

THERE ARE ALTERNATIVES

A supplement to the handbook for preventing unnecessary immigration detention

This handbook is designed for legislators, policy makers and civil society wanting to know more about alternatives to immigration detention.

International human rights laws and standards make clear that immigration detention should be used only as a last resort, in exceptional cases after all other options have been shown to be inadequate in the individual case. However, there is limited practical guidance available over how this can be achieved systematically.

The International Detention Coalition's (IDC) *Handbook for preventing unnecessary immigration detention* aims to address this gap. This handbook identifies and describes a range of mechanisms to prevent unnecessary detention and outlines a number of possible alternatives to detention. The pragmatic approach adopted in this handbook is shaped by the legitimate migration management concerns of governments. These concerns include

compliance with release conditions, timely case resolution and cost, while minimizing harm and upholding individual rights and dignity.

Drawing on a number of international examples – from countries such as Argentina, Belgium, Canada, Hong Kong, New Zealand, the Philippines, Spain, Sweden and the United Kingdom – the handbook outlines a new approach to alternatives to detention: a 5-step conceptual and practical framework, called the **Community Assessment and Placement (CAP) model**.

The policies described in this handbook, as outlined in the CAP model, are currently being implemented in a range of countries to enforce immigration law through mechanisms that do not rely heavily on detention. **Such targeted enforcement provides a sophisticated response to the diverse population of irregular migrants and asylum seekers within national territories.**



KEY FINDINGS OF NEW RESEARCH

The research¹ focused on three key areas to assess the success of any alternative to detention program; compliance, cost and health and wellbeing. A number of identified benefits for government, the community and the individual, achieved by adopting preventative mechanisms and alternatives to detention, include:

Cost less than detention

For example: 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.

Increase voluntary return and independent departure rates

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.

Maintain high rates of compliance and appearance

For example: 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.

Reduce wrongful detention, litigation, overcrowding and long-term detention

For example: Wrongful detention has led to litigation, costly compensation and public criticism in a range of countries including Australia, South Africa and the UK. For instance, court rulings in Hong Kong required the government to demonstrate the reasons for detention, leading to a number of policy changes including the introduction of individual case assessment.

Improve client health and well being, integration outcomes and respect human rights obligations

For example: Appropriate management in the community has been found to be more likely to uphold human rights and support wellbeing, improving ability to contribute fully to society if residency is secured or to face difficult futures such as return.

The research found asylum seekers and irregular migrants rarely abscond while awaiting the outcome of a status determination or other lawful process. They are better able to comply with liberty or release conditions, or a negative final decision if they: **can meet their basic needs in the community; if they have been through a fair and efficient determination process; if they have been informed through the process, including legal advice and have been provided advice on all options to remain in the country legally and, if needed, supported to consider sustainable avenues to depart.**

INTRODUCING CAP

Common factors that contribute to successful community-based programs include understanding the diversity within the population of asylum seekers and irregular migrants, as well as understanding those contexts that promote good outcomes for a range of stakeholders. Individual case and community assessment assists in making informed decisions on appropriate placement, the setting of conditions if required, and the provision for basic needs, legal advice and individual case management while awaiting a final outcome. These factors are part of a 5-step conceptual and practical framework, called the Community Assessment and Placement model, which prevents and reduces the likelihood of unnecessary detention and effectively manages individuals in the community.

THE CAP MODEL

Community Assessment and Placement model

DECISION MAKING PROCESS



Not detain
Open accommodation

Conditional release
Alternatives to detention

Detain
Last resort with review

PLACEMENT OPTIONS

1. R.Sampson, G.Mitchell and L.Bowring, *There are alternatives: Handbook for preventing unnecessary immigration detention*; IDC, 2011.

HOW TO USE THE CAP MODEL

The Community Assessment and Placement model has been designed as a framework to assist governments in their exploration and development of alternatives to detention.

While governments deal with detention and enforcement differently due to specific political systems and differing asylum seeker and irregular migration experiences, there may be mechanisms within the model that work for an individual country.

The CAP model can assist in framing discussions and providing a shared understanding of some of the issues, while the practical examples of current implementation demonstrate that reducing detention through community management is achievable and beneficial for a range of parties. Although designed in this way, these five mechanisms correspond to the steps that can be taken in

individual cases subject to or at risk of detention, to ensure detention is only applied as a last resort in exceptional cases.

For example: *If authorities screen out an individual from detention at Step 2, then the individual is not detained and can be placed in an open accommodation setting. In most cases the first three steps will be sufficient to ensure effective compliance. However, if individual and community assessments identify serious concerns, then release into the community may only be possible through an alternative to detention placement involving additional conditions, as shown at Step 4. Re-evaluation in each case occurs at certain points, such as after a negative decision on a status application or when a set review period is reached for people in detention. It is not intended to imply that most cases end in detention.*

Use the Community Assessment and Placement model for targeted enforcement; to ensure detention is not wrongful and used only where individually assessed as needed. CAP reduces the financial and human cost of immigration detention and maximizes management and case resolution in the community.

Step 1.

Presume detention is not necessary: CAP operates on the basis of a presumption against detention, and is a safeguard against arbitrary detention and ensures that detention is applied only as a last resort. This includes a presumption against detention, detention as a last resort and a mandate to explore alternatives.

Step 2.

Screen and assess each case individually: Understanding population's subject to or at risk of immigration detention through individual screening and assessment assists in the identification of needs, strengths, risks and vulnerabilities in each case. Screening includes legal obligations, identity, health and security checks, vulnerability and individual case factors, including community ties.

Step 3.

Assess the community context: Assessment of the community context in order to understand the individual's placement in the community and to identify any support mechanisms needed so that the person remains engaged in immigration proceedings. This includes ability to meet basic needs, legal advice, documentation and case management.

Step 4.

Apply conditions to release if necessary: Further conditions such as reporting requirements or supervision may be introduced to strengthen the community setting and mitigate identified concerns. This includes individual undertakings, monitoring, supervision, intensive case resolution and negative consequences for non-compliance.

Step 5.

Detain only as the last resort in exceptional cases: If conditions are shown to be inadequate in the individual case, detention in line with international standards including judicial review and of limited duration may be the last resort.

The CAP model is unique as it combines mechanisms to prevent unnecessary detention with strategies for effective and humane case resolution in the community.

STAGES IN EXPLORING AND IMPLEMENTING ALTERNATIVES AND PREVENTING UNNECESSARY DETENTION

Stage 1: Analyse the context

- Assess current legislation, policy and practice against international legal standards and identified good practice examples relating to the detention of refugees, asylum seekers and migrants
- Identify what available preventative mechanisms or alternatives exist but which may be underutilized
- Explore what alternatives can be tested or expanded without changing existing legislation
- Identify policy gaps and legislation which may require revision to ensure detention is a last resort.

Stage 2: Assess the population

- Undertake an analysis of populations subject to or at risk of detention
- Identify particularly vulnerable populations to prioritize in pilot or national programs.

Stage 3: Explore relevant models

- Undertake a study visit to countries already implementing preventative mechanisms and alternatives to detention
- Undertake research studies and an analysis of available local and national community services and placement options.

- Organize an expert roundtable and forums to explore preventative mechanisms and alternatives relevant in the national and local context.

Stage 4: Build partnerships

- Develop partnerships with departments and agencies with expertise in community services, case management and working with complex cases, such as health, child protection and family services
- Identify international organizations, NGO and civil society groups to partner with, including service and legal providers and religious groups.

Stage 5: Start implementing

- Develop local and national pilots and programs in partnership with government agencies, NGO service providers and international organizations
- Undertake policy development and legislative reform on immigration detention and the implementation of preventative mechanisms and alternatives to detention
- Monitor and evaluate the effectiveness of these programs and share learnings and outcomes with relevant national and international stakeholders.

HOW THE INTERNATIONAL DETENTION COALITION CAN ASSIST:

- The IDC provides training on alternatives to immigration detention and preventative mechanisms
- The IDC provides technical, programmatic, policy and legal assistance
- The IDC can connect to regional, national and local NGOs and civil society groups, including legal and service providers.

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International Detention Coalition

Immigration detention is a growing phenomenon of modern governance as governments strive to regulate growing cross-border migration and limit the number of migrants who do not have legal status on their territory. Detention capacity continues to expand despite well-established concerns that detention does not deter irregular migrants; that it interferes with human rights; and is known to harm the health and wellbeing.

The International Detention Coalition brings together civil society organizations and individuals from more than 50 countries across the globe working together to improve the human rights of detained refugees, asylum seekers and migrants. The Coalition undertakes research, training, advocacy and campaign initiatives, with a focus on children in detention, conditions and monitoring of places of detention and promoting the use of alternatives to detention.

To find out more or download the handbook visit: www.idcoalition.org or email: info@idcoalition.org