



IMMIGRATION
DETENTION
MONITORING



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MODULE 1 INTRODUCTION TO IMMIGRATION DETENTION MONITORING



UNHCR
The UN Refugee Agency



LEGEND

 **LEARNING OBJECTIVES**

 **REFLECTION ACTIVITY**

 **SUPPLEMENTARY READING**

 **SELF-ASSESSMENT**

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CHAPTER 1

LEARNING OBJECTIVES AND UNIT STRUCTURE

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

- ✓ Describe what detention monitoring is;
- ✓ Recognize the value in detention monitoring; and
- ✓ Identify good practices and examples of detention monitoring.

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

This module should take you around 45 minutes to complete.



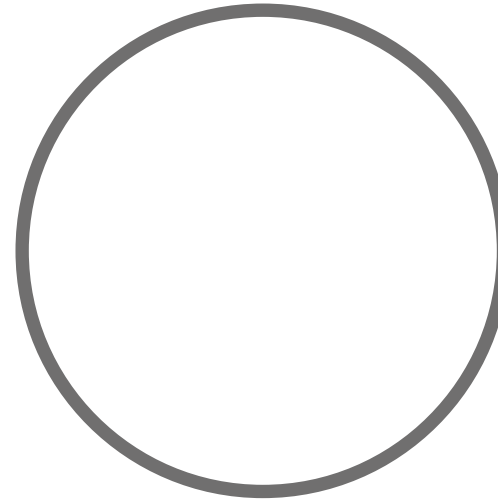
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Chapter 1

CHAPTER 2

DETENTION IN THE IMMIGRATION CONTEXT

Detention in the immigration context must be exceptional and must be necessary and proportionate in each individual case (you may wish to consult the Fundamentals of Immigration Detention e-Learning). Yet States do not always comply fully with these international law requirements and various policy approaches are adopted as justifications. Let us examine these:



Click on the circles to see more.



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Chapter 2



Today the use of immigration detention as a migration management tool is on the rise in a large number of countries. Far from being used as an exceptional practice, immigration detention is being used increasingly in a systematic manner as a first response to irregular arrivals. This is particularly concerning for asylum-seekers and others in need of international protection.

Detention is a deprivation of liberty and must comply with the relevant safeguards provided in international law. Before we go over how to tell whether immigration detention does, in fact, comply with international legal standards, let us examine the places where immigration detention can occur.





CHAPTER 3

WHERE CAN IMMIGRATION DETENTION OCCUR?

Immigration detention can occur in a broad array of locations, not only in places that are designated as ‘detention facilities’ by the authorities. A place of immigration detention means any place where a person is deprived of liberty on the basis of his or her immigration status. Such places may include not only designated immigration detention centres and removal or transit centres but also airports, transit and ‘international zones’, houses, hostels and even hotels, as well as variety of community-based locations. One common thread to these varied locations is that residents (detainees) are not free to leave at will. We shall examine the various types of immigration detention places in more detail in Module 2.

REMEMBER

The tell-tale characteristic of an immigration detention facility is not what it is officially called. The determining factor is whether a person is free to leave it at will, or not.



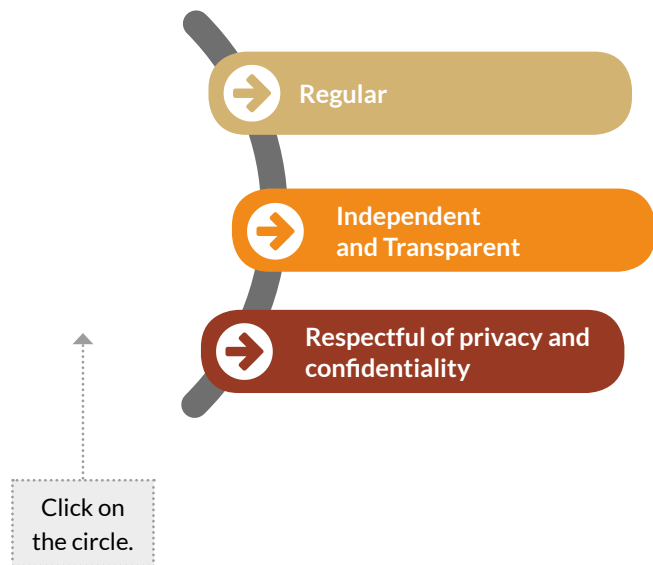
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Chapter 3

WHY MONITOR?

Transparency and independent oversight of the public administration of the State are critical parts of any system based on principles of democracy and the rule of law. This is especially true in the case of monitoring the power of the State to deprive anyone of their liberty, not least in the context of immigration detention.

To ensure that systems of immigration detention comply with international legal principles, it is important that immigration detention centres be open to scrutiny and monitoring by independent national and international institutions and bodies.



Having immigration detention sites visited by monitoring bodies can open up the closed world of custody and contribute to:





CHAPTER 5

WHO MONITORS? ACTORS OF IMMIGRATION DETENTION MONITORING: UNHCR

UNHCR is one of the leading international organizations that carries out visits to immigration detention facilities. UNHCR does this as part of its key responsibilities:

- 1 Supervisory responsibility for state implementation of international instruments relating to asylum-seekers and refugees; and
- 2 Protection responsibility. Given the particular character of asylum-seekers, refugees and stateless people as people who lack the protection of their own countries, UNHCR is entitled to and responsible for interceding directly on their behalf.

Supervisory function

To oversee the implementation of international standards

Protective function

To find solutions
To intercede directly



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Chapter 5



5.1 Who monitors?

Actors of detention monitoring: UNHCR

While UNHCR carries out many activities in detention facilities (including visiting places of detention for the purposes of identifying people of concern, ensuring their access to asylum procedures or carrying out status determination), it also has longstanding experience in accessing people of concern in detention and monitoring the conditions in places of detention. While UNHCR offices adopt a variety of approaches to detention monitoring, pursuant to its mandate for the international protection of refugees the organization has a particular role to play in monitoring immigration detention. It is important to understand that:

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 covers a broader range of activities that include the careful examination of all relevant aspects of the conditions in which people are held. These conditions will be examined in these self-study modules. Moreover, detention monitoring needs to take place in a systematic manner in the context of a preventive approach that seeks to avert human rights violations, at both the individual and systemic level, before they happen.



**MONITORING IS NOT JUST VISITING
PEOPLE IN DETENTION**



**MONITORING ENTAILS A BROADER
RANGE OF ACTIVITIES**



**MONITORING NEEDS TO TAKE PLACE
IN A SYSTEMATIC MANNER IN THE CONTEXT OF A
PREVENTIVE APPROACH**

5.2 Who monitors? National actors

In the Fundamentals of Immigration Detention e-Learning we examined the key bodies that carry out monitoring at both the national and international levels. Let us quickly re-cap.



Click on the key
bodies to learn more.



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5.3 Who monitors? The international level



Click on the key
bodies to learn more.



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WHO BENEFITS FROM MONITORING?

← Click on each element of the circle.



INTERIM ASSIGNMENT

Please read carefully the following statements and mark them as TRUE or FALSE.

	Statement	True	False
1.	The Subcommittee on Prevention of Torture is the United Nations body which receives complaints about instances of torture in detention.		
2.	Non-governmental organizations in some countries may have access to detention facilities, usually negotiated with the authorities.		
3.	National Preventive Mechanisms (NPMs) must have unhindered access for announced visits to all the detention facilities in the country.		

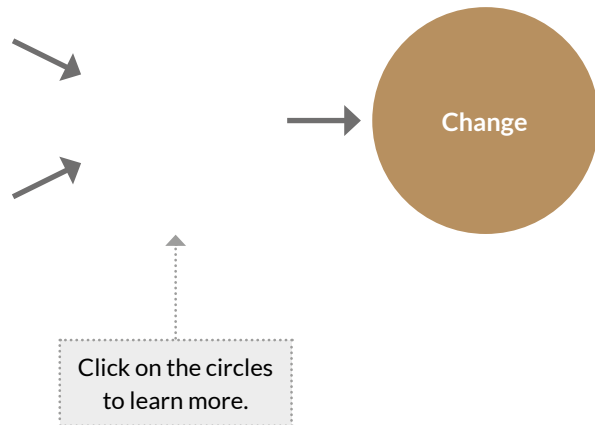




	Statement	True	False
4.	Preventive monitoring is of little benefit to the State authorities because it exposes them to a large degree criticism.		
5.	Preventive monitoring may have the positive effect of changing the negative perceptions of the society at large about immigration detention.		
6.	UNHCR's role in detention monitoring is to supervise the implementation of international law standards related to asylum-seekers and refugees.		
7.	Through our national legislation, access to all detention facilities is granted to our Human Rights Commission and they are doing a good job. There is therefore no need for other agencies, such as UNHCR or NGOs, to carry out any further monitoring		

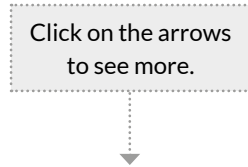
PRECONDITIONS FOR DETENTION MONITORING

On-site visits to places of immigration detention are the principal means to access first-hand information on the treatment of detainees, the reasons for their detention, their living conditions and the functioning of the places of detention. Such visits have two key approaches that, together, must lead to a constructive dialogue with the authorities and ultimately to a change in the detention facility.



8.1 On-site visits should be:

Click on the arrows
to see more.



WHAT DO WE MONITOR?

We shall be dealing in detail with the legal standards of immigration detention in Module 5, but for now it is important to understand the substance of a monitoring visit: what do we monitor?

In short, the answer is: we monitor conditions of detention.

Monitoring conditions of detention encompasses all aspects of the lives of people deprived of their liberty and involves access to all areas where detainees are held.

CONDITIONS OF DETENTION

← Click on the list to learn more about the conditions of detention.



WHAT MONITORING IS NOT

It is important that preventive monitoring visits are distinguished from other types of visits which can occur in an immigration detention facility. These other types of visits can include, for example, regular visits by UNHCR focused on identifying or registering people in need of international protection or for purposes of carrying out refugee status determination or resettlement interviews. Other types of visits which can occur in the detention facility include:

All these other types of visits contribute to preventive monitoring, though, because they can be a source of important information. For example, a visit for individual casework can provide information about more systemic or structural problems or may raise questions about the adequacy of mechanisms for referral to asylum or other procedures.

The different types of visits are not mutually exclusive. Instead, they complement each other.

NOT A PREVENTIVE VISIT

Click on each type of visit to learn more.



INTERIM ASSIGNMENT

Carefully read the following five descriptions of visits to an immigration detention facility and identify the primary aim of each of those visits as one of the following types:

- | | |
|---------------------------|---|
| A. Preventive | D. Single visit |
| B. Reactive | E. For identification/registration purposes |
| C. Provision of a service | |

		A	B	C	D	E
1.	The visiting team has arrived at an immigration detention facility and asks to meet the detainees who took part in the protest that occurred in the facility last week.					
2.	The visiting team has arrived at an immigration detention facility and asks the authorities to show them the changes made in the way they register the detainees, which was one of the recommendations the team made last week.					
3.	The authorities have concluded an agreement with an organization for the provision of counselling services to asylum-seekers in detention. The representatives of this organization have arrived to inspect the facilities which the detention authorities have provided to them and to set up a system of visits thereafter to start counselling.					





A. Preventive	D. Single visit
B. Reactive	E. For identification/registration purposes
C. Provision of a service	

		A	B	C	D	E
4.	There is a memorandum of understanding between the immigration detention facility and an organization for providing training to the detention facility staff. One part of that agreement allows for a visit to be conducted to the immigration detention facility to see the working conditions of the staff.					
5.	The visiting team has arrived at the immigration detention facility as a part of its study to examine the mental health of those in various detention facilities in the country.					
6.	A UNHCR staff member has arrived at the immigration detention facility to see whether there are any unaccompanied children there and, if so, to make a list of their names.					



CHAPTER 12

KEY MESSAGES



- Immigration detention, which can occur in various types of facilities, should be subject to independent monitoring
- The fundamental premise of such monitoring is prevention of human rights violations



- Many international, regional and national bodies are able to carry out monitoring visits to immigration detention facilities
- UNHCR must be given prompt and unhindered access to all detention facilities



- 'Monitoring' describes the process of periodic or regular examination of immigration detention through on-site visits
- This examination can cover a particular aspect of detention or certain categories of detainees, or it could be more comprehensive



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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.