



IMMIGRATION
DETENTION
MONITORING



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MODULE 5 IMMIGRATION DETENTION STANDARDS



UNHCR
The UN Refugee Agency



LEGEND

 **LEARNING OBJECTIVES**

 **REFLECTION ACTIVITY**

 **SUPPLEMENTARY READING**

 **SELF-ASSESSMENT**

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CHAPTER 1

LEARNING OBJECTIVES AND MODULE STRUCTURE

✓ BY THE END OF THIS INTRODUCTION, YOU SHOULD BE ABLE TO:

- ✓ Identify detention standards applicable to immigration detention;
- ✓ Describe what aspects to examine during a detention monitoring visit; and
- ✓ Recognize how detention standards apply to people in situations of vulnerability/risk, particularly children.

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

This module should take you around 80 minutes to complete.



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Chapter 1

CHAPTER 2

PROCEDURAL SAFEGUARDS APPLICABLE TO IMMIGRATION DETENTION

The core task of every immigration detention monitoring visit is examining the extent to which the detention takes place in accordance with international standards. It is therefore paramount that the monitors know the international standards as they relate both to the procedural aspects and the conditions of detention.

Let us start with the procedural standards. **Asylum-seekers** are entitled to certain procedural guarantees during detention or if faced with the prospect of detention. Asylum-seekers have the right to:

Click on each arrow to learn more.



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Chapter 2

Click on each arrow to learn more.



Please read UNHCR's [Detention Guidelines](#), Guideline No. 7

INTERIM ASSIGNMENT

Below you will find a list of questions that a monitor may ask authorities or detainees during the monitoring visit to ascertain whether the standards described above have been upheld. Read each question carefully and assign it to one of the eight categories of standards:

- | | |
|---|-----------------------------------|
| ① Detention on the grounds and in accordance with the procedure prescribed by law | ④ Legal assistance |
| ② Review of detention | ⑤ Linguistic and other assistance |
| ③ Information to detainees | ⑥ Challenging detention |
| | ⑦ Access to asylum procedures |
| | ⑧ Respect for confidentiality |

Question 1, to the detainee: What were you told at the time of arrest?	
Question 2, to the authorities: Who can access the personal file of this detainee?	
Question 3, to the detainee: Since your detention here, have you been brought before a judge or another judicial authority?	
Question 4, to the authorities: How do you ensure legal representation of detainees?	
Question 5, to the authorities: Can you please provide the legal basis for the detention of this asylum-seeker?	
Question 6, to the detainee: Have you been able to access asylum procedures?	



- | | |
|---|-----------------------------------|
| ① Detention on the grounds and in accordance with the procedure prescribed by law | ④ Legal assistance |
| ② Review of detention | ⑤ Linguistic and other assistance |
| ③ Information to detainees | ⑥ Challenging detention |
| | ⑦ Access to asylum procedures |
| | ⑧ Respect for confidentiality |

Question 7, to the detainee: Have you met with a lawyer or have you had access to other forms of legal counsel since your detention here?	
Question 8, to the detainee: Have you been informed about the reasons for your detention?	
Question 9, to the authorities: What happens to asylum-seekers in detention who cannot afford legal representation?	
Question 10, to the detainee: Are you aware of what are your rights in this detention place?	
Question 11, to the detainee: Are you able to communicate with the authorities in charge of this detention facility?	
Question 12, to the authorities: At what intervals is the detention of an asylum-seeker usually reviewed?	



CHAPTER 4

THE INTERNATIONAL STANDARDS FOR CONDITIONS OF DETENTION: THE PLACE OF DETENTION

Let us now turn to the international standards relating to the conditions of detention. Imagine that you are an asylum-seeker who is just arriving at the detention facility. Walk along and click on 'STANDARDS' to find out the standards of detention applicable. When going through this section, please consult Chapter 4 of [Immigration Detention Manual](#) for detailed further references.

Click on the numbers to learn more.



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Chapter 4

CHAPTER 5

THE CONDITIONS OF DETENTION: THE TREATMENT

Click on each dot
to learn more.



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Chapter 5

CHAPTER 6

THE CONDITIONS OF DETENTION: THE MEDICAL ASSISTANCE



Click on each dot to learn more.



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CHAPTER 7

THE CONDITIONS OF DETENTION: THE CONTACT WITH THE OUTSIDE WORLD



Click on each dot
to learn more.



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CHAPTER 8

THE CONDITIONS OF DETENTION: COMPLAINTS AND INDEPENDENT OVERSIGHT



Click on each dot
to learn more.



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Chapter 8

CHAPTER 9

THE CONDITIONS OF DETENTION: THE STAFF



Click on each dot
to learn more.



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INTERIM ASSIGNMENT

Carefully read the following statements and select 'True' or 'False' in relation to each.

		True	False
1.	The detention of asylum-seekers can take place in any closed facility which can hold people securely and ensure a staff presence.		
2.	Immigration detainees should be allowed to wear their own clothes.		
3.	Immigration detainees should provide their own bedding.		





	True	False
4. Immigration detainees should be allowed to practise the religion which is recognized as the official religion of the country.		
5. If a child is born in a detention facility, the authorities should get in touch with the respective consular authorities of his parents' country to inform them of the child's birth.		
6. There is a need to register all asylum-seekers in detention to be able to track each detainee, to clarify accountability and facilitate proper management of each detainee's file.		
7. It is necessary to separate women and men in immigration detention facility unless they are a family unit.		
8. While primary medical care should be provided free of charge, continued treatment to asylum-seekers can be provided if they are able to pay for it themselves.		



		True	False
9.	Only those asylum-seekers who already have family settled in the country have the right to receive visits from family members.		
10.	Asylum-seekers in detention can only receive hot meals if they are able to prepare them themselves.		
11.	If an asylum-seeker in detention is ill-treated by a staff member of the facility who is a private contractor, a complaint can be lodged against the company running the facility but not against the State.		
12.	Child asylum-seekers should only attend school inside the detention facility.		



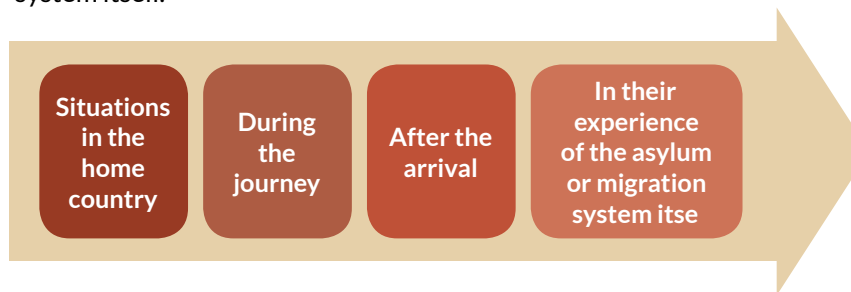
		True	False
13.	Every asylum-seeker has the right to submit a complaint and receive an impartial and prompt response.		
14.	As long as sufficient numbers of staff members can be provided during the day, there is no need for staff to stay overnight in the detention facility.		
15.	Periodic training applies only to those staff members who have not received a comprehensive initial training.		

PEOPLE IN SITUATIONS OF VULNERABILITY/RISK

In the Fundamentals of Immigration Detention e-Learning, we have already examined that there are people in situations of vulnerability/risk, and that there are sets of international standards that apply to such people because of their situation of vulnerability/risk. It is paramount that monitors be aware of these standards.



Refugees, asylum-seekers, victims of trafficking, women, children, LGBTI asylum-seekers, asylum-seekers with disabilities, elderly asylum-seekers and survivors of violence, torture or exploitation can experience a broad range of vulnerabilities. To address these, international law has developed standards specific to such situations of vulnerability/risk. Situations of vulnerability/risk can arise from circumstances in a person's home country, or emerge during their journey, after arrival and in their experience of the asylum or migration system itself.



The best way to evaluate a person's vulnerability is by using a person-centred and holistic approach.

Situations of vulnerability/risk are not fixed and can change over time with changing circumstances. Certain categories of people, such as children, are readily accepted as vulnerable and in need of special care, support and protection, while, for other people, their individual circumstances and context are the main determinants of vulnerability.

Let us examine different situations of vulnerability/risk next.



VARIETY OF VULNERABILITIES AND RISKS

Click on each box to learn more.



International law has developed specific standards to address the needs of people in such situations of vulnerability/risk. Before we examine these, please complete a short interim assignment.

INTERIM ASSIGNMENT

Put the people listed here in the appropriate 'basket of vulnerability':

- Person with substance addiction
- Elderly person
- Girl
- Person who is stateless
- Woman
- Person who is transgender
- Nursing mother
- Person at risk for suicide
- Victim of trafficking
- Survivor of torture
- Child alone
- Child with family
- Person who is gay
- Person who is disabled





CHAPTER 14

EXTRA RESOURCES ON PEOPLE IN SITUATION OF VULNERABILITY/RISK

❶ Children

- 1.1. United Nations Convention on the Rights of the Child.
- 1.2. Overarching principles guiding the care of the asylum-seeking children
- 1.3. Unaccompanied or separated children
- 1.4. What if a child is detained?

❷ Women

- 2.1. Standard of treatment of women in immigration detention

❸ Victims or potential victims of trafficking

❹ Survivors of trauma or torture

❺ Asylum-seekers with disabilities

❻ Elderly asylum-seekers

❼ Lesbian, gay, bisexual, transgender or intersex asylum-seekers



14.1 Extra resource: Children

In principle, children should not be detained in the immigration context.

The key international instrument backing up this principle is the United Nations Convention on the Rights of the Child (CRC). This instrument lays out specific international legal obligations related to children and sets out a number of guiding principles regarding their protection. Let us examine the key provisions of the Convention.

Extra resource 14.1.1.

United Nations Convention on the Rights of the Child

The **best interests of the child** shall be a primary consideration in all actions affecting children, including asylum-seeking and refugee children (Article 3 in conjunction with Article 22).

There shall be **no discrimination** on the grounds of race, colour, sex, language, religion, political or other opinions, national, ethnic or social origin, property, disability, birth or other status, or on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians or family members (Article 2).

Each child has a fundamental **right to life, survival and development** to the maximum extent possible (Article 6).

Children should be assured the **right to express their views freely** and their views should be given '**due weight**' in accordance with the child's age and level of maturity (Article 12).

Children have the right to family unity (inter alia, Articles 5, 8 and 16) and the right not to be separated from their parents against their will (Article 9).

If a child is temporarily or permanently deprived of his or her family environment, or it is not in the best interests of the child to remain in that environment, such a child shall be entitled to **special protection and assistance provided by the State** (Article 20(1)).

Article 20(2) and (3) of the CRC require that States shall, in accordance with their national laws, ensure alternative care for such a child. Such care could include, inter alia, foster placement or, if necessary, placement in suitable institutions for the care of children.

When considering options, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 22 of the CRC requires that States take appropriate measures to ensure that children who are seeking refugee status or who are recognized refugees, whether accompanied or not, receive **appropriate protection and assistance**.

Article 37 of the CRC requires States Parties to ensure that the detention of children be used only as a **measure of last resort and for the shortest appropriate period of time**.

Where separation of a child or children from their parents is unavoidable in the context of detention, both parents and child are entitled to **essential information from the State** on the whereabouts of the other unless such information would be detrimental to the child (Article 9(4)).



Extra resource 14.1.2.

Overarching principles guiding the care of asylum-seeking children

← Click on each level of the pyramid.

Extra resource 14.1.3.

Unaccompanied or separated children

The fundamental rule is that detention is never in the best interests of the child. This also applies to unaccompanied or separated children. Detention cannot be justified based solely on the fact that the child is unaccompanied or separated, or on the basis of his or her migration or residence status.

UNHCR underlines that best interest assessment ([BIA](#)) and best interest determination ([BID](#)) should be carried out as soon as a child with specific vulnerabilities and needs is identified, and durable solution(s) found.

Unaccompanied or separated children should

1. Be provided with proper reception conditions which are safe, secure and conducive to children's participation.
2. Stay together with family members, including siblings.
3. Be provided with alternative care arrangements, such as foster placement or residential homes, made by the competent child care authorities, ensuring that the child receives appropriate supervision. Residential homes or foster care placements need to support the child's healthy physical and mental development while longer-term solutions are being considered.



In relation to age assessment, several safeguards should be in place:

- An age assessment should only be conducted when there is a doubt about the age of the child.
- Methods used to determine age must be safe, respect human dignity and allow for a margin of error.
- Age assessment cannot rely only on physical appearance, but must also take fully into account the level of emotional and mental maturity as well as the child development.

Remember: Where a child's age cannot be established with certainty the benefit of the doubt should be given. This means that the individual concerned should be regarded and treated as a child.

FURTHER READING

- [Position paper on age assessment in the context of separated children in Europe](#), Separated Children in Europe Programme (SCEP), 2012

Extra resource 14.1.4.

What if a child is placed in immigration detention?

If a child is placed in immigration detention:

1. Age- and gender-appropriate accommodation must be made available.
2. Detained children benefit from the same minimum procedural guarantees as adults, but these should be tailored to children's particular needs. See UNHCR's [Detention Guidelines](#), Guideline No. 9
3. An independent and qualified guardian, as well as a legal adviser, should be appointed for unaccompanied or separated children.
4. During detention, children have the right to education, which should take place outside the detention premises to facilitate the continuation of their education upon release.
5. Provision should be made for children's recreation and play, including play with other children, because this is essential to a child's development and will alleviate stress and trauma. See UNHCR's [Detention Guidelines](#), Guideline No. 8
6. All efforts, including prioritizing processing of their asylum request, should be made for the immediate release of children from detention and their placement in other forms of appropriate accommodation.



INTERIM ASSIGNMENT

Carefully consider the six statements below and pick those which represent standards applicable to asylum-seeking children in detention.

		YES	NO
1.	Detention of an asylum-seeking child is never in his or her best interest.		
2.	Children in detention have the right to receive education free of charge.		
3.	'Best interests of the child' is the overriding principle in all matters concerning children.		
4.	Asylum-seeking children have the right to family unity.		
5.	State must provide special protection and assistance to those children who are deprived of their family environment.		
6.	Age- and gender-appropriate accommodation needs to be made available.		

14.2 Extra resource: Women

You may wish to read UNHCR's [Detention Guidelines](#), Guideline No. 9, para. 3



Click on the dots
to learn more.





Extra resource 14.2.1.

Standard of treatment of women in immigration detention

Women in immigration detention have distinctive needs that must be provided for. Although some categories of women, including pregnant women and nursing mothers, should not be detained at all, if they are detained, special medical and other support is to be provided. Likewise, the gender-specific hygiene needs and related reproductive health needs of women must be met. Detaining authorities must ensure measures to prevent sexual abuse and other forms of gender-based violence, and to respond to survivors of such violence.

Thus, where detention of female asylum-seekers takes place:



Moreover, when detaining female asylum-seekers, authorities must ensure:

1. **Protection measures:** Female asylum-seekers in detention who report abuse are to be provided immediate protection, support and counselling, and their claims must be investigated by competent and independent authorities. This must be done with full respect for the principle of confidentiality, including where women are detained together with their husbands/partners/other relatives. Protection measures should specifically consider the risks of retaliation.
2. **Medical care and counselling:** Female asylum-seekers in detention who have been subjected to sexual abuse need to receive appropriate medical advice and counselling, including where pregnancy occurs. They are to be provided with the requisite physical and mental health care, support and legal aid.

14.3 Extra resource: Victims or potential victims of trafficking

While people who have been trafficked may enter a State or otherwise remain irregularly, as victims of exploitation they should not be held in immigration detention or other forms of custody. People who have been trafficked are, first and foremost, victims. They are not to be detained, charged or prosecuted for the illegality of their entry or residence or for any involvement in unlawful activities which are a direct consequence of their situation as a person who has been trafficked.

Alternatives to detention, including [safe houses](#) and other care arrangements, are sometimes necessary for such victims or potential victims, in particular children. It is paramount that victims of trafficking are never held together with their traffickers.

14.4 Extra resource: Survivors of trauma or torture

Because of the experience of seeking asylum, and the often traumatic events precipitating flight, asylum-seekers may present with psychological illness, trauma, depression, anxiety, aggression and other physical, psychological and emotional consequences. Such factors need to be weighed when assessing the necessity to detain (see UNHCR's [Detention Guidelines](#), Guideline No. 4).

Survivors of torture and other serious physical, psychological or sexual violence also need special attention and should generally not be detained. Detention can and has been shown to aggravate and even cause the illnesses and symptoms noted above. This can be the case even if individuals present no symptoms at the time of detention.

IMPORTANT! Periodic assessment: Because of the serious consequences of detention, initial and periodic assessments of detainees' physical and mental state are required, and must be carried out by qualified medical practitioners. Appropriate treatment needs to be provided and medical reports presented at periodic reviews of an individual's detention.

Click on each third of the circle to see more.



14.5 Extra resource: Asylum-seekers with disabilities

You may wish to consult UNHCR's [Detention Guidelines](#), Guideline No. 9, para. 5

The UN Convention on the Rights of Persons with Disabilities (CRPD) is the key instrument regarding the rights of people with disabilities.

Article 5 – Equality and non-discrimination

1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.
2. States Parties shall **prohibit all discrimination on the basis of disability** and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.
3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that **reasonable accommodation is provided**.

(...)

Article 14 – Liberty and security of the person

1. States Parties shall ensure that persons with disabilities, on an equal basis with others:
 - (a) Enjoy the right to liberty and security of person;
 - (b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the **existence of a disability shall in no case justify a deprivation of liberty**.
2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by **provision of reasonable accommodation**.

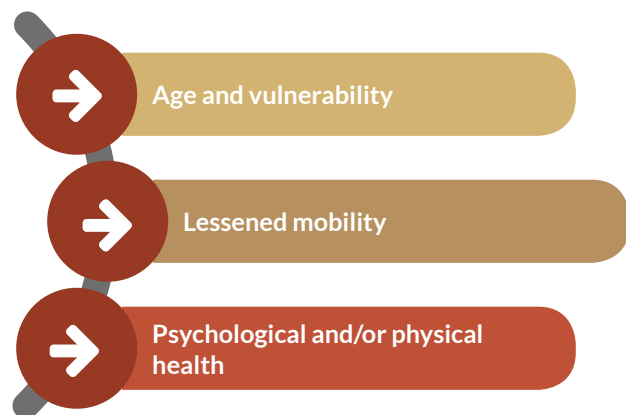


The graph presents the main guarantees for asylum-seekers with disabilities.



14.6 Extra resource: Elderly asylum-seekers

You may wish to read UNHCR's [Detention Guidelines](#), Guideline No. 9, para. 6



Elderly asylum-seekers may require special care and assistance due to their age, vulnerability, lessened mobility and psychological or physical health, which is likely to increasingly deteriorate in detention conditions.

Elderly asylum-seekers comprise a very diverse group which usually will include people of varied ages, with different physical capabilities. While most will have health care needs, these will vary and may or may not include mobility issues, various disabilities and chronic conditions.

Without special care and assistance, detention of elderly asylum-seekers may become unlawful. Alternative arrangements would need to take into account their particular circumstances, including their physical and mental well-being.

14.7 Extra resource: Lesbian, gay, bisexual, transgender or intersex asylum-seekers

You may wish to read UNHCR's [Detention Guidelines](#), Guideline No. 9, para. 7





Measures may need to be taken to ensure that:

- Any detention of lesbian, gay, bisexual, transgender or intersex asylum-seekers avoids exposing them to risk of violence, ill-treatment or physical, mental or sexual abuse;
- They have access to appropriate medical care and counselling, where applicable; and
- Detention personnel and all other officials in the public and private sector who are engaged in detention facilities are trained and qualified, in terms of international human rights standards and principles of equality and non-discrimination, including in relation to sexual orientation and gender identity.

Where their security in detention cannot be assured, release or referral of people who are LGBTI to alternatives to detention needs to be considered. In this regard, solitary confinement is not an appropriate way to ensure the protection of asylum-seekers who are lesbian, gay, bisexual, transgender or intersex.





INTERIM ASSIGNMENT

Please complete the following statements by the most *appropriate* choices:

1. Detention of pregnant and nursing mothers...	
should not take place.	
is permissible if the woman is detained with her family.	
2. Victims of torture who are asylum-seekers...	
require initial assessment of their physical and mental state to ensure care.	
require initial and periodic follow-up assessments of their physical and mental state.	
3. The best interests of the child...	
allows detention of asylum-seeking children with their families.	
is the guiding principle in all matters concerning children.	
4. Disability of an asylum-seeker...	
requires that such an asylum-seeker is always detained in a medical facility.	
cannot be the sole basis for that person's detention.	
5. Victims of trafficking who are asylum-seekers can...	
be detained as a part of the fight against human trafficking.	
become victims of criminalization in the fight against human trafficking.	



6. Asylum-seekers with disabilities should be allowed to ...	
keep aids relevant to their disability.	
purchase new aids relevant to their disability from an approved company.	
7. Older asylum-seekers ...	
may require special care due to their old age and health condition.	
should be referred to old age care facilities.	
8. Solitary confinement of LGBTI asylum-seekers...	
is an appropriate means to ensure their safety.	
is an inappropriate means to ensure their safety.	
9. Female asylum-seekers must be detained...	
in facilities where their specific hygiene needs can be met.	
in facilities which allow for specific education tailored at women.	
10. Staff in detention facilities for female asylum-seekers should be...	
female.	
male.	



CHAPTER 15

KEY MESSAGES

- Conditions of detention must be humane and dignified
- The best interests of the child must be a primary consideration in all actions affecting children, including asylum-seeking and refugee children
- Detention of people in situations of vulnerability/risk should only be used as a last resort
- Detention of children is not in their best interest
- Complaints mechanisms must be available in all places of detention to allow for confidential requests and complaints without censorship



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This material was developed within the project 'Global Technical Assistance and Capacity Building Programme to Prevent Detention of Children and to Protect Children and Other Asylum-Seekers in Detention' funded by the European Union.

The views expressed herein can in no way be taken to reflect the official opinion of the European Union.