

International Detention Coalition

Human rights for detained refugees,
asylum seekers and migrants

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ALTERNATIVES TO DETENTION: THE ROLE OF THE COMMUNITY AND BEST PRACTICES

Seminar: “Practical aspects of monitoring immigration detention and forced return”

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Envisioning a world without unnecessary immigration detention

INTRODUCTION

Hello, my name is Ben Lewis, Advocacy Coordinator for the International Detention Coalition (IDC). First of all, thank you to the conference organizers for inviting me to join you today.

By way of introduction, the IDC is a unique global network of over 300 NGOs, faith-based groups, academics and practitioners in more than 70 countries that advocate for and provide direct services to refugees, asylum-seekers and migrants in immigration detention. Here in Latvia, we are proud to have the Latvian Centre for Human Rights as IDC members working on this important issue.

I'll be presenting today on the importance of developing and implementing community-based models of alternatives to detention, and will share the findings of our global research on the effectiveness of such models. I'll start by providing a brief overview of global trends with regard to the use of detention and alternatives to detention in migration management. I'll then provide a definition for ATD, drawing upon the international and European regional legal frameworks. I'll review the IDC's research findings regarding the benefits of community-based ATD models. Finally, I'll share the key characteristics of successful ATD programs, and review a few best practices in relation to community-based management.

GLOBAL TRENDS

The IDC, through its international membership, has observed two parallel trends occurring globally in relation to the detention of refugees, asylum seekers and migrants. One is the dramatic increase in the use of immigration detention by states over the past 10-15 years. This includes increasingly criminal and punitive immigration laws and policies, and states often turning to the use of detention as a first resort in violation of well-established international human rights standards. Often, this use of detention is justified as being the most effective way to prevent irregular entry or to control or manage people once they've arrived, although the research overwhelmingly shows that this is not the case, and I'll explain that in just a moment.

But the second trend, is a more recent shift over the past 5 years by many states to implement a more human-centred approach to migration management, including the exploration and implementation of alternatives to detention and the use of detention in cases of last resort only. The reasons for this second trend are interesting:

First, it is clear that the costs of detaining someone are significantly higher than equally effective community-based alternatives. In fact alternatives have been found, on average, to be around 80% cheaper than detention.

Second, there has been a growing criticism of immigration detention practices, particularly given the severe and well-known mental and physical health harms that detention has on people—and especially with regard to particularly vulnerable groups such as children, families, asylum seekers, or those who have been exposed to torture, trauma and other abuse either prior to or during their migration.

Finally, there is a growing body of research that demonstrates that detention doesn't deter irregular arrivals—one of the primary justifications currently being

used for detention polices worldwide. In fact, there is no statistical correlation between an increase in detention practices and a decrease in irregular arrivals. So the use of immigration detention to reduce or prevent the arrival of undocumented asylum seekers for example, is simply not effective.

So these factors have led many governments to begin a dialogue internally or in some cases with UN or civil society partners around what alternatives do exist.

WHAT ARE ALTERNATIVES TO DETENTION (ATD)?

So what are alternatives to detention? In fact, there is no internationally agreed-upon definition of ‘alternatives to detention’. The term is not a legal one on its own, but is derived from the right to liberty of person found in article 9 of the International Covenant on Civil Political Rights (ICCPR), article 5 of the European Convention on Human Rights (ECHR) and every other major international and regional human rights instrument.

The right to liberty of person imposes important limitations on states when they seek to detain someone, and primary among these is the prohibition on arbitrary detention. The prohibition on arbitrary detention requires that any use of detention is “reasonable, necessary and proportionate in light of the [individual] circumstances”, and this has been interpreted by the European Court of Human Rights (ECtHR) to require that states first seek to use other, less restrictive “alternatives measures” before resorting to the use of detention. Said another way, detention must be a last resort, and therefore states must implement alternatives first, and these alternative approaches must have been found lacking, before a state can legally detain someone.

“Alternative measures” has been used to describe a wide spectrum of strategies, policies and practices that authorities can use in order to ensure people comply with immigration processes. This has included everything from decriminalizing certain low-level or administrative offenses, to implementing early engagement or prevention programs, through to bail and reporting programs.

The IDC purposefully adopts a broad approach, defining ATD as “any law, policy or practice by which persons are able to reside in the community, without being detained for migration-related reasons.” This broad definition is meant to take into account all areas of law, policy and practice that can help to prevent unnecessary detention.

Some ATD discussions have focused on the physical location of the individual, but this overlooks the many on-going, normal and positive practices of states who govern migration without resorting to detention in the first place. In such liberty is simply the norm, and our research finds that effective engagement is actually more effective—and also cheaper—than restrictive models or detention itself.

RESEARCH FINDINGS

This broad approach to ATD is based upon a 2011 study we completed looking at the ATD practices of 28 countries around the world, entitled *There are Alternatives*. In this study, we found more than 50 types of ATD being used effectively across all regions of the world. Particularly we found a number of effective screening mechanisms to help states identify who may be a risk to their safety or security and who can effectively be managed in the community.

And we found a number of very effective community-based care models: everything from intensive case management support, through to shelters for unaccompanied children, or minimal reporting requirements for self-sufficient individuals.

COMMUNITY-BASED ATD

So what, then, are community-based models? By community-based models, we mean all of the strategies, programs, and approaches that governments can take to effectively engage migrants in the migration process so that they do not have to resort to detention.

These include things such as:

- Initial screening and assessment tools
- Temporary visas and provision of documentation
- Provision of free legal assistance and interpreters
- Safe spaces to access information
- Shelters for at-risk migrants
- Case management for complex cases
- Ability to be self sufficient or to reside with one's own family or ethnic community

BENEFITS OF ATD

And when states implement community-based ATD, the benefits are many. I'd like to highlight three of the primary benefits of community-based ATD: cost, compliance and voluntary return.

Cost Savings - ATD cost less than detention, on average 80% cost savings with an annual daily cost of around \$100/day. A cost saving of 93% was noted in Canada and 69% in Australia on alternatives to detention compared to detention costs. In addition independent returns in the EU and Australia save approximately 70% compared to escorted removals.

Compliance - ATD maintain high rates of compliance and appearance, on average 90% compliance. A recent study collating evidence from 13 programs found compliance rates ranged between 80% and 99.9%. For instance, Hong Kong achieves a 97% compliance rate with asylum seekers or torture claimants in the community, and in Belgium, a pilot working with families facing removal had an 82% compliance rate. Examples in Canada, Australia and the US of both refused asylum seekers and irregular migrants had return rates of between 60% and 69%, while Sweden reported an 82% rate of return from the community among refused asylum seekers.

Voluntary return - ATD increase independent departure and voluntary return rates for refused cases, an average of 65% with up to 82% reported. Examples in Canada, Australia and the US of both refused asylum seekers and irregular migrants demonstrated return rates of between 60% and 69%, while Sweden reported an 82% rate of return from the community among refused asylum seekers.

KEY ELEMENTS OF SUCCESSFUL ATD

But in order to achieve these benefits, our research has identified a number of common characteristics or “key elements” of successful ATD. It’s important to note that these “key elements” were identified across a broad range of ATD models and across a diverse group of countries in both the north and south, and including countries of destination, transit, and complex mixed migration.

We found that ATD programs are most successful when:

1. There is a focus on early intervention;
2. Individuals are informed and feel they have been through a fair process;
3. They provide holistic case management with a goal of case resolution, not simply removal;
4. Any conditions imposed are not overly onerous; and
5. Individuals are able to meet their basic needs;

So how can states ensure that these key elements are implemented effectively?

POSITIVE ATD PRACTICES

Well, there are a number of positive practices that help, and I’ll briefly review three of the most important positive practices now. Specifically, I want to discuss the role of initial screening and assessment procedures; case management services; and the use of restrictions or conditions only when they are actually necessary.

Screening and assessment

To begin with, individualized screening and assessment are important tools in reducing unnecessary detention, as authorities can identify and assess levels of risk and vulnerability as well as the strengths and needs of each person. This in turn enables them to make informed decisions about the best way to manage and support an individual to resolve their migration status, and to make case-by-case decisions about whether detention is truly necessary. Our research identified four critical areas for assessment: legal obligations; identity, health and security checks; vulnerability; and individual case factors.

Case management

Next, most successful ATD programmes identified by the IDC are those that use constructive engagement rather than enforcement to ensure individuals comply and cooperate with migration authorities, thus reducing and eliminating the need for detention at all. Although such programs sometimes make use of residential facilities as part of a management system, the location of the individual is not of primary concern. Instead, the focus is on assessing each case and ensuring that the community setting contains the necessary structures and conditions that will best enable the individual to work towards a resolution of their migration status with authorities.

Case management can be understood as “a comprehensive and coordinated service delivery approach widely used in the human services sector to ensure a coordinated response to, and support of, the health and wellbeing of vulnerable people with complex needs.” Case managers form working relationships with individuals and families to empower, enhance their wellbeing and problem-solving capacities, resolve outstanding issues, provide information

on how to obtain services and resources in their communities, and work towards the protection of people who are not in a position to do so themselves. When used properly, case management can contribute to ensuring that the elements of successful ATD outlined above are in place. Satisfactory outcomes can therefore often be achieved without the imposition of onerous reporting or other restrictive conditions.

Limited use of restrictions or conditions

Finally, many governments that do utilize alternatives have focused on unnecessarily restrictive or intrusive options, such as onerous reporting and monitoring, or on different forms of restrictions on liberty, such as electronic monitoring and curfews. However, the IDC's findings indicate that overly onerous conditions actually have an adverse effect on compliance and successful case resolution outcomes. While conditions or restrictions might be imposed, they should only be applied—consistent with international law—when they are absolutely necessary, and when deemed to be proportionate in each individual case.

CONCLUSION

So in conclusion, there are alternatives to unnecessary immigration detention. By assessing the individual context, referring to the community programs and applying conditions in the community if required, governments can make informed decisions on individual placement, management and support requirements. ATD mechanisms can reduce the financial and human cost of immigration detention while meeting government and community expectations. And by involving civil society as well as the individuals at risk of immigration detention themselves, states that effectively implement ATD have shown better compliance outcomes while respecting rights of vulnerable refugees, asylum seekers and migrants.

Thank you.