



International Detention Coalition

Human rights for detained refugees,
asylum seekers and migrants

International immigration detention trends and good practice

BRIEFING PAPER

This briefing paper, prepared by the International Detention Coalition (IDC), looks at recent international developments related to the use of detention for migration-related purposes, which maintains the human rights, dignity and wellbeing of detainees. This includes trends concerning detention dialogue, policy reform, monitoring, training, alternatives and practice related to vulnerable populations. This is a non-exhaustive list of legislative, policy or practice examples identified by the IDC, who are currently undertaking international research to further explore these and other good practice examples.

International dialogue

Human Rights Council's first ever meeting on immigration detention at its 12th Session in September 2009 identified the need for alternatives to detention for vulnerable groups, particularly children, with a follow-up meeting expected in 2010.

A Human Rights Council resolution was adopted on child migrants, initiated by Mexico, which included that the detention of children should be as a last resort, for the shortest possible time, with States encouraged to consider alternatives to detention.

Detention monitoring:

International: 74 countries have now signed or ratified the Optional Protocol on the Convention Against Torture (OPCAT), including the 27 countries who have now implemented National Preventative Mechanisms (NPMs).

Regional detention monitoring mechanisms, including the European Committee for the Prevention of Torture (CPT); African Special Rapporteur on Prisons and Conditions of Detention; and Inter-American Special Rapporteur on the Right of Persons Deprived of their Freedom.

National independent, regular detention monitoring examples:

- National Human Rights Institutions (NHRI) – Fiji, Australia, Uganda, Malaysia, South Africa
- Ombudsmen and Independent Commissions – e.g., Argentina, Australia, Poland, UK
- Red Cross/Crescent National Societies – Canada, Australia, Sweden
- NGOs – Bulgaria, Hungary, Lebanon, Spain, Mexico, South Africa, UK.

Alternatives models and practice for vulnerable detainee groups:

Presumption against detention – Introduced legislation or policy to not detain refugees, asylum seekers and irregular migrants in the first instance, including children, and other vulnerable groups – Brazil, Sweden, Australia, Hungary, Belgium, South Africa, Canada.

Children not detained in the first instance or released upon detention: Hungary, Lebanon, Philippines, Hong Kong, Australia, Japan, Canada, Brazil, Spain, Holland, Belgium, Sweden.

Unaccompanied minors– Community release support for unaccompanied minors: Netherlands, UK, Australia, Holland, Belgium, Canada, Sweden, Hong Kong.

Trafficking victims – Legislation/policy which recognizes trafficked persons as victims and does not penalize or detain them for crimes related to acts of trafficking – Brazil, Belgium, Japan, Mozambique, Sweden, Hong Kong, Norway, Canada, Philippines, Australia. Government funded community programs aimed at prevention and supporting victims – Philippines, Ethiopia, Italy, Bulgaria, Hungary, Panama, Belgium, Indonesia, Hong Kong, New Zealand, Canada, Thailand, Romania, Netherlands, Norway, Australia, European Commission.

Alternatives to detention models, including community release options for refugees, asylum seekers, children, families and victims of human trafficking, torture and trauma survivors and individuals with health concerns. These models include:

- Release on a bond/surety/reporting requirements/detention review – US, Australia, UK, Hong Kong, Japan, Sweden, Canada.
- Release of registered refugees and asylum seekers – Sri Lanka, Malaysia, Indonesia, Lebanon.
- Release to a case worker – Australia, Belgium, Sweden, UK, US (currently being considered)
- Release to a community/religious group, including groups providing a basis for transition into the community of vulnerable cases under assurances of support and reporting – Lebanon, Sri Lanka, Indonesia, Canada, Australia.

NGO, NHRI, community-groups and Government working together

Service provision – Access given NGOs and community groups to provide health and welfare services, social support, specialist care, information and legal provision, counseling, release and repatriation assistance for vulnerable detainees, including children – Thailand, Indonesia, Pakistan, Sri Lanka, Mexico, Lebanon, Hong Kong, Canada, USA, Australia, South Africa and the EU.

Detention training for detention service providers, police officers and border guards on legal standards regarding conditions of detention, rights and welfare of detainees and the asylum and



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legal processes available for detainees - Hong Kong, Lebanon, Indonesia, Mexico, Pakistan, South Africa, Australia, US, Canada and EU.

Detention health standards and services improved - US, Australia, South Africa, Lebanon and EU.

Legal provision including legal orientation programs aimed at improving legal aid and increasing release outcomes. South Africa, Mexico, Lebanon, Indonesia, US, Australia, UK, Belgium, Japan, Canada, South Korea

Detention monitoring - See earlier section.

Benefits for government, community and detainee - Cost savings, reductions in overcrowding, improved services and more humane conditions when using detention only where assessed as necessary and access to community groups is ensured.

Asia Pacific Good Practice Examples Identified:

- Children not detained in first instance or released upon detention - Philippines, Hong Kong, Japan.
- Release into community of registered refugees - Sri Lanka, Indonesia
- Release into own recognizance - Hong Kong
- Training of detention authorities and police - Hong Kong, Japan, Indonesia, Pakistan, Malaysia
- Role of NGOs and community groups in places of detention (Including welfare services, health, social support, specialist care for children and other vulnerable groups, education, recreation etc) - Thailand, Indonesia, Hong Kong, Philippines, South Korea and Japan.

Case Study - Lebanon as a model to explore:

- OPCAT ratified in December 2008.
- Role of community groups: 24 hour access and provider of social and legal services within the centres, including health, welfare, social support, recreation, legal advice, counselling and education.
- Vulnerable groups are identified, including women and children, following needs and risk assessments from social workers and at risk groups may be released into the shelter of the community group.
- NGOs and CBOs have regular dialogue with government and provide training of detention officers and Directors on human rights and working with complex cases.

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