

Using Alternatives to Detention (ATD) as a Systems Change Strategy

Towards Ending Immigration Detention



This paper was written for civil society organisations, grassroots groups and individuals working in advocacy, community organising, academia, law, research, policy and direct service provision, and particularly for representatives of communities directly impacted by immigration detention, including IDC members and partners, who are interested in working to reduce, and ultimately end immigration detention.



About International Detention Coalition (IDC)

IDC is a powerful global network of organisations, groups, individuals, as well as representatives of communities impacted by immigration detention, based in over 100 countries. IDC members have a wide range of specialisations related to immigration detention and alternatives to detention (ATD), including academia, law, research, policy, direct service, advocacy, and community organising.

IDC staff work nationally and regionally in Africa, the Americas, Asia Pacific, Europe, the Middle East and North Africa, and at the global level. Staff coordinate with members and partners on advocacy, research, coalition and capacity building, as well as create opportunities for national, regional and global collaboration to reduce and end immigration detention, and further rights-based ATD.

Our Vision

A world where immigration detention no longer exists and people who migrate live with rights and dignity.

Our Mission

IDC advocates to secure the human rights of people impacted by and at risk of immigration detention. In partnership with civil society, UN agencies, and multiple levels of government, we strategically build movements, and influence law, policy and practices to reduce and end immigration detention, as well as implement rights-based ATD.

Our Values

- › **Solutions-Focused** We strategically adapt our approaches to context, and develop pragmatic solutions that are grounded in everyday reality and experience
- › **Innovation** We continually innovate our understanding and practices, through curiosity, learning, and exploring new possibilities
- › **Collaboration** We engage in collective thinking and group-centred processes that facilitate an active exchange of ideas and contributions
- › **Respect** We listen closely and with empathy to diverse perspectives, share and accept critique, and treat one another with dignity
- › **Representation** We prioritise diversity, inclusion, and the leadership of people with lived experience of detention, in order to ensure accountability in our work



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Introduction

While people have migrated throughout human history, immigration detention is a relatively recent global phenomenon that has spread across many regions of the world in the last thirty years. This has happened as governments increasingly seek to control the movement of people across their borders, as well as the communities of people living irregularly within their borders. Governments use immigration detention for various political, bureaucratic and symbolic reasons that are linked to sovereign authority, national security, border control and limiting migration.¹

The increasing use of immigration detention as a migration governance tool is a key manifestation of a growing global trend to criminalise migrant communities. This trend includes disregarding basic human rights and safeguards, which is exemplified by harmful pushbacks, externalisation of borders and other unlawful border control and enforcement measures, such as deportations, which violate rights and jeopardise human lives.²

Further, geopolitics play a fundamental role in the increased use of immigration detention.

- 1 Sampson, Robyn, and Mitchell, Grant, 'Global Trends in Immigration Detention and Alternatives to Detention: Practical, Political and Symbolic Rationales' in *Journal on Migration and Human Security Volume 1 Number 3*, 2013, pp. 97-121.
- 2 It is important to note that under international law, the criminalisation of irregular entry or stay is not a legitimate objective on which to base detention. Irregular entry and stay should never be considered criminal offenses (see e.g. Report of the Special Rapporteur on the human rights of migrants, François Crépeau, Detention of migrants in an irregular situation, para. 9, A/HRC/20/24); they are not crimes per se against persons, property or national security, and persons should never be classified or treated as criminals on the basis of their irregular immigration status (see e.g. Id. and also Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General Comment No. 2 (2013), para. 24.). Furthermore, seeking asylum is never an unlawful act and asylum seekers should never be penalised, including the use of detention or other restrictive measures, on the basis of entering a country to seek asylum (see UNHCR Detention Guidelines, Guideline 4).

Concerningly, rich destination countries have encouraged and financially incentivised poorer, transit countries to build detention systems and detain migrants along their journeys to safety and freedom.³ As these systems have grown, immigration detention has become an industry worth billions worldwide, and garners continuous revenue for private corporations and governments alike.

Historical and political contexts, and the practical realities of immigration detention vary greatly across countries and regions. There are some countries that do not generally use immigration detention at all, and others that do not detain certain groups. These cases prove how recent a phenomenon immigration detention is, and also that *it is* possible to govern migration without detention. While in other countries, immigration detention is often used to arbitrarily detain migrants in mass numbers. Overall, for the vast majority of the world's migrants today, immigration detention is no longer an ad hoc practice, it is widespread and systemic and has very real impacts on their safety and wellbeing.

The experience of immigration detention has many damaging and enduring effects on individuals. This includes debilitating physical and mental health impacts that are felt well-beyond the period of detention, and are often felt for an entire lifetime. While perpetuating societal discrimination, criminalisation and marginalisation, immigration detention also rips families apart and instills fear in communities, which harms societies overall. Along with its well-documented and known harms,⁴ evidence also shows that immigration detention does not support effective and sustainable migration governance outcomes.⁵

Further, it is critical to view the impacts of immigration detention through an intersectional lens. This means understanding that people have diverse and intersecting identities, and are impacted in very specific ways. This includes acknowledging and addressing the specific experiences of migrant women, girls, transgender, gender diverse, and LGBTI+ communities, alongside the layered harms of also facing discrimination based on race, ethnicity, religion, and culture, among other factors.

3 Mike Flynn, 'There and Back Again: On the Diffusion of Immigration Detention', 2018, in *Journal on Migration and Human Security Volume 2 Number 3*, 2014, pp. 165-197.

4 Sampson, R., Chew, V., Mitchell, G., and Bowring, L. *There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention* (revised), International Detention Coalition, 2015. p. 5

5 Immigration detention is costly and does not reduce irregular migration; it weakens case resolution and integration outcomes. Most people in detention have inadequate health care and legal support; they are stripped of their agency and separated from supportive networks including family and friends. They are less able to participate and progress towards concluding their case with dignity. See International Detention Coalition, *Reframing immigration detention in response to irregular migration Does Detention Deter?*, 2015 and Sampson, R., Chew, V., Mitchell, G., and Bowring, L. *There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention* (revised), International Detention Coalition, 2015, pp. 3/5.

Building on the Moment

The COVID-19 pandemic has disproportionately affected migrants, and put the health risks of immigration detention into sharp focus.⁶ COVID-19 has also highlighted our interconnectedness and responsibility to each other as people. Within this context, and for various different reasons, a number of countries reduced or suspended their use of immigration detention during this time, and turned to ATD. These developments provide us with an important opportunity to ensure that the COVID-19 recovery process over the coming months and years, includes maintaining and enhancing COVID-19 related practices of non-detention.

As movement of people continues amid ongoing conflict, crises, and climate change, global society has an imperative to ensure that migration

governance respects dignity and human rights. After thirty years of growing immigration detention systems across the majority of the world, the results are clear: immigration detention creates severe harm at personal, community, and systemic levels, and its human and financial costs make it unsustainable for the future.

In terms of solutions, there is ample evidence that ATD leads to better outcomes for individuals, communities and governments.⁷ ATD programmes prove that detention is not necessary during the immigration process, and cases can be resolved while people are free in communities. There is also growing interest and momentum on ATD globally. A range of UN human rights bodies,⁸ international⁹ and regional entities, and civil society groups have supported governments

- 6 UN Network on Migration Working Group on Alternatives to Immigration Detention, *Policy Brief: COVID-19 & Immigration Detention: What Can Governments and Other Stakeholders Do?*, April 2020.
- 7 Sampson, R., Chew, V., Mitchell, G., and Bowring, L. *There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention* (revised), International Detention Coalition, 2015, pp. 9 - 15.
- 8 For example, UN Committee Migrant Workers, *General comment No. 5*, 2021; UN Special Rapporteur on the Human Rights of Migrants, *Report on ending immigration detention of children and seeking adequate reception and care for them*, 2020; UN Committee on the Rights of the Child and UN Committee on Migrant Workers, *Joint General comment no. 4 and no. 23*, 2017.
- 9 For example, UN Network on Migration Working Group on Alternatives to Detention here <https://migrationnetwork.un.org/thematic-working-group-2-alternatives-detention>; IOM, *Quick Guide on Alternatives to Detention*, 2019; UNICEF, *Alternatives to Detention for Children*, updated 2019; UNHCR, Alternatives to Detention tools available online here: <https://www.unhcr.org/search?page=search&skip=0&docid=&cid=49aea9390&scid=53aa926a6&comid=56b0b4534>

to implement ATD.¹⁰ Through different global frameworks, such as the Global Compact for Migration, the Committee on Migrant Workers General Comment No. 5 and many others, governments have committed to developing and supporting non-custodial ATD with the goal to reduce and end immigration detention. Further, governments are increasingly exploring ATD “ranging from scoping studies and small-scale pilot projects to significant policy developments and systemic change.”¹¹ To IDC, this represents a political environment that is conducive to change.

Paper Aims

Since its inception in 2008, IDC has focused on ATD advocacy as a key area of work, alongside our members and partners across regions. In 2021, after over a decade of learning and evolving our approach, IDC

undertook targeted consultations with staff and key members and partners to update and refine our position on ATD advocacy. This paper seeks to set out IDC’s approach to using ATD as a systems change strategy towards ending immigration detention.

This paper was written for civil society organisations, grassroots groups and individuals working in advocacy, community organising, academia, law, research, policy and direct service provision, and particularly for representatives of communities directly impacted by immigration detention, including IDC members and partners, who are interested in working to reduce, and ultimately end immigration detention. However, it may also be of interest to UN agencies, other international and regional intergovernmental entities, national human rights institutions and academics with similar goals.

10 For example, Council of Europe, *Practical Guidance on Alternatives to Immigration Detention: Fostering Effective Results*, 2019; Council of Europe, Commissioner for Human Rights, *Human Rights Comment, High time for states to invest in alternatives to migrant detention*, 31/01/2017; Inter-American Commission on Human Rights, *Human Mobility Inter-American Standards*, 2015; the *Inter-American Principles of the Human Rights of all Migrants, Refugees, Stateless Persons and Victims of Human Trafficking*, 2019; and Migration for Southern Africa Dialogue (MIDSA) *Conclusions and Recommendations* 2016.

11 Sampson, Robyn, and Mitchell, Grant, ‘Global Trends in Immigration Detention and Alternatives to Detention: Practical, Political and Symbolic Rationales’ in *Journal on Migration and Human Security Volume 1 Number 3*, 2013, p. 98.

Understanding The ATD Landscape

There is no universally recognised definition of ATD. Therefore, ATD is interpreted in different ways, including legal, conceptual, academic and practical interpretations. The lack of universal definition also leads to different actors using the term ATD to describe a broad spectrum of practices and approaches.

A Legal Safeguard

Under international human rights law, everyone has the right to liberty of person, irrespective of their migration situation.¹² The prohibition on arbitrary detention requires that immigration detention always be based on a legitimate state objective in line with national law, and must be an exceptional measure of last resort.¹³ This means that when there is a lawful immigration detention

decision, States have a legal obligation to first evaluate and apply all available “alternative measures” prior to detaining someone, in accordance with the principles of necessity and proportionality, and on the basis of a presumption of liberty.¹⁴ Thus, ATD is a key legal safeguard to prevent arbitrary detention and ensure the right to liberty.

Different ATD Definitions

While the legal obligation to implement ATD is clear, “alternatives to detention” is not a legal term of art¹⁵ and conceptually, the term has been used in at least two main ways. Some actors refer to ATD in a narrower legal sense as “a practice used where immigration detention has a legitimate basis, in

¹² The right to liberty of person is upheld by international law in article 3 of the Universal Declaration of Human Rights (UDHR) and article 9 of the ICCPR and is recognized in all major international and regional human rights instruments. See e.g. Human Rights Committee General Comment No. 31 (2004): “the enjoyment of Covenant rights is not limited to citizens of States Parties but must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party.”

¹³ The prohibition of arbitrary detention is absolute, which means that it is a non-derogable rule of customary international law, or a *jus cogens* norm. See UN Committee on Migrant Workers General comment No. 5, para. 17.

¹⁴ UN Committee on Migrant Workers General comment No. 5, para. 17.

¹⁵ UNHCR Detention Guidelines, *Terminology*: “‘Alternatives to detention’ is not a legal term...”

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."¹⁶ Others use it in a broader conceptual or practical sense, to refer to a range of policies and practices that States use to manage migration without the use of detention.

Spectrum of ATD Practices

An array of practices have been implemented worldwide by governments and other actors as "alternatives to detention," varying in the extent to which they respect, interfere with or violate human rights. These practices exist on a spectrum from more to less restrictive, as well as those that do not involve restrictions on liberty at all. In terms of approach, these practices can also broadly be grouped into ATD that relies on reduced degrees of coercion to increase "compliance" with migration processes, and those that actively support and engage with people to better ensure rights, wellbeing and migration governance outcomes.¹⁷

ATD Debates

Within this complex ATD landscape, ATD has become a somewhat contentious issue among civil society groups and actors. For example, there have been debates on the definition of ATD, as well as the use of the term itself. These debates center on issues such as:

- › Should ATD only refer to restrictions placed on individuals or a wider range of approaches used to avoid detention?
- › Should ATD only be applied to people who can legally be detained?
- › Does using the term "alternatives to detention" legitimise detention?
- › Does using the term ATD benefit or inadvertently harm efforts to ensure rights, and reduce and end immigration detention?

IDC believes that diverse views and perspectives are critical to ensuring a healthy and vibrant ecosystem of change for all, and engaging these key questions and considerations in the context of grounded advocacy efforts help to sharpen approaches overall.

16 Costello, Cathryn , and Kaytaz, Ezra, Building Empirical Evidence into Alternatives to Detention: Perceptions of Asylum-Seekers and Refugees in Toronto and Geneva, UNHCR, 2013, p.10

17 Detention Action, *Without Detention: Opportunities for alternatives*, September 2016, p. 20.

ATD for IDC

IDC envisions a world where immigration detention no longer exists and people who migrate live with rights and dignity. With this vision at its core, IDC recognises the relevance of ATD as an academic and legal concept, but first and foremost, IDC approaches ATD as a systems change strategy to reduce and end immigration detention, and build migration governance systems that ensure dignity and human rights.

Further, IDC understands ATD as a range of laws, policies and practices by which people at risk of immigration detention are able to live in the community, without

being detained for migration-related reasons. For IDC, ATD can involve a range of interventions in areas of migration governance that ensure liberty and rights, individual screening and assessment, placement options, and case management to facilitate fair and timely case resolution.

Based on this holistic approach to ATD, IDC's Community Assessment and Placement (CAP) model provides practical building blocks for developing rights-based ATD. Additionally, IDC stands by a set of principles for ATD which guides our advocacy when using ATD as a systems change strategy. More on both of these in later sections.



A Systems Change Strategy

IDC is a global civil society coalition of members and partners who actively engage in varied and innovative strategies around the world to reduce and end immigration detention. IDC believes that in order to ensure a healthy and vibrant ecosystem of change, diverse approaches from a range of actors are absolutely necessary in the movement to end immigration detention.

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As a diverse sector that includes grassroots groups, academics, researchers, lawyers, direct service providers, community organisers and leaders with lived experience of detention, civil society undertakes a range of strategies, often implementing multiple approaches simultaneously. These can include, but are not limited to, campaigning and advocating to:

- › Release people from immigration detention
- › Close specific detention centres

- › End corporate investment in immigration detention
- › Reform immigration and asylum law
- › Change policy through strategic litigation
- › End immigration detention of certain groups, for example children
- › Monitor places of immigration detention¹⁸
- › Change public narratives through strategic communications
- › Implement rights-based and community-based ATD

For IDC, ATD advocacy is one of many strategies that civil society can utilise to achieve progress towards reducing detention, and help pave the way for future systems of migration governance that do not rely on detention. None of these approaches should be seen as exclusive of one another, and they can and do complement each other in many contexts.

¹⁸ Association for the Prevention of Torture (APT), International Detention Coalition (IDC), and United Nations High Commissioner for Refugees (UNHCR), *Monitoring Places of Immigration Detention: Practical Manual*, (Association for the Prevention of Torture (and United Nations High Commissioner for Refugees: 2014).

When deciding which strategies to utilise as civil society, IDC believes that migrant and refugee-led groups and initiatives at the grassroots level, particularly leaders with lived experience of detention, must be supported and centered in these strategic decisions, as they are the ones driving change on the ground, and best understand the challenges facing their communities, as well as the potential solutions.

For IDC, it is the leadership of our members, partners and people with lived experience of immigration detention, particularly marginalised groups such as women, girls, transgender, gender diverse, and LGBTI+ communities, that inspires IDC to ground our approaches in vision. This means that while we work to end what we are against, we also advocate for the future we want to see, which is a world where immigration detention no longer exists.

Why Systems Change?

Due to the prevalence of legal discourses on immigration detention, the human impacts of detention are often showcased in terms of individuals and cases. While immigration detention has devastating impacts on many individuals every day, it is operationalised through large, complex migration governance systems that impact people, families and whole communities in a systematic manner.

These systems are made up of webs of institutions, laws, policies and practices, both formal and informal, as well as less visible power structures, resource interests and relationships. Further, systems of immigration detention are often entrenched in xenophobic and discriminatory cultures based on specific historical context, that often criminalises migrant communities.

To change the status quo on immigration detention, we must address immigration detention as a systemic issue, not an individual one. Further, isolated legal or policy action is often not enough to make fundamental change, nor are actions focused exclusively on immigration detention alone. Our work is to change systems - this requires intentional processes that chip away at underlying structures and alter supporting mechanisms to bring about lasting change.¹⁹

Key Elements

Provide a Vision & Roadmap

For IDC, using ATD as a systems change strategy means laying the groundwork for a vision and roadmap towards migration governance approaches that are based on values of human rights, agency and freedom. This includes developing systems that strengthen and protect migrant communities for the long-term, in order to build strong, equitable and sustainable societies overall.

¹⁹ Abercrombie, Harries and Wharton, *Systems change: A guide to what it is and how to do it*, NPC, 2015, p.5.

This strategy emphasises ATD that is sustainable and works better for everyone - individuals, communities and governments. In doing so, focus is shifted away from coercive enforcement-based measures to rights-based approaches that engage people, and supports their empowerment and ability to navigate complex migration processes. This includes strengthening the ability and accountability of systems to ensure rights, as well as mechanisms for people to claim them.

Tailor to Context

Firstly, it is important to note that this strategy is only relevant to contexts in which immigration detention is a practical reality that needs to be addressed. However, contexts that already do not use immigration detention can provide learning and inspiration for using ATD as a strategy in other places.

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In IDC's experience, change is always context specific. Across the world, immigration detention use varies greatly, and is dependent on specific drivers, as well as political, historical, and migratory contexts. A strength of using ATD as a strategy is that the approach can be tailored to specific, complex realities, and can address unique gaps and opportunities.

IDC members and partners work in countries across the world that differ greatly in terms of their migration contexts and systems, use of immigration detention, experiences of people impacted by detention, as well as the openness of governments to engage with civil society. Further, ATD as a strategy is used in contexts

of mandatory detention, transit, as well as destination countries where immigration detention is used predominantly in the context of return.

IDC members and partners also work on ATD for people with a range of intersectional identities and systemic experiences, such as children, women, LGBTI+ people, as well as those also experiencing racial, ethnic, or religious discrimination, including people seeking asylum, stateless people, long-term residents, people with convictions, people with expired visas, victims of trafficking, adoptees, undocumented migrants, and many others who are impacted by immigration detention in different parts of the world.

IDC believes that for ATD as a strategy to be impactful, it must be grounded in pragmatic, nuanced and contextualised approaches that work towards realising core rights-based principles and values. There is no one-size fits all model, and the processes of change, as well as the ATD interventions used, will look different in each context.

Concretely, this strategy involves bringing about change in different areas of migration governance through rights-based ATD, with the intention to reduce detention and progressively build systems for the long-term that don't rely on detention. This can include a range of interventions that operationalise local solutions for people at risk of detention to live in the community while their migration case is being resolved.

For example, in countries with limited resources that host large numbers of people in mixed migration contexts, ATD processes may focus on developing screening mechanisms and referral pathways to understand and respond to different needs and motivations within diverse populations. ATD can also address the ways in which people are able to meet their own basic needs, such as through legal access to services and access to remunerated employment. In mandatory detention contexts, ATD interventions have often focused initially on priority groups such as children and families, for example through developing child protection protocols and supported community placement. In countries where detention is mainly used in the return context, ATD might focus on quality, holistic case management that works with people towards case resolution.

In terms of contextual political considerations, in contexts with limited civic space, focusing on ATD has allowed groups to approach governments when directly criticising immigration detention isn't viable. Alternatively, in more democratic societies, ATD advocacy has been used in conjunction with more publicly critical approaches to effectively drive change.

Prioritise Transformative Incremental Change

Using ATD as a strategy catalyses local change processes by supporting stakeholders to develop solutions for avoiding immigration detention in their own contexts. The process of considering ATD

possibilities encourages decision-makers to reassess current approaches, and can shift mindsets away from detention towards fundamentally different ways of managing migration. This is as important as the ATD measures adopted, although often less visible.

In this process, civil society influences authorities by assessing the interests of governments and strategically inserting new transformative ideas while speaking to those interests. This means understanding multi-dimensional motivations for government use of detention, which might be a combination of reasons, including practical, political, symbolic, punitive, and more. By speaking directly to migration governance objectives through the practicalities of ATD, this process can transform underlying rationales, for example progressively shifting the narrative from “enforcement” and “compliance” to “engagement” and “case resolution.”

In short, this strategy involves driving transformative change through incremental and realistic steps to reduce immigration detention in the given context. ATD programmes provide pathways for release and community options that prove it's possible to resolve cases in the community. Stand alone ATD programmes provide governments with learning and evidence, and have a ripple effect as they are expanded and mainstreamed into the broader system, with the aim to eventually phase out immigration detention entirely. This is the systems change that can come from prioritising transformative incremental change.

Using the Term “ATD”

This strategy responds to the urgent and growing problem of immigration detention, and the fact that many governments around the world continue to detain hundreds of thousands of people. Using the term “ATD” can be useful in some contexts, because it clearly links the practical reality of detention with the solutions to reduce and end it. In other contexts, it can be advisable to not explicitly use the term while working on interventions within a range of migration governance areas that also reduce the use of detention.

Currently, using the term “ATD” can be a strategic choice in many contexts, and not in some others. However, as we move along our theory of change,²⁰ the aim is for the term ATD to become obsolete as non-detention approaches become the norm, and new, values-based mechanisms and processes are integrated into everyday social systems.

In the meantime, it is also important to mitigate risk when using the term “ATD.” As governments remain in enforcement mode, some have co-opted the term and use it to describe coercive measures that increase control and surveillance, rather than reduce detention and enhance rights. Further, pilot ATD projects can be used by governments to avoid permanent solutions and refrain from mainstreaming ATD approaches. As with any civil society strategy, risk mitigation is a core

and ongoing task. Organisations and groups on the ground are best-placed to identify risks and mitigation strategies, as part of a process-based, iterative advocacy approach that responds to constantly changing environments.

Build Trust & Collaboration

Using ATD as a strategy has the greatest potential to contribute to change when there is trust and collaboration among different actors in developing ATD, particularly including migrant communities, civil society and others. This process of change involves different levels and branches of government relevant for implementing ATD, for example city, state and national authorities, as well as health, social welfare, child protection and foreign affairs authorities. While this collaboration might not exist in all contexts, or in varying degrees, it can be built over time and supports what is often called a “whole of society” or “whole of government” approach.

Further, IDC has seen that using ATD as a strategy is most effective when one of the core priorities is to engage with relevant government departments and officials to develop collaborative solutions. In various local contexts, IDC has seen this government engagement approach complement tactics that build pressure, by creating a strategic opening for constructive dialogue within highly politicised environments. When executed with strategic coordination, seemingly

²⁰ For example, European ATD Network, Theory of Change: Building evidence and momentum on engagement-based alternatives to detention, to reduce immigration detention at the national and regional levels in Europe, 2019.

divergent strategies that are implemented by different groups can intersect in truly transformative and effective ways, by simultaneously pushing governments away from detention and drawing them towards rights-based ATD.

Getting Involved

In IDC's experience, possible steps and actions for beginning to use ATD as a strategy can include: identifying advocacy interventions and potential allies; building a coalition of interested actors; increasing awareness of ATD alongside other strategies; and importantly, developing context analysis and research on immigration detention and ATD.

There are many different tactics and approaches that civil society groups can use to further ATD advocacy strategies. While some may prefer to focus on direct government engagement, others may prefer tactics such as community organising, media and communications, research and documentation, or technical training and support. Civil society organisations and groups can choose approaches that fit their context, strengths, expertise and resources.

For example, groups could focus on:

- › Creating dialogue with government and different stakeholders on ATD
- › Drafting laws, operational protocols, screening tools related to ATD
- › Providing input and technical advice on ATD development
- › Implementing pilot projects and supporting frontline case managers
- › Organising alongside impacted communities and leaders with lived experience of detention and ATD
- › Monitoring and evaluating²¹ ATD programmes
- › Strengthening, upscaling, and mainstreaming ATD programmes
- › Producing evidence-based research on ATD impacts
- › “Advocacy through doing” in every-day interaction with authorities²²
- › Advocating for budgets and funding to resource rights-based ATD

21 International Detention Coalition, *Alternatives: Learning What Works & Why Monitoring and evaluation of alternatives to immigration detention*, 2019.

22 For example, European ATD Network, *Outcomes of peer exchange workshop for NGOs implementing alternative to detention pilot projects as a strategy for change to reduce immigration detention, Nicosia, 10 & 11 December 2019*, pp. 25 -26.

IDC's ATD Principles

IDC believes adherence to the following principles will ensure that ATD contributes to reducing and ending immigration detention. Therefore, IDC aims to realise and be guided by these principles when using ATD as a systems change strategy.

ATD Must Respect Human Rights²³

Ensure Agency & Empowerment

ATD must support the empowerment and leadership of people to effectively and actively navigate the complex migration processes that directly impact their lives and futures. ATD must also ensure that they have the agency to know and claim their rights along the way.²⁴

Simultaneously, ATD must increase the ability of individuals and institutions to respect, protect and fulfill the rights of those they engage with, and be held accountable when they do not. This assurance of agency and fulfillment of rights serves to strengthen and protect communities as a whole, and create more equitable and just societies.

Use an Intersectional Approach

ATD must uphold the full humanity and dignity of each person, and recognise that people at risk of immigration detention experience multiple and intersectional violations of their human rights. This includes their right to liberty and freedom of movement, as well as potentially their right to education, housing, health care, and freedom from various forms of discrimination, among others. ATD must also be gender responsive, and recognise the specific impact that immigration detention has on women, girls, transgender, gender diverse, and LGBTI+ communities.

Create No New Harms

ATD must not create new harms or further the violation of rights. For example, ATD must respect the right to personal freedom, and any liberty or other rights restrictions imposed on people must be subject to the same stringent safeguards as detention.²⁵ ATD must not be used to place restrictions on individuals who would not otherwise be detained.

23 Sampson, R., Chew, V., Mitchell, G., and Bowring, L, *There are Alternatives*, 2015, pp. 18 - 33.

24 *The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies* (2013); and the human rights based approach PANEL principles e.g. Scottish Human Rights Commission, *A human rights based approach: an introduction*.

25 UN Committee on Migrant Workers, para. 51.

ATD Must Reduce Immigration Detention

Reducing Detention

IDC believes that ATD must operationalise local solutions for people at risk of or in detention to live freely, without being detained for migration-related reasons. Approaches that run parallel to existing immigration detention systems, without impacting use of detention or the size of the immigration detention estate, by nature do not reduce immigration detention.

Risk of Detention

Additionally, the meaning of “risk” is context specific and must be determined within each context. For example, people can be at risk of legal or arbitrary detention, for a variety of reasons including their ethnicity, race, gender, sexual orientation, geographic location, contact with health, social welfare or criminal justice authorities or their current status and circumstance in the migration process (e.g. if they are seeking asylum, undocumented, have a return decision) among others. It’s a strategic decision for civil society actors on the ground to assess and prioritise at-risk groups for ATD advocacy in their contexts. For example, some IDC members use ATD advocacy to

address the very real and practical risk of children being detained in their countries, although child immigration detention is prohibited by international law.

ATD Must Be Based on Engagement Not Enforcement

This means moving away from coercive approaches, which often emulate those from the criminal justice field and are an extension of government enforcement and security-based migration policies that ultimately criminalise migrants.²⁶ Instead, the focus must be on engaging and working with people towards just and fair resolution of their case, in particular through case management.²⁷ Engagement-based ATD builds trust, supports empowerment, and promotes agency and wellbeing so people can actively participate in processes that affect their rights and futures.

ATD Must Involve Holistic Support

ATD must be centred around holistic community-based support to help people achieve stability, navigate complex systems, as well as ensure basic needs, access to services and wellbeing.²⁸ Based on an individual’s needs and strengths,²⁹ ATD should provide local wrap-around services and support mechanisms. This could

26 UN Committee on Migrant Workers, *General comment No. 5*, paras. 48 to 51.

27 For example, Sampson, R., Chew, V., Mitchell, G., and Bowring, L, *There are Alternatives*, 2015, pp. 47 - 58; IDC, *There are Alternatives Africa*, 2018, pp 7 - 8; Ohtani, Eiri, *Alternatives to detention: building a culture of cooperation Evaluation of two-year engagement-based alternative to immigration detention pilot projects in Bulgaria, Cyprus and Poland*, European Programme for Integration and Migration, 2020, section 4; IDC, *Case Management as an Alternative to Immigration Detention: The Australian Experience*, 2009.

28 Sampson, R., Chew, V., Mitchell, G., and Bowring, L, *There are Alternatives*, 2015, p. 28.

29 On screening and assessment to inform individualised placement and support decisions, see: Sampson, R., Chew, V., Mitchell, G., and Bowring, L, *There are Alternatives*, 2015, pp. 35 - 46.

include a range of individualised support, such as healthcare referrals, trauma-sensitive counselling, finding opportunities for meaningful activity, access to education, access to remunerated work and linking people with networks and communities.³⁰

ATD Cannot Involve Deprivation of Liberty

Measures that amount to deprivation of liberty - either individually or cumulatively - are simply *de facto* detention, sometimes referred to as “alternative forms of detention,” regardless of whether they are labelled ATD by governments or not. For example:

- › Closed shelters or reception facilities that people are not allowed to leave. Closed “shelter” models are often purported to support or protect individuals from harm, but they have been shown to arbitrarily restrict access to rights and services.
- › Remote or physically isolated locations in which natural geography is used to severely curtail freedom of movement and access to rights, sometimes coupled with strict curfews.
- › Screening at international borders or transit zones where restrictions go beyond typical screening and identification processes. For example: temporary custody in stations, ports and airports or any other facilities where people remain under surveillance, are transferred against their will, or remain in the custody of government officials pending transfer (e.g. in the case of deportation).
- › Electronic monitoring or tagging is a controversial form of surveillance which involves an electronic device that is physically fitted to a person and cannot be removed, allowing for constant monitoring by government officials. Electronic tagging can involve substantial or complete deprivation of freedom of movement and liberty.
- › Onerous conditions or restrictions applied under the auspices of “ATD” that are not lawful, necessary and proportionate, and comport with the same test for non-arbitrariness of detention discussed above³¹. Overly onerous conditions or restrictions of personal liberty may be arbitrary and constitute *de facto* detention.³²

30 For example, IDC, *There are Alternatives: Africa*, 2018, pp 13 - 14.

31 UN Committee on Migrant Workers, *General comment No. 5*, para. 51.

32 ECtHR, *Guzzardi v. Italy*, where the court found the applicant was in fact deprived of his liberty when confined to a small island and subject to a curfew, reporting requirements, and restrictions on movement and communications.

Building Blocks of ATD

Based on global research conducted by IDC and published in *There are Alternatives*,³³ IDC created a holistic framework for developing rights-based ATD called the Community Assessment and Placement (CAP) Model.

For research purposes, IDC reviewed “any law, policy or practice by which persons are able to reside in the community, without being detained for migration-related reasons.” With our strategic purpose in mind, this broad framing was designed to capture the wide range of options available to governments for developing systems to reduce and ultimately end detention through ATD, which allow people to live freely while their migration status is being resolved.

IDC’s research went beyond measures traditionally viewed as ATD, such as restrictions, conditions and accommodation options. It sought to incorporate practices that

were normal functions of migration governance in one country and not considered ATD, but which could be used to reduce and end immigration detention for people who would otherwise be detained in other countries.

IDC’s research identified the main elements of successful ATD that work better for individuals, communities and governments, in terms of promoting wellbeing and achieving migration governance outcomes.³⁴ The following elements are brought together in IDC’s CAP Model:

- › Focusing on early engagement
- › Early screening and assessment mechanisms to tailor case management and placement decisions
- › Ensuring availability of accommodation and placement options in the community, if needed

33 Sampson, R., Chew, V., Mitchell, G., and Bowring, L. *There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention* (revised), International Detention Coalition, 2015.

34 Adapted from Sampson, R., Chew, V., Mitchell, G., and Bowring, L. *There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention* (revised), International Detention Coalition, 2015, p. 13.

- › Providing holistic case management, focused on case resolution
- › Exploring all options to remain in the country regularly and also all avenues for voluntary or independent departure
- › Ensuring individuals are well-informed and trust they have been through a fair and timely process
- › Ensuring fundamental rights are respected, access to services is provided and basic needs are met
- › Ensuring any conditions imposed are not overly onerous
- › Having in place Standard Operating Procedures (SOPs) to ensure adequate staffing and funding, timely processing, and quality

The CAP Model provides building blocks for developing ATD that can lead to migration governance systems that do not rely on immigration detention. It is holistic and paves the way for a range of interventions, including laws, policies and practices to ensure liberty and rights, processes of screening and assessment, placement options, as well as case management that facilitates fair and timely case resolution. This framework includes:

Liberty: Presumption Against Detention

A range of laws, policies, operational procedures and practices establish the presumption of liberty; provide a mandate to apply ATD in the first instance; only permit detention when ATD cannot be applied; or prohibit the detention of vulnerable individuals.

Minimum Standards

There are a number of minimum standards which a government must respect and uphold for all individuals regardless of legal status, including fundamental rights; meeting basic needs; legal status and documentation; legal advice and interpretation; fair and timely case resolution; and regular review of placement decisions. These minimum standards are in place and underpin all decision-making and placement processes in the system.

Identification and Decision-Making

Screening and assessment in each case allows governments to identify and evaluate a person's risk, needs, vulnerabilities and strengths to make an informed case-by-case decision on how to provide support while their immigration status is being resolved. Screening and assessment can involve reviewing: legal obligations, identity, health and security checks; vulnerability; individual case factors and community context, among others.

Case Management, Support and Resolution

Case management across all stages ensures a coordinated and comprehensive approach to each case. Case management centres on understanding and responding to the unique needs and challenges of the individual and their context. This promotes coping and wellbeing, timely decision-making and case resolution.

Placement Options

There are various placement options available to governments in supporting and managing an individual, pending case resolution. Placement in the community without conditions – or with liberty – is the preferred option in the vast majority of cases. Placement in the community with conditions is used as necessary and proportionate after individual screening and assessment has identified concerns.

The CAP Model emphasises that liberty should be the default situation, in line with international human rights standards. It also recognises that people at risk of immigration detention have a range of rights, including economic, social and cultural rights. It foresees that migration governance systems have, or are able to effectively connect to various support services and mechanisms – such as legal assistance, healthcare, housing – in order to guarantee those rights, ensure wellbeing, and support people to navigate and engage with immigration processes.

Using the CAP Model

The CAP Model is designed as a practical tool to support local advocacy to develop migration governance systems which reduce and ultimately end immigration detention. Recognising that there is no one-size fits all model of ATD, the CAP Model does not seek to provide prescribed solutions for complex realities. Instead, it supports stakeholders to engage, develop, and take ownership of ATD solutions within their specific context. The CAP Model should be seen as a tool to:

- › Start conversations, build dialogue and trust among stakeholders on ATD
- › Analyse the context in terms of elements of ATD, gaps, strengths and challenges
- › Gain ideas about what is possible, prioritise and plan interventions
- › Assess existing ATD, and determine weaknesses and ways of strengthening them
- › Develop and expand community options in local contexts
- › Train officials, practitioners and stakeholders how to avoid detention and develop and implement ATD

Join Us

IDC believes that a vibrant and healthy ecosystem of change is necessary to achieve our collective goal of reducing and ending immigration detention. IDC works worldwide to build, support and strengthen civil society towards this goal. We work collaboratively to connect members and partners at national, regional and global levels, and to foster the development of communities of practice on reducing and ending immigration detention, and furthering rights-based ATD.

IDC supports the leadership of its members and partners to develop tailored strategies, and strives to ensure people who have experienced or are at risk of experiencing immigration detention are provided with opportunities to conduct and lead national, regional, and global level advocacy to reduce and end immigration detention. Find out how to join IDC here: <https://idcoalition.org/join-idc/>

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Key IDC Resources on ATD:

- › [There are Alternatives](#)
- › [IDC Online Training Toolkit](#)
- › [IDC Alternatives to Detention Database](#)
- › [Alternatives: Learning What Works & Why](#)
- › [Vulnerability Screening Tool, UNHCR & IDC](#)

For more resources on using ATD as strategy, please visit:
<https://idcoalition.org/atd-strategy/>



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