

IOM ROAD MAP ON ALTERNATIVES TO MIGRATION DETENTION

TOOLS SERIES N°1



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IOM ALTERNATIVES TO DETENTION (ATD) SERIES

The IOM ATD Series is a series of tools aimed at guiding IOM staff and other interested stakeholders in conceiving, developing, implementing and advocating for alternatives to detention.

To uphold the human rights principle that migration detention should be a measure of last resort, States need to move towards alternatives to detention (ATD). International organizations and civil society organizations have the responsibility to support States' efforts to do so.

This series of tools builds on IOM's operational experience with various ATD elements, and also draws on tools and materials developed by other key stakeholders.

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DISPLACED KIDS AT IOM PSYCHOSOCIAL CENTER AT HAJ ALI EMERGENCY SITE, IN SOUTH OF MOSUL, IRAQ. © IOM

INTRODUCTION

This Alternatives to Detention (ATD) road map outlines a non-prescriptive process to progressively develop migration governance systems that prevent the unnecessary detention of migrants through the use of alternative options in the community. While the road map has primarily been conceived as a tool to guide the work of IOM staff, other stakeholders working on alternatives to detention in the context of migration may also find it useful. Today, there is a global consensus that effective alternatives to detention have better outcomes in terms of human rights and well-being of migrants, compliance with immigration procedures and costs, when compared to immigration detention. It is, therefore, in the interest of both States and migrants that alternatives to detention are pursued.

This ATD road map was partly informed by the findings and main learning points of a mapping of IOM projects on alternatives to detention carried out since 2014.

The ATD road map broadly reflects the pathways for change some of the identified projects have taken or are planning to take. The road map also relies on some external material.¹

IOM understanding of ATD and of the various elements that are relevant to effective ATD interventions are outlined in [IOM Quick Guide on Alternatives to Detention](#). IOM defines ATD as: “Any legislation, policy or practice, formal or informal, aimed at preventing the unnecessary detention of persons for reasons relating to their migration status.” The broadness of IOM definition underscores a holistic understanding of immigration detention as embedded in a larger, complex, migration governance system, which is composed of multiple laws, policies, processes and operational areas. Correspondingly, the road map encourages a systemic change process that minimizes the use of detention to a last resort by fostering changes in a number of different areas of migration governance.

¹ See for example *The International Detention Coalition, There Are Alternatives (2015)*, and *The Australian Experience (2009)*; *UNHCR: Alternatives to Detention Self-study Modules (2017)*; *European Programme for Integration and Migration (EPIM): Alternatives to detention - from theory to practice: Evaluation of three engagement-based alternative to immigration detention pilot projects in Bulgaria, Cyprus and Poland (2018)*; *Council of Europe, Alternatives to immigration detention: Fostering effective results - Practical guidance, 1st preliminary draft, September 2018*.

The road map shows that a diverse range of interventions in different areas of the migration governance system could be pursued concurrently or consecutively to achieve specific objectives with respect to ATD. Such interventions often address multiple areas of the migration governance system simultaneously and go hand in hand with other interventions.

In reality, prioritization according to context is necessary. This can act as an entry point for the road map, initiating the incremental process of change towards a system that will increasingly rely less on detention. It could be a question of prioritizing a particular group for whom ATD should be used, or a particular problematic issue within the migration governance system. IOM's work in Zambia, for example, centred on developing a national referral mechanism and a screening and assessment process and appears to have had some impact on Zambia's detention practice, although it was not ostensibly framed as ATD.

The road map presupposes willingness on the part of States and other actors to engage with ATD and work collaboratively. Trust of the governments or other actors and confidence in ATD can also be achieved over time, as they become more familiar with ATD and the options proposed. To maintain coherence and facilitate actions among different stakeholders, the road map should be conceived as a collective endeavour which brings together different strengths, expertise and resources that are available.

Although the road map contains a sequence of steps, there is no one-size-fits-all approach. This is why it is broad in scope so that it can be adapted to each national or regional context and further developed in more detail to reflect the specific needs of each national or regional reality.

Involvement of other stakeholders and the scope of ATD

Throughout the road map, it is necessary to identify stakeholders and partners who should be involved in ATD process. Here, applying a “whole-of-government, whole-of-society” approach is highly recommended: it is not only compatible with the IOM Migration and Governance Framework and the Global Compact for Safe, Orderly and Regular Migration, but also necessary to facilitate progress towards ATD. Relevant stakeholders can also join at any point of the road map, though early involvement of all relevant actors will enhance chances of success and enables identification of the best solutions available. Nonetheless, new stakeholders may be identified as discussions mature. A non-exhaustive list of potential stakeholders includes:

- relevant government departments
- judiciary
- local civil society organizations
- local authorities
- service providers (health, education, housing etc.)
- migrant and diaspora communities
- migrants with experience of detention
- ombuds person offices
- local communities
- national human rights institutions
- UN Organizations
- international NGOs

The road map can also be used in instances where interest in ATD is triggered by a protection concern for a specific group of vulnerable migrants. ATD, however, is not exclusively used for vulnerable populations. When ATD work initially begins this way and the implemented ATD proves to be successful, it can open the possibility of extending the ATD to other migrants in vulnerable situations and, in the longer term, to irregular migrants in general.

IOM's ATD Road map

Step 1 – Conduct baseline research by gathering and analysing information and data on immigration detention in the country/region to develop a shared understanding of how and why immigration detention is used in the migration governance system.

Step 2 – Conduct context analysis for each element of ATD to identify formal and informal gaps, strengths and challenges and draft a list of possible interventions.

Step 3 – Decide on priorities and objectives and develop a national or regional action plan based on the intelligence gathered in Step 1 and Step 2. This could include one or more ATD pilots.

Step 4 – Undertake regular monitoring and evaluation to improve and learn from the change process and identify next steps.

Step 5 – Scale-up successful ATD.

Step 1 – Baseline research on immigration detention in the country/region

Conduct baseline research by gathering and analysing information and data on immigration detention in the country/region to develop a shared understanding of how and why immigration detention is used in the migration governance system, including:

- general migratory context
- scale of detention
- reasons for detention in law and in practice
- screening/assessment procedures
- process surrounding detention in law and in practice (including procedural safeguards)
- registration/lack of registration in detention centres
- maximum detention period set in law/respected in practice (i.e. automatic release)
- disaggregated data of detained population (which can potentially also provide an indication of population at risk of detention)
- costs of detention

It is also important to pay attention to States' motivations for using detention. Understanding their perspectives and overall migration governance strategies and priorities is crucial in identifying potential barriers to ATD development and implementation that lead States shifting away from detention towards community options. During this stage, all partners should become familiar with the latest ATD developments at the global level and reflect on which ATD practices are likely to be the most effective.

Step 2 – Existing alternatives to detention context analysis

Conduct context analysis for each element of ATD (as set out in the working guidance) to identify formal and informal gaps, strengths and challenges and draft a list of possible interventions.

This exercise should be conducted with stakeholders, to facilitate a thorough examination of the context and to tap into a broad range of perspectives and experiences on the topic.

A collective discussion at this stage allows a preliminary, but robust, analysis of possible interventions as well as the forging of cooperative relationships. For example, it is possible that some stakeholders have already completed or are contemplating such interventions. Where interventions have already been completed, their outcomes need to be considered, including whether they should be continued, expanded or modified. Equally, if interventions are in process, duplication of efforts can be avoided and other stakeholders encouraged to support in a constructive manner.

The outcome of this assessment may well be that the national context does not allow for stand-alone ATD programmes (e.g. ATD pilots) that directly reduce States' use of detention to progress. In this case, interventions that are more generic in nature and not explicitly framed as ATD could be prioritized. This could include, for example, developing effective screening and referral mechanisms or developing or increasing accommodation options for vulnerable migrants. These interventions can lay foundation for achieving the longer-term aim of progressing towards ATD at a later stage.

IOM definition of ATD : "Any legislation, policy or practice, formal or informal, aimed at preventing the unnecessary detention of persons for reasons relating to their migration status"

ATD elements	Suggested guiding questions to identify formal and informal gaps, strengths and challenges in the system	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"> - Does the law establish that detention should be used as a last resort? If so, does the law provide for an individualized assessment of whether detention is required in a given case? - Does the law require the detention of all or all of a certain category of migrants? If so, are vulnerable migrants exempted? - Does the law provide for alternatives to be considered before detention and at reviews of detention decisions for all types of detention, including short periods of detention for the purpose of identification? - Does the law specify maximum length of detention and automatic release from detention after the expiry of the maximum period? - Is the law adhered to in practice? Is it implemented systematically? 	<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 alternatives to detention are always considered first for all migrants, and for children and other vulnerable migrants in particular. - Ensuring presumption against the detention of certain groups, notably of children, is enshrined in law and practice and alternatives are always considered when a decision to detain is adopted. - Developing a mechanism for securing release for 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.

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ATD elements	Suggested guiding questions to identify formal and informal gaps, strengths and challenges in the system	Interventions that support alternatives to detention
	<ul style="list-style-type: none"> - Is there a regular detention review process ? - Are decision makers aware of available alternatives? Are they willing to implement them in practice? - Do migrants have access to legal advice and/or representation to challenge their detention for all types of detention including upon entry? - Does any of the above (and more) take place informally? 	<ul style="list-style-type: none"> - Training for officials, decision makers and other stakeholders on relevant legal standards, vulnerabilities, release mechanisms and their legal framework.
 <p>IDENTIFICATION, ASSESSMENT AND DECISION-MAKING</p>	<ul style="list-style-type: none"> - Is there a screening and assessment mechanism? How effective is this? - What referral pathways exist for alternatives options, with an emphasis on community-based options? - Which groups are considered to be vulnerable? Are vulnerable individuals identified effectively? Are there specific authorities in charge of vulnerable individuals/migrants in vulnerable situations different from immigration authorities? 	<ul style="list-style-type: none"> - Developing or improving screening and assessment of individual migrants that enables authorities to make informed decisions about management and placement options. - Establishing referral pathways that link screening and assessment mechanisms with community options, restrictions to liberty when necessary, and service providers.

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ATD elements	Suggested guiding questions to identify formal and informal gaps, strengths and challenges in the system	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"> - What are the existing community-based options (including those that are not targeting migrant populations)? Living independently in flats and houses, in open, shared, accommodation centres, in hotels, being hosted by families? Who is involved in managing these options? Who are the beneficiaries? - What case management support is available for such community options? Who provides it? - How can community-based options be modified, strengthened, scaled-up, replicated, extended to support different groups? 	<ul style="list-style-type: none"> - Creating or strengthening reception or longer-term accommodation and support arrangements in the community, including for vulnerable migrants. - Identification of resources required to strengthen, modify, scale-up, replicate existing options and minimum standards to cater for different groups, in different locations (for example, partnership work, capacity-building, training, financial resources, shared SoP) - Developing an operational plan or standard operating procedures for community options.
 <p>LIMITED RESTRICTIONS ON FREEDOM OF MOVEMENT WITH LEGAL REVIEW</p>	<ul style="list-style-type: none"> - What mechanism exists for release from detention? Is it established in law? How is it implemented in practice? How is it implemented for vulnerable individuals? - What placement options are available for individuals whose detention is no longer justified? If none are available, is this a factor delaying the release process? - For those who are released with conditions, what placement options are available? 	<ul style="list-style-type: none"> - Developing non-custodial alternative measures to be applied when necessary. <p>These measures could include semi-open centres, registration of residence requirement, reporting mechanism, designated residence system, bail, bond and surety options, supervision system.</p> <p>The list is not-exhaustive and could be applied in combination with case management support.</p> <ul style="list-style-type: none"> - Develop non-custodial alternatives adapted to families with children as well as to unaccompanied or separated children.

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ATD elements	Suggested guiding questions to identify formal and informal gaps, strengths and challenges in the system	Interventions that support alternatives to detention
 <p>CASE MANAGEMENT</p>	<ul style="list-style-type: none"> - Is case management available for existing placement options? Who provides it, for whom and for what purpose? Is case management effective or does it need to be improved? - Is there awareness and understanding of case management? - Are case managers adequately trained? - Is there an established case management protocol and guidance? - Can case management be deployed to strengthen community placement options? 	<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 them explore all options to remain in the country legally or to leave with dignity, informing them of consequences of non-compliance.
 <p>CASE RESOLUTION OPTIONS</p>	<ul style="list-style-type: none"> - What case resolution options are available? - Can they be widened? - Are there realistic case resolution options, particularly for stranded migrants? 	<ul style="list-style-type: none"> - Increasing options for regularization, such as refugee status, temporary visas, various forms of admission to the country (through resettlement, humanitarian admission, humanitarian visas, etc.).

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ATD elements	Suggested guiding questions to identify formal and informal gaps, strengths and challenges in the system	Interventions that support alternatives to detention
Cross-cutting measure		
 <p>MINIMUM STANDARDS AND LEGAL SAFEGUARDS</p>	<ul style="list-style-type: none"> - Are minimum standards met (respect of human rights, basic needs, formal status and documentation, legal advice and interpretation, fair and timely case resolution, regular review of decisions, etc.) and in what way are they helping (or hindering) individuals to regularly engage with the system and with relevant procedures – placing them at risk of / protecting them from detention? 	<ul style="list-style-type: none"> - Formal status and documentation. - Fair and timely case resolution. - Regular review of restrictions to liberty. - 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 human rights of all individuals, ensuring that basic needs can be 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 timely appointed.

Step 3 – Develop a national/regional action plan on alternatives

Decide on priorities and objectives and develop a national or regional action plan based on the intelligence gathered in Step 1 and Step 2.

Setting priorities and objectives requires that the results of baseline research and context analysis be considered in order to identify the most pressing problems and key objective(s).

It is important that a range of relevant stakeholders meaningfully participate in this process, in particular, migrants themselves. Furthermore, in difficult contexts, where the collaboration with the government is challenging and building government trust is a long-term endeavor, partnering with other reliable stakeholders in proposing ATD options can also help increase the credibility of the proposed intervention and possibly also diluting IOM's responsibility in case of challenges in the ATD implementation/compliance rates.

There is often an urgency to provide protection to vulnerable groups, such as victims of trafficking and migrant children as some of the mapped projects demonstrate. Therefore, it is likely that a certain population may be identified as an initial target population for ATD and this might become an overall objective. In other contexts, it might be preferable to develop a broader plan for systemic implementation of ATD for all eligible groups.

Step 3 can entail the following activities:

- a. Choose objective/s based on the analysis of data gathered during Step 1 and Step 2. The analysis conducted earlier should identify strengths, gaps and challenges and the plan should include interventions that address these issues.
- b. Create a national or regional action plan, identify timeframe and secure required resources. This could include, for example, running a small scale ATD pilot. At this stage, other new stakeholders might be identified as crucial players in order to achieve the objective.
- c. Objectives could be divided into short-term, medium-term and long-term objectives, depending on the nature and complexity of interventions chosen.
- d. Develop key advocacy messages and talking points.

- e. Agree on a mechanism for implementing the plan, information and intelligence sharing. Identify a focal person / organization to coordinate them.
- f. Agree on key performance indicators, including cost, compliance, wellbeing factors and set up a monitoring and evaluation framework.

ATD pilots?

It has been frequently observed that many States lack confidence to move away from enforcement-model of detention and move towards engagement-model of community options. To sensitize them about the potential benefits of ATD and build greater confidence in community options, a small scale pilot is often recommended as a strategy for change. ATD pilots therefore could be one of the tools utilized to start an incremental shift towards a system that uses detention only as a last resort. ATD pilots also have practical benefits: they can be used to test a model of a chosen community-option, they give implementers valuable opportunities to gain hands-on knowledge of the process and specialist skills such as case management and they could be used to develop standard operating procedures and improve them based on ongoing monitoring and evaluation, before they can be rolled out more widely.

This is still a relatively new area of work for States, civil society and international organizations. Capacity-building and technical assistance are likely to be needed for ATD pilots to achieve best outcomes, covering topics such as: understanding how various ATD elements work together (see flow chart below), effective case management, developing a referral mechanism, developing a network of various services that support migrants on the pilots, assessing ATD pilots' potential community impact, etc.

IOM project in Libya provides an example of the process of setting up ATD pilot as one of the ways to move towards a more systematic approach to ATD. IOM Libya operationalized a small ATD pilot in 2018. This pilot was led in collaboration with local Libyan partners and was a safe way to explore this approach and test a release and referral process, case management support and facilitating case resolution in the community in a safer and more stable environment. Standard Operating Procedures were developed, and a local NGO started the pilot in September 2018. Although its operation had to be terminated for security reasons, IOM Libya gained valuable understanding of the process involved.



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ii. Moving from ATD Pilots to a more comprehensive approach to ATD

The ATD flow chart³



If ATD pilots have proven successful, the option to move towards a more systematic approach to ATD can be considered. In this respect, it should be noted that successful ATD systems are usually the ones that look into implementing various elements of ATD concurrently.

The flowchart aims to visually depict how the various types of alternatives to detention can be used together to create a comprehensive system aimed at enhancing the effectiveness of alternatives to detention. It should be read in conjunction with the explanation of the interventions required in the table provided under Step 2 of the road map.

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 decision-making and action, as

well as possibly parliamentary action if legislation amendments are required. While these processes are underway, other operational interventions can already 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, in particular, represent the core part of what ATD are and, as noted above, are usually also the focus of ATD pilots. Non-custodial restrictions to liberty can be applied when necessary, if provided by the applicable legislation. Case management and minimum standards/legal safeguards are considered as applicable throughout the process and are often critical to make the ATD successful. Lastly, case resolution is represented as the final line 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.



ROHINGYA REFUGEES ARRIVE AT THE AJUMANPARA BORDERPOINT BETWEEN BANGLADESH AND MYANMAR. ©IOM 2017

Step 4 – Monitoring and evaluation

Undertake regular monitoring and evaluation to improve and learn from the change process and identify next steps. Regular monitoring and evaluation of progress enables adjustments to workplan and modalities, troubleshooting and learning from what is and is not working. Evidence gained from monitoring and evaluation can also shape future advocacy, messaging, policy proposals and implementation. For example, IOM Indonesia's Community Accommodation's implementation practice evolved and changed as they were able to identify ways to improve it.

The overall aim of ATD of preventing unnecessary detention should guide monitoring and evaluating. Outputs, outcomes and impact should be analysed in terms of whether they contribute to this overall aim. This is not a simple task and monitoring and evaluation of ATD is still an evolving area. [UNHCR Beyond Detention Toolkit Guiding Questions for the assessment of Alternatives to Detention](#) (May 2018) and the International Detention Coalition, [Alternatives: Learning What Works & Why](#) (September 2019) are useful resources in this respect.

There are many issues to contend with when monitoring and evaluating ATD's or ATD pilots' impact on preventing unnecessary detention. They should be taken into account when establishing a monitoring and evaluation framework.

- It is important to consider a range of quantitative data (such as number of migrants released from detention or percentage of decrease in the use of immigration detention) and qualitative data (such as narrative accounts of changes in attitudes, perception and experience).
- If there is an intention to contribute towards the ongoing discussion on benefits of ATD, monitoring and evaluation should capture ATD's impact on human rights and well-being of migrants, compliance with immigration procedures and costs, when compared to immigration detention.

Step 5 – Scale-up successful ATD

If ATD are successful, scaling them up should be considered. The following steps can be taken:

- a. Gather information about anticipated size of other cohorts who can also benefit from ATD.
- b. Calculate possible costs of 1) setting up and running an alternative to detention pilot for each cohort and 2) scaling-up and maintenance costs.
- c. Where possible and desirable, calculate comparative costs savings that are generated by replacing detention with alternatives, including from reduction of the detention estate.
- d. To achieve cost-neutrality, such savings can be reinvested in community-based alternatives to detention.

For ATD to have continued effect in preventing unnecessary detention, they must (eventually) become formal part of States' migration governance system, for which the State is the primary responsible. It is not realistic for IOM or any other actor other than the State to be exclusively or even predominantly responsible for their implementation in the long-term. This question of long term sustainability should be born in mind at every stage of the road map and is one which may be particularly challenging to address in developing States, where the scope and effectiveness of the interventions may depend on availability of donor's funding.

