

Concept Note

Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons

11-12 May 2011

The Universal Declaration of Human Rights provides that *everyone* has the right to liberty and to protection from arbitrary detention. This normative standard flows from a recognition of the drastic impact of detention on the individual human being. While international law allows that administrative immigration detention can legitimately be applied in certain individual cases, it is widely held that such a deprivation of liberty should be exceptional and strictly as a measure of last resort. This normative standard is underpinned by a growing body of jurisprudence at international and national levels that sets limits on the legality of immigration detention on both substantive and procedural grounds. Furthermore, this jurisprudence has consistently clarified that less coercive means of achieving migration management objectives need to be considered, in order to satisfy the necessity and proportionality requirements of the right to liberty. Accordingly, States are called upon to first explore the use of alternative, non-custodial measures.

An increasing number of governments have begun to implement non-custodial alternatives to detention (ATD). Some governments have implemented community release or bail programmes across the board for all types of migrants; others have special programmes for families or children; while others are tailored to asylum-seekers. A variety of countries have legislated for at least some form of alternative to detention, such as reporting requirements, bail or designated residence. Others have piloted or systematized more comprehensive case management and community supervision models with individuals living freely in the community.

The latest research indicates that implementing ATD models can result in significant benefits for the efficient functioning of migration policies. For instance, in many examples less than ten per cent of asylum applicants as well as persons awaiting deportation disappear when they are released to proper supervision and facilities. In other words, 90 per cent or more of persons comply with the legal requirements relating to their conditions of release. In addition, alternative options present significant cost savings to governments, and ATD programmes that offer advice on the full spectrum of possible legal avenues to remain – as well as to leave - also enjoy higher voluntary return rates than those that do not.

The human rights and social benefits of alternatives to detention are also significant. It is well documented that incarceration, particularly when it is prolonged, can cause severe psychological and physical health problems, which have long-term costs – both for individuals and for communities. In the long-term, practices of detention can also have a high social cost, in terms of increasing the difficulty for those ultimately accepted to remain to adapt to their new country, as well as in terms of increasing resistance to voluntary return for those not granted asylum or other legal residence status.

The roundtable is intended to build on meetings on ATD held during the 2009 UNHCR Executive Committee, the UNHCR-organized East Asian ATD Roundtable held in Seoul in April 2010, a Regional Consultation on Detention of Asylum Seekers and Refugees in Bangkok in March 2010 and meetings held during the 12th and 13th Sessions of the Human Rights Council.

Objectives

Against this background, the United Nations High Commissioner for Refugees (UNHCR) and the Office of the High Commissioner for Human Rights (OHCHR) are hosting a two-day roundtable to explore issues related to alternatives to detention of asylum-seekers, refugees, migrants and stateless persons. The principal objectives of the roundtable are to:

- Situate the search for alternatives to immigration detention in the contemporary context, and discuss the human rights impacts of such measures.
- Draw lessons from State practice and empirical research in order to encourage the exploration and establishment of ATD models.
- Exchange practical advice on issues such as screening, assessment, community and case management, legal provision, return assistance, and documentation.
- Identify areas for cooperation and the establishment of specialized partnerships.

Participants

The roundtable will bring together representatives from States, OHCHR, UNHCR and other international organizations, human rights mechanisms, national human rights institutions, and national and international non-governmental organizations.

Location and dates

The roundtable will take place at the International Labour Organization in Geneva, 11-12 May 2011. An agenda and background documentation will be shared in due course with confirmed participants.

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