



# International Detention Coalition

Human rights for detained refugees,  
asylum seekers and migrants

## Alternatives to Immigration Detention Key points for consideration May 2010

### 1. Introduction

Irregular migration is an everyday issue faced by governments around the world. A range of strategies used internationally have been identified for managing refugees, asylum seekers and irregular migrants in the community while their migration status is resolved, without resorting to immigration detention. This document will outline some key concepts and strategies identified to date by IDC.

### 2. Legal framework for detention and alternatives

There are a range of international law, standards and guidelines that relate to the detention of refugees, asylum seekers and migrants<sup>1</sup>. UNHCR Guidelines for Detention state that there should be a presumption against detention.

The detention of asylum-seekers is, in the view of UNHCR inherently undesirable. This is even more so in the case of vulnerable groups such as single women, children, unaccompanied minors and those with special medical or psychological needs. Freedom from arbitrary detention is a fundamental human right and the use of detention is, in many instances, contrary to the norms and principles of international law.<sup>2</sup>

When considered necessary in the individual case, detention should only be a last resort, reviewable and used for the shortest possible time. Alternatives to detention should be used in the first instance.

The International Detention Coalition defines an alternative to detention as “any legislation, policy or practice that allows asylum seekers, refugees and migrants to reside in the community with freedom of movement while their migration status is being resolved or while awaiting deportation or removal from the country.”

### 3. Detention and community practices

International research highlights a continuum of practice where detention is not used, through to where it is used as a last resort for refugees, asylum seekers and irregular migrants. These include:

- Presumption against detention
- Identification, screening and assessment
- Open reception or accommodation centres
- Release options and alternative models
- Detention as a last resort in line with international, regional and national legal standards.<sup>3</sup>

### 4. Practical tools and strategies for implementing alternatives to detention

**4.1 Risk and Need Assessment** - A number of identification and screening mechanisms have been identified, including need and risk assessment of individual cases.

Individual screening is an important tool used by governments to identify and assess risk, need, vulnerability and strengths to make an informed case-by-case decision to not detain, detain or release and under what conditions, but also to ensure duty of care to individuals and appropriate response to people with vulnerabilities or complex needs.

<sup>1</sup> <http://idc.rfbf.com.au/wp-content/uploads/2009/06/unhcrdetentionmaterial.pdf>

<sup>2</sup> <http://www.unhcr.org.au/pdfs/detentionguidelines.pdf>

<sup>3</sup> <http://idc.rfbf.com.au/wp-content/uploads/2009/06/unhcrdetentionmaterial.pdf>

Key components of screening of individuals at any stage are:

- *Legal requirement*: Legal grounds to release or not detain in first instance
- *Government checks*: Identity, health and security screening
- *Individual case factors*: Flight risk screening factors include: stage in visa determination process, anticipated time until case resolution, local family and community connections, person's belief in the process, compliance to date, etc.
- *Vulnerability screening*: Special needs related to four key areas of vulnerability that may place people at heightened risk in a detention environment:
  - *Age*: including the elderly, children, unaccompanied and separated minors
  - *Gender and diversity*: including women at risk, pregnant and nursing mothers, sexual diversity and gender identity
  - *Health*: including physical and mental health, disability, psychosocial needs
  - *Protection needs*: including refugees, asylum seekers, stateless persons, trafficked persons, survivors of torture and trauma, sexual and gender based violence, or other violence and/or persecution.

Identification of risk and vulnerabilities can be achieved by screening prior to detention and/or during detention, with periodic review and reassessment. Individuals identified as being low risk and/or affected by a number of vulnerabilities do not need to be detained. For those where there are identified concerns, these should be assessed against whether applying conditions in the community could meet the compliance or monitoring requirements.

#### **4.2 Identifying mitigating factors in the community setting**

In addition, alternatives to detention themselves may mitigate identified risks without the need for onerous conditions, particularly if they include:

- Case management, including legal support
- Basic needs including housing, food, clothing
- Documentation, including some kind of identification.

UNHCR research found in 2006 that asylum seekers and irregular migrants rarely abscond while awaiting the outcome of a visa application or in a lawful process, if in their destination country<sup>4</sup>. In addition, preliminary research into a number of alternative programs in a range of countries, including Australia, Belgium and the UK, seem to suggest the following:

1. Asylum seekers and irregular migrants are better able to comply with requirements if they can meet their basic needs while in the community.
2. Asylum seekers and irregular migrants are more likely to accept and comply with a negative visa decision if they believe:
  - They have been through a fair RSD or visa determination process
  - They have been informed and supported through the process
  - They have explored all options to remain in the country legally<sup>5</sup>

#### **4.3 Decision to use an alternative to detention or detain**

There are a range of international examples of decision-making processes to use an alternative to detention (including decision not to detain or to release) or to detain and under what circumstances. The decision can be made at a number of levels:

1. Administrative decision: Departmental officer
2. Executive decision: Ministerial intervention

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<sup>4</sup> <http://www.unhcr.org/4474140a2.html>

<sup>5</sup> Note: The IDC is currently undertaking international research into alternatives to detention, which will be completed in October 2010. This section will be referenced in detail but includes findings in the following projects: Solihull Project in the UK; Family Alternative Project in Brussels, Belgium and Hotham Mission and the Community Care Pilot in Australia, see: <http://idcoalition.org/idc-report-case-management-as-an-alternative-to-detention-the-australian-experience/> ; [http://webcache.googleusercontent.com/search?q=cache:3KHVa5R22sIJ:www.humanrightsconsultation.gov.au/www/nhrc/submissions.nsf/list/C53737DBA6775093CA25760F000553E0/%24file/Hotham%2520Mission%2520Asylum%25200Seeker%2520Project%2520\\_AGWW-7T27MR.doc+hotham+mission+welfare+issues+and+immigration+outcomes&cd=2&hl=en&ct=clnk&gl=au](http://webcache.googleusercontent.com/search?q=cache:3KHVa5R22sIJ:www.humanrightsconsultation.gov.au/www/nhrc/submissions.nsf/list/C53737DBA6775093CA25760F000553E0/%24file/Hotham%2520Mission%2520Asylum%25200Seeker%2520Project%2520_AGWW-7T27MR.doc+hotham+mission+welfare+issues+and+immigration+outcomes&cd=2&hl=en&ct=clnk&gl=au)

### 3. Judicial decision: Court order

Input from external bodies on decision-making included legal counsel and recommendations or review from Tribunal, Ombudsman, NGO, UNHCR, health providers, Case Managers etc.



Figure 1: Decision Making Framework - Continuum of Detention and Community Practices

#### 4.4 International examples: Release options and alternative models<sup>6</sup>:

Alternatives to detention without any conditions:

- Open reception centre
- Release of vulnerable groups
- Release on own recognizance
- Release with registration and documentation
- Release to family/community group/religious group/or faith based organisation

Alternatives to detention with additional conditions include:

- Release to nominated address or accommodation centre
- Release with bail, bond, surety or guarantor
- Release with reporting requirements
- Release to a return preparation and counselling program
- Release with case management

#### 4.5 Community case management

There are a number of mechanisms used by states to support and manage people released from detention into the community. Case management is a practical framework to ensure a coordinated response to vulnerable populations in a variety of settings. Applied to migration management, case management is a strategy for managing refugees, asylum seekers and irregular migrants in the community while their migration status is resolved, without resorting to immigration detention. It can ensure that people are not detained unnecessarily, facilitate managed release in the community and promote timely case resolution.

<sup>6</sup> <http://idc.rfbf.com.au/wp-content/uploads/2009/06/unhcralternatives.pdf>

Existing models suggest case management works well where there is partnership between governments and NGOs.<sup>7</sup> Effective case management requires:

- *Initial assessment and intervention planning:* After identifying and prioritizing the most vulnerable cases, a trained worker conducts a thorough assessment to plan for intervention and support, including immediate support in detention and for release. Considerations include housing, health, livelihood, education, spiritual and social needs;
- *Consistent case work:* Ideally with a trained social worker
- *Regular review of assessment:*
- *Case conferencing with key stakeholders* at various points of the determination process (e.g. government, social worker, legal advisor)

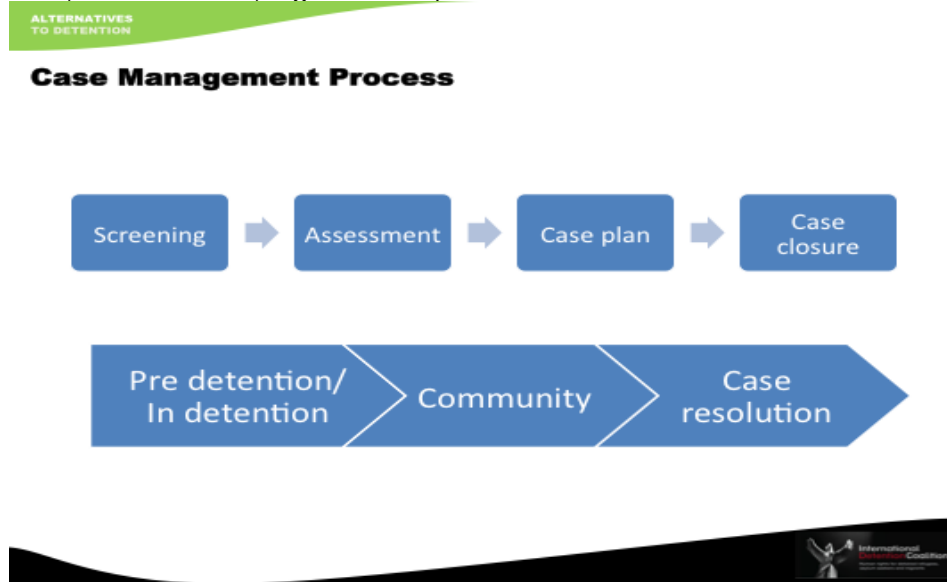


Figure 2: Case management process

#### 4.6 Timely immigration case resolution from the community

Holistic case management allows for community processing as individuals maintain a link to immigration authorities, access required support services, referrals and legal counsel and are supported to explore all options for their future. This promotes better decision-making and can contribute to a timely and fair case resolution, including return and legal stay outcomes, with the use of immigration detention. Voluntary return outcomes have been high in countries using case management but must be based on a thorough and vigorous Refugee Status Determination process to ensure people are not *refouled*.

#### 5. Identified benefits of community-based alternatives to detention

- Lower cost in comparison to detention
- Reduce wrongful detention and litigation
- Reduce overcrowding and long-term detention
- Low levels of absconding
- Increased voluntary returns for refused cases
- Improved integration outcomes for approved cases
- Improved client health and welfare<sup>8</sup>

#### 6. Selected international examples

A non-exhaustive list of some of the countries we are aware of that are currently implementing alternative to detention programs are listed below.

##### Legal presumption against detention

- Does not use immigration detention at all: Brazil
- Law provides a presumption against detention and/or alternatives to detention: Switzerland, Denmark, Ireland, Austria, Lithuania, Finland, New Zealand.

<sup>7</sup> <http://idc.rfbf.com.au/wp-content/uploads/2009/06/casemanagementinaustralia.pdf>

<sup>8</sup> To be detailed in final report. See: <http://idc.rfbf.com.au/wp-content/uploads/2009/06/casemanagementinaustralia.pdf>

### Vulnerable groups

- Children not detained or quickly released into an alternative: Australia, Belgium, Philippines, Hong Kong, Hungary, Denmark, France.
- Other vulnerable individuals released: Belgium, Malta, Canada, Sweden

### Community reception and release into alternative to detention programs

- Open accommodation centres for asylum seekers: Spain, Denmark, Finland, Ireland, Portugal, Belgium, Sweden, Hungary
- Release on own recognizance or with registration and documentation: South Africa, Ireland, Hong Kong, Bulgaria, France
- Release to nominated address: Spain, Hungary, Belgium, Australia, New Zealand
- Release to case worker support (case management): Sweden, Australia, Belgium, Spain
- Release to community group / religious group / family: USA, Mexico
- Release to a return preparation program: Belgium, Australia, the Netherlands, Germany
- Release with reporting requirements: USA, Australia, Denmark, Finland, New Zealand
- Release with bail, bond, surety or guarantee: Australia, Japan, South Korea, United Kingdom, Canada, Slovenia, Finland.