

**ANNUAL CONSULTATIONS WITH NGOs
11 – 13 JUNE 2013 - International Conference Center Geneva**

THEMATIC SESSION

BACKGROUND PAPER

Immigration Detention – Finding Alternatives

Thursday 13 June 2013, 09h00 – 10h45 - Room 4

Irregular migration poses a challenge to the efficient functioning of asylum systems in many countries. States are increasingly confronted with the complex phenomenon of mixed population movements, including smuggling and trafficking in persons, and the multiple push and pull factors driving such movements. As governments have attempted to respond to this challenge, detention policies and practices have been expanded; however, they have not always differentiated sufficiently between the special situation of persons in need of international protection and the broader category of irregular migrants.

In this context, detention continues to affect thousands of men, women and children within the mandate of UNHCR. At times, their detention falls below international standards, may lack adequate due process safeguards, and be for prolonged periods. Furthermore, the negative and at times severe physical and psychological consequences of detention are well-documented, yet appear to have had limited impact on some national detention policy-making. A study by the Jesuit Refugee Service, for example, reveals that regardless of whether asylum-seekers present with symptoms of trauma at the start of their detention, within a few months, they show such symptoms. The research concludes that everyone is vulnerable in detention.¹

This is a worrying trend, not least because the latest empirical research shows that not even the most stringent detention policies deter irregular migration or discourage persons from seeking asylum. In fact, forthcoming research commissioned by UNHCR suggests that many asylum-seekers are unaware of the detention policies of their destination countries, or have little or no say about their journey or their final destination.²

Seeking asylum is not an unlawful act³ and as such, even those having entered or remained in the territory without authorization, are protected from penalization, including

¹ Jesuit Refugee Service, *Europe: Becoming Vulnerable in Detention*, June 2011, available at: <http://www.unhcr.org/refworld/docid/4ec269f62.html>

² Cathryn Costello and Esra Kaytaz, research paper on alternatives to detention, UNHCR Legal and Protection Policy Research Series (forthcoming 2013); See also International Detention Coalition, *There are Alternatives, A Handbook for Preventing Unnecessary Immigration Detention*, 2011, available at: <http://idcoalition.org/cap/handbook/>.

³ See Guidelines, paragraph 11. For a review of the various legal frameworks impacting immigration detention, see International Detention Coalition, *IDC Legal Detention Framework guide*, 2011, available at: <http://idcoalition.org/legal-detention-framework-guide/>.

penalization in the form of detention or other restrictions on their movement. Article 31 of the 1951 Convention relating to the Status of Refugees requires States to amend – and to implement – laws to ensure that no person who is entitled to benefit from Article 31 is subject to such penalties⁴.

In 2012, UNHCR released new *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention* (2012), which were launched at the 63rd session of the Executive Committee. They set out the international legal framework governing detention in this context. International human rights and refugee laws and standards require that detention of asylum-seekers should be used only as a last resort, in exceptional cases and after all other options have been shown to be inadequate in the individual case. In other words, where a government intends to detain a person for immigration-related reasons, it needs to first consider and pursue Alternatives to Detention (ATD).

In this context, an increasing number of governments have implemented or are exploring ATD and recent research highlights their benefits, including that they reduce the financial and human costs of detention.⁵

Alternatives to Detention encompass any legislation, policy or practice that allows asylum-seekers to reside in the community, possibly subject to a number of conditions or restrictions on their freedom of movement, and by outlining the international rights framework that applies in such situations. There are a wide range of Alternatives to Detention⁶ in national practice, from registration and/or reporting conditions, supervision, release on bail or bond, community release, designated residence, to case management models. or more burdensome measures such as electronic tagging or home curfew. Some of these are used in combination and some impose greater restrictions on liberty or freedom of movement than others, yet all need to be governed by law and regulations and be subject to human rights standards. Furthermore, Alternatives to Detention should not be used as alternative forms of detention.

There is much space for including ATD into the migration management process. In the field of implementation, the policies of many industrialised countries, for example, are out of step with the latest research. Evidence shows that ATD – for example, reporting requirements, designated residence or supervision in the community – work in practice. Research indicates that asylum-seekers consistently comply with conditions of their release in over 90 per cent of cases.⁷

This session on “Immigration Detention – Finding Alternatives” aims to highlight that there are various ways to address irregular migration – other than through unnecessary and harmful detention – that take due account of government concerns around irregular

⁴ Asylum-seekers may, for example, be unable to obtain the necessary documentation prior to their flight because of their fear of persecution and/or the urgency of the departure.

⁵ International Detention Coalition, *There are Alternatives, A Handbook for Preventing Unnecessary Immigration Detention*, 2011, available at: <http://idcoalition.org/cap/handbook/>.

⁶ See Guidelines, Annex A.

⁷ A. Edwards, *Back to Basics: The Right to Liberty and Security of Person and “Alternatives to Detention” of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants*, UNHCR Legal and Protection Policy Research Series, PPLA/2011/01.Rev.1, April 2011; International Detention Coalition, *There are Alternatives, A Handbook for Preventing Unnecessary Immigration Detention*, 2011, available at: <http://idcoalition.org/cap/handbook/>; United Nations, Report of the Special Rapporteur on the Human Rights of Migrants, François Crépeau, A/HRC/20/24, 2 April 2012, available at: <http://www.unhcr.org/refworld/docid/502e0bb62.html>.

migration and misuse of asylum systems, while respecting the particular circumstances and rights of asylum-seekers and others. The session will in particular provide an overview of UNHCR's Detention Guidelines, share the latest research in this area conducted by the International Detention Coalition (IDC) and UNHCR, and provide a platform to discuss advocacy strategies around these issues, such as building partnerships and networks, information-gathering and sharing, research dissemination, good practices promotion, campaigning, litigation, training and capacity-building, and monitoring.

Individuals and groups are invited to share examples of advocacy around ATD, and how to identify and seize upon advocacy opportunities.

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