other vulnerable migrants. • Ensuring that a presumption against the detention of certain groups, notably of children, is enshrined in law and practice, and that alternatives are always considered when decision to detain is made. • Developing a mechanism for securing the release of those currently in detention for whom detention is no longer justified, or for whom alternative arrangements are available, including vulnerable migrants. • Ensuring effective asylum procedures are in place.
<p>Screening, identification, and decision making</p> 	<ul style="list-style-type: none"> • Developing or improving screening, identification procedures and assessment of the situation of individual migrants that enable authorities to make informed decisions about referrals for asylum seekers or other migrants in vulnerable situations, options for admission (temporary or longer term) and for living in the community, application of restrictions to liberty when justified, and return decisions.* Results of assessment may also have implications for access to services going beyond the scope of status and stay.

Elements of alternatives to detention	Interventions that support alternatives to detention
<p>Options for living in the community without restrictions to freedom of movement</p> 	<ul style="list-style-type: none"> • Creating or strengthening reception or longer-term accommodation and support arrangements in the community, including for vulnerable migrants.
<p>Applying restrictions to freedom of movement with legal review</p> 	<ul style="list-style-type: none"> • Developing non-custodial alternative measures to be applied when necessary. • These measures could include semi-open centres, registration of residence requirement, reporting mechanism, designated residence system, bail, bond and surety options, supervision system. • The list is not exhaustive and could be applied in combination with case management support. • Developing non-custodial alternatives adapted to families with children as well as to unaccompanied or separated children.
<p>Case management</p> 	<ul style="list-style-type: none"> • Providing case management aimed at supporting migrants through the process of their status determination. • Ensuring access to services, reliable information, and legal advice on all options including AVRR programmes. • Ensuring effective access/referral mechanisms to asylum procedures. • Helping migrants explore all options to remain in the country legally or to leave with dignity, informing them of consequences of non-compliance.

Elements of alternatives to detention	Interventions that support alternatives to detention
<p>Case resolution options</p> 	<ul style="list-style-type: none"> • Increasing options for regularization, such as temporary permits, work permits; or • Being granted refugee status or another protection status, as well as various forms of admission to the country (through resettlement, humanitarian admission, humanitarian visas, etc.).
Cross-cutting measures	
<p>Minimum standards/legal safeguards***</p> 	<ul style="list-style-type: none"> • Formal status and documentation. • Fair and timely case resolution. • Regular review of options to live in the community. • Providing meaningful access to legal advice and support from the beginning and continuing throughout relevant asylum or migration procedures. • Ensuring individuals are well-informed and providing clear, concise and accessible information about their rights, duties, and consequences of non-compliance. • Safeguarding the dignity and fundamental rights of individuals by ensuring that basic needs are met. • Ensuring that child-friendly procedures and best interests assessment and determination are in place and are taken into account in all decisions concerning a child. For unaccompanied or separated children, legislation and procedures are in place to make sure that a guardian is appointed in a timely manner.

Notes

* IOM is in the process of developing a screening tool for migrants in vulnerable situations, one of the long-term objectives of which is assisting governments to avoid their detention.

*** Minimum standards and legal safeguards support all aspects of alternatives to detention in facilitating a system which prevents unnecessary detention. They could be considered as ATD when used in combination with other work.

d) How can the elements of alternatives to detention be used together?³



1. This flowchart visually depicts how the various elements of alternatives to detention set out in the table above can be used together to create a comprehensive system aimed at enhancing the effectiveness of alternatives to detention. It also shows that these elements are interconnected with each other, highlighting the need for a holistic approach when advocating for the development and implementation of effective alternatives to detention.
2. Starting from the top left side, the flowchart shows that adoption of new laws or policies, or legislation amendments should be considered from the very beginning of the process, but are usually long-term endeavors requiring government action, as well as possibly parliamentary action if amendments to legislation are required. While these processes are underway, other operational interventions can be initiated. The focus should first be on ensuring that effective screening, identification and assessment processes are in place and that options for living in the community are available. The latter represents the core of ATD and is usually also the focus of ATD pilots (see IOM Roadmap on Alternatives to Migration Detention, tool series No. 1, forthcoming). Restrictions to liberty can be applied when necessary, if provided for in the applicable legislation. Case management and minimum standards/legal safeguards should be applied throughout the process and are often critical to making the ATD successful. Lastly, case resolution is represented as the final objective the whole system should aim to achieve within a reasonable time-period.

³ This flowchart is adapted from the IDC Revised CAP Model, see *There are Alternatives*, p. 16.

For further information on Alternatives to Detention, please contact iml@iom.int.