

Room for Hope

IDC Briefing Note: An overview of promising alternatives to detention in the era of COVID-19

October 2020



**International
Detention Coalition**
Rights and dignity for all who migrate

“The COVID-19 pandemic has created momentum for alternatives to immigration detention as a viable solution to mitigate public health concerns while ensuring access to human rights and essential services for migrants”

Policy Brief

United Nations Network on Migration Working Group on Alternatives to Detention

Co-led by IDC, UNHCR & UNICEF

Introduction

The impacts of COVID-19 have been far-reaching for people in migration-related detention or at-risk of being detained. Amidst the many issues of concern that have been highlighted by the IDC, there are also a number of promising responses and practices that demonstrate how alternatives to detention (ATD) can be utilised to reduce public health concerns, while supporting compliance with human rights standards and the provision of, and access to essential services.

These promising responses range from temporary release from detention and relaxation on onerous reporting requirements, to greater use of alternative care for migrant children. They highlight how there are opportunities for the wider use of humane and cost effective ATD that have emerged during the COVID-19 pandemic. Such ATD also support essential health measures, reducing the spread of COVID-19. By engaging actors involved in, and documenting these promising responses to the pandemic, the IDC seeks to build on this momentum to increase the uptake of ATD and reduce the use of immigration detention.

With regard to immigration detention and COVID-19, IDC has developed a broad based Global COVID-19 Policy Position and during COVID-19 crisis and recovery, recommends:

1. Immediate release from immigration detention into rights-based ATD, and a moratorium on any further detention
2. Non-discriminatory access to rights and services for all migrants, refugees, asylum seekers and stateless persons in the community, as well as case resolution procedures that are adapted to the health and safety needs of COVID-19
3. For those remaining in detention, conditions must meet international human rights standards, and must not be diminished due to COVID-19

This Briefing Note was informed by data made available between April-August 2020 and highlights a number of promising responses identified through IDC networks and other open-access sources. The aim of this Briefing Note is to provide a snapshot of when and where changes in the immigration detention landscape have occurred in response to COVID-19. In some cases these changes have aligned with rights-based ATD and reinforce the value of the Community Placement and Assessment (CAP) model as a resource to strengthen migration-management responses, including during times of crisis. In other cases, while integrating some elements of the CAP model, responses have not been grounded in a rights-based ATD or migration policy framework, leading to concerns and gaps which will need to be addressed.

As we continue to face deep societal changes due to the prolonged impact of COVID-19, IDC urges that detention as a migration governance approach continues to be challenged. IDC calls for rights-based ATD that are humane, cost effective, comply with public health measures and respect the human rights of migrants, asylum seekers and refugees, and stateless persons.

Initial State Responses

Since the beginning of the pandemic in early 2020, broad measures have been adopted to contain or eliminate the spread of COVID-19 globally. Such measures, including border closures and far-reaching restrictions on movement, have affected all groups within a country's territory, including citizens, residents, temporary visitors as well as migrants, asylum seekers and refugees, and stateless persons.

From the outset of the public health emergency declared by the World Health Organisation in January 2020, the main priority for most governments and public health departments has been to uphold community safety. At the same time, concerns began to emerge for people in migration-related detention who very often face conditions such as overcrowding and insufficient water, sanitation and health care facilities, and lack of access to adequate medical care in an environment where some may have pre-existing health conditions. A diverse range of immediate responses from States to this emerging crisis included:

- closing access to immigration detention centres and facilities for visitors and service providers;
- increased restrictive internal measures in detention such as quarantining and solitary confinement;
- unclear screening and preventative measures;
- suspensions and delays in legal and administrative proceedings;
- heightened risk of deportation without due process;
- suspension of immigration detention orders;
- mass releases near border areas;

- individual releases from pre-removal detention due to international border closures and impossibility of effecting returns; and
- increased instances of immigration detention upon arrival, justified under quarantine requirements.

In some contexts, access to release mechanisms became more difficult and there were threats of crackdowns on undocumented migrants that resulted in increased numbers of people in detention. Other issues included meeting information needs where people might require translation of information messages in order to understand the implications of any government orders regarding, for instance, lockdown measures.

Initial Civil Society, UN and other Stakeholder Responses

Organisations operating locally, particularly from civil society, faced increasing pressure to mitigate the impacts that COVID-19 and the immediate responses from States had on migrants, stateless persons, asylum seekers and refugees, while trying to address the impacts on their own organisations and staff. Despite increasing challenges, local support organisations quickly mobilised to coordinate efforts, respond to immediate needs and engage in advocacy.

Global, regional, national, and local advocacy efforts from civil society organizations, UN agencies and other stakeholders have centred around seeking release from detention and a moratorium on migration-related apprehensions. Related to this was the adoption and expansion of ATD, drawing upon the CAP Model to guide decision-making around placements in the community.

Other guiding principles and recommendations on immigration detention and ATD issued by key stakeholders include:

- [Policy Brief of the Working Group on Alternatives to Immigration Detention of the United Nations Network on Migration](#)
- [Principles for Protection for Migrants, Refugees and other Displaced Persons](#)
- [UN SG Policy Brief: COVID-19 and People on the Move](#)
- [WHO's Interim Guidance on Preparedness, Prevention and Control of COVID-19 in Prisons and Other Places of Detention](#)
- [OHCHR's Guidance on Covid-19 and the Rights of Migrants](#)
- [UNHCR's Key Legal Considerations for People in Need of International Protection in the Context of Covid-19](#)
- [IOM's COVID-19 Analytical Snapshot: Immigration Detention](#)

- [UNICEF's Key Messages on Refoulement, Detention, Push Backs and Deportations of Children](#)
- [Subcommittee on the Prevention of Torture's Advice Related to the Coronavirus Pandemic](#)
- [Inter-Agency Standing Committee Interim Guidance COVID-19: Focus on Persons Deprived of Their Liberty](#)

The focus of advocacy efforts at all levels have been the following themes:

1. Public Health is paramount – an acknowledgement that detention can exacerbate the risk factors for COVID-19 and that ATD can both mitigate risk and comply with local guidelines.
2. Humane approach – as has been seen in other sectors, such as aged care, lockdowns and restrictions on visitor access for people in detention adds to mental health concerns and inhibits a culture of monitoring and oversight. People in detention also require continued access to medical care.
3. Rights based – the provision to ensure the rights of all persons resident in a country irrespective of visa status extends to people in detention

Promising Responses based on Alternatives to Detention

While the situation changes rapidly, and will continue to change, the responses identified below have been reported as occurring as a response to the COVID-19 pandemic. These examples reflect just a snapshot of where ATD and elements of the CAP model have been adopted or strengthened to enhance public health responses to the risks posed by COVID-19 to persons in, and at-risk of, migration related detention.

Releases from detention and decreased arrests

Belgium

In order to mitigate the risks of a COVID-19 infection, Belgium reduced the capacity of its immigration detention centres and released approximately half of its detainee population. These included vulnerable groups and individuals that were to

be returned under the Dublin Agreements. However, little to no support has been provided to those released.

Egypt

There have been reports of reduced instances of arrests/detention for those without valid residency permits including expired documentation. The centralized government visa and residency services suspended their operations between mid-March to June.

Italy

As of 28 March, an estimated 381 people were detained in Italian immigration centres pending deportation. However, judges have been issuing individual release orders on the basis that deportation is not possible.

Japan

There was reportedly a decrease in arrest and detention during the pandemic. Statistics from Parliament members show that at the end of 2019, 1,054 were detained. By the end of April 2020, this number decreased to 914.

Provisional release was granted for about 563 asylum seekers by April. In May 2020, the Ministry of Justice released an official guideline to address the risk of a COVID-19 outbreak in immigration detention. Under this guideline, the Immigration Services Agency is directed to actively utilise provisional release to reduce the congestion level within the detention facilities.

Mexico

In response to a successful strategic litigation challenge by a broad coalition of civil society organizations and a

recommendation by the national human rights commission, in April, immigration control operations such as border raids were suspended and arrests diminished significantly. Detention centers were practically emptied (an estimated 3,000 people were released) and there were significantly reduced instances of detention in the ensuing months, primarily influenced by strict border closures in neighbouring origin countries. Detention numbers rose again by July, after negotiations regarding deportation to Central America, including detention of children, and continued to do so as borders reopened.

Spain

In general, immigration detention is used to ensure deportations, however with travel restrictions meaning that deportations could not be carried out, there were technically no legal grounds for

detention. Following sustained advocacy and criticism from CSOs and the Spanish Ombudsman, 8 detention facilities were emptied by the first week of May. Those with a residence were released to their homes (with family or friends). Those without sent to reception centres run by civil society organisations where case management is provided. No reporting conditions were imposed. Migrant detention was temporarily suspended during the peak months of the pandemic.

United Kingdom

In the United Kingdom, the Home Office has released almost 300 people from detention centres, about a quarter of the estimated 900 people detained. Pressure for these releases came in part from legal challenges made by IDC member Detention Action, who argued that the Home Office had failed to protect detainees from the COVID-19 outbreak. The United Kingdom's Home Office has refrained from detaining individuals

from 49 nations where deportation is currently not possible due to travel restrictions. Releases from detention and decreased arrests

Registration and Support in the Community

Guatemala

In the case of children deported to Guatemala, in accordance with the protocol for assistance and care of children coordinated by the authorities and civil society organizations, children are placed in hotels that act as filters (including COVID testing) before referral and reunification with families. Foreign migrant children are received in closed shelters to evaluate individual circumstances. Case management for children and families is jointly managed by the government and civil society.

Mexico

The government's ATD program for asylum seekers continued to operate through

the quarantine months and asylum seekers were referred to private and public shelters and private accommodation. Under the program, asylum seekers are offered a stipend for accommodation and food, access to workshops to understand their rights and support integration, and humanitarian and legal aid, primarily coordinated by UNHCR with its partners. However, migrants with irregular status are not eligible for this program.

Some small numbers of those released from detention centres were hosted in shelters run by local civil society organisations, some providing case management, in order to continue immigration processes. Others were released without documentation nor reporting conditions, simply a time-bound requirement to leave the country. Subsequent to proposals for managed release including ATD implementation made by IDC members, hotels mainly in the north of Mexico were given permission to stay open to

act as filters for both transit and deported migrants and refugees, supported by IOM and UNHCR funding.

Spain

Following release from detention, migrants were sent to reception facilities run by civil society organizations where accommodation and other support was provided to meet basic needs. They were not, however, required to stay in the shelters. The government of Spain granted extraordinary work permits for migrants to work in the agricultural sector. These permits will only be valid during the health emergency and are aimed at ensuring food supplies.

Extension of residency permits

France

France has extended all residence permits for asylum seekers by three months to cover for expirations. However, several asylum seekers due to be returned to Italy have had their appeal against the extension of their detention rejected by French courts and will continue to be detained.

South Africa

Asylum seeker permits that were due to expire during the country's lockdown period that began in March 2020 were automatically extended to 31 October.

Tunisia

The Tunisian government has decided to prolong the residency permit of all documented migrants by 3 months due to the total lock down in April. This was renewed for a further 3 months.

Cessation or relaxation of reporting requirements

Japan

Migrants and refugees under provisional release did not have to report to the immigration office until the further notice during the pandemic. Immigration officers made a phone call to the released migrants and refugees to let them know that the date for reporting has been suspended due to COVID-19.

United Kingdom

The requirement to report to immigration authorities, usually once every 2-3 weeks, was suspended until further notice during the pandemic.

Public messaging on access to healthcare (“firewalls”)

Egypt

In April, the Egyptian government reiterated that refugees would be provided assistance within the national health care system during the pandemic. Refugees have access to public primary, secondary, and emergency health services however in reality, there they face barriers in accessing such services.

Ireland

All migrants in Ireland, including undocumented people, have been given access to healthcare and social services, and their information will not be shared with the Department of Justice and Equality.

Portugal

In Portugal, all foreigners with pending applications, including asylum seekers, will be treated

as permanent residents and have been given the same access to state services including “the national health service, welfare benefits, bank accounts, and work and rental contracts” until at least 1 July, provided that they can show that they have a pending application.

South Korea

The government encouraged all migrants, including those with irregular status, to get tested if they had any COVID-19 symptoms. They also reassured that public health facilities would not be required to report undocumented patients, and that testing and treatment would be free for all persons.

A promising trajectory in light of the CAP Model

In order to continue in this promising direction, the responses documented need to be sustained by legal and policy frameworks that ensure availability and accessibility of rights and community-based ATD, consistent with the CAP model.

While most of the developments outlined in this Briefing Note align with the CAP model, many are missing vital elements that would support positive outcomes in terms of access to rights and services, mental and physical wellbeing, social inclusion, contributions to communities, case resolution, cost, and compliance. For example, in a number of countries, releases from detention as well as temporary moratoriums on migration-related arrests have taken place, and persons benefiting from these measures have been provided with registration and follow-up support from government agencies. In other countries however, detainees were released with no registration, documentation or support; they were left in destitution with civil society organisations scrambling to meet their basic needs and to support them in accessing rights and services. The mere release of people from immigration detention or the mere cessation of migration related arrests and detention, while positive developments, are insufficient for people to access their rights and for governments to meet legitimate migration governance goals – and, during the COVID-19 era, public health needs.

Instead, to be successful and sustained, the documented ATD responses need to be further developed and expanded under the umbrella of migration governance frameworks using the CAP model as a guiding tool. While having to be specifically tailored to each national context, generally, these frameworks should:

- not rely on detention;
- guarantee minimum standards, basic rights and access to services (particularly health care in the current context);
- focus on early engagement, case resolution and individual support through access to case workers and legal advice;
- ensure provision of information;
- use screening and referral tools and mechanisms to tailor placement decisions; and
- allow individuals to live in the community – either in their places of residence, with family members or in open shelters.

Grounded in these key elements of successful ATD observed by IDC in countries across the world, the CAP model can be used as a critical tool to identify and address gaps, needs and concerns, as well as to support the development, improvement, and expansion of these promising ATD responses that have emerged amidst the pandemic.

Alternatives to Detention as the ‘new normal’: expanding promising responses and pre-existing practices

As countries adjust to the “new normal”, there is now a unique opportunity for governments to showcase and learn from the promising instances of ATD that have been used, to look into pre-existing ATD practices, and in planning for the post-pandemic future, to move away from the use of migration-related detention.

In the context of the pandemic, rights-based ATD have emerged as a policy tool to achieve longer-term systemic change towards migration governance frameworks that do not rely on detention. In collaboration with civil society, UN agencies and other stakeholders, this is the time to reflect on the progress, challenges, concerns, and learnings during the health crisis, to work collaboratively on developing national strategies and roadmaps to enable well-managed releases of remaining detainees into rights-based ATD, and to make ATD the rule rather than the exception.

In some countries, previously existing ATD have been utilized during the pandemic to facilitate the release of large numbers of people from immigration detention. These mechanisms, including underutilized laws and policies that permitted releases from detention into community-based ATD and case management in ATD instead of detention, were quickly deployed and well adapted to COVID-19 circumstances. Conditions such as reporting or designated residence requirements were not applied at all or modified e.g. the use of telephone rather than in-person reporting, or significantly reduced frequency of in-person reporting. **If these approaches could be utilized, can they be continued? How can they be sustained, broadened and scaled up beyond the pandemic?**

Succeeding in this endeavour will entail concerted efforts, collaboration and peer learning at all levels, tailored advocacy and targeted technical support. Through this Briefing Note, IDC seeks to support these ongoing efforts by showcasing responses that represent global examples of countries choosing ATD as workable models during a time of crisis. As we move into periods of recovery and into the “new normal”, these workable models can be strengthened and expanded to reach more people at risk of being detained or currently held in detention. Some suggested actions include:

- improvement of data collection on ATD and its impacts, especially during the pandemic, to increase the evidence base;
- collaboration between multiple levels of government, civil society and UN agencies to pilot, scale up and strengthen rights-based ATD using the CAP model as a framework;
- drafting of action plans at country, regional and global levels for targeted advocacy on rights-based ATD;
- development of opportunities for targeted peer learning and exchange to share lessons learned, concerns, challenges and progress; and
- engagement of the media and the general public to understand the extraordinary economic, social and human cost of immigration detention for migrants, refugees, asylum seekers and stateless persons, communities and countries.

The cost-saving measures of ATD and their established potential to reduce State spending on immigration detention are fundamental with the economic impact of COVID-19 now becoming apparent, resulting in State-budget reductions along with job losses and fears for economic recession. Reducing unnecessary public expenditure on costly detention becomes key during a period of recession and economic downturn. Also, the significant impacts of detention on an individual's mental health are well documented. Such impacts place migrants, refugees, asylum seekers and stateless persons at even greater risk of isolation and harm in the society in which they are residing.

In recent months, in addition to responding to COVID-19 there has also been an outpouring of activism about issues of racism, inequality and discrimination. These are issues that also deeply affect people in or at risk of migration-related detention and that are at the core of migration systems that resort to detention. Taken together they highlight the immediate pressing need for a better way to respond to migration that includes ending the use of detention; ensuring the provision of rights-based ATD; addressing public health considerations for migrants, refugees, asylum seekers and stateless persons in a safe and dignified manner; and overall working to ensure human rights and create better cohesion in societies and communities for all.

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