

PROTECTION-SENSITIVE ENTRY SYSTEMS: ALTERNATIVES TO DETENTION

CARIBBEAN REGIONAL CONFERENCE ON THE
PROTECTION OF VULNERABLE PERSONS IN MIXED
MIGRATION FLOWS:

PROMOTING COOPERATION AND IDENTIFICATION
OF GOOD PRACTICES

MAY 2013, NASSAU, THE BAHAMAS



**International
Detention Coalition**

Human rights for detained refugees,
asylum seekers and migrants

International Human Rights framework

The right to liberty and security of person

The right to freedom of movement

- Immigration detention is highly controversial due to its negative impact on health, well being and human rights.
- International human rights law and standards make clear that immigration detention should be used only as a last resort in exceptional cases after all other options have been shown to be inadequate in the individual case.

Trends

- Detention as migration management tool. Mandatory detention in mixed and transit contexts.
 - litigation on wrongful, unlawful, arbitrary and negligent detention,
 - heightened risk of human rights abuses,
 - criticism to states on the high financial and human cost of immigration detention,
 - including the growing evidence and recognition of the impact of detention on mental health and on children
- **Counter trend: Expanded use of Alternatives to Detention around the world** – Australia, US, Belgium, Sweden, Japan, but also Spain, Malaysia, Indonesia, Thailand, Mexico, Costa Rica, Israel, South Africa

Alternatives to Detention

- “Alternatives to detention” : any legislation, policy or practice that allows undocumented migrants and asylum-seekers to reside in the community while their immigration status is being resolved or while awaiting deportation or removal from the country.
- EGS: Registration; bond/bail/sureties, reporting requirements; periodic appearances; release into open reception centers; community release programs with supervision and case management; temporary documentation; designated residence, etc.
- The consideration of the availability, effectiveness and appropriateness of alternatives to detention in each individual case is part of an overall assessment of the necessity, reasonableness and proportionality of detention.
- It must be shown that in the light of the particular circumstances, there were not less invasive or coercive means of achieving the same ends.

IDC – International Detention Coalition

- “There are Alternatives” – Community Assessment and Placement model CAP
- “Captured Childhood” Child-sensitive CAP model
- Coming soon: How-to guide in mixed and transit contexts
- www.idcoalition.org
- In terms of good practices, our research found over 50 different types of ATDs around the world that allow freedom of movement in the community while safeguarding the government’s concerns regarding identity, health and security and also while ensuring individual rights are upheld.

What should protection-sensitive entry systems include?

- The Community Assessment and Placement model:
- The 5 steps to prevent and reduce the likelihood of unnecessary detention are:
 - Presume detention is not necessary
 - Screen and assess the individual case
 - Assess the community setting
 - Apply conditions in the community if necessary
 - Detain only in the last resort and in exceptional cases

Community Assessment and Placement model

DECISION MAKING PROCESS

1.
Presume
detention
is not
necessary

2.
Screen and
assess the
individual case

3.
Assess the
community
setting

4.
Apply
conditions in
the community
if necessary

5.
Detain only as
the last resort
in exceptional
cases

Not detain
Open accommodation

Conditional release
Alternatives to detention

Detain
Last resort
with review

PLACEMENT OPTIONS

Key Elements of Good Practice

- Risk management tool
- Case management approach
- Conditions on release

- Detention is not necessary to meet government requirements of compliance and co-operation. Consider screening and release before detention and monitoring.
- Governments can make informed decisions on individual placement, support and management requirements, by assessing the individual and community context.
- This prevents unnecessary detention and reduces the financial and human cost of immigration detention.

Other interesting findings:

- Detention is **not an effective deterrent** and does not reduce number of irregular arrivals:
 - No impact on choice of destination country
 - Seen as an inevitable part of the journey
 - Deterrence message not conveyed back home
- Asylum seekers and irregular migrants are a **low risk to abscond** if they are awaiting a decision on their case.

In all contexts, they are better able to comply and cooperate in the community if they:

- Are able to meet their basic needs
- Are not at risk of detention and/or refoulement
- Have been supported through a fair and informed process, including legal advice on sustainable long-term solutions, stay and departure options

Preliminary roadmap

- Carry out an assessment of its migration flows, detention laws and practices, ad hoc release mechanisms, community environment and support programs, etc.
- Identify what the biggest challenges are in particular context for respecting the right to liberty of all persons, and to implementing ATDs. Then design an ATD program that takes this into account
- Collaboration and coordination btw government, civil society, IGOs. Need for accurate data and info.
- Make use of existing resources eg community
- One way is engagement and participation through development of multi stakeholder pilot programs, for example, with a particular vulnerable group.

Benefits of ATD vs. detention

- Cost less than detention – savings
- High rates of compliance - considering
- Improve integration outcomes for approved cases
- Increase voluntary departure rates for refused cases
- Improve health and well being
- Reduce wrongful detention and litigation
- Reduce overcrowding and long-term detention
- Protect and fulfill human rights

Thank you!

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