

**ANNUAL CONSULTATIONS WITH NGOs
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THEMATIC SESSION

BACKGROUND PAPER

Monitoring places of immigration detention

Wednesday 18 June 2014, 11h15 – 13h00 – Room 4

Today the use of immigration detention as a migration management tool by many governments is on the rise. The detention of refugees, asylum-seekers and migrants¹ represents a growing human rights challenge worldwide, despite detention only being permitted as a matter of international law where it is ‘necessary’, ‘reasonable’, and ‘proportionate’ to the ‘legitimate aim’ to be achieved, and then only after less coercive alternatives have been found not to be suitable in each individual case.

This is a worrying trend, not least because the latest empirical research shows that not even the most stringent detention policies deter irregular migration or discourage persons from seeking asylum. Recent research commissioned by UNHCR suggests that many asylum-seekers are unaware of the detention policies of their destination countries, or have little or no say about their journey or their final destination.² Seeking asylum is not an unlawful act³ and as such, even those having entered or remained in the territory without authorization, are protected from penalization, including penalization in the form of detention or other restrictions on their movement. Article 31 of the 1951 Convention relating to the Status of Refugees requires States to amend – and to implement – laws to ensure that no person who is entitled to benefit from Article 31 is subject to such penalties⁴.

In this context, it is critical that monitoring bodies, NGOs, and UNHCR staff are actively engaged in and have the capacity to monitor and/or inspect places of immigration detention. Transparency and independent oversight of the public administration of a 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 his/her liberty, not least in the context of immigration detention. Monitoring also allows for a thorough identification of vulnerable groups in the diverse population of immigration detention centers. By recognizing individuals at risk,

¹ For the purposes of this Background Paper, “refugees, asylum-seekers and migrants” is used broadly to refer to the many legal, political and social categories of migrants.

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

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

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

such as women, children and LGBTI individuals, steps can be taken to address the issues that leave certain groups feeling susceptible within their environment. Immigration detention is always a deprivation of the right to liberty and security of person, however particularly vulnerable groups continue to be detained at a higher risk. Immigration detention must therefore always comply with the relevant safeguards provided in international law.

Women in immigration detention, for example, have distinctive needs that need to be provided for. Although some categories of women, including pregnant women and nursing mothers, should not be detained at all, if they are exceptionally detained then special medical and other support are to be provided. Likewise, the gender-specific hygiene needs and related reproductive health matters of women need to be catered for. Measures to prevent sexual abuse and other forms of gender-based violence, and to respond to victims, must be ensured by the detaining authorities.

The very fact of visits by monitoring bodies to places of immigration detention can open up the closed world of custody and contribute to increasing transparency and accountability and strengthening public confidence. These visits can also have an important deterrent effect and reduce the risk of human rights violations such as torture and inhuman and degrading treatment.

Moreover, refugees, asylum-seekers and migrants may be detained in conditions that do not meet minimum standards and are unsuited to their particular circumstances. While practices and conditions of detention vary widely between countries and even within countries at different detention facilities, an endemic problem in the immigration context is that detention can, whether intentionally or otherwise, have the effect of inhibiting access to procedures that are critical for resolving the immigration status of the detainee, often with far-reaching human rights consequences. In this connection, administrative and/or judicial review of different forms of immigration detention may not be available. Indeed, in practice, many governments do not take proper or adequate account of the special or particular protection needs and individual vulnerabilities of certain categories of immigration detainees, including the relevant age, gender or diversity factors of an individual.

In 2014, UNHCR, together with the Association for the Prevention of Torture (APT) and the International Detention Coalition (IDC), are releasing a new resource, *Monitoring Places of Immigration Detention: A Practical Manual*. This Manual seeks to provide a practical tool for building and strengthening monitoring and/or inspection capacities for places of immigration detention, with a particular focus on preventative monitoring.

This session on “Monitoring Places of Immigration Detention” aims to highlight the importance of regular and ongoing preventative monitoring of places of immigration detention, and to share the new *Monitoring Manual* as a way to encourage more capacity for and engagement in immigration detention monitoring by UNHCR, its partners and stakeholders.

The session will in particular provide an overview of *Monitoring Places of Immigration Detention: A Practical Manual*, and provide a platform to discuss advocacy strategies around improving rights, conditions and regular monitoring of places of immigration detention, such as building partnerships and networks, information-gathering and sharing, research dissemination, good practices promotion, campaigning, litigation, training and capacity-building.

Individuals and groups are invited to share examples from their own regional or domestic contexts and to help identify positive practices with regard to monitoring places of immigration detention.