IMMIGRATION
DETENTION
MONITORING

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MODULE 3 **THE IMMIGRATION DETENTION MONITORING STRATEGY**

UNHCR
The UN Refugee Agency

LEGEND

✓ **LEARNING OBJECTIVES**

👥 **REFLECTION ACTIVITY**

📖 **SUPPLEMENTARY READING**

👤 **SELF-ASSESSMENT**

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LEARNING OBJECTIVES AND MODULE STRUCTURE

BY THE END OF THIS MODULE, YOU WILL BE ABLE TO:

✓ Describe the elements of a detention monitoring strategy;

✓ Draft a detention monitoring strategy; and

✓ List advocacy strategies to support the detention monitoring strategy developed at country level

Please read the following chapters carefully and complete the short assignments.

This module should take you around 45 minutes.

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Chapter 1

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WHY A DETENTION MONITORING STRATEGY IS NEEDED

In Module 1 we examined the various reasons for immigration detention monitoring and established that monitoring is not an aim in and of itself. Instead, monitoring is a protection tool that can help bring change at legislative, policy and practical levels:

LEGISLATIVE LEVEL
Monitoring can help ensure that national legislation complies with international standards

POLICY LEVEL
Monitoring can help ensure that the implementation of legislation is supported by policies that correspond to the requirements of international law

PRACTICAL LEVEL
Monitoring can help ensure that policy requirements are translated into practice in a manner that respects international standards to achieve de facto compliance with international standards on the ground

There is an important interplay between these three levels, and each of these levels complements the others: without national legislation that reflects international standards, immigration detention will not take place as envisaged by international law. Without policies that draw on international standards to translate that legislation into practice, legislation will remain unimplemented. And, finally, if policies are not duly reflected in practice, the situation on the ground will not be one envisaged by the national legislation that has sought to implement the international standard.

It is therefore paramount that UNHCR devise an immigration detention monitoring strategy at the country level that takes into account the interplay of these three levels.

DETENTION MONITORING AS PART OF THE UNHCR'S OVERALL PROTECTION STRATEGY

Detention monitoring should not be confused with, nor interpreted as being limited to, visits to individuals in detention for such purposes as carrying out registration or refugee status determination. Detention monitoring entails a broader range of activities which all form part of the detention monitoring strategy. According to para. 4.7 of the UNHCR's Policy on Detention Monitoring, detention monitoring can have different functions.

Click on each circle to learn more.
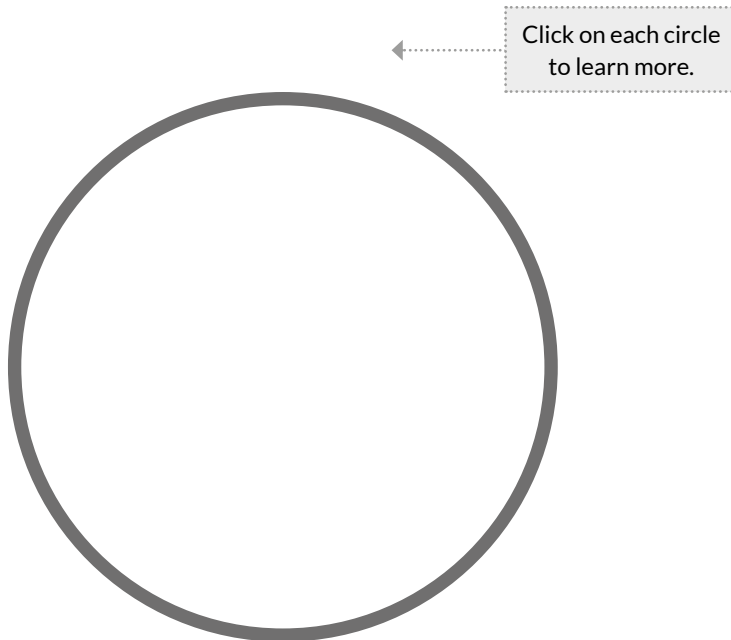
ENSURING ACCESS TO PLACES OF DETENTION

It goes without saying that to plan and develop a monitoring strategy and consequently carry out actual visits to immigration detention facilities, the monitoring body must ensure that they have the requisite access.

It is not a given that UNHCR will have full and unhindered access to places of detention. On the contrary, access may need to be carefully negotiated in advance and formalized in practice with the acknowledgement of the relevant authorities through, for example, written agreements, memoranda or letters of understanding, or through specific legal provisions. Because of this, negotiating access must be an integral part of an immigration detention monitoring strategy.

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Chapter 4

4.1 Why UNHCR should access immigration detention facilities

PROTECTION

FINDING SOLUTIONS

SUPERVISION OF IMPLEMENTATION

Remember that as part of UNHCR's **mandate for the protection** of refugees and stateless persons and, together with governments, **to find solutions to their plight**, the detention of asylum-seekers, refugees and stateless persons is of concern to the organization. Given the particular character of asylum-seekers, refugees and stateless persons as people who lack the protection of their own countries, UNHCR is entitled to and responsible for interceding directly on their behalf, because they would otherwise not be represented legally on the international plane. The High Commissioner for Refugees also has the **responsibility to supervise the implementation** of international instruments for the protection of refugees, laid down explicitly in paragraph 8(a) of the 1950

Statute of the Office of the High Commissioner for Refugees, in Article 35 of the 1951 Convention Relating to the Status of Refugees and Article 2 of the 1967 Protocol Relating to the Status of Refugees, and in regional refugee instruments and under international human rights law.

States are expected to cooperate with the High Commissioner in the exercise of these supervisory responsibilities, including in places of detention. Therefore UNHCR must be given prompt and unhindered access to asylum-seekers, refugees and stateless persons wherever they are, including when they are detained. Part of UNHCR's supervisory responsibilities entails accessing and visiting places of detention, as well as intervening with and supporting the authorities to improve conditions of detention. This is true with respect to individual cases and in relation to addressing system-wide shortcomings.

4.2 What 'access' entails

Where authorization for access is provided, the terms and conditions of access must be clearly outlined in writing to ensure that the nature and scope of access are clear to all parties.

It is paramount that monitors consider carefully whether they have access that enables them to carry out a full detention monitoring visit (see Module 4 for details of what this type of visit entails). Access should include following:

Access to places	• Access without restriction to all places of detention • Liberty to choose the places of detention to visit • Liberty to choose the locations to visit inside the place of detention
Access to detainees	• Access to all detainees within the place of detention • Private interviews with detainees, if necessary with the assistance of an interpreter, and with the liberty to choose which detainees to interview • Assurances against reprisals • The possibility of conducting follow-up visits
Access to staff and others working in the place of detention	• Private interviews with staff members, if necessary with the assistance of an interpreter
Access to all information on detainees	• All information on immigration detainees, including admission and medical registers and other documents, and following data protection principles
Timing, length and notice of visits	• Visits may be announced or unannounced • Announced visits may be at short notice, with monitors having liberty to decide the timing and length of a visit, keeping in mind the need to respect the orderly operation of the place of detention at all times
Follow-up to the visits	• Monitors may produce a report than may be made public

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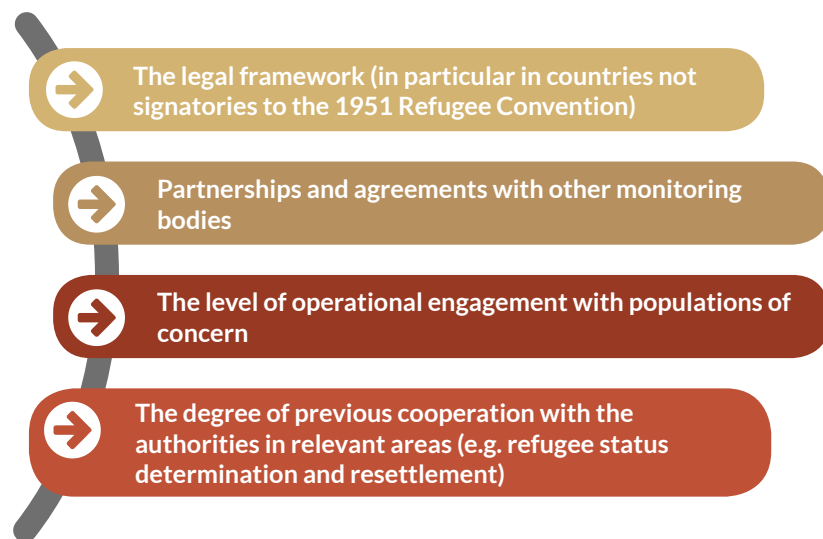The Immigration Detention Monitoring Strategy

4.3 How access is ensured

It should not be assumed that the UNHCR will have full and unhindered access to all immigration detention facilities. Access will always need to be negotiated in advance. Sometimes compromises will need to be made to ensure that detention monitoring activities can be successfully carried out.

Ensuring access is a complex exercise. How access is ensured can vary according to various factors, including the following:

In some countries, access may be provided by law or regulation or by a specific memorandum of understanding or similar agreement. In other counties, UNHCR may need to think strategically about ensuring such access and what levels of access to negotiate for at specific stages of the monitoring strategy.

→ **The legal framework (in particular in countries not signatories to the 1951 Refugee Convention)**

→ **Partnerships and agreements with other monitoring bodies**

→ **The level of operational engagement with populations of concern**

→ **The degree of previous cooperation with the authorities in relevant areas (e.g. refugee status determination and resettlement)**

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4.3.1 Negotiating access

The fundamental factor to consider is how to formalize access in a manner that **fits your strategic monitoring goals**. Actions for negotiating access may include:

Access

Click on the boxes with the types of actions to learn more.
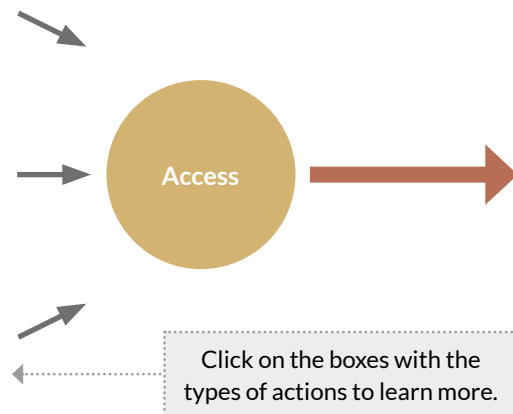
IMPORTANT! Whatever decisions are made about negotiating access to immigration detention facilities, UNHCR must always remain true to its mandate, which must never be compromised.

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THE CORE ELEMENTS OF A DETENTION MONITORING STRATEGY

To maximize the impact of detention monitoring, the specific context of immigration (see Module 2) needs to be taken into account at an early stage of defining a monitoring strategy, including a programme of visits.

The following elements should be considered when developing a monitoring strategy:

Click on each of these to learn more.

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Chapter 5

5.1 The overall immigration detention context

Monitors need to gather as much background information as possible about the social, political and legal context in which immigration detention takes place. This means:

UNDERSTANDING THE OVERALL IMMIGRATION DETENTION CONTEXT

Click on the arrows to learn more.

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5.2 Defining clear monitoring goals and objectives

Detention monitoring programmes have three overall goals:

To ensure that immigration detainees are not arbitrarily or unlawfully detained

To ensure that immigration detainees have effective access to protection and to immigration procedures

To ensure that immigration detainees are held in conditions that meet international human rights standards

Remember that monitoring is a process that can be both prohibitively expensive as well as labour-intensive, and it is therefore crucial to develop a monitoring strategy that contains clear and achievable objectives so that monitoring efforts will not collapse under the strain of overambition.

Your monitoring objectives need to be as specific as possible, so that they can yield measurable outcomes. In preparing for a particular visit, more detailed objectives can then be set.

5.3 Selecting places of detention on which to focus

It is prudent that the monitoring body do an initial mapping of all the places where asylum-seekers and migrants are detained. While it is expected that the authorities would have this information, such information may be:

- **Unreliable.** The authorities may have their own way of determining whether a particular place is a detention facility or not, and this categorization may not correspond to the standards set by international law.

- **Incomplete.** Different facilities may be run by different authorities, which may make any centralized information gathering unreliable due to possible discrepancies among the different authorities.

- **Inaccessible.** For various reasons, authorities may not be willing to share the information with the monitoring body.

Remember that immigration detention can occur in wide variety of places. Furthermore, immigration detention is often carried out in remote locations.

The selection of the places to monitor might be influenced by the following:

The need to monitor different stages of immigration detention	• Arrivals and border facilities • The transfer process • Departure or removal centres • Post-removal or reception facilities in a country of origin or in a third country

The existence of risks, both potential and actual, to detainees	• Places where little information is available • Places that hold many people in situations of vulnerability/risk • Places with a high turnover of asylum-seekers • Places of high risk, such as institutions with a well-documented history of problems

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5.4 Setting an overall timeframe for the monitoring programme

Detention monitoring is a process, developed over time that entails a clear cycle of activities. For this reason, when setting up the monitoring timeframe, the following must be carefully considered:

MANDATE
What is the mandate of the monitoring body? What monitoring visits are realistically possible ❓

CONTENT
Is the overall aim to establish a comprehesive baseline picture of the immigration detention context in the country ❓
Or is the aim to examine a particular aspect (e.g. provision of legal assistance in detention)? Or to look at the situation of a particular group in detention (e.g. persons with disabilities) ❓

LOGISTICS
How many detention facilities are there ❓
What are their locations ❓
How many monitors are there ❓
What funding is available for monitoring visits ❓

Setting up a long-term timeframe for a cycle of monitoring visits is desirable. Monitoring should be as frequent as possible, and the cycle would include follow-up and return visits. The full cycle needs to span enough time to allow for monitoring and for assessing any resulting changes, and for reviewing the sustainability of any changes.

5.5 The nature of monitoring visits

When creating the detention monitoring strategy, monitors need to carefully consider the nature of the visits that will be undertaken, because each type has its advantages and disadvantages.
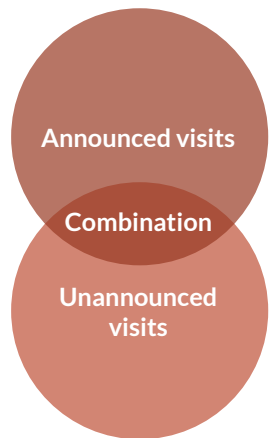
➔ **Announced visits.** These visits are announced to the authorities in advance, which allows them to prepare and, because of this, eliminates the possibility of surprise. This means that monitors on announced visits are less likely to see the facility as it is on a day-to-day basis. This is a disadvantage. However, announced visits have an advantage too: authorities know of the forthcoming visit and therefore must be able to accommodate the visit fully, including all the requests for information, etc. Nevertheless, carrying out only announced monitoring visits is unlikely to achieve the immigration detention monitoring goals.

Announced visits

Combination

Unannounced visits

➔ **Unannounced visits.** These visits have the great advantage of the element of surprise. Unannounced visits allow monitors to observe the immigration detention facility as it is usually run. The disadvantage of unannounced visits, however, also rests with the element of surprise: if authorities do not know of the visit, they cannot prepare all the documents that might be required. It is possible that monitors might not be able to examine certain documents or meet with certain detainees or even the authorities themselves, because they may be absent for legitimate reasons.

➔ **Combination.** The combination of announced and unannounced monitoring visits draws from the strengths of each of these approaches and tries to strike a balance between letting the authorities about a visit in advance, and arriving unannounced. The combination of announced and unannounced visits is usually the most effective way to carry out detention monitoring.

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5.6 The duration and frequency of monitoring visits

The duration of monitoring visits will depend on many variables.

> Click on each box to see more.

In all cases, monitors need to stay flexible so that they can be responsive to unexpected issues or incidents.

When considering an immigration detention monitoring strategy, monitors must also think about the frequency of visits. Frequency will depend on such factors as the number of places to visit, their location, reported problems and availability of monitoring teams. However, experience shows that monitoring visits are much more effective at preventing torture, ill-treatment or *refoulement*, and in achieving sustained improvement in all these areas, if they take place frequently.

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5.7 The composition and size of the monitoring team

Ideally, monitoring should always be carried out by a team. The following factors should be considered when composing a team.

Click on each circle to see more.
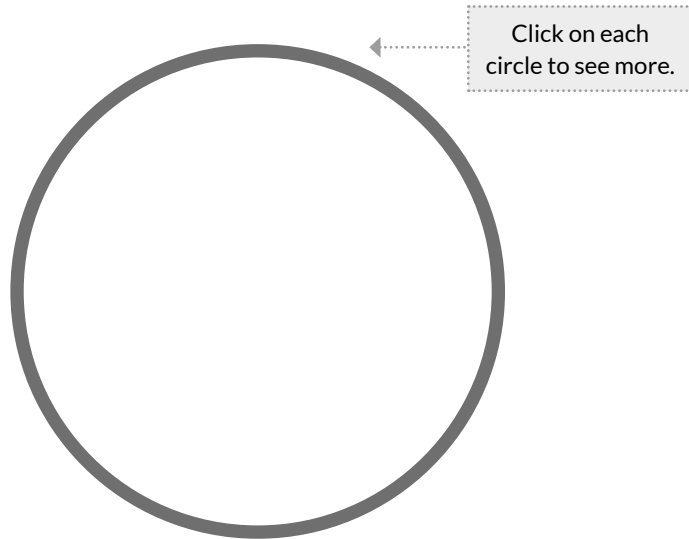
In all cases, however, one person should be identified to head the team and coordinate the visit.

5.8 Coordination among monitoring bodies

As noted, in some countries the use of immigration detention has greatly increased (see Module 1).

This calls for coordinated and collaborative monitoring. Immigration detention monitoring bodies need to complement each other's work and avoid duplication, possibly through a formalized network. This allows:

Click on each box to see more.

Where monitoring is undertaken by a national body, coordination should also be sought with regional and international bodies such as human rights treaty bodies, UNHCR, the Special Procedures of the Human Rights Council, the International Committee of the Red Cross, or regional monitoring bodies such as the European Committee for the Prevention of Torture and other Inhuman and Degrading Treatment or Punishment (CPT). The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) emphasizes direct contact between National Preventive Mechanisms (NPMs) and the OPCAT Subcommittee on Prevention of Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (SPT).

All this coordination ultimately enhances the efficiency of the monitoring programme and also makes it more efficient in the eyes of the authorities.

> **TIP! Coordinating immigration detention monitoring efforts**
>
> It is important to know which bodies carry out immigration detention monitoring visits in a country and whether there are other bodies that visit immigration detention facilities for other reasons (e.g. to provide services or other assistance). To understand this, a mapping exercise could be carried that lays out the mandate and objectives of these other bodies vis-à-vis immigration detention. For example, are they monitoring immigration detention, or are they providing counselling services?
>
> It is then necessary to meet with representatives of these other bodies to understand their mandate and work in the immigration detention facility properly, and to ascertain whether coordination of work is possible and potentially helpful.
>
> The modalities of such cooperation could then be agreed upon. This could include, for example, coordinating the timing of monitoring visits; coordinating coverage of facilities if one monitoring body has access to one particular immigration detention place but not to others; examining each body's recommendations and following up on their implementation and/or reinforcing them through other recommendations.

INTERIM ASSIGNMENT

Please read the statements below carefully and identity them as TRUE or FALSE.

	Statement	True	False
1.	Detention monitoring essentially refers to visiting individuals in immigration detention facilities.		
2.	An immigration detention strategy must consider the interplay among the legislative, policy and practical levels of immigration detention in the country.		
3.	When negotiating access to immigration detention facilities, it is not necessary to specify the need to be able to carry out private interviews with detainees.		
4.	It is not right for the monitoring body to rely on the list of detention facilities prepared by the authorities, because such a list might be incomplete or unreliable.		

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	Statement	True	False
5.	Unannounced visits are always the best possible option.		
6.	The size of the detention facility is likely to determine the length of the monitoring visit.		
7.	There is no need to have a multilingual monitoring team because there is always the possibility of using an interpreter.		
8.	It is important to coordinate monitoring work with other monitoring bodies to ensure complementarity.		

ADVOCACY AS AN ELEMENT OF THE DETENTION MONITORING STRATEGY

We have examined the core elements of the immigration detention monitoring strategy. However, depending on the level of access to detention facilities that the monitoring body has, it may be both necessary and appropriate to develop advocacy strategies, in parallel to monitoring strategies, to support the monitoring work.

Monitoring functions	Advocacy strategies	Change

Advocacy strategies need to be designed to complement the monitoring function. They need to give voice to the monitoring body's findings to help achieving implementation of any recommendations and thus the necessary protections for detainees.

Advocacy can take place through strategic use of public action initiatives, civil society forums and networks (e.g. the International Detention Coalition), global or regional forums (e.g. the Working Group on Arbitrary Detention, the United Nations Human Rights Council and other human rights mechanisms).

You may wish to consult the following guide on Human Rights Mechanisms in Protection.

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Chapter 7

7.1 Promoting the ratification of international instruments and the work of other monitors

When devising an immigration detention monitoring strategy, it is important to take into account that advocacy can foster an environment of openness and transparency in places of deprivation of liberty, and this can contribute to the overall aims of an immigration detention monitoring strategy. The more open to outside scrutiny are the places of deprivation of liberty, the more they become accustomed to engaging with independent monitoring bodies and recognizing the value of oversight. This helps make the overall goals of the immigration detention monitoring more achievable.

To this end, a detention monitoring strategy should promote the work of the following entities:
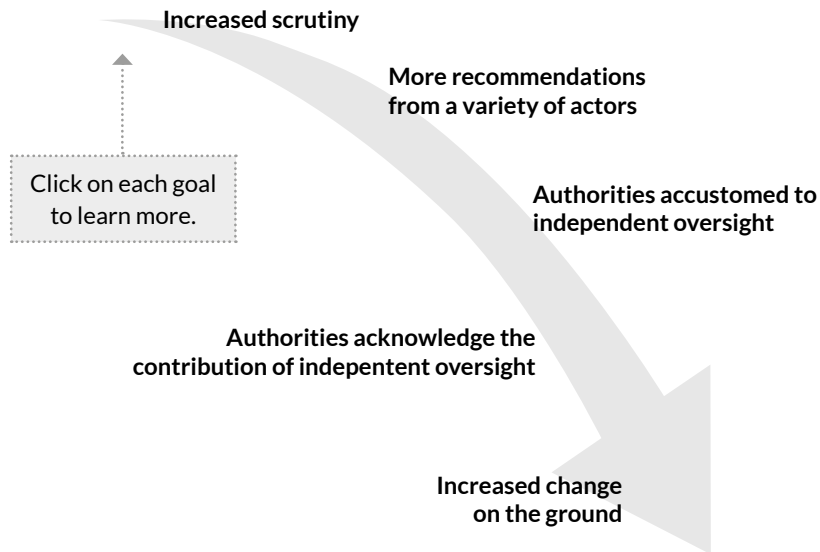
Click on the circles
to learn more.

7.2 The contribution of other monitoring bodies

The contribution that these other actors can make to overall detention monitoring goals are as follows:

Increased scrutiny

More recommendations from a variety of actors

Click on each goal to learn more.

Authorities accustomed to independent oversight

Authorities acknowledge the contribution of indepentent oversight

Increased change on the ground

FOLLOW-UP ACTIVITIES TO THE MONITORING STRATEGY

It is important to include follow-up activities in your monitoring strategy. Follow-up activities usually include:

Click on each activity to see more.

IMPORTANT! Any correspondence with authorities on the part of a monitoring body needs to comply with local conventions and protocols for written communications. It must use formal language and salutations, as appropriate.

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Click on each activity to see more.

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Click on each activity to see more.

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UNHCR may sometimes, after careful assessment, provide services or assistance in places of detention, to alleviate detention conditions in the short term or build capacity of the national or local authorities to take responsibility for detention conditions. When providing such services or assistance, UNHCR needs to be careful to avoid supporting (inadvertently) activities that could prolong deprivation of liberty or result in arbitrary restrictions on the freedom of movement of people of concern, or activities that allow the authorities to disregard their own responsibilities over the long term.

UNHCR offices are not authorized to fund in any way the construction of detention facilities, or the expansion, refurbishment or improvements in infrastructure of existing places of detention. Advocacy efforts should focus on monitoring and advocacy for improving detention conditions and promoting alternatives to detention.

PROVISION OF SERVICES/ASSISTANCE	CONSTRUCTION/EXPANSION/REFURBISHMENT OF DETENTION FACILITIES
• **To alleviate conditions of detention** • **To build the capacity of national/local authorities in charge of detention**	**NOT the mandate of UNHCR**

When in doubt, seek advice from the Division of International Protection.
You may also want to consult paras. 4.14 and 4.15 in the UNHCR's Policy on Detention Monitoring.

Chapter 8

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CHAPTER 9

EVALUATING AND REVIEWING THE MONITORING PROCESS

For the process of monitoring places of immigration detention to be effective, its work and impact must be regularly evaluated and reviewed, with a view to learn from the process and make any necessary changes.

An evaluation of a monitoring visit, or a monitoring programme, needs to assess all aspects and stages of the process. An evaluation should assess the methodology used and its implementation at the different stages of monitoring. In broad terms, it ought to be able to answer:

What have we done?	• What have we achieved ❓ • How well have we done it ❓ • What difference have we made ❓ • How do we know ❓

In turn, this ought to provide answers to the following questions:	• What do we know now that we did not know before ❓ • Are there any gaps or deficiencies in our monitoring process ❓ • Were there any missed opportunities ❓ • What could we do better ❓ • How would this make a difference ❓

Monitoring processes that are well planned and prepared ought to enable monitoring bodies to provide thoughtful and specific answers to all these questions. Those evaluating must remember, however, that changes in the protection landscape tend to be incremental and undramatic. Because of this, the evaluation and review process needs to be periodic and ongoing. It needs to measure impact over time.

INTERIM ASSIGNMENT

Type in the answers from the box in the right column:

- Follow-up visits Organizing roundtables with authorities
- Convening meetings with authorities
- Promoting ratification of OPCAT
- Promoting the ability of NGOs to visit immigration detention facilities
- Seeking a written response to a submitted report
- Training immigration detention officers on international human rights standards
- Revising national legislation

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ADVOCACY	CONSTRUCTIVE DIALOGUE	OTHER FOLLOW-UP ACTIVITIES

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To see the correct answer go to the next .

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| ADVOCACY | CONSTRUCTIVE DIALOGUE | OTHER FOLLOW-UP ACTIVITIES |

Click on the boxes to learn more.

Chapter 10

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KEY MESSAGES

→ Tailoring the monitoring strategy to the specifics of the country's immigration context maximizes the preventive impact of detention monitoring

→ Coordinated and collaborative monitoring with other monitoring bodies ensures complementarity and avoids duplication

→ A monitoring visit is not an end in itself; rather it is one part of a strategy aimed at improving the treatment of immigration detainees and the conditions of detention

→ A detention monitoring programme must set out the main goals of the programme, its overall timeframe, prioritize/select/provide criteria for selecting the places of detention to visit, and set the frequency of visits

→ Activities such as advocacy and promoting international human rights instruments should be an important part of an overall detention monitoring strategy

→ The monitoring process must include regular evaluation, review and reporting

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