



## Canada/USA Bi-National Roundtable on Alternatives to Detention of Asylum Seekers, Refugees, Migrants and Stateless Persons

Buffalo, New York, United States of America/Fort Erie, Ontario, Canada  
24-26 September 2012

### Summary Conclusions

On 24 – 26 of September, 2012, the Branch Office for Canada (BOCAN) and the Regional Office for Washington, D.C. (ROW) of the United Nations High Commissioner for Refugees (UNHCR), with the support of UNHCR's Division of International Protection, organized a Bi-National Roundtable on Alternatives to Detention (ATD) in Buffalo, New York, United States of America (USA). Thirty-seven participants from the government and non-government sectors in Canada and the USA, as well as Australia and Sweden (via video teleconference), participated in the Roundtable. The discussion was informed by each government's experiences and good ATD practices; by UNHCR's views and the international human and refugee rights legal framework; and by empirical research presented by experts in the field of ATD. Roundtable participants also took lessons from on-site visits to local community-based non-governmental organizations (NGOs) that provide holistic alternatives to detention to refugees and asylum-seekers: Vive la Casa in Buffalo, New York, USA, and the Multicultural Centre, Casa El Norte, and Matthew House, in Fort Erie, Ontario, Canada.

The Canada/USA Bi-National ATD Roundtable relied on past global, regional and national roundtable events on ATD.<sup>1</sup> The Bi-National ATD Roundtable and these resulting Summary Conclusions were also informed by the on-site visits, the discussions of the participants, and by UNHCR's *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention* (UNHCR Guidelines on Detention and Alternatives to Detention).<sup>2</sup>

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<sup>1</sup> Past ATD roundtable events included the November 2011 Regional Roundtable on Alternatives to Detention in Brussels, Belgium (UNHCR Regional Representation for Western Europe, "Summary Report - Regional Conference on Alternatives to Detention for asylum-seekers, refugees and stateless persons, Brussels, Belgium," 16 November 2011, available at <http://www.unhcr.be/fr/nos-activites/campagnes/conference-regionale-sur-les-alternatives-a-la-detention.html>); the June 2011 UNHCR-IDC Roundtable on Alternatives to Detention in Canberra, Australia (UNHCR-International Detention Coalition (IDC), "Expert Roundtable on Alternatives to Detention, Canberra – Co-Chair Summary Statement," 19 July 2011, available at: [http://unhcr.org.au/unhcr/images/2011-07-19\\_ATD%20Joint%20Statement%20by%20the%20Co-Chairs%20\\_Final\\_.pdf](http://unhcr.org.au/unhcr/images/2011-07-19_ATD%20Joint%20Statement%20by%20the%20Co-Chairs%20_Final_.pdf)); the May 2011 UNHCR-OHCHR Global Roundtable on Alternatives to Detention in Geneva, Switzerland (UN High Commissioner for Refugees, *Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons: Summary Conclusions*, July 2011, available at: <http://www.unhcr.org/refworld/docid/4e315b882.html>); and the April 2010 East Asian Roundtable on Alternatives to Detention in Seoul, Korea. Also informing the Bi-National ATD Roundtable were the October 2010 Regional Consultation on Detention of Asylum Seekers in Bangkok, Thailand; the 2009 side-panels at the Executive Committee of the High Commissioner for Refugees' Programme; the Annual UNHCR-NGO Consultations; and meetings held during the 12<sup>th</sup> and 13<sup>th</sup> sessions of the United Nations Human Rights Council.

<sup>2</sup> UN High Commissioner for Refugees, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at: <http://www.unhcr.org/refworld/docid/503489533b8.html> [hereinafter *UNHCR Guidelines on Detention and ATD*]. Also influential were the April 2011 UNHCR publication, Alice Edwards, *Back to Basics: The Right to Liberty and Security of Person and 'Alternatives to Detention' of Refugees, Asylum-Seekers, Stateless Person and Other Migrants*, April 2011, PPLA/2011/01.Rev.1, available at: <http://www.unhcr.org/refworld/docid/4dc935fd2.html> [hereinafter *Back to Basics*]; the expert research of Cathryn Costello, Esra Kaytaz and Stephanie Silverman (forthcoming in UNHCR's Legal and Protection Policy

With agreement of the participants, discussions were conducted pursuant to the Chatham House Rule. The following issues represent the highlights of the discussion and do not necessarily represent the views of UNHCR or any particular individual or organization.

### **Key Messages<sup>3</sup>**

- The detention of asylum-seekers should in principle be avoided, be a measure of last resort, prescribed by law and applied only where necessary, reasonable and proportionate to a legitimate purpose and only after all less restrictive alternatives to detention have been determined inappropriate. “Alternatives to detention” refers to any legislation, policy or practice that allows asylum-seekers to reside in the community subject to a number of conditions or restrictions on their freedom of movement.<sup>4</sup>
- Open and humane reception arrangements for asylum-seekers need to be put into place, including safe, dignified and human rights-compatible treatment. If detention is necessary, governments need to ensure that it complies with human rights standards.
- Screening tools for the assessment of the necessity, reasonability and proportionality of detention should be developed and put into practice. Implementation of such tools should be transparent and assessed in as open a forum as possible. NGOs can be valuable partners in developing and providing training on the implementation of these tools, particularly in screening for vulnerabilities.
- Governments need to ensure that asylum-seekers have independent review of decisions to detain or to otherwise place restrictions on liberty. Ideally, review of detention should be carried out periodically and automatically.
- Governments need to support alternatives to detention as an important feature of migration and asylum systems.
- The introduction of holistic performance indicators is key to the adequate evaluation of the success and cost-effectiveness of the alternative to detention programmes. The NGO community is well-positioned to assist governments in developing these indicators.
- Alternatives to detention programmes should be tailored to address any special or specific needs of particular individual or groups, such as children, women, persons with disabilities and victims of trafficking, among others.
- Case management services that include a single case manager coordinating the legal, social, and health aspects of the individual’s case from start to finish increase meaningful engagement with asylum procedures and facilitate the efficient functioning of the asylum system.
- Refugees and asylum-seekers should be treated with dignity, humanity and respect throughout the asylum procedures. A basic belief in the fair and equal application of the law to their case can increase asylum-seekers’ trust in and compliance during the asylum determination process.

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Research Series, available at: <http://www.unhcr.org>) and Costello, *Alternatives to Detention in Toronto: Extracts from Research in Progress*, Handout for the UNHCR Bi-National Roundtable on Alternatives to Detention, 25 Sept. 2012 [hereinafter *Alternatives to Detention in Toronto: Extracts*]; and the International Detention Coalition’s (IDC) May 2011 publication, *There are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention*, 13 May 2011, ISBN 978-0-9871129-1-0, available at: <http://www.unhcr.org/refworld/docid/4f0c14252.html> [hereinafter *There Are Alternatives*].

<sup>3</sup> See generally Edwards, *Back to Basics*, page 84.

<sup>4</sup> *UNHCR Guidelines on Detention and ATD*, ¶ 8.

- Clear and concise information about the full range of legal options to stay, the rights and duties if placed in an alternative to detention programme, and the consequence of non-compliance, increases the fairness and equality in the process itself and, in turn, increases asylum seekers' trust and compliance throughout the entire adjudication process. Recent empirical research found that asylum-seekers who trust that the system is being fairly applied are more cooperative, have a better understanding of their options, and are more likely to avail themselves of voluntary return when necessary. A sense of living within the legal system also helps limit willingness to abscond.
- Clarity on roles between government, non-government groups, and the individuals in the asylum process should be set out, including issues around enforcement for non-compliance. Clear reporting procedures promote the trust and collaboration needed between government and groups providing case management.
- Involvement of civil society in research, development, implementation and monitoring/inspection of alternatives to detention is instrumental to ensure the success of these programmes.
- Alternatives to detention can have many positive consequences. In addition to being more humane for asylum-seekers, ATDs can improve appearance rates at immigration interviews and hearings; increase compliance with final orders issued by immigration judges; reduce absconion rates; and limit the number of persons in held in detention facilities.
- ATDs have also consistently been shown to offer significant cost savings to governments compared to holding asylum-seekers in detention. These cost differentials increase further when the full scope of detention costs is considered, such as the costs of additional custody adjudications, complaints processes, and law suits filed against detention agencies.
- Fuller research is required in order to get a comprehensive understanding of the overall, long-term costs associated with detention vis-à-vis alternatives to detention. This would include the costs to society when functioning members are removed from their families and the work force, as well as the long-term costs associated with physiological and psychological recovery from detention.
- Governments can learn from best practices adopted by other Governments and exchange positive experiences in the field of alternatives to detention. Collecting and sharing good practices across governments on effective implementation of ATD programmes is encouraged. Such good practices should be grounded in a human-rights framework and attend to the safety and well-being of the asylum-seeker at least to the same extent as attending to government interests.

### **Understanding the Legal Framework<sup>5</sup>**

1. Detention of asylum-seekers should in principle be avoided, be a measure of last resort, prescribed by law and applied only where necessary, reasonable and proportionate to a legitimate purpose. Alternatives to detention are an important feature in most asylum systems. UNHCR's *Guidelines on Detention and Alternatives to Detention* are a welcome tool for understanding and addressing the on-going challenge of detention of asylum-seekers, and provide a range of practical examples of alternatives to detention.

2. Detention produces negative emotional, psychological and physical effects on asylum-seekers and their families. This is true even during short-term periods of detention, as well as for persons who may

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<sup>5</sup> The international legal framework is most clearly set out under the *UNHCR 2012 Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum Seekers and Alternatives to Detention* ("2012 UNHCR Detention Guidelines" or "the Guidelines").

not be classified as “vulnerable” under government criteria.<sup>6</sup> The effects of detention can endure long after release, and can also lead to family breakdown and difficulties with community integration if asylum is granted.

3. Research has shown that detention does not deter irregular migration and that such migration occurs regardless of a State’s detention policies. Nonetheless, some governments have expanded the use of immigration detention. The right to seek asylum—and to not be penalized for seeking asylum—is embedded in the international human and refugee rights framework.<sup>7</sup> Detention policies designed to deter asylum-seekers are not for a legitimate purpose under international law.

4. Asylum-seekers and other migrants should be separated from those being held on remand or those convicted of crimes, and that they should not be held in penal facilities. Human rights standards for detention include special safeguards and conditions for vulnerable groups, including children, elderly, pregnant women, and persons with physical or mental disabilities.

5. Before detention, a state should first consider whether ATD may be appropriate in the individual case. ATDs encompass a range of options. Adequate screening tools guided by the principles of necessity, reasonableness and proportionality can help determine the most appropriate option.

6. Alternatives to detention should not amount to alternative forms of *detention*. An alternative can become a form of detention due to, for example, onerous reporting requirements, restrictive curfews, or home-detention. Where an ATD imposes conditions on release that involve restrictions on liberty, these must be subject to periodic review by an independent body empowered to vary the conditions.

7. Establishing identity is a notable challenge that governments face in making decisions to detain or not detain individual asylum-seekers. Minimal periods in detention may be permissible to carry out initial identity and security checks in case where identity is undetermined or in dispute. Asylum seekers should understand the processes for establishing identity and be aware of relevant documentation that might prove identity. Governments retain responsibility to make all reasonable efforts to determine identity, and should ensure individualized, periodic review of the necessity, proportionality and reasonableness of continued detention on the basis of failure to establish identity.

### **Community-Based Alternatives and Good Practices**

8. Community-based alternatives to detention can be valuable resources for governments. Non-governmental organizations, such as Vive la Casa, the Multicultural Centre, Casa El Norte, and Matthew House, are examples of how true community-based alternatives provide relatively inexpensive and comprehensive services to individuals seeking asylum, while supporting the efficient operation of the asylum system. These services include housing or support in sourcing housing, psychosocial support, education (including language training), and legal needs.

#### *Canada – Government-Funded Bail Programme ATD Model*

9. The government-funded Toronto Bail Programme (TBP) was recognized as one successful ATD collaboration between the Canadian government and civil society. The TBP typically engages in supervising asylum-seekers who cannot be released because they are, for example, without a bondsperson. TBP performs an important complement to normal bail systems, in particular removing the financial obstacles to release for some individuals. TBP provides a range of services to its clients.

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<sup>6</sup> See generally Jesuit Refugee Service, *Europe: Becoming Vulnerable in Detention*, June 2011, available at: <http://www.unhcr.org/refworld/docid/4ec269f62.html>.

<sup>7</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, art. 31, available at: <http://www.unhcr.org/refworld/docid/3be01b964.html>.

10. It was stressed that government support is necessary for community-based alternatives. Community-based organizations in the USA and Canada often struggle to meet growing needs with limited resources and depend on private and community donations, and grants and funds from local and national governments. Some receive a per-diem from the national government for the people they are hosting. For example, the Canadian government funds the TBP programme, based on annual performance indicators of compliance. The regularity of the funding enables the TBP to hire experienced, qualified personnel, including a mental health coordinator. Even with this funding, TBP provides significant cost-savings to the Canadian Government.

#### *Sweden – Open Accommodation Centres and Supervision Arrangements for ATD*

11. The Swedish Government presented on their use of open accommodation centres as the primary reception response for asylum-seekers during the initial stages of the application process. Very few asylum-seekers are in fact held in detention during the asylum procedure, with a very high rate of compliance. Long-term applicants can choose to stay in an apartment or they can arrange their own accommodation with relatives and friends while the authorities adjudicate their claims for protection. The only form of ATD that is contemplated is supervision arrangements, and detention and ATD are typically used only in the returns context. In Sweden, detention is applied as a last resort, in particular in recognition of the individual's liberty interests. It was also noted that the high financial costs of confinement make open reception arrangements attractive.

#### *Australia – Community Detention ATD Model*

12. The Australian Government also presented its Community Detention Programme (CDP), which is supported and carried out by several contracted service providers, including the Australian Red Cross and other NGOs. People in community detention remain administratively detained, however are free to move about the community without the need to be accompanied. Accommodation, a living allowance, education for children, health care, live-in care for unaccompanied minors and various other supports are provided to clients through the service providers.

13. Additionally, Australia also uses a bridging visa model to support people who initially arrive without a visa. Both models allow people to reside in the community and live as normal a life as possible, and they each use screening of individuals held in detention to identify vulnerable asylum-seekers. Australia also highlighted their government case management service, in which each asylum-seeker is assigned a case manager who is responsible for overseeing the case to status resolution.

#### *USA – Community Support Release ATD Model*

14. In the USA, the government is considering a pilot arrangement to release certain individuals into community support ATD programmes run by NGOs that assist the individuals to access local legal, social and other services. These programmes are based on a case management model of assistance, with the idea that accessing services support the individuals during their cases and lead to better outcomes. The pilot would initially focus on vulnerable populations, including families and asylum-seekers. The government and NGOs have agreed that roles and responsibilities would need to be clearly defined, with the NGOs providing holistic support to the individuals in the programme, and explicitly leaving monitoring and enforcement to the government.

#### *Addressing Needs of Children and Families Seeking Asylum in ATDs*

15. With respect to child asylum-seekers, a model of care rather than enforcement needs to govern all interactions with children. The best interests of the child should be the cornerstone of all asylum proceedings for minors and remain the primary consideration,<sup>8</sup> and further, a child has a right to

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<sup>8</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, art. 3, available at: <http://www.unhcr.org/refworld/docid/3ae6b38f0.html>

family life, education, and development, among others. Community-based ATD providers like Casa El Norte, Matthew House and Vive la Casa facilitate compliance with these principles by assisting unaccompanied children and families to meet their legal, social and emotional needs. Services include supporting children in accessing schools, assisting with their asylum applications, and if granted asylum, helping them find a stable, long-term home environment. Experts also noted a number of other international good practices that ensure the best interest and right to liberty of children with irregular status.<sup>9</sup>

#### *Addressing Mental Health Needs of Asylum-Seekers in ATDs*

16. Any decision to restrict the liberty of an asylum-seeker with mental and/or physical medical needs must consider the compounding impact of detention on those needs and how to address them. Likewise, those released into the care of a community-based ATD often have on-going needs that require additional resources to address. States should work together with ATD programmes to address such individuals' on-going care needs. The government-funded TBP notably has recently added a mental health specialist to assist those individuals with such needs.

#### **Screening Mechanisms**

17. Screening mechanisms are important facets of detention reviews, and also allow alternatives to be tailored to the particular individual's circumstances and needs, leading in turn to good cooperation and compliance rates.<sup>10</sup>

18. Established lines of communication and trust between community-based ATD models and government authorities allow eligible asylum-seekers to be quickly identified and referred to ATD programmes. Such referral systems reduce the amount of time asylum-seekers spend in detention and facilitate efficient functioning of the asylum system.

19. States have adopted a range of screening models for ATD. The USA has developed a computer-based risk classification assessment tool to inform custody decisions at the time of intake. The tool is designed to balance vulnerabilities with others factors, such as risk of flight and danger to the community, enabling decisions to be taken in respect of release and the types of conditions, if any, to be imposed (for example, release on own recognizance, order of supervision, bond, or electronic monitoring). A primary benefit of the tool will be to improve uniformity of custody determinations throughout the United States. Nonetheless, mandatory detention laws in the USA will limit the degree to which this determination is truly individualized in all cases. Although the automated nature of the screening tool in the USA has advantages in particular because of the volume of irregular migrants entering the system annually, it was recognized that such automation might not be suited to other countries with smaller volumes. There was also discussion about the need to ensure that qualitative assessments continue to take place when applying the automated system. Notably, the recommended "custody level" produced by the USA risk classification assessment tool may be overturned at a supervisory level following a careful qualitative assessment of all considerations.

20. In Australia, the government conducts screening to identify non-citizens with certain vulnerabilities for placement into their Community Detention Programme (CDP). The programme focuses on unaccompanied children and vulnerable families, though other vulnerable persons—including those with more serious medical needs—may also be considered for placement. Once these individuals are screened for their vulnerabilities, the Australian Government coordinated with the

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<sup>9</sup> For example, the Child-Sensitive Community Assessment & Placement (CCAP) model, which provides care for irregular migrant children in the community outside of places of detention, involves five steps: Step 1. Prevention; Step 2. Assessment & Referral; Step 3. Management & Processing; Step 4. Reviewing and Safeguarding; and Step 5. Case Resolution. International Detention Coalition (IDC), *Child-Sensitive Community Assessment & Placement (CCAP) Model*, available at: <http://idcoalition.org/ccap/>.

<sup>10</sup> Both the Australian Red Cross and the TBP have detailed screening processes for the people whom they serve in addition to the government referral process.

Community Detention Service Providers to arrange for their placement into the CDP, which subsequently includes individualized case management and monitoring arrangements.<sup>11</sup>

### **Case Management and Legal Aid**

21. In both the detention and ATD contexts, consistent and reliable information and communication are essential to compliance and cooperation by individuals. Research has shown that when asylum-seekers understand the asylum process and are treated with dignity and respect throughout, they are more likely to feel engaged in the asylum process and that the outcome of the process – no matter positive or negative - is fair.

#### *Case Management in ATDs*

22. Case management can be an effective component of any asylum system, whether persons are in detention or in an alternative to detention. Case management can be described broadly as the way in which the state, stakeholder and/or community-based organization works with an individual in detention or in an ATD programme to ensure meaningful access to and completion of the asylum process. Drawing from the social services framework, effective case management referrals in the ATD attends to the whole spectrum of human needs and care for asylum-seekers.

23. Case management should be introduced from the very start of the process. Preferably an applicant should have a single case manager to follow them from the start to the completion of the process. In Australia, individualized case management is central to the CDP, where case workers facilitate a holistic process for the client to help meet their living and psychosocial needs. Asylum seekers in the program are referred to as “clients,” both by the Government and service providers, to enhance the service-oriented nature of case management. Clients are assigned a government case manager whose main role is to ensure their asylum claims are being progressed appropriately, that the client has access to legal services, and that the client is aware of options available to resolve their status. Clients are also assigned a case worker through the service provider who assists them to manage any personal difficulties external to the asylum process and provides support to enable the client to live in the community successfully.

24. Similarly, the TBP uses a comprehensive orientation as a key part of the intake process. This again helps ensure that individuals understand the programmes’ rules and priorities, including the rights, duties and consequences of a failure to comply, from the outset.

25. In the United States, one ATD arrangement, the Intensive Supervised Release Program (ISAP II), identifies program participants based on specific criteria that indicate these participants’ success in the program. Each participant’s case is monitored on an individual basis according to his/her immigration status and unique needs. Depending on case specifics, the participant’s enrollment is immediately monitored either by an immigration officer or by an ISAP II contractor case specialist who works with immigration officers to support the participant’s progress through the immigration system. Contractor case specialists may also assist the participant with referrals to community services providing transportation, housing, rehabilitation, childcare, and other legal support.

26. Where case management involves some form of supervision, this should be a flexible mechanism that can be minimized over time. This should be carried out thorough individualized periodic reviews of the necessity, proportionality and reasonableness of the supervision requirements.

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<sup>11</sup> While the Australian Red Cross is the main service provider, other organizations also partner with the Australian Government for CDP placement, including Hotham Mission Asylum Seeker Project, Mercy Community Services, the Salvation Army, Multicultural Development Association, MacKillop Family Services and Marist Youth Care.

27. It is also important to be aware of and to acknowledge the risks associated with some forms of release, especially for unaccompanied minors. Trafficking of persons remains a concern, and hence children need to be released to proper supervisory arrangements, including to foster care or, where foster care has been determined not to be appropriate, to residential homes.

28. Regardless of the format, case management should be promoted with early and informed engagement of the individual enrolled in the ATD programme. Part of informed engagement means that the individuals should be made aware of the full range of legal options to stay and the consequences of non-compliance. Early engagement means that this should be clear from the start, when screening an individual into an ATD programme.<sup>12</sup>

#### *Legal Assistance in ATDs*

29. Where possible, governments should provide free legal assistance to asylum-seekers. Sweden and Canada provide legal representation for asylum-seekers on a limited basis pursuant to request by the applicant. Sweden will also consider requests for legal counsel for an appeal of an asylum denial.

30. Australia provides access to "migration agents" - independent providers of immigration assistance and advice - for all asylum seekers through the Immigration and Application Advice Assistance Scheme (IAAAS).<sup>13</sup> The IAAAS provider assists the client to present their asylum claims for assessment and continues to support them through an independent review, where relevant, before ceasing their services.

31. Where legal aid is not possible, a government should ensure that individuals understand their rights and options in the asylum context, through consistent, accessible and reliable legal information and guidance. Early and consistent information, in a language the asylum-seeker understands, provides more meaningful access to protection procedures for asylum-seekers and can mitigate unfounded applications when people realize early on that they are ineligible. Understanding of the system can also help limit unfounded appeals and facilitate voluntary return.

#### **Roles and Responsibilities, Monitoring and Reporting**

32. The governments, organizations and individuals that are a part of ATD programmes should be clear on the relevant roles and responsibilities. This includes the roles of all levels of government and any partner organizations. Governments, NGOs and those receiving services should use this knowledge to facilitate coordination, accountability and responsibility for the success of the programme.

33. Monitoring mechanisms provide a tool via which government authorities maintain contact with the individual in an ATD programme. Such mechanisms include supervision orders and designated addresses, among others.<sup>14</sup> Clearly defined monitoring mechanisms facilitate communication and trust between authorities and individuals in an ATD programme. Depending on the programme, monitoring may be separate from case management, which focuses on continued needs assessment and adjustment of arrangements accordingly. In Australia, the Australian Government conducts case monitoring in the Community Detention model, while the Australian Red Cross conducts case management and responds to emerging individual needs.

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<sup>12</sup> IDC, *There Are Alternatives*, Sections 3 & 4. See also IDC, *Case management as an alternative to immigration detention: The Australian Experience*, June 2009, available at: <http://idcoalition.org/wp-content/uploads/2010/02/a2daustrialiabrief1feb2010.pdf>.

<sup>13</sup> For more information regarding the IAAAS program, see <http://www.immi.gov.au/media/factsheets/63advice.htm>.

<sup>14</sup> See IDC, *There Are Alternatives*, Section 4.4.2.



34. Involvement of civil society in research, development, implementation and monitoring/inspection of alternatives to detention is instrumental to ensure the success of ATD programmes.

35. Regarding reporting, the Australian Government and NGO service providers established clear parameters regarding information that is required to be reported by the service provider for each case. These reporting requirements are communicated to the “community detention” clients immediately prior to entry in the program by their Government case manager. The client must acknowledge the reporting arrangements in writing, as well as the conditions for their ongoing placement in the community, to ensure they are aware of their rights, responsibilities and the consequences of non-compliance. NGO service providers must report various incidents, including client non-compliance, to the Government within prescribed timeframes.

36. The TBP also operates a contract-based tool, in which clients commit to abide by the rules of the programme, and the TBP commits to deliver a range of services. TBP notifies clients that failure to appear for an appointment may require the TBP to inform the authorities for their action.

37. The “enforcement” question has been a stumbling block for some NGOs to engage with governments in this area. One solution would be that an individual released subject to reporting conditions would continue to report to the government (for example, to his or her government caseworker, to the immigration authorities at regular intervals, or to the police), whereas the NGO would be responsible only for service delivery, and reporting on monthly or quarterly statistics. Australia has developed an ATD programme in which asylum-seekers are released to community-based organizations that provide holistic support, while the government distinctly retains enforcement responsibilities.

#### **Additional Observations**

38. There are many practical reasons for the use of ATD, including the human rights consequences and the social and economic costs. Alternatives to detention, when properly managed, can facilitate the efficient functioning of the asylum system and some programmes have a 90-95% compliance rate. ATD can also encourage voluntary repatriation when asylum is denied.<sup>15</sup>

39. Involvement of civil society in research, development, implementation and monitoring/inspection of alternative to detention is instrumental to ensure the success of these programmes.

40. The Canada/USA Bi-National Roundtable clearly showed that in the area of ATD governments can learn from each other and from non-governmental stakeholders. The exchange of past and current good practices is useful for developing a better framework for moving forward an ATD-based approach to the treatment of asylum-seekers, and can encourage more successful practices.

41. There remain significant challenges around identity checks and the provision of documents for incoming asylum-seekers. Creating a better understanding of how different governments address this growing problem will also inform the ATD process.

42. The stated purposes of ATD may have an effect on whether it is considered a success and on its long term survival. Understanding and acknowledging this is important. While key performance indicators should include compliance with international legal obligations, the well-being of applicants, as well as the financial cost, further research is needed into the full costs of ATD versus detention over time, including the long-term impacts of detention on the individual and his/her family, as well as the additional costs involved in social and economic integration.

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<sup>15</sup> Edwards, *Back to Basics*, p. 85.

43. Further research into state practices and implementation is also needed. Collection of more statistics on separate categories will also help inform the dialogue going forward. Government commitment to and cooperation with data distribution will be integral to this.

44. UNHCR and the government and NGO participants agreed to the importance of follow up to the discussions and conclusions of the roundtable event. UNHCR will coordinate this process, in conjunction with the event participants.

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