

# UNHCR Annual NGO Consultations 2015

## Background Paper:

### Community-based support and care: providing alternatives to the detention of refugees and asylum seekers

Thursday July 2, 2015, 13h00 - 14h30

Room 5, International Conference Center Geneva (ICCG)

The use of immigration detention is a widespread and expanding feature of migration policies, and represents an important human rights challenge worldwide.<sup>1</sup> Immigration detention practices have come under considerable scrutiny in recent years both on practical and human rights grounds. There has been growing litigation, public concern, and increasing recognition of the serious mental and physical health impacts of immigration detention, especially on children and other particularly vulnerable individuals.

The continued use of immigration detention is especially troubling given that the latest empirical research demonstrates not even the most stringent detention policies deter irregular migration or discourage persons from seeking asylum.<sup>2</sup> This raises important questions over the legality and effectiveness of immigration detention policies in general, especially when viable alternatives exist.

International and regional human rights laws clearly provide that the use of detention must be an exceptional measure of last resort. The fundamental right to liberty prohibits states from resorting to detention—even in cases of irregular entry or stay—unless it is absolutely necessary, reasonable, and proportionate to a legitimate state objective.<sup>3</sup> Instead, states have an obligation to first explore and implement “alternative measures” consistent with the principle of minimum intervention prior to any decision to detain.<sup>4</sup> Furthermore, seeking asylum is never an unlawful act and asylum seekers should never be penalised, including the imposition of detention or other restrictive measures, on the basis of entering a country to seek asylum.<sup>5</sup>

Recognising this, in recent years a number of states have undertaken detention reform to ensure that detention is truly an exceptional measure and to implement non-custodial alternatives to detention (ATD) as a matter of priority. This includes legislative and policy choices to avoid detention altogether for particularly vulnerable groups. It also includes a number of innovative strategies for effectively supporting and protecting the rights of individuals in the community without the use of detention; strategies such as the use of individual screening and assessment, community-based care models, specialised shelters, temporary visas, regularisation and integration supports, and the provision of legal aid, counselling services and case management.

Governments increasingly are taking steps to explore and implement ATD, ranging from

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<sup>1</sup> See generally, Sampson, R.; Mitchell, G., *Global Trends in Immigration Detention and Alternatives to Detention: Practical, Political and Symbolic Rationales*, Journal on Migration and Human Security, (2013).

<sup>2</sup> See International Detention Coalition (2015), *Briefing Paper: Does Detention Deter?*, available at <http://idcoalition.org/detentiondatabase/does-detention-deter/>.

<sup>3</sup> See UNHCR Detention Guidelines, Guideline 1.

<sup>4</sup> See UNHCR Detention Guidelines, Guideline 4.3.

<sup>5</sup> See UNHCR Detention Guidelines, Guideline 4.

initial scoping studies and small-scale pilot projects to significant policy developments and systemic change.<sup>6</sup> An initial body of research has already highlighted the many benefits of ATD, including that they reduce the financial and human costs of detention while meeting states' legitimate compliance objectives.<sup>7</sup> However, there is a growing consensus on the need for better research and understanding of the key elements of successful ATD as well as examples of positive ATD practices which states can implement in their own domestic context.<sup>8</sup>

To facilitate this, in 2014 UNHCR launched a *Global Strategy – Beyond Detention 2014-2019*, a five-year initiative through which UNHCR is supporting governments to address some of the main challenges around immigration detention policies and practices. The *Beyond Detention* strategy includes as one of three main goals, the aim of ensuring that ATD are available in law and implemented in practice.

In April 2015, UNHCR convened the 2<sup>nd</sup> *Global Roundtable on Reception and Alternatives to Detention* in Toronto, Canada. Building on the outcomes of the first global roundtable held in 2011, the event provided an opportunity for governments and civil society organisations to explore challenges and positive practices regarding the practical implementation of ATD.

The 2<sup>nd</sup> *Global Roundtable* highlighted the need for vast expansion of community-based support and care models, including a focus on “good old-fashioned social work” as an effective strategy for engaging refugees and asylum seekers in migration procedures rather than relying on onerous conditions or punitive models which often fail to meet government aims, cost more, and can violate the rights of refugees and asylum seekers.

This side-event on “Providing alternatives to the detention of refugees and asylum seekers” seeks to build on constructive dialogue coming out of the 2<sup>nd</sup> *Global Roundtable* and to expand current ATD practice by exploring a variety of practices and approaches that successfully support refugees, asylum seekers, stateless persons and migrants to reside in the community, while at the same time ensuring safety, compliance and cost-effectiveness to the state.

In particular, this side-event will explore the benefits of case management and social work ATD models. Many of these models are not currently being considered by states as viable “alternatives to detention”, yet they are proving to be some of the most efficient and effective ways to ensure compliance with immigration procedures while respecting the rights of refugees and asylum seekers. Panelists will highlight how constructive engagement and support—rather than models which punish or restrict refugee and asylum seeker rights—can prevent unnecessary detention in the first place and help states to resolve cases more efficiently and cost-effectively.

Individuals and groups are invited to share examples from their own regional or domestic contexts and to help identify positive ATD practices.

UNHCR/IDC, May 2015.

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<sup>6</sup> Sampson, R.; Mitchell, G., *Global Trends in Immigration Detention and Alternatives to Detention: Practical, Political and Symbolic Rationales*, Journal on Migration and Human Security (2013), p. 98.

<sup>7</sup> Sampson, R., Mitchell, G. and Bowring, L., *There are Alternatives, A Handbook for Preventing Unnecessary Immigration Detention*, 2011, available at: <http://idcoalition.org/cap/handbook/>.

<sup>8</sup> See generally, Sampson et al., *There are Alternatives, op.cit.*; see also, Alice J. Edwards, *Back to Basics: The Right to Liberty and Security of Person and "Alternatives to Detention" of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants*, UNHCR, available at <http://www.unhcr.org/refworld/docid/4dc935fd2.html>.