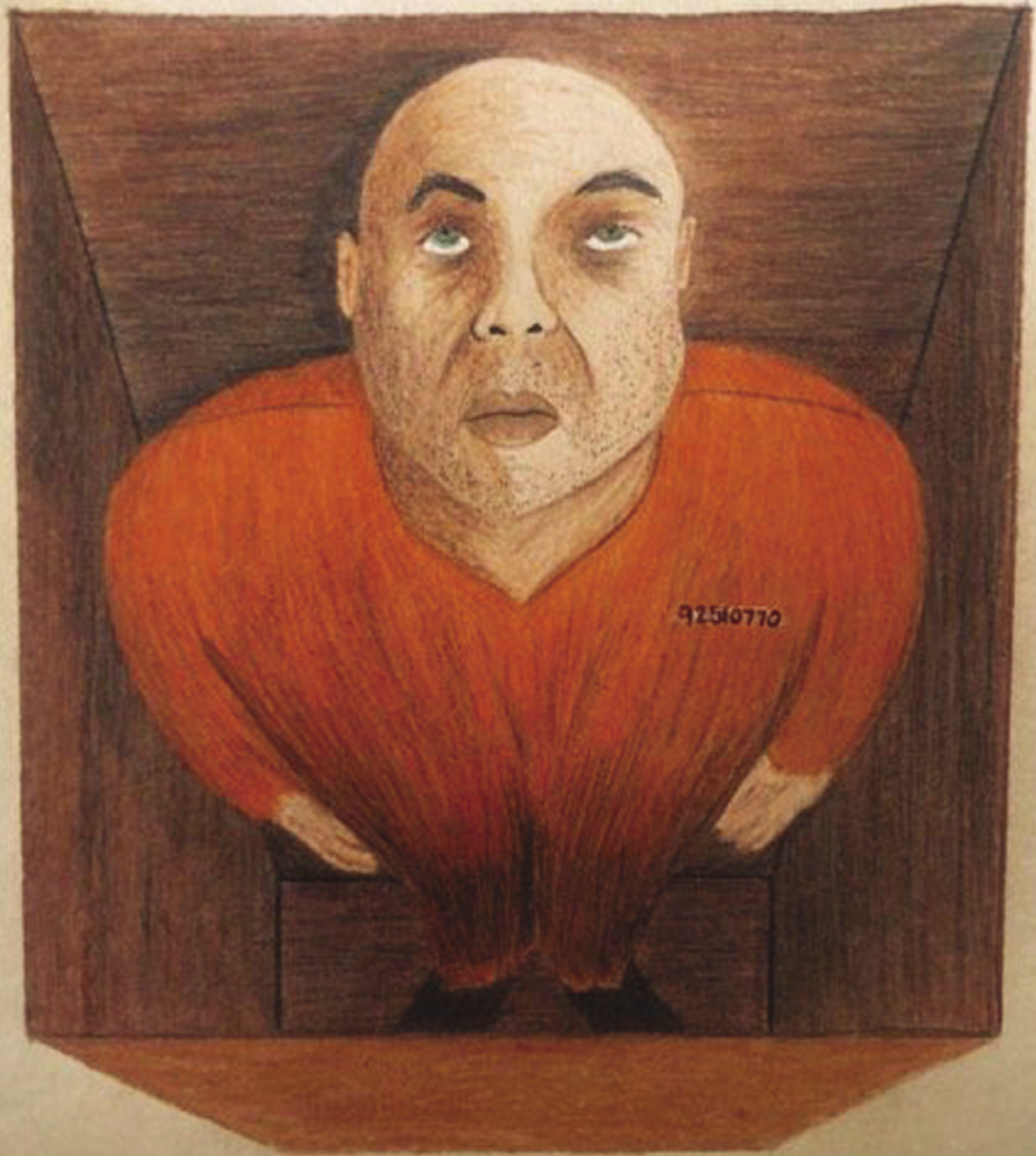


COVID-19 IMPACTS ON IMMIGRATION DETENTION: GLOBAL RESPONSES



International
Detention Coalition

WESTERN SYDNEY
UNIVERSITY



Humanitarian and
Development Research
Initiative

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Design: Roy Peake <http://roypeake.net>

I Refuse

by Anthony Miranda

Deprived of family and friends

Confined by iron stone walls

They feed me fear, anger, darkness, and hate.

So now I live without tears.

Who understands me when I say I refuse to give into darkness?

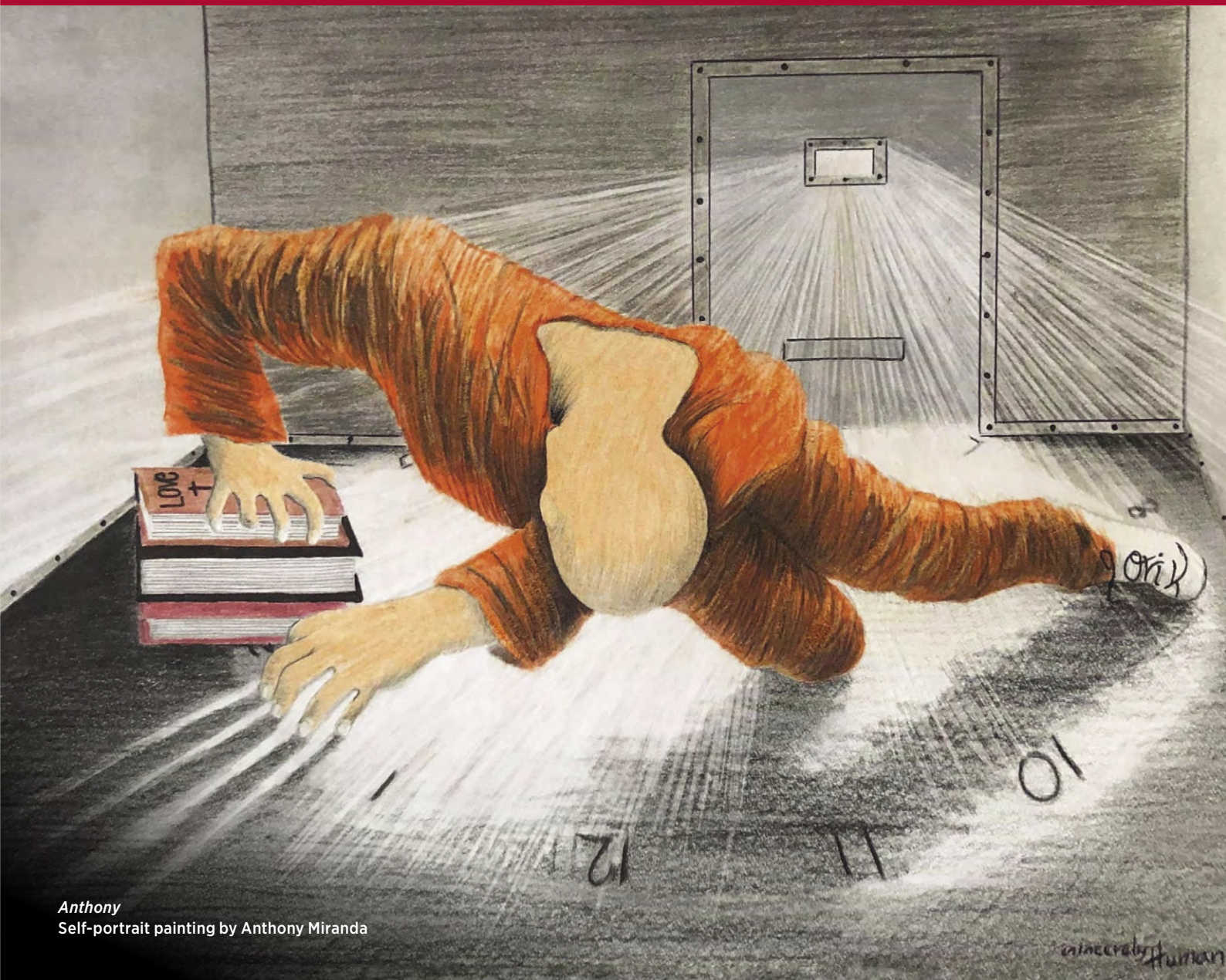
I refuse to give up because of the pain they have inflicted on me.

I refuse to let the anger control me.

I refuse to act on the hatred they forced upon my heart.

And I refuse to let these iron stone walls consume my soul.

Sincerely, "Human"



Anthony
Self-portrait painting by Anthony Miranda

miraculously human

FOREWORD FROM INTERNATIONAL DETENTION COALITION (IDC)

Over the past few months, immigration detention practices around the world have been changing rapidly as state and civil society actors respond to manage the multiple impacts of COVID-19. In some cases, these changes have been positive, leading to stronger protection of the rights of non-citizens. In others, they have led to the increased marginalisation of and discrimination against non-citizens.

In collaborating with the Humanitarian and Development Research Initiative to produce this joint edited collection, the International Detention Coalition sought to provide a platform for our members and partners to discuss their experiences, actions and perspectives as the pandemic unfolded across the globe. The contributions are rich and diverse, showing the impact that COVID-19 has had on refugee, undocumented migrant and stateless communities around the world.

The contributions highlight a number of issues related to migrants, stateless persons and refugees experiencing (or at risk of) immigration detention – the closure of borders, restrictions on international and local travel, changes in status determination procedures for asylum seekers and refugees, new regulations concerning visitors and lawyers in detention facilities, the redistribution of detainees across different facilities, the introduction of quarantine and isolation procedures for those with COVID-19 symptoms, and the impacts of immigration detention practices on the mental health needs of detainees. The edited collection covers the response of civil society groups to immigration detention, highlighting increased concern about the detention of non-citizens expressed in rallies, petitions, and other forms of protest. It also reviews legal interventions that have led to the release of detainees – some, unfortunately, into destitution and homelessness.

The contributions also speak to rising levels of inequality. States with already weak healthcare systems before the pandemic struggle to manage rising caseloads. Civil society groups have had to cut back on their activities in the light of increased restrictions and health concerns; funding shortages have jeopardised the continuity and reach of their essential services. Migrants, stateless persons and refugees in overcrowded housing have been unable to practice physical distancing and, against rising xenophobia and racism, have been susceptible to scapegoating for the impact of COVID-19. In many contexts, the health and welfare of citizens has taken firm precedence over that of these groups.

COVID-19 does not discriminate, but laws, policies and practices concerning migration governance, immigration detention, and public healthcare shape the vulnerability of migrants, stateless persons and refugees to its spread and effects. The contributions in this joint edited collection highlight both positive and negative developments over the past year that need careful attention – and in some cases, urgent correction – for the health and wellbeing of all.

We extend our gratitude to the authors for their contributions, which have allowed the breadth of responses that are in this collection. We also thank HADRI, and in particular Dr. Melissa Phillips, who is also part of the IDC's International Advisory Committee, for the opportunity to have collaborated on this important initiative.



ALICE NAH
Chairperson of the Committee, IDC

FOREWORD FROM HUMANITARIAN AND DEVELOPMENT RESEARCH INITIATIVE (HADRI)

COVID-19 has exposed serious flaws in social, political and economic systems in states and territories across the world. As states have rediscovered sovereign powers to close borders and reduce movement, a number of groups of people have been especially vulnerable.

As this joint edited collection shows, people in detention facilities are the most at risk of contracting COVID-19, and the contributions in this collection provide an important insight into the agendas behind, and narratives that underpin, state uses of immigration detention.

By placing the different responses of states to the issue of detention of migrants side-by-side, this report provides an accessible global snapshot of the situation of migrants in detention, and those at risk of detention, and a unique and important opportunity for comparison of state and civil society responses to COVID-19. Case studies such as those on Australia, Malaysia and Saudi Arabia highlight the way in which some states have used discourses of 'safety', alongside perceptions of migrants as 'vectors of infection', to detain migrants, often in overcrowded and unsanitary conditions. In Australia, policies that detain asylum seekers off-shore build on older discourses of protecting Australians from a range of threats, including terrorism. Despite civil society advocacy for release of all detainees, the government has used COVID-19 to support its case for continuing its policy of offshore detention, now claiming asylum seekers are less likely to become infected on Nauru or Christmas Island. In other states, for example in Spain, the pandemic has prompted civil society groups to successfully pressure the national government to release detainees, who are now being supported by civil society groups. Clearly there are alternatives to immigration detention, including community-based programs.

The contributions in this report provide important insights into how states have used COVID-19 to police their borders, especially in terms of containing and managing immigrant bodies, and the generally poor conditions of immigration detention across the world. The contributions also shed light on why in these peculiar political and policy contexts, some groups of people have been and remain more vulnerable than others to immigration detention. This is particularly the case with respect to how states have implemented immigration detention as a means of managing flows of asylum seekers, refugees and migrant workers.

HADRI is proud to partner with International Detention Coalition (IDC) to compile this timely report, which has emerged from HADRI's *Migration and Diaspora* research theme, led by Dr Melissa Phillips. It is a good example of how HADRI collaborations between scholars and practitioners provide evidence-based research and approaches to resilience in humanitarian and development practice.



ASSOCIATE PROFESSOR NICHOLE GEORGEOU
Director, HADRI

ABOUT IDC

IDC is a powerful global network of 400+ organisations, groups, individuals, as well as representatives of communities impacted by immigration detention, based in over 100 countries. IDC staff work across the world, nationally and regionally, in Africa, the Americas, Asia Pacific, Europe, the Middle East and North Africa, and at the global level.

IDC advocates to secure the human rights of people impacted by and at-risk of immigration detention. In partnership with civil society, UN agencies, and multiple levels of government, we strategically build movements, and influence law, policy and practices to reduce immigration detention and implement rights-based alternatives to detention (ATD).

For more information about IDC, see www.idcoalition.org

**International
Detention Coalition**

ABOUT HADRI

HADRI was established at Western Sydney University (WSU) in 2016 with a globally unique approach to pursue research that highlights the complexity of international responses to conflicts and disasters, and the intersections between the multidimensional health and socio-economic and political aspects of complex emergencies.

HADRI aims to conduct research that:

- Bridges the academic and practice aspects of humanitarian response, rehabilitation and development.
- Informs policy decisions of government, international organisations, academics and other stakeholders.
- Ensures synergies, innovation and knowledge sharing and translation through collaboration with HADRI's global partners and engagement with WSU's undergraduate and postgraduate degrees in Humanitarian and Development Studies (HADS).

This report *COVID-19 Impacts on Immigration Detention: Global Responses* is the second collaboration from Humanitarian and Development Research Initiative (HADRI) affiliated scholars and practitioners on COVID-19, the first being the June 2020 publication of *State Responses to COVID-19: a global snapshot at 1 June 2020*.

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Development Research
Initiative**

A NOTE ON THIS REPORT

We commenced discussions about a joint edited collection in August, inspired by the success of HADRI's *State Responses to COVID-19: a Global Snapshot at 1 June 2020*. Our initial conversations focused on a perceived gap in understanding how States and Civil Society had responded to those at risk of immigration detention and those in immigration detention during the COVID-19 pandemic. IDC and HADRI were keen to showcase what actions or policies different actors had taken towards refugee, undocumented migrant and stateless communities; whether these actions or policies led to any increase or reduction in the use of immigration detention; and what has been the impact on different groups typically at risk of, or in immigration detention.

The enthusiastic response we received from contributors was most encouraging. Despite their own busy workloads, including in many cases directly responding to people in immigration detention or living in countries where the pandemic was still at a critical stage, authors committed to be part of this edited collection which came with a very tight timeframe. We want to thank them for their willingness to take on this additional work and for responding to our requests for clarification or correction. As we have learnt, in many cases legal terms and processes do not necessarily translate from one context to another.

Eager to include creative pieces we are grateful to Christina Fialho, Co-Founder/Executive Director, Freedom for Immigrants for linking us to Anthony Miranda whose artwork features on our report cover. When approached for permission to use his work, Anthony replied:

Honestly I'm amazed that an organization wants to use my drawings! What can I say it would be nice to write a short story of my life!! I spent 5 years in detention center fighting for my right to stay in the US and they still deported me to "my" state! A State I never knew. And now I am forced to live on the other side away from my family! But you know what nothing stops me! Right now I am living in a tent I gave up the hot showers the cozy bed the warm food all that to follow a dream, a dream that I had in mind since I was detained. I'm building my own home with the help of my family but I am building everything by myself and I know I can do it. Because besides being an immigrant I am a person with dreams and goals and I never stop fighting.

We continue to be inspired by the stories behind the statistics that counter the increasing media rhetoric about refugee, undocumented migrant and stateless communities and hope this edited collection can challenge commonly held perceptions about the 'need' for immigration detention.

We would like to also thank the entire IDC team for their support in facilitating this edited collection and HADRI Director Associate Professor Nichole Georgeou for her guidance and advice on how to bring such an ambitious project to fruition. The editors appreciate the funding support provided by the School of Social Sciences, Western Sydney University.

In preparing this edited collection we undertook to proofread all submissions but due to the timeframes we did not check every hyperlink and reference, nor did we edit referencing styles for consistency. We apologise in advance for any errors and note that in the fast-changing world of immigration policy, the articles are accurate up to 15 September 2020. The diverse range of views in this report are the views and opinions of the authors and do not necessarily reflect the official position of the IDC.

VIVIENNE CHEW

International Detention Coalition

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MIN JEE YAMADA PARK

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Photo by Milada Vigerova on Unsplash

DETENTION AT ALL COSTS: COVID-19 AND IMMIGRATION DETENTION IN AUSTRALIA

The Australian Government has held firm to a position of mandatory immigration detention for many years despite regular attempts by civil society and the public to soften this hardline approach. Unfortunately, COVID-19 has now also failed to alter the Government's resolve to utilise indefinite detention despite clear and obvious risks to the health of detainees throughout the pandemic.

This paper provides a summary of State and civil society activity in response to COVID-19 with specific reference to immigration detention in Australia. It does not have scope to explore offshore detention arrangements as these policies have remained unchanged and include jurisdiction of other governments.

STATE RESPONSES

Australia was quick to close borders following the World Health Organisation (WHO) declaration of an international pandemic in March 2020, and nationwide community lockdowns shortly followed for non-essential workers. The humanitarian program for refugee resettlement was suspended in mid-March due to cancellation of flights and closed borders and has remained suspended since. The reduction in international travel also saw a significant decrease in new arrivals and therefore minimal numbers of new cases of immigration detention. This was further assisted by a decision to offer extension of visas for those already in Australia and unable to leave.

As at 31 March 2020, there were 1,373 people in Australian immigration detention facilities including 512 asylum seekers, otherwise known as 'Illegal Maritime Arrivals'¹. As at 31 May 2020 the total in detention had raised to 1,458 people and the number of asylum seekers had reduced to 505 people². The balance of the Australian immigration detainees is primarily made up of visa cancellations due to breaches and visa overstays. Whilst more recent statistics are unavailable, it is apparent that detention practices remain unchanged despite the pandemic, with numbers in detention increasing rather than decreasing through the initial crisis. Despite this increase there does appear to be a continued practice of granting bridging visas³ for those who are eligible, yet these numbers have been very low.

Visitors to the detention facilities were suspended in late March 2020 meaning that detention monitors and personal visitors could no longer attend detention facilities. In exchange, all detainees were given a \$20 phone credit per week to remain in contact with the outside world and alternate arrangements were under negotiation for detention monitoring to continue in a modified form through CCTV and detainee complaints.

In early August 2020, the Australian Government confirmed that it would redistribute detainees across the detention network in order to minimise overcrowding and the risk of transmission. This included utilising the controversial option of Christmas Island detention facilities⁴ for non-refugee detainees and deporting some New Zealand detainees to free up space to relocate people from more crowded facilities in the Eastern States. Refugee detainees and others with higher vulnerabilities have generally been kept in separate facilities to those who have been detained for criminal breaches of visa conditions. No COVID-19 cases have been detected in Australian immigration detention at the time of writing.

On 12 August 2020, the Communicable Diseases Network Australia (CDNA) released guidelines for the prevention, control and public health management of COVID-19 outbreaks in correctional and detention facilities in Australia⁵. This guideline highlights the high risk of rapid transmission in detention facilities due to the close proximity of detainees and therefore emphasises strategies to prevent the illness getting into detention facilities in the first place. This reflects what seems to be the primary approach of the Australian Government to protecting detainees from COVID-19 infection. Detainees who do display symptoms are subject to isolation.

Prior to and during the pandemic, the Australian Government has shown resolve in ensuring that its strict policies on migration are maintained despite legal and other challenges. This has included a narrative of protecting Australians first and upholding the immigration laws including detention. This approach has remained unchanged during COVID-19 and is evidenced by one case where the Federal Court ordered the Australian Government to remove a 68-year-old detainee from an immigration facility in Melbourne due to a substantial risk of COVID-19 infection. Rather than utilising an option of community release, the man was relocated to a less risky facility in Western Australia⁶.

CIVIL SOCIETY RESPONSES

Australian civil society has been active in raising concerns about the high risk of infection within detention and promoting the release of detainees⁷. This included several calls for the Australian Government to utilise existing alternatives such as community detention and bridging visas for those undergoing refugee status determination⁸. Concerns were also raised around overcrowding and risks to the broader community⁹.

1 <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-31-march-2020.pdf>

2 <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-31-may-2020.pdf>

3 <https://www.sbs.com.au/news/two-year-old-girl-and-mother-released-after-years-in-australian-immigration-detention>

4 <https://www.theguardian.com/australia-news/2020/aug/04/australian-government-to-reopen-christmas-island-detention-centre-during-covid-19-crisis>

5 <https://www.health.gov.au/resources/publications/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia>

6 <https://www.sbs.com.au/news/melbourne-immigration-detainee-to-be-forcibly-flown-to-wa-after-losing-coronavirus-court-battle>

7 <https://www.hrw.org/news/2020/04/02/coronavirus-poses-added-risks-australias-immigration-detainees>

8 <https://www.kaldorcentre.unsw.edu.au/publication/detention-increases-covid-19-health-risk>

9 <https://humanrights.gov.au/about/news/media-releases/commission-concerned-detainees-during-covid>

The legal community has made a number of attempts to seek court¹⁰ or administrative¹¹ rulings in relation to detainees that are particularly vulnerable to COVID-19 infection. Whilst these cases have managed to demonstrate that people in detention are particularly vulnerable to COVID-19 infection and that the Australian Government owes a duty of care to these people¹², the Government has persistently argued that risk of infection in detention is lower than in the community. They have also cited legal restrictions preventing releases from detention as a result of serious breaches of the law and adverse security assessments. Therefore, whilst legal pursuits have been successful in determining heightened COVID-19 infection risk in detention they have been unsuccessful in brokering releases from detention.

Calls for the urgent release of people seeking asylum, refugees and other non-citizens held in immigration detention centres began as soon as the magnitude and reach of the global health crisis associated with COVID-19 became clear.¹³ Public support for releasing low threat detainees has been high with petitions such as the #saferathome petition raising over 57,000 signatures¹⁴. Some doctors have been protesting outside detention for 300 nights as part of the Indefinite Sleepout to End Indefinite Detention campaign¹⁵ and public support has also been in the form of an open letter from doctors, academics and other professionals calling for releases¹⁶. Some refugee advocates have also ignored COVID-19 restrictions to protest against detention in Brisbane¹⁷ and several rallies have been held there.

Many health experts have identified detention centres as extremely high-risk places for both infection and onward transmission of COVID-19 and have urged the Government to follow social distancing and health advice. They have also advocated for release where possible¹⁸. Health experts have also questioned the suitability of confinement or isolation as an infection management strategy in detention on the grounds that it could further traumatise refugee detainees¹⁹ as isolation conditions in detention are associated with detainees with severe behavioural issues. Additionally, conditions may be triggering for refugees who may have experienced previous trauma in similar settings.

Overall, Australian civil society has been persistent in raising public concerns about the plight of detainees, and in seeking to exercise both legal and moral pathways towards alternatives to formal detention in the Australian context.

CONCLUSION

Australia has clearly remained unwavering in its policy of mandatory detention despite the capacity and precedent for alternatives to be used. Although the Australian Government has shown willingness to follow the advice of public health experts in relation to the broader community, it has not heeded expert recommendations regarding people in detention. The preferred approach has been to focus on quarantine by keeping COVID-19 out of detention facilities and to utilise Christmas Island and other detention facilities throughout Australia to minimise overcrowding and risk of transmission.

Despite various attempts by civil society to utilise the law and public or moral pressure, the Government has chosen to maintain a hardline approach rather than seek an opportunity to show leniency in the interests of the health of detainees. This is, however, consistent with the lack of compassion shown to non-residents in the Australian community during the pandemic.

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ARASH BORDBAR
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10 <https://www.theguardian.com/australia-news/2020/apr/22/sick-refugee-at-risk-of-covid-19-launches-high-court-bid-for-release-from-australian-immigration-detention>

11 <https://piac.asn.au/2020/05/07/covid-19-group-complaint-for-asylum-seekers-at-risk-in-immigration-detention-calls-for-urgent-investigation/>

12 <https://www.abc.net.au/news/2020-08-11/man-immigration-detention-to-be-moved-due-to-coronavirus-risk/12543302>

13 <https://journals.sagepub.com/doi/full/10.1177/1741659020946178>

14 <https://www.change.org/p/stop-the-spread-of-covid-19-in-immigration-detention-centres-saferathome>

15 <https://www.sbs.com.au/news/these-doctors-have-slept-outside-for-300-nights-to-protest-australia-s-refugee-detention>

16 <https://docs.google.com/document/d/16M02AA9KvM1G45JM3iiP4xpP9JuAOzIEac8mneL03ms/edit>

17 <https://www.abc.net.au/news/2020-06-21/refugee-detained-in-brisbane-hotel-describes-pain-and-sadness/12377532>

18 <https://www.theguardian.com/australia-news/2020/mar/24/we-are-sitting-ducks-for-covid-19-asylum-seekers-write-to-pm-after-detainee-tested-in-immigration-detention>

19 Human Rights for All Senate submission <https://www.aph.gov.au/DocumentStore.ashx?id=46517825-312d-466f-9725-e874745de59d&subId=682951>

STATE RESPONSES TO THE REFUGEE SITUATION DURING COVID-19: ROHINGYAS IN MYANMAR AND BANGLADESH

The Asia-Pacific region is home to roughly 3.5 million refugees, 1.9 million internally displaced people (IDPs) and 1.4 million stateless people. As COVID-19 continues to be the biggest threat to global health security, it is the most vulnerable among us that are disproportionately impacted by this global pandemic. Particularly, those populations under some form of confinement and restrictions, such as IDPs or refugees, are particularly vulnerable as they tend to lack basic access to healthcare and live in conditions that increase the risk of COVID-19 infection. This is clearly seen in the examples of the irregular migrants in the IDP camps in Rakhine state, Myanmar and in the refugee camps in Cox's Bazar, Bangladesh. Experiencing a form of detention, these IDPs and refugees are mostly living in 'closed' camps, where they are under significant restrictions, especially on movement.

IDPS IN RAKHINE STATE, MYANMAR

Concerns have already been raised about Myanmar's ability to manage the COVID-19 crisis given the state of its weak healthcare system, pre-existing humanitarian caseloads and ongoing conflict.¹ In Rakhine State itself, there are currently more than 210,000 IDPs living in various camps around the State, with most having lived there since 2012.² While the Myanmar government launched its National Strategy on Resettlement of Internally Displaced Persons (IDPs) and Closure of IDP Camps in November 2019, questions surrounding the safety, ease of movement, and livelihood sustainability of affected communities still remain.³ There have been reports from the ground that the resettled IDPs, particularly the Rohingya, still face many restrictions. These include the lack of choices of where they can relocate to, as well as being forced to live in crowded semi-permanent structures in sub-standard areas.⁴ Movement restrictions on those living in the camps have also increased with the current lockdown measures. Even IDPs in need of medical referrals to the State's main hospital in the capital Sittwe have had trouble obtaining permission to leave their camps, with them being told to seek treatment in the camps instead.⁵

With the overcrowded conditions in these camps, a lack of health facilities as well as sanitation facilities, social distancing and other COVID-19 mitigation measures are almost impossible to implement. Although the government of Myanmar have instituted various measures – mobilising response teams for IDP camps to construct more sanitation facilities, conduct education sessions and distribute essential supplies, announcing a nationwide ceasefire agreement as well as instituting a

lockdown of Rakhine state – the effects of these measures are limited due to several factors.⁶

One such factor is the lack of resources. One of Myanmar's poorest states, Rakhine has limited testing and medical facilities with only one laboratory in Sittwe General Hospital and only nine health workers per 10,000 people in the state health system, far below the 22 recommended by World Health Organisation and even the national average of 16.⁷ The provision of external humanitarian assistance to the people of these IDP camps have also seen reductions, with the Rakhine State Government only allowing essential life-saving humanitarian assistance such as those related to food assistance, COVID-19 response and water.⁸ Moreover, with some personnel from UN agencies, as well as other international organisations, having tested positive for the COVID-19, other organisations have also temporarily reduced their activities, further stretching resources in the field.⁹ As such, it should be of key importance that the Myanmar government end movement restrictions for the people living in the camps, or at the very least allocate additional space to alleviate overcrowding. They should also work together with humanitarian aid groups to ensure the provision of sufficient resources on the ground for a substantive COVID-19 response.

COVID-19 mitigation measures in Rakhine State are also further complicated by its ongoing conflict between Myanmar's military and the ethnic armed organisation, the Arakan Army (AA). Although the military announced a temporary national ceasefire in line with the UN Secretary-General's global appeal on 9 May 2020, it excludes "areas recognised as the base of terrorist organisations".¹⁰ With the AA being designated a terrorist organisation in late March 2020, this effectively excludes the Rakhine State.¹¹ The ongoing conflict in Northern Rakhine, as well as its relatively rural location, also means that humanitarian assistance to the area has been minimal.¹² While Myanmar's government has been dealing relatively well with COVID-19, the recent surge of local transmission cases in Rakhine should serve as a warning to avoid complacency.¹³

Although there have been no confirmed COVID-19 cases in the camps or other IDP sites at the time of writing, out of Myanmar's 887 cases, 409 have been reported across Rakhine – 393 of which were reported between 16 August and 1 September 2020.¹⁴ Moreover, with the continued delays in testing primary contacts of those who have tested positive for COVID-19, some of whom live in the IDP camps, it may only be a matter of time before the camps start seeing COVID-19 cases.¹⁵

- 1 United Nations Economic and Social Commission for Asia and the Pacific, "The Impact of COVID-19 on South-East Asia", *Policy Brief*, July 2020, <https://www.unescap.org/sites/default/d8files/2020-07/SG-Policy-brief-COVID-19-and-South-East-Asia-30-July-2020.pdf>
- 2 United Nations Office for the Coordination of Humanitarian Affairs & United Nations Refugee Agency, "Humanitarian Situation in Rathedaung", *Flash Update*, 30 June 2020, <https://reliefweb.int/sites/reliefweb.int/files/resources/Myanmar%20-%20Flash%20Update%20-%20Humanitarian%20situation%20in%20Rathedaung%20%2830%20June%202020%29.pdf>
- 3 Global New Light of Myanmar, "Ministry unveils national strategy on resettlement of IDPs, camp closures", *Global New Light of Myanmar*, 27 December 2019, <https://www.gnln.com.mm/ministry-unveils-national-strategy-on-resettlement-of-idps-camp-closures/>
- 4 CARE et al., "Three Years On: Prospects for Durable Solutions and Justice Remain Elusive for Rohingya", 24 August 2020, https://www.nrc.no/globalassets/pdf/final-statement-3-years-on-and-no-durable-solutions_08.20.2020.pdf
- 5 Nadia Hardman & Param-Preet Singh, "Pandemic Adds New Threat for Rohingyas in Myanmar", *Human Rights Watch*, 29 May 2020, <https://www.hrw.org/news/2020/05/29/pandemic-adds-new-threat-rohingyas-myanmar>
- 6 Kyaw San Wai, "Myanmar and COVID-19", *The Diplomat*, 1 May 2020, <<https://thediplomat.com/2020/05/myanmar-and-covid-19/>>.
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ROHINGYA REFUGEES IN COX'S BAZAR, BANGLADESH

The largest refugee settlement in the world, Cox's Bazar, Bangladesh, houses around 900,000 Rohingya refugees from Myanmar.¹⁶ In all the 34 camps, tightly packed and overcrowded conditions render social distancing virtually impossible, placing their residents at a disproportionately high risk of contracting COVID-19. The Rohingya populations in these camps are also entirely reliant on humanitarian assistance, both local and international. However, this is currently hampered by travel restrictions implemented by the Government of Bangladesh.¹⁷ The movement of aid workers in and out of the camps is heavily restricted, while refugees are only allowed to travel to neighbouring camps but are not allowed to go to places further out like the city centre of Cox's Bazar and other municipalities such as Chittagong.¹⁸

A study published in March 2020 by John Hopkins University researchers projected that, should there be an outbreak among the refugee community in Cox's Bazar, the virus would first spread slowly before rapidly cascading within a year. Based on their models, a single case in Cox's Bazar could lead to between 119 and 504 transmissions within a month, and up to 600,000 infections in a year.¹⁹ As of July 2020, there have been around 60 COVID-19 cases reported in the camps, with five deaths.²⁰

While the numbers have not gone up exponentially since the first case, the conditions for a serious outbreak are still present. This is due to several factors. Firstly, the average population density in a Rohingya refugee camp in Cox's Bazar is about 40,000 people per square kilometre, which drastically increases the chances that the virus will spread quickly.²¹ Secondly, while the Bangladesh government has been working in tandem with national and international aid agencies to improve healthcare infrastructure and services in the camps, the camps are still woefully unequipped to deal with the pandemic.²² Due to government under-investment, the health sector in Bangladesh suffers from inadequate quality of healthcare service and paucity of essential equipment.²³ Intensive care capacity is still lacking, and COVID-19 testing capacity is still very low in Cox's Bazar.²⁴ As of 10 June 2020, there is only one testing laboratory in the entire Cox's Bazar, catering to both host communities and refugees.²⁵

The response has also been complicated by increasing distrust for and stigmatisation of Rohingya refugees. Since the onset of the pandemic, there has been a rise in anti-Rohingya hate speech and racism among the local population in Cox's Bazar. Rohingya refugees have been accused of carrying the virus and siphoning resources away from local Bangladeshi communities.²⁶ Societal stigmatisation would only compound the suffering of the Rohingya. As such, it is important that the Bangladesh government works together with aid agencies to create and promote campaigns to reduce the stigmatisation of the Rohingya by host communities in Cox's Bazar.

Finally, Rohingya refugees need to be included in policy discussions as well as mitigation plans. This would give them a voice and enable policymakers to be culturally sensitive when planning and enacting response strategies. An example that highlights this need can be seen when the practice of 'shielding' – separating the elderly from their families as a form of social distancing – was met with pushback from the Rohingyas.²⁷ Consultation with Rohingya representatives would have revealed that most Rohingyas are against the splitting up of multi-generational households, which then would have resulted in more culturally appropriate COVID-19 mitigation policies.

CONCLUSION

As COVID-19 continues to rage throughout the world, it is becoming ever clearer that each country, or indeed the world, is only as strong and prepared as its most vulnerable member. For the already movement-restricted irregular migrants living in overcrowded camps, further confinement in camps – most of which already lack adequate healthcare and sanitation facilities during 'normal' times – may perhaps bring about an undesirable result. As such, an inclusive health-disaster response, one which takes into account the particular needs and vulnerabilities of each community, would be vital for the long-term eradication of COVID-19.

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CANADA: THE CORDON SANITAIRE AND THE SHIFTING THREATS OF THE COVID-19 PANDEMIC

Since Confederation in 1867, Canadian officials have called upon quarantine measures, and, later, immigration detention, to control, contain, manage, and eventually expel foreigners. A pattern of legislation marks potential and current immigrants with diseases or disabilities as liabilities burdening a fragile public health care system.¹ During COVID-19, this pattern continues with a national fear of foreign “infections” overriding the rights of newcomers and permanent residents – as well as their children, other dependents, and even people who “looked like immigrants”. Yet, these concerns were balanced against the threats posed by the detention centres themselves, thus leading to a reduction in detention.

The socio-legal understanding of the “cordon sanitaire” is helpful here. The original “sanitary cordon” or “health border” was a perimeter set up in France during the Middle Ages to control the outbreak of Black Death by preventing anyone from leaving and thus spreading the disease. Since then, and to various effects on stigmatized communities, cordons sanitaires have quarantined residents of Georgia, Texas, and Florida in the 1880s to contain yellow fever; Honolulu’s ‘Chinatown’ in 1900 to control a bubonic plague outbreak; and Poland during World War I to combat a typhus outbreak.²

We can extend this idea to capture the border as a safeguard not to contain disease but to repel it. Popular discourse associates migrants with bringing dangerousness, invasion, panic, and uncertainty, as well as carrying bio-medical risks and, *inter alia*, bio-security risks.³ We can think here of Canadian and international media depicting or describing refugees and other migrants literally as infectious diseases, rising floodwaters, animals, or potential terrorists.⁴ By recognizing the power of the cordon sanitaire, we can unpack the idea of the border or detention centre as a literal and metaphorical bulwark against pollution or harm.

But what happens when the threat emanates not from migrants but from the conditions of their confinements? The federal Government of Canada instituted a national quarantine and called for de-carceration of prisons and detention centres. How will this impact the power of the cordon sanitaire, the future of migration control, and public and government thinking about the acceptability of incarcerating migrants in the first place? This is the legal, social, and policy experiment that Canada confronts as it grapples with COVID-19.

IMMIGRATION DETENTION IN CANADA

The *Immigration and Refugee Protection Act* (IRPA) Section 55 vests Canada Border Services Agency (CBSA) officers with the discretionary power to detain. The CBSA assists the Ministry of Immigration, Refugees and Citizenship Canada (IRCC) and the Immigration Division (ID) of the Immigration and Refugee Board to make decisions on admissibility. CBSA officers can stop migrants for questioning, take breath and blood samples, and search, arrest, and detain people without warrants.

During the 2018-19 fiscal year, the CBSA officially detained 8,781 foreign nationals, with an average of 342 people detained each day.⁵ With an average time in detention of 13.8 days but a median length of 1 day, we can see that some people are detained for extremely long periods. Most detention is “back-end” or pre-removal, and takes place in Ontario. In 2018-19, 85 per cent of immigration detainees were held because they were deemed to be unlikely to appear for an immigration or admissibility hearing.⁶ IRPA S27 empowers ID adjudicators to conduct routine hearings to review the grounds for every detention until the case is concluded through release or removal from Canada. IRPA S38 prohibits entrance to immigrants posing dangers or significant financial costs to public health.

CBSA detains in its own detention facilities known as immigration holding centres (IHCs) as well as in police cells and provincial prisons. The IHCs are located near international airports in Toronto, Montreal, and a new facility is being constructed near Vancouver. Categorized as medium-security facilities, IHCs tend to have poor ventilation, lack hygiene products, and provide limited access to medical care.⁷ Since detainees share rooms and eat meals together, it is difficult to socially distance in the IHCs. Likewise, despite international rules prohibiting “co-mingling”, detainees incarcerated in provincial prisons often share the common area, cells, and units with inmates.

In 2016, the Liberal Government of Prime Minister Justin Trudeau pledged \$138 million to “transform” the detention estate over five years through the so-called National Immigration Detention Framework (NIDF). The NIDF has expanded “alternatives to detention” programs, including the problematic deployment of electronic ankle shackles and biometric voice-recognition check-in systems.⁸

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A COVID-19 CORDON SANITAIRE?

As of 4 September 2020, there have been 130,744 confirmed cases of COVID-19 in Canada, including 9,140 fatalities. There have been 6,660,999 tests administered. On 21 March 2020, in response to a rising transmission rate in Canada (including the infection of the Prime Minister's wife after a trip to London), the Government of Canada implemented a restriction on all discretionary travel at the Canada-U.S. border. Using emergency powers available under the *Quarantine Act*⁹, the Government issued two broad-reaching "travel bans" for foreign nationals who want to enter Canada. Orders in Council¹⁰ require a 14-day mandatory self-isolation and quarantine for all persons entering Canada, whether citizens or not. There is little to no caselaw and it seems that there have never been any court challenges to *the Quarantine Act*.¹¹

On 17 March 2020, CBSA was officially detaining 353 people across its IHCs and in provincial jails. The population of IHC detainees fell quickly to 98 people (25 March) then 64 people (1 April) then 30 people (19 April). As of 19 April, 117 detainees were in provincial jails, corresponding with their categorization as "high-risk" detainees. One staff member at the Toronto IHC tested positive for COVID-19, and one inmate at a federal prison in Laval has died from the disease.¹²

The Canadian case study shows a willingness to reduce detention and acknowledgement that prison health *is* public health: COVID-19 endangers not only detainees but also guards and staff, healthcare workers, legal advocates, and other visitors who bring droplets in to and out of the detention facilities. It is unclear how all of COVID-19 will impact longer-term CBSA, IRCC, and ID decision-making on whom to detain, and whom to welcome across the cordon sanitaire. Immigration processing is slowed, and claims for refugee protection are decreased. The IRCC has announced that its offices will not interview refugee claimants in person, or process refugee protection claimant document renewals.¹³ Yet, IRCC recently announced an immediate pathway to permanent residence for 1,000 refugee claimants employed as essential workers.¹⁴ Particularly when the country is geographically isolated and its government virtually closes the land borders, national focus shifts from the cordon sanitaire to the facilities used to contain and "manage" immigrant bodies.

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COVID-19, IN BETWEEN POLICY CHANGE – THE UNCERTAIN SITUATION OF ERITREAN REFUGEES IN ETHIOPIA

INTRODUCTION

Ethiopia reported its first COVID-19 cases on 13 March 2020¹. In response, the Ethiopian government established a Ministerial Coordination Committee and by 8 April, the Prime Minister, Abiy Ahmed, declared a 5 months state of emergency in accordance with the provisions of Article 93 of the Federal Constitution².

The state of emergency declaration allowed the Ethiopian Government to impose lockdown conditions on the population. Hence, as of 16 March 2020, schools and institutions of higher learning were closed for 15 days and government employees were directed to work from home. In addition, from 20 March all persons entering the country were subjected to 14 days mandatory quarantine. Restaurants and night clubs were closed, all sporting events were banned and all movement across land borders, except for cargo and essential goods, was suspended.³ Also, the Ethiopian Federal Attorney General issued a release order of over 4,000 prisoners including foreigners held on drug trafficking charges⁴ who were ordered to be deported to their countries.⁵

COVID-19 Statistics as of 4 September 2020

TOTAL CASES	54,409
TOTAL RECOVERED	19,903
TOTAL DEATHS	846

As part of the response, the 29 August 2020 general elections were postponed.⁶ The postponement has been contested and become the source of much political tension within Ethiopia especially since Tigray region (North Ethiopia) has decided to hold its own separate elections on 9 September 2020.⁷ As part of a USD 1.6 billion Ethiopia emergency response plan, the Ethiopian government introduced a specific COVID-19 emergency response with strong support for the health sector as well as measures to protect the economy and ensure social protection.⁸

The spread of COVID-19 impacted the lives of many Ethiopians as well as refugee populations residing in the country. According to the UNHCR, refugees in East African countries “are particularly vulnerable to the

virus, both in refugee camps and in urban areas” as they have to live “in crowded conditions, without adequate access to water and sanitation facilities, and with precarious livelihoods and food security”.⁹ Measures adopted to prevent spread of the virus, such as closure of the borders, and restrictions of movement, have particularly affected Eritrean refugees residing in the North of Ethiopia. Alongside with the movement ban, a policy decision ending the prima facie recognition of refugee status of Eritreans exacerbated their protection needs.¹⁰

COVID-19 BORDER CLOSURE AND THE IMPACT ON ERITREAN REFUGEES

For the period January to March 2020, UNHCR reported 9,463 new asylum seekers from Eritrea and an average of 3,000 new arrivals per month in the first quarter of 2020.¹¹ Already in April 2020, 423 Eritrean asylum seekers were held under quarantine in a border reception centre, Endabaguna, that has been converted for the purpose.¹²

Because of the lockdown measures implemented by the Ethiopian government to contain spread of COVID-19, as of 24 March 2020, the Administration for Refugees & Returnee Affairs (ARRA) suspended refugee reception, registration, and screening activities. Additionally, non-governmental organisations put on hold non-health related refugee camp activities. In Tigray region, where Eritrean refugees are located, the regional state government supplemented the measures of the Federal government by imposing a total movement ban.

Following the Ethiopian government’s COVID-19 declaration of emergency and lockdown as well as the travel ban imposed by the Tigray regional state, UNHCR reports indicate that there were no new asylum seekers arriving from Eritrea or any other location. It is only in July 2020 that UNHCR reported the arrival of 56 new asylum seekers in Ethiopia.¹³ However, the un-official cross-border movement remains undocumented. As the Special Rapporteur on the situation of human rights in Eritrea, Daniela Kravetz, informed, several unregistered recently arrived Eritreans were seen by locals living without shelter and support.¹⁴ The UNHCR also stated that as of 24 March,¹⁵ it has no access to the Ethiopia – Eritrea border area (in Tigray region) but that it does have access to the Endabaguna quarantine station. However, at present there is no public update on the quarantine situation in the border areas.

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ERITREAN REFUGEE STATUS IN ETHIOPIA

Already prior to the COVID-19 lockdown measures, Eritrean refugees and new asylum seekers were experiencing confusion and distress due to key policy shifts by the Ethiopian government on the recognition modality of their refugee status. For years, the Ethiopian government granted all Eritrean asylum seekers *prima facie* refugee status as a group. However, since late January of this year, the Federal government started to apply an 'exclusion criteria' preventing a large number of Eritrean asylum seekers from obtaining recognition as refugees. The exclusion criteria includes the following categories: (i) unaccompanied and separated minors;¹⁶; (ii) persons within the age of conscription in Eritrea; (iii) persons who access Ethiopia to seek medical care; (iv) persons who have crossed the border on repeated occasions, regardless of whether or not they have sought asylum in Ethiopia before; and (v) persons wishing to reunite with family members in a third country.¹⁷

Though Ethiopia and Eritrea have been engaged in a peace process since June 2018, to date there is no evidence that the Eritrean government is undertaking any reforms of the policies of national service and militarised education that are linked with human rights violations and are the major cause of young Eritreans fleeing the country.¹⁸ Since 2018, the UN Special Rapporteur on the situation of human rights in Eritrea continues to report that in Eritrea "[there is] no accountability for continuing and past human rights violations and crimes against humanity."¹⁹ In 2019, the Special Rapporteur reported that "despite the improved regional climate for peace and security, the human rights situation in Eritrea remains unchanged."²⁰ It is therefore a matter of concern that the Ethiopian government changed its open door policy toward Eritrean asylum seekers and is now applying exclusion criteria without following official procedures, as stipulated in their 2019 Refugee Proclamation²¹. The reasons for this policy decision are unknown. It is however clear that Eritreans without access to asylum procedures are at greater risk to human rights violations, detention, exposure to human trafficking and expulsion to Eritrea.

The Ethiopian Government's decision to end *prima facie* recognition of refugee status of Eritreans in combination with the application of the movement and quarantine restrictions, means that newly arrived Eritrean asylum seekers (including unaccompanied minors) are at greater risk of being detained. The exact practices of immigration detention of migrants in Ethiopia are unknown although according to the Global Detention Project, "there have been occasional reports of

authorities arresting and deporting migrants as they pass through the country".²² According to Daniela Kravetz, the UN Special Rapporteur on the situation of human rights in Eritrea, in several cases asylum seekers were turned away or told to go back to Eritrea by border and immigration staff members.²³ Return of people who left Eritrea without permission means persecution, detention or imprisonment by the state authorities.

Refusal to register asylum seekers leaves them without access to basic services and protection, particularly amidst the COVID-19 pandemic. In addition, Eritreans being denied refugee status recognition on a *prima facie* basis in Ethiopia may decide to undertake further secondary migration to other countries further afield, hence increasing their exposure and vulnerability to COVID-19 and human trafficking.

PROPOSED CLOSURE OF HITSATS REFUGEE CAMP IN TIGRAY, ETHIOPIA

The situation of Eritrean refugees was further jeopardised by the decision of the Ethiopian government to close Hitsats refugee camp. In March 2020, in the middle of the COVID-19 pandemic, the Administration for Refugees & Returnee Affairs (ARRA) verbally informed Hitsats refugees of the directive of the Federal Government to close the camp. There was no formal written notice from the Ethiopian government. The estimated population of Hitsats refugee camp at the time of the notice was 11,000 refugees. There was no prior structural preparation either at Hitsats or any of the receiving refugee camps in Tigray, all of which are overcrowded, underserved and are not prepared to receive the additional population.²⁴

The proposed closure of Hitsats camp generated protest from the refugees in the camp as well as Eritrean Human Rights organisations²⁵ who engaged in an advocacy campaign with the Ethiopian Prime Minister, donors, and regional bodies to highlight the danger of the closure of the refugee camp during the COVID-19 pandemic. The advocacy campaign highlighted that the unprepared mass movement of refugees amid the world pandemic is unprecedented and would endanger refugees as well as local communities. UNHCR, Eritrean Human Rights organisations, as well as other organisations such as Human Rights Watch, continue advocacy campaigns against the closure of the camp while requesting the Government to respect the rights of refugees and asylum seekers and abide by the Principle of do-no-harm.²⁶

16 Human Rights Watch, 21 Aprils 2020; Ethiopia: Unaccompanied Eritrean Children at Risk; <https://www.hrw.org/node/341087/printable/print>;

17 Habte Hagos; 28 March 2020; Eritrea Focus - Urgent: Ethiopia adopts new criteria excluding Eritrean Refugees - <https://eritreahub.org/urgent-ethiopia-adopts-new-criteria-excluding-eritrean-refugees>

18 Van Reisen, M., & Estefanos, M. (2017). The exodus from Eritrea and who is benefiting. *Human Trafficking and Trauma in the Digital Era: The Ongoing Tragedy of the Trade in Refugees from Eritrea. Bamenda, Cameroon: Langaa RPCIG*, 95-158.; Van Reisen, M., Saba, M., & Smits, K. (2019). 'Sons of Isaias': Slavery and Indefinite National Service in Eritrea. *Connected and Mobile: Migration and Human Trafficking in Africa*.

19 UN Human Rights Council (2018). Report of the Special Rapporteur on the situation of human rights in Eritrea. Retrieved from: <https://undocs.org/en/A/HRC/38/50>

20 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24721&LangID=E>

21 The Federal Democratic Republic Of Ethiopia. (2019). Refugee Proclamation No. 1110/2019. Federal Negarit Gazette. Retrieved from <https://hopr.gov.et/documents/20181/94381/REFUGEES+PROCLAMATION/fc2e0847-ba23-49a5-972b-4e70bd5d34ec?version=1.0>

22 The Global Detention Project, 20 August 2020, Ethiopia Immigration Detention Profile, Retrieved from <https://www.globaldetentionproject.org/countries/africa/ethiopia#covid-19-updates>

23 UN Human Rights Council. (2020). Human rights situation in Eritrea. A/HRC/44/23. Retrieved from <https://eritreahub.org/wp-content/uploads/2020/06/UN-Special-Rapporteurs-Report-2020.pdf>

24 Human Rights Watch, 21 Aprils 2020; Ethiopia: Unaccompanied Eritrean Children at Risk; <https://www.hrw.org/node/341087/printable/print>; Habte Hagos; 28 March 2020; Eritrea Focus - Urgent: Ethiopia adopts new criteria excluding Eritrean Refugees - <https://eritreahub.org/urgent-ethiopia-adopts-new-criteria-excluding-eritrean-refugees> Melicherova, K. (2020). Closure of Hitsats refugee camp in Ethiopia. EIPA. Retrieved from: <https://www.eipa.be/?p=3672>

25 Eritrea Focus. (2020). Ethiopia: Open Letter to PM Abiy on closing Refugee Camps for 18,000 Eritreans. Eritrea Hub. Retrieved from: <https://eritreahub.org/ethiopia-open-letter-to-pm-abiy-on-closing-refugee-camps-for-18000-eritreans>

26 UNHCR Ethiopia, 30 April 2020; Eritrean Refugees in Ethiopia Tigray and Afar Regions. Situation Update. Human Rights Watch, 21 Aprils 2020; Ethiopia: Unaccompanied Eritrean Children at Risk; <https://www.hrw.org/node/341087/printable/print>;

CONCLUSION

As the COVID-19 pandemic unfolded in Ethiopia over the past months, Eritrean refugees and asylum seekers found themselves caught between radical policy changes which brought greater uncertainty and concerns and the distress and uncertainty brought about by the pandemic. Both the radical policy change and the COVID-19 measures, intensified protection risks for Eritreans which exposes them to the lack of legal protection in Ethiopia and enhances risk of detention. The vulnerability of this population was increased by the application of severe and potentially dangerous exclusion criteria to the individual refugee status determination for Eritreans as well as the suspension of reception, registration, and screening of asylum seekers because of the COVID-19 lockdown. In addition, the decision to close Hitsats refugee camp caused further outrage and frustration among refugees residing in the camp. Thus, in the case of Eritrean refugees in Ethiopia, COVID-19 is exposing their ongoing institutional, social, and political vulnerabilities, including vulnerabilities to detention.

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LEFT IN LIMBO? EUROPE'S STATELESS POPULATIONS IN A GLOBAL PANDEMIC

Stateless people we work with often tell us they feel 'invisible', like they don't exist. Angela from Azerbaijan, who was detained in the Netherlands after being refused asylum and then released into limbo, said, "*the documents I do have tell me I'm of 'unknown nationality'. Officially I still don't exist*". Or Farid, from Pakistan, detained in Poland, who said: "*The waiting is the worst part... it's like you don't have any control any more... you wait for someone else to tell you who you are and what your country is*".

Working in this area, we repeatedly find that statelessness is ignored, misunderstood, and left out of law and policy frameworks, denying stateless people basic rights and services. These legal, policy and practice gaps can put stateless people at particular risk of immigration detention. With no legal route to protection, a residence permit, or nationality where they live, and no other country to which they can go, stateless people can find themselves stuck in legal limbo. In 2017, the work of our members across Europe helped shine a light on the stories of many of these men, women, and children like Angela and Farid, who are left locked in limbo through no fault of their own.¹

Across Europe, there are more than half a million people living with no nationality, with no recourse to the rights and protections that being a citizen of somewhere confers. They are members of minority groups, refugees, migrants, individuals with hopes, dreams, and aspirations just like everyone else. Some have moved across borders; some have always lived in the same place while borders have moved around them. Some fall victim to gaps or conflicts in nationality laws, and some to deliberate policies of deprivation or denial of nationality. Stateless people and people at risk of statelessness in Europe have many and different aspects to their identities, but all lack a State to turn to in times of crisis.

When European governments started to impose varying degrees of lockdowns and states of emergency as COVID-19 cases rose dramatically in spring 2020, ENS reached out to our members to find out how the pandemic was impacting on their work and the stateless people they work with.² In May, we organised a series of online conversations with stateless activists and representatives of affected communities across Europe to hear how the pandemic was impacting on them and what responses they wanted to see. These discussions were worked up into a position paper,³ providing a starting point for the views and experiences of people affected by statelessness to be prioritised and reflected in decision-making during COVID-19 and beyond. We continue to work with this group and our wider membership to monitor the fast-moving regional picture as we learn more every day about how responses to the pandemic are affecting stateless people across the region. Our members (over 150 civil society organisations and individual experts in 41 European countries), have had to adapt fast to be able to continue to provide vital services, juggling working virtually with the need to reach the most marginalised populations who may have limited access to internet or phones. They have faced the closure of competent authorities, procedural delays, disruption of court cases, and a reduction in access to the people they support in detention and reception centres. They have also faced an impact on their own funds and future fundraising opportunities, as well as difficulty getting traction on advocacy goals or media attention on statelessness related issues.

At the height of the pandemic in Europe, stateless activists and advocates told us that COVID-19 was having a specific social, economic, and health impact on them and their communities. Even amidst a public health crisis, they told us stateless people continued to face barriers to accessing healthcare, an increase in homelessness, and loss of income. Access to aid packages is reliant on identification documents in some countries, access to education during lockdowns is reliant on parents having the language and IT literacy to support their children. Immigration and court procedures faced significant delays in many countries, and access to lifeline legal advice and support was limited. Information on COVID-19 measures and impacts was not always translated or accessible to stateless people. Romani activists in particular reported an increase in antigypsyism, institutional discrimination, racial profiling and racist attacks, as well as the impact of increased police powers in some countries being to heighten the risk of people being detained or sanctioned for having irregular residence status or lacking identification documents.

Concerns about the state response towards people at risk of or held in immigration detention during the COVID-19 lockdowns were raised by our members in the UK, Sweden, Poland, Malta, France, Bulgaria, and Belgium, among others. They condemned the conditions inside places of detention during the pandemic, the lack of adequate healthcare and personal protective equipment, instances of the use of solitary confinement as a COVID-19 'prevention' mechanism, as well as the lack of access to legal advice, support services and visits. In the UK, Sweden, Belgium, France, the Netherlands, and Spain, it was reported that at least some people were released from detention due to COVID-19 measures, but in some cases our members said people were then not provided with adequate support and accommodation, leaving them at risk of destitution and homelessness.

Nonetheless, our members also reported some positive developments. As well as releasing people from detention, some other encouraging State practices were highlighted, including countries that extended residence permits or made it policy to take no punitive action against people whose permits expired during the lockdown period (e.g. Ukraine, Portugal, Poland). Members in Portugal, Bosnia-Herzegovina, Albania, Ireland, Malta, and Serbia, all reported that governments had explicitly increased rights to access public services (in some cases only COVID-related services) for stateless or undocumented people. In Ireland and Belgium, a firewall to prevent health services from sharing information with immigration authorities was introduced to facilitate access to healthcare.

The pandemic has exposed the urgent need for European States to put in place comprehensive legal and policy frameworks to protect and operationalise the rights of stateless people. It has also exposed gaps in knowledge and a need for more participatory research to understand how stateless people are being impacted, including those affected by immigration enforcement and detention policies.⁴ Whether States are willing to recognise it or not, stateless people exist, they are here in Europe, and they are calling for their rights to be upheld, and to be involved in the development of responses to COVID-19. At the same time, a handful of States have demonstrated that

1 https://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_detention_Testimonies.pdf

2 <https://www.statelessness.eu/about-us/members>

3 <https://www.statelessness.eu/resources/even-pandemic-statelessness-has-been-invisible-involving-stateless-people-europe-s-covid>

4 With the support of the Rosa Luxemburg Foundation, ENS is currently carrying out a scoping study to improve understanding of the nexus between health rights and statelessness to be published in early 2021

positive and inclusive responses to the pandemic are viable and beneficial, by extending healthcare, socio-economic, and residence rights to marginalised populations, introducing firewalls to prevent data-sharing with immigration authorities, releasing people from immigration detention, and taking steps to guarantee a minimum basic income. If such measures are possible during a pandemic, why not in the longer-term too?

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COVID-19 AND IMMIGRATION DETENTION IN HONG KONG

In this article, we discuss the Hong Kong S.A.R. government's COVID-19 response in relation to irregular migrants and asylum seekers. We provide a brief background on Hong Kong's legal and policy framework on immigration detention and then go on to highlight the neglect of disadvantaged migrants within the Hong Kong government's response to the COVID-19 pandemic. We argue that the pandemic has thrown into sharp relief the lack of transparency about immigration detention as well as the vulnerabilities of disadvantaged migrant groups in Hong Kong.

LEGAL AND POLICY FRAMEWORK ON IMMIGRATION DETENTION

Hong Kong is a special administrative region of the People's Republic of China with a population of 7.5 million¹. As an international financial centre and regional travel hub with a liberal visa regime, Hong Kong hosts significant numbers of short-term visitors as well as white-collar and less privileged migrants².

Notwithstanding the significant number of migrants transiting through or living in Hong Kong in myriad circumstances, Hong Kong has a thin policy framework on refugees, forced migration, and human trafficking. It is not a party to the 1951 Refugee Convention³ or the Protocol to Prevent, Suppress and Punish Trafficking in Persons⁴ or the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families⁵. It is a party to the Convention against Torture⁶ and the International Covenant on Civil and Political Rights⁷, and its obligations under these treaties have prompted the system currently in place to evaluate *non-refoulement* claims by migrants. Since 2014, the Hong Kong government has administered the Unified Screening Mechanism ('USM') for evaluating whether *non-refoulement* claimants would be at risk of torture, persecution, ill-treatment or arbitrary deprivation of life if returned to their countries of origin⁸.

The USM process is protracted and the rate of success extremely low. Between the USM's commencement in March 2014 to June 2020, only 192 out of 31,524 cases have been substantiated; this means the substantiation rate under the USM is 0.6 percent⁹. The top five countries of origin for substantiated claimants are Pakistan, Yemen, Rwanda, Egypt and Sri Lanka¹⁰. By way of comparison, the rate of substantiation for asylum claims ranges from 25 to 60 percent in many high-income countries¹¹. While awaiting the outcome of their claims, protection claimants receive a subsistence allowance and limited access to public services, but are barred from working. This extended, indeterminate precariousness means that some protection claimants might end up working informally in order to support their families, pay for healthcare or meet other expenses.

Such individuals, along with other low-income migrants who breach immigration rules, risk detention within Hong Kong's stringent immigration detention regime. The Immigration Ordinance (Cap 115)¹² specifies a number of criminal offences related to breaching immigration rules and grants immigration and police officials wide powers of detention¹³. It is important to note that immigration detention in Hong Kong is purely administrative and is not automatically subject to judicial scrutiny. An individual seeking to contest the decision to detain them would need to apply to the High Court for *habeas corpus*. Most detainees face formidable economic and linguistic barriers in applying for *habeas corpus*. Experience so far suggests that even the few who manage to apply are very unlikely to secure a decision in their favour¹⁴.

Official figures indicate that 10,053 people were detained in 2019¹⁵. The number of detainees hovered between 10,000 and 11,000 between 2014 to 2016¹⁶. This is comparable to (and in some years higher than) the number of prison inmates in Hong Kong in the same year¹⁷. Despite these high numbers, the immigration detention system in Hong Kong is startlingly opaque. There is very little publicly available information about the detainee population, detention conditions, and rates and

1 Census and Statistics Department, Government of the Hong Kong S.A.R. Available at <https://www.censtatd.gov.hk/hkstat/sub/so20.jsp>.

2 Government of the Hong Kong S.A.R., The Facts: Immigration. Available at <https://www.gov.hk/en/about/about/hk/factsheets/docs/immigration.pdf>.

3 Convention relating to the Status of Refugees, United Nations, Treaty Series, vol. 189, 137.

4 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000, G.A. res. 55/25, annex II, 55 U.N. GAOR Supp. (No. 49) at 60, U.N. Doc. A/45/49 (Vol.I) (2001).

5 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 18 December 1990, A/RES/45/158,

6 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, United Nations Treaty Series, vol. 1465, 85.

7 International Covenant on Civil and Political Rights, United Nations, Treaty Series, vol. 999, 171.

8 Immigration Department, Government of the Hong Kong S.A.R. *Notice to Persons Making Non-refoulement Claims*. Available at https://www.immd.gov.hk/pdf/notice_non-refoulement_claim_en.pdf. This reform was put in place as the result of a series of judicial review decisions.

9 This includes 17,777 cases determined by the Immigration Department at first instance and 13,747 cases determined by the Torture Claims Appeal Board on appeal since April 2014. Sources for these statistics include: Secretary for Security, 'LCQ9: Non-refoulement claims' (20 May 2020). Available at: <https://www.info.gov.hk/gia/general/202005/20/P2020052000659.htm>; Immigration Department, "Statistics on Non-refoulement Claim". Available at: <https://www.immd.gov.hk/eng/facts/enforcement.html>; and email reply to Justice Centre Hong Kong's access to information request from the Security Bureau dated 13 August 2020.

10 Immigration Department, "Statistics on Non-refoulement Claim".

11 UNHCR Refugee Data Finder, <https://www.unhcr.org/refugee-statistics/download/?url=VDc5>; Home Office, United Kingdom, 'How many people do we grant asylum or protection to?', 21 May 2020 (asylum grant rate of 54% in the year ending March 2020). Available at <https://tinyurl.com/y3nmfe8j>.

12 Immigration Ordinance (Cap 115).

13 See for example, Immigration Ordinance (Cap 115) Sections 19(1), 26, 27, 42, and 53(1A)(b).

14 This observation is based upon Justice Centre's experience advising vulnerable migrants, anecdotal feedback from immigration lawyers, as well as publicly available information on legal proceedings. See also the government's recent observations in this regard, available at <https://www.immd.gov.hk/eng/press/press-releases/20200813.html>.

15 Government of Hong Kong, The Facts: Immigration. Available at <https://www.gov.hk/en/about/about/hk/factsheets/docs/immigration.pdf>.

16 Immigration Department, Government of HKSAR, 'Appendix 13 - Enforcement Branch Statistics' in *Annual Report 2016* (Government of HKSAR 2016). Available at https://www.immd.gov.hk/publications/a_report_2016/en/appendices-13.html; Immigration Department, Government of HKSAR, 'Response to Justice Centre request under the Code on Access to Information'. Available at https://accessinfo.hk/en/request/immigration_detention.

17 Hong Kong Correctional Services website.

conditions of bail and deportation¹⁸. Further, the detention regime in Hong Kong lacks a robust external monitoring mechanism¹⁹.

Refugees, asylum seekers and forced migrants are particularly vulnerable to immigration detention under the Immigration Ordinance's wide powers. For example, they may have entered Hong Kong illegally or travelled with forged identification documents. Notably, asylum seekers can only commence their USM claims when they are subject or liable to removal from Hong Kong²⁰. This means people wanting to seek asylum must first overstay their visas, thereby committing an immigration offence, which increases their likelihood of being detained. As of 31 May 2020, at least 79 out of the 399 detainees at the Castle Peak Bay Immigration Centre (CIC), which is the major detention facility, were asylum seekers²¹.

As we discuss below, the COVID-19 pandemic has reinforced even further the need for greater disclosure and monitoring in relation to immigration detention.

THE RESPONSE TO COVID-19

Since the first confirmed case of COVID-19 was reported on 23 January 2020, the Hong Kong government's response to the pandemic has been generally agile and successful. The number of confirmed cases and deaths remained relatively low: as of 9 September 2020, there are 4,896 confirmed cases and 99 deaths²². Despite this, the Government has taken no concerted efforts to ensure the safety of refugees, asylum seekers and other vulnerable migrants amid the pandemic. While at the time of writing no major outbreaks have been reported in these communities, two detainees at the CIC tested positive for COVID-19 in mid-August and early September²³.

Civil society groups have long expressed concerns about the substandard conditions at immigration detention centres, including poor hygiene, crowded environments and lack of access to healthcare²⁴. The contribution by the CIC Concern Group in this volume highlights the urgent need for transparency about conditions in detention²⁵.

Regrettably, the Immigration Department has provided little information on measures taken to monitor and mitigate the impact of COVID-19 in detention facilities. The lack of effective complaints and monitoring mechanisms means that independent scrutiny is not possible.

In contrast to some other immigration regimes, Hong Kong does not have detailed operational guidelines on identifying individuals unsuitable for detention. This means the needs of people suffering from injury, trauma or other health conditions might not be appropriately recognised. The risks attendant upon this are heightened during the current pandemic. It is, of course, vital to identify and protect individuals who might be immunocompromised in any way. In addition, it is also important to recognise and address that the well-documented mental health toll of the pandemic is likely to be intensified by custodialisation. Thus far, it is unclear if the immigration authorities in Hong Kong have implemented safeguards in this regard.

Moreover, it is also unclear whether the Government has reviewed its immigration detention policies in relation to detention thresholds and duration during the COVID-19 pandemic. Ongoing border closures and interruption to international flights create the risk of extended periods of detention. International law as well as common law principles prohibit disproportionate periods of immigration detention²⁶. For example, *Hardial Singh* establishes that immigration detention beyond short periods is only justifiable where there is a prospect of removal within a reasonable time²⁷. The Immigration Department has confirmed that, as at June 2020, 70 detainees at the CIC are asylum seekers with rejected claims who are pending removal²⁸. While there are reports that some detainees have since been released on recognizance²⁹, the lack of a transparent review mechanism makes it difficult to ensure individuals are not subject to potentially arbitrary detention.

People who are released on recognizance in lieu of detention are required to regularly report to the authorities in person³⁰. The need to travel – often considerable distances and on public transport – for the purposes of reporting puts people at risk and is against the public health advice to stay at home and practice social distancing. Upon enquiry,

18 See, for example, the official reply to access to information requests in this regard: https://accessinfo.hk/en/request/immigration_detention_informatio#incoming-1324 and https://accessinfo.hk/en/request/immigration_detention_2#incoming-1323.

19 Justices of the Peace are permitted to visit immigration detention centres, but there is little public information about the nature or findings of these visits.

20 Immigration Ordinance, Section 37W(1).

21 Immigration Department, *Statistics on immigration detention: 2014-2019*, 5 June 2020. Available at: https://accessinfo.hk/en/request/statistics_on_immigration_detent#incoming-1384. At the time of writing we are unable to confirm whether the figure provided by the Immigration Department includes asylum seekers who have filed judicial review challenges against rejections of their asylum claims.

22 Government of the Hong Kong S.A.R. "Covid-19 Situation Dashboard". Available at: <https://chp-dashboard.geodata.gov.hk/covid-19/en.html>.

23 Immigration Department, "A person transferred from Pik Uk Prison to Castle Peak Bay Immigration Centre for detention tests positive for Covid-19". 6 September 2020. Available at: <https://www.immd.gov.hk/eng/press/press-releases/20200906.html>; Immigration Department, "A detainee detained at Castle Peak Bay Immigration Centre tested positive for Covid-19". 19 August 2020. Available at: <https://www.immd.gov.hk/eng/press/press-releases/20200819b.html>.

24 Westbrook, Laura, "Coronavirus: Hong Kong lawyers, lawmakers flag hygiene issues at detention centre, but Immigration says health measures in place" *South China Morning Post*, 16 April 2020. Available at: <https://www.scmp.com/news/hong-kong/health-environment/article/3081544/coronavirus-hong-kong-lawyers-lawmakers-flag-and-cheng-olivia>; 鄭祉倫, "Hong Kong's Refugees: The Invisible Wall 看不見的難民" *Ming Pao Weekly 明報周刊* Volume 2517, 4 February 2017 (In Chinese).

25 "Immigration detainees on weeks-long hunger strike", RTHK, 20 July 2020, Available at <https://news.rthk.hk/rthk/en/component/k2/1538868-20200720.htm>.

26 See Grange, Mariette & Mazcher, Izabella, "Immigration Detention under International Human Rights Law: The Legal Framework and the Litmus Test of Human Rights Treaty Body Monitoring" in Flynn, Michael J. & Flynn, Matthew. *Challenging Immigration Detention: Academics, Activists and Policy-makers*. Edward Elgar 2017, 269-271.

27 *R v Governor of Durham Prison, ex p Hardial Singh* [1984] 1 WLR 704, affirmed by the Hong Kong Court of Final Appeal in *Ghulam Rbani v Director of Immigration* (2014) 17 HKCFAR 138.

28 Secretary for Security, "LCQ12: Castle Peak Bay Immigration Centre", 17 June 2020. Available at: <https://www.info.gov.hk/gia/general/202006/17/P2020061700461.htm>.

29 Recognizance is similar to bail or bond except that it is granted by an immigration or police officer, and there is no judicial oversight of this process. See Immigration Ordinance, Section 36. "Fernando Cheung et al. meet with Immigration to discuss CIC Hunger Strike, criticises the Immigration for exercising wide powers without transparency 青山灣羈留者絕食抗議一個月 張超雄等晤入境處 斥權力過大欠透明" *Stand News* 立場新聞, 28 July 2020 (In Chinese). Available at: <https://bit.ly/3klxTZw>.

30 Immigration Ordinance, Section 36.

the Immigration Department stated that it has arranged to temporarily relax the reporting frequency of recognizance form holders to not more than once every eight weeks since 13 February 2020³¹. However, reports from affected individuals suggest this measure was not communicated clearly to them, and many are left confused about their reporting requirements³².

Immigration detention aside, refugees, asylum seekers and forced migrants have been largely excluded from the Government's social security response. Crucially, these communities face significant barriers in accessing healthcare. Refugees and asylum seekers are not eligible to access public health facilities at a subsidised price. While they may apply for medical fee waivers, most are unaware of this mechanism as there is a lack of information about its availability. People with insecure immigration status, such as asylum seekers who are unable to register their USM claims or victims of trafficking who may have entered Hong Kong illegally, are further disincentivised from seeking medical care for fear of legal ramifications and costs. Adding to these concerns are language and cultural differences, as well as poor health literacy. Overall, there is no clear information on how refugees, asylum seekers and irregular migrants can safely access medical services if they develop COVID-19 symptoms.

Law and policy in relation to refugees, asylum seekers and other vulnerable migrants in Hong Kong continues to have significant gaps. Systemic shortfalls in relation to the rights and welfare of vulnerable migrants in ordinary times have been exacerbated under the extraordinary circumstances of a global pandemic.

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³¹ Letter from the Security Bureau to the Refugee Concern Network, 22 May 2020.

³² Based upon feedback from non-*refoulement* claimants received by Justice Centre Hong Kong staff.

ORGANISING FOR CHANGE: HOW WE SUPPORTED COVID-19 – STRUCK AND HUNGER STRIKING DETAINEES IN HONG KONG

Hong Kong is a Special Administrative Region located at the edge of Southern China, with a dense population of 7.5 million. It is home to 530,000 ethnic minorities from the Philippines, Indonesia, India, Nepal and other Asian countries¹. Given its proximity to China, the city experienced the first wave of COVID-19 outbreak as early as 23 January 2020, and there were over 4,800 confirmed cases by 4 September 2020.

People without right of abode in Hong Kong, such as overstayers, ‘illegal workers’ and prisoners with foreign nationalities who had finished their sentences, were detained in CIC, i.e. Castle Peak Bay Immigration Centre. Usually around 200-400 were detained at a given time. Some were soon released on recognizance paper and received a minimal monthly subsidy to survive in the city. Some remained in CIC, awaiting deportation back to their country of origin or the result of their *non-refoulement* claim (a.k.a. torture claim²) applications or appeals; either way they could be detained for prolonged periods of time, as there was no clearly defined ‘jail term’ in CIC. The authorities justified some unusually long detentions by the detainees’ supposed threat to public order or high chance of abscondment³.

Since 29 June 2020, a peak of 28 male CIC detainees from India, Pakistan, Nigeria, Zambia and Benin took part in an indefinite hunger strike. They protested against being detained indefinitely, some for over 5 months and even up to 2 years, with no end in sight. 11 strikers entered their 70th day of hunger strike on 7 September. 15 female detainees reportedly conducted a brief hunger strike in solidarity in August as well.

Hunger strikes have unfortunately been common among desperate detainees. Prolonged detention, without meaningful activity or work and no contact with sunlight, has been physically and mentally torturous. Many reported that ‘CIC is worse than prison’. In addition, detainees reported appalling hygiene conditions, with frequently blocked toilets and showers, swarms of rats and cockroaches, crowded common areas, shared buckets of drinking water, no place to dry clothes, and poor ventilation.

A newly admitted detainee was tested positive for COVID-19 on 18 August 2020, another on 5 September. The cases reflected the vulnerability of detainees in times of a pandemic. This article will detail the threats posed by COVID-19 to detainees, and the ground-breaking actions taken by a civil society initiative, CIC Detainees’ Right Concern Group, as well as their impacts.

HOW COVID-19 THREATENED CIC DETAINEES

The lack of proper outbreak-prevention policies in CIC was exposed when a confirmed case was publicised. On 16 August 2020, a Thai overstayer, alongside 3 other new entrants, was separated from most detainees in an ‘isolation cell’. He was identified as COVID-19 positive on 18 August and taken to the hospital⁴. However, detainees reported that officers who handled his detention moved freely around CIC before the

discovery. It was mere luck that a full-blown outbreak did not follow. All detainees were asked to conduct a COVID-19 test the next day.



CIC concern group volunteer witnessed staff in full protective gear coming in and out of CIC on 19 August 2020

A second COVID-19-positive case, a 22-year-old Thai male transferred from Pik Uk Prison to CIC for detention, emerged on 5 September⁵. In particular, this detainee used to work in the Prison’s Laundry Workshop Complex that served the city’s public hospitals. The next morning, the CIC Concern Group discovered that all visits to CIC had been suspended until further notice.



The CIC concern group only discovered that all visits to CIC had been suspended until further notice on 6 September 2020, outside the gates of CIC.

1 There were also around 60,000 people categorised as ‘white’. Source: Census and Statistics Department of HKSAR Government. ‘Hong Kong 2016 Population By-census – Thematic Report: Ethnic Minorities’. Retrieved from <https://www.censtatd.gov.hk/hkstat/sub/sp459.jsp?productCode=B1120100> (3 Sep 2020)
 2 Hong Kong did not sign the Convention Relating to the Status of Refugees, so recognised UN refugees can only await relocation to a third country.
 3 See Immigration Department of HKSAR Government (2012, Dec), ‘Policy for detention pending final determination of the claimant’s torture claim’, Retrieved from https://www.immd.gov.hk/pdf/Detention_policy_en.pdf (3 Sep 2020)
 4 Immigration Department (2020, August 19), ‘A detainee detained at Castle Peak Bay Immigration Centre tested positive for COVID-19 19 August 2020’. Retrieved from <https://www.immd.gov.hk/eng/press/press-releases/20200819b.html> (3 Sep 2020)
 5 Immigration Department (2020, September 6), ‘A person transferred from Pik Uk Prison to Castle Peak Bay Immigration Centre for detention tests positive for COVID-19’. Retrieved from <https://www.immd.gov.hk/eng/press/press-releases/20200906.html> (11 Sep 2020)

From their phone calls to the Group, detainees expressed that uncertainty about their own and one another's health and future had been a great source of stress. One of them reported that all detainees were immediately tested for COVID-19, while around 30 close contacts to the confirmed case simply 'disappeared' for isolation purposes.

Moreover, detainees reported a lack of protective gear and sanitation products in CIC. A detainee who was transferred from prison in early 2020 recounted not being allowed to bring his own facial masks along and that it took a week-long collective complaint by detainees in April – when the second-wave outbreak in the city started to wane – for CIC to start supplying facial masks once a day. There was also no supply of alcohol gel and wet tissues for disinfection. Detainees relied on handouts from visitors (only if they had any). Only 3 packs of wet tissues – 10 pieces each – were allowed monthly. Many of them complained that banning visits meant they were denied even daily essentials like soap and clothes.

It is easy to overlook that the stoppage of international flights also unfairly extended detainees' period of detention. Since 6 September 2020, detainees reported that several people had their planned deportation that week suddenly delayed until further notice. Ex-detainees surveyed by the CIC Concern Group in May 2020 reported that groups of 40-50 Thai and groups of mainland Chinese were unable to get deported for months, which led to severe overcrowding in the facilities. According to the Immigration Department, until 15 June 2020, around 35 CIC detainees were awaiting international flights⁶.

Some detainees, including migrant domestic workers fired due to the pandemic, explained that they were detained precisely because their country went into lockdown, such that they were forced to overstay, being unable to return. Even though the authorities detain on the basis that they can deport within a reasonable timeframe, in practice they could not do so and detention became prolonged. In light of this, Human right lawyers the Group consulted in private said that the pandemic arguably constituted a reason for the release of detainees.

CIC CONCERN GROUP TO AMPLIFY DETAINEES' VOICES

CIC Detainees' Rights Concern Group is a voluntary alliance formed by friends of Yuli Riswati, an Indonesian migrant worker who was unjustly detained in CIC in November 2019⁷. Since then, the Concern Group actively engaged ex-detainees, detainees' visitors, local lawmakers, human rights lawyers and NGOs, the media and volunteers. The group conducted surveys outside CIC since May 2020, gathered ex-detainees and exposed inhumane detention conditions publicly.

Public awareness and media attention surged further after the Group publicised the hunger strike on its second day and staged small-scale protests on the 7th and 17th day of strike, despite the government's restrictions on outdoor group gatherings of over 4 and later 2 people. Father Franco Mella, a seasoned activist who had supported migrants' rights in Hong Kong for decades, staged a 50-hour hunger strike in solidarity in mid-August. Solidarity action outside CIC – visible to detainees through their windows – were also staged intermittently, which helped boosting the morale of detainees.



8am (6 September 2020) Sunday Protest with Franco Mella's singing for all detainees in CIC. The protest lasted for an hour, and detainees waved towels outside the bars and shouted 'Freedom now' back throughout.

6 Immigration Department of the HKSAR Government (2020, Jun 29). Letter in reply to legislator Shiu Ka-chun (in Chinese). Reference: L/M (5) in Imrd CIC/ OPS/4/12(C) Pt.1

7 See (2020, July 13), 'Violent Strip Search, Denied Medication – Former Detainees Speak Out against Abuse in Castle Peak Bay Immigration Centre'. Stand News. Retrieved from <https://www.thestandnews.com/society/violent-strip-search-denied-medication-former-detainees-speak-out-against-abuse-in-castle-peak-bay-immigration-centre/> (3 Sep 2020)

The Group also began visiting hunger strikers frequently and built a trusted relationship with them, and their families and friends. Thus, timely updates were received.

AUTHORITIES IN DENIAL – BUT RESPONDING SLUGGISHLY

Given intense pressure from the public and hunger strikers, top Immigration Department officials invited the Group and lawmakers to meet on 28 July and 9 August 2020. They reported that each striker's case had been reviewed by the department Director, and four of the 28 strikers had been released. Yet, they denied charges of indefinite detention and abuse by officers, and offered poor explanations for the long-deficient hygiene and medical conditions.

When pressed about the unjustifiable practice of detention during the pandemic, the Department replied that their communication with consulates for identity documents and flight arrangements, as well as successful deportation of isolated detainees continued, so the pandemic did not pose a significant obstacle to the deportation process. The group disagreed and later made urgent appeals to the UN Special Rapporteur on Torture and Working Group on Arbitrary Detention.

On 12 August, the Immigration Department issued an unusually strong-worded statement, denying the existence of indefinite detention at all⁸. Despite this hardened stance, there seem to be changes inside CIC due to intense civil society monitoring: some detainees reported receiving more active reviews of the grounds for their detention.

CIC Concern Group believes that civil society initiatives can play the simple yet important role of addressing the huge information asymmetry that exist regarding immigration detention situation, especially during COVID-19. Detainees need reliable sources of support for basic material and legal needs, and channels to make their complaints heard. Citizens need to be informed about the way their government treats detainees discreetly. By persistently doing these simple things while building stronger grassroot and civil society alliances, we can make a difference.

ANNA TSUI

Castle Peak Bay Immigration Centre Detainees' Rights Concern Group



8am (6 September 2020) Sunday Protest. The protest lasted for an hour, and detainees waved towels outside the bars and shouted 'Freedom now' back throughout.

8 HKSAR Government (2020, Aug 12), 'Immigration Department strongly condemns unfounded allegations against Castle Peak Bay Immigration Centre by online media'. Retrieved from <https://www.info.gov.hk/gia/general/202008/13/P2020081300599.htm?fontSize=1> (3 Sep 2020)

INDIA: IMPACT OF COVID-19 ON IMMIGRATION DETENTION

INTRODUCTION

As of early September 2020, India recorded the world's second-highest COVID-19 cases after the United States. The latest figures indicate that the subcontinent has over 5.6 million¹ cases, with an average of 80,000 new cases being recorded every day. When the pandemic first hit the subcontinent in early March 2020, the government imposed one of the strictest and longest lockdowns in the world, which continued until the end of May 2020 with very few relaxations. In mid-March, the Supreme Court directed States to set up 'High Powered Committees' to consider releasing prisoners facing a maximum sentence of up to seven years on bail and parole. This was in acknowledgement of the fact that prisons in particular could potentially become hotspots for the spread of the virus owing to overcrowding, poor sanitary conditions, and lack of medical facilities. The Supreme Court also relaxed the conditions for their release, stating that detainees would only have to furnish a bond of Rs 5,000 (USD 67) with two sureties.

In April 2020, the Supreme Court further directed the government to release "illegal foreigners" who have been under detention for over two years in the State of Assam (a North-Eastern State of India), an epicentre for immigration detentions in India. Releases would be conditional on detainees recording their biometrics and fingerprints, and reporting periodically at the nearest police station. The court also reduced the surety (or bail) amount to Rs 5000 (USD 67) from Rs 100,000 (USD 1360). Despite the circumstances that compelled the Court to issue the directive, it has been widely welcomed by human rights activists and is considered a positive step towards reforming immigration detention practices in India.

IMMIGRATION DETENTION IN INDIA

In the Indian context, "illegal foreigner" detainees often include refugees (who are yet to access the asylum process for a formal determination of their legal status) and/or survivors of trafficking who are subject to indefinite detention without access to asylum systems or humanitarian protections under domestic and international laws. India has a strong track record of hosting refugees, particularly in light of its assistance to Tibetan and Sri Lankan refugees, however, it does not have a law for asylum management. In fact, the law does not recognise refugees as a separate category of foreigners who are in need of international protection. Therefore, they invariably fall within the purview of the 1946 Foreigners Act and the 1967 Passport Act that allow the State wide powers to arrest a "foreigner" (defined as a non-citizen) for illegal entry or prolonged stay. In light of this, refugees in India are at a heightened risk of being subject to detention and deportation with very limited avenues to access justice systems. Typically, the sentences in such cases is detention for up to five years and/or a fine. The only relief in such cases has come through the courts which, through judicial activism, have treated refugees as a distinct group in need of asylum and have upheld the principle of *non-refoulement*.²

In India, immigration detention is not different from criminal detention, since immigration violations are treated as criminal acts. In effect, immigration detainees are often kept in regular prisons, which is a violation of their rights under international law.³ Under domestic law, migration-related detention can either be custodial or administrative. The former is used as a measure to secure appearance before a judicial body for the purposes of criminal prosecution. The latter is used in cases involving unidentified aliens/foreigners who are residing illegally in the country, as a measure prior to deportation. Over the years, courts in India have made attempts to ensure that detainees have access to basic constitutional protections, particularly those enshrined under Article 21 (right to life and personal liberty) which includes right to live with human dignity, access to medical facilities, a fair trial and legal aid through court orders. With these directives, detainees in theory would also have protection against torture and ill-treatment while in custody, and the right to bail during the pendency of their appeal.

With regard to administrative detention centres, on January 2019, the Indian government released the Model Detention Centre Manual that requires States to ensure basic standards of protection, which includes access to essential services, medical facilities, and other adequate infrastructure. However, despite these guidelines, a number of administrative detention centres are still operated out of makeshift facilities within local prisons and there have also been reports of death of detainees due to poor living conditions and lack of adequate infrastructure.⁴ Further, due to the unavailability of timely, quality legal aid, poor mechanisms to review detainee's legal status, as well as an inability to carry out deportations to home countries, several immigration detainees languish in detention centres for indefinite periods of time.

RECENT DEVELOPMENTS

Over the years, the situation has worsened with the introduction of *ad hoc* executive policies pertaining to refugee management and citizenship. In 2017, the government issued an executive order directing all enforcement authorities across the country to detect, detain, and deport refugees originating from the Rakhine State of Myanmar. This was followed by the drive to implement the National Register for Citizenship (NRC) policy in Assam which aims to document legal citizens of India and identify, detain and deport "illegal migrants". Large immigration detention camps have been set up across India to detain those who were unable to prove their Indian citizenship. As of January 2020, a total of ten immigration detention centres are operational in the country, out of which six are in Assam. Latest media reports indicate that more such centres are likely to come up in Assam, Punjab, and Karnataka.

1 Coronavirus Cases in India, World O Meter, available at: <https://www.worldometers.info/coronavirus/country/india/> (accessed as on September 23, 2020).

2 *Non-refoulement* is a customary international law principle that guarantees that no one should be returned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm.

3 See, Article 9 of the United Nations International Covenant of Civil and Political Rights (ICCPR) which India has signed and ratified.

4 Defending Human Rights in Courts and Beyond, November 28, 2019, available at: <https://cjp.org.in/ambiguous-guidelines-for-model-detention-camps-raise-questions/> (accessed on September 23, 2020).

In December 2019, India witnessed public outrage and large scale protests over the implementation of the NRC and a controversial citizenship law (that allows all non-Muslim religious minority groups from Afghanistan, Bangladesh and Pakistan to acquire citizenship), both of which are widely regarded as being unconstitutional and against India's secular values. These developments have made immigration detention one of the most pressing political issues in the country. As mentioned, with the advent of the global pandemic, the situation escalated further as thousands of immigration detainees, who had been kept in detention centres indefinitely without access to legal remedies, were at a heightened risk of infection.

CONCLUSION

Latest data⁵ indicates that since March 2020, over 8,500 COVID-19 cases have been detected within various prison facilities across India. India has over 1,401 prisons in the country, which, according to 2018 National Crime Records Bureau (NCRB) data, were packed with around 450,000 people, nearly 60,000 over the sanctioned capacity. Following the Supreme Court directives, over 61,000 detainees have been released, of which over 350 are foreigners from immigration detention centres in Assam.⁶ Following their release, all detainees were required to undergo a COVID-19 test and a mandatory 14-day quarantine. In light of the spike in COVID-19 cases across the country, State governments and courts have also started extending the interim bail of those released, to prevent the possible spread of the virus by those returning to jail after the expiry of their bail or parole period. For example, in August 2020, the Delhi High Court extended the interim bail of 2,901 undertrial prisoners by 45 days to de-congest jails.

With regard to foreign detainees, reports indicate that there are still nearly 500 inmates who remain in the detention centres in Assam. While, it is not clear as to why they were not eligible for release based on the court's directive, it can be inferred that this group would include detainees who were unable to pay the surety amount or had not served two years in detention. While the decision to release some categories of detainees to prevent congestion in prisons is a welcomed move, it is still a reactive and a temporary measure. There is no clarity on the status of the released detainees. Will they face re-detention once the pandemic is in control? What will happen to detainees who have served their full sentence? What will be their legal status in India?

As per data from October 2019, there are nearly 130,000⁷ "illegal foreigners" in India with minimal chance of repatriation. In light of this, we need long term solutions for the management of this group which is in line with India's constitutional and democratic ethos. The courts have to step in to de-legitimise the practice of indefinite detention of individuals created by the current legal lacunae. Further, the courts should also issue uniform guidelines for the protection of vulnerable groups like refugees, survivors of trafficking and other persecuted groups by ensuring that there are systems in place to process their asylum claims, provide legal representation, issue legal documentation, and facilitate access to protection services. With respect to the current pandemic, there has to be clarity on the legal procedure that will be followed for those who have been released and those still in detention, once the situation normalises.

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5 State Wise Prison Response to COVID 19 Pandemic in India, available at: <https://www.humanrightsinitiative.org/content/state-wise-prisons-response-to-covid-19-pandemic-in-india> (accessed on September 23, 2020).

6 Assam: 350 detention camp inmates released on bail during Covid-19 pandemic, says Centre, New Indian Express, September 21, 2020, available at: <https://www.newindianexpress.com/nation/2020/sep/21/assam-350detention-campinmates-released-on-bail-during-covid-19-pandemic-sayscentre-2200003.html> (accessed on September 23, 2020).

7 1.29 lakh people declared foreigners in Assam, 6 deported: Govt, The Hindustan Times, December 10, 2020, available at: <https://www.hindustantimes.com/india-news/1-29-lakh-people-declared-foreigners-in-assam-only-6-deported-govt/story-M3sMhUjODQfwd4y4SughrN.html> (accessed on September 23, 2020).

INDONESIA: QUESTIONING ALTERNATIVES TO DETENTION IN TIME OF PANDEMIC

COVID-19 IN INDONESIA

Indonesia has been witnessing a steady, if not rapid, increase in COVID-19 cases since March 2020. By mid-September, the additional number of cases reached an all-time high, hovering above 3,800 new cases daily. Indonesia's struggle with COVID-19 has been criticized due to the low rate of testing and lack of contact tracing, raising suspicions of under-reported cases and contagions.¹ The inadequacy in testing and contact tracing is combined with a relatively low number of healthcare facilities and professionals.² As of September 2020, COVID-19 patients are filling up 80% of Jakarta's hospital beds and, with the current rate, will possibly exceed the city's capacity.³

On the other hand, the government has been swaying in implementing preventive policies due to their adverse economic impact. After implementing large-scale social distancing (*Pembatasan Sosial Berskala Besar/PSBB*) to contain the virus' spread at the end of March, the government introduced the 'New Normal' policies to return activities back to as much as they were before the pandemic.⁴ However, on 14 September 2020, a surge of cases after the 'New Normal' implementation pushed the Jakarta municipal government to close the city back into a lockdown.⁵

IMMIGRATION POLICIES DURING COVID-19

Since Indonesia enacted a COVID-19 emergency in March 2020, the immigration authority has been taking special measures to curb, monitor, and control people's movements across the border. The earliest COVID-19 related measure can be traced back to early February where the Director General of Immigration circulated a direction to limit the visa issuance for visitors from COVID-19 impacted regions.⁶ The Immigration Directorate gradually adjusted their policies in congruity with the national direction.

The Immigration Directorate's COVID-19 concerns not only lie with the movement of people but also the immigration detention centers under their purview. Overall, Indonesia has acknowledged the risks within detention facilities and went as far as releasing tens of thousands of petty crime offenders to avoid the risk of contagion in prison.⁷ However, little is publicly known about specific policies related to COVID-19 and immigration detention centers.

In the case of refugees and asylum seekers, immigration detention has been relatively less of a concern. The campaign on alternatives to immigration detention for asylum seekers gained traction in Indonesia by 2017.⁸ The Director General of Immigration further reaffirmed this direction by guiding detention centers to divert refugees to temporary shelters allocated by local governments.⁹ Over the years, Indonesia has been observing a lower number of asylum seekers and refugees in detention centres. As of June 2020, less than one percent (eight people) of the overall refugee population in Indonesia remain detained.¹⁰ It should be noted that while the number of asylum seekers and refugees in immigration detention centers is fairly low, SUAKA received several reports of asylum seekers being held at the international zone in Soekarno-Hatta international airport.¹¹

ALTERNATIVE TO DETENTION AND ASYLUM SEEKERS

During the pandemic, the Indonesian government, International Organization for Migration (IOM) and UNHCR are confronted with the reality that living conditions in the alternatives to detention are still far from adequate. The decision to confine refugees in temporary shelters potentially holds imminent COVID-19 risks. One of the most recent examples can be found in the local government's shelter for asylum seekers and refugees in Aceh and Kalideres.

Upon their arrival in Aceh early September, Rohingya asylum seekers were directed to a temporary shelter managed by the Aceh local government.¹² The vocational training center in Lhokseumawe sheltered around three hundred people, three times its actual capacity. Regarding COVID-19 concerns, IOM assisted the local government to provide rapid tests for the arrivals.¹³ However, by 13 September 2020, three Rohingya refugees died due to respiratory illness before swab tests were administered.¹⁴ Refugees in the Kalideres shelter are facing similar limitations during the pandemic. The supposedly temporary facility has been housing around 200 refugees since last year.¹⁵ The scarcity of clean water and space has rendered them helpless in fulfilling even the basic prevention measures: washing hands and physical distancing.¹⁶

1 <https://www.thejakartapost.com/news/2020/08/25/contact-tracing-the-missing-link-in-indonesias-battle-with-covid-19.html>; <https://www.reuters.com/article/us-health-coronavirus-indonesia-hospital/indonesias-chronic-testing-lag-undermines-fight-against-covid-19-idUSKBN22Q28C>; <https://www.aljazeera.com/news/2020/09/bali-covid-19-surge-blamed-inaccurate-rapid-tests-visitors-200907052734606.html>

2 World Health Organization (2017). The Republic of Indonesia Health System Review. Health systems in transition. Vol-7, Number -1

3 <https://asiatimes.com/2020/09/indonesia-on-verge-of-a-deadly-covid-disaster/>

4 <https://www.thejakartapost.com/news/2020/05/16/lets-coexist-with-covid-19-jokowi-calls-on-residents-to-adapt-to-new-normal.html>

5 <https://jakartaglobe.id/news/jakarta-sets-new-record-in-number-of-covid19-cases-as-new-restrictions-announced>

6 Directorate General of Immigration instruction no. IMI-0954.GR.01.01, 5 February 2020

7 <https://jakartaglobe.id/news/indonesia-releases-30000-prisoners-as-covid19-cases-double-in-a-week>

8 UNHCR (2014). Beyond detention: a global strategy to support governments to end the detention of asylum-seekers and refugees; Missbach, A. (2017).

Accommodating Asylum Seekers and Refugees in Indonesia: From Immigration Detention to Containment in "Alternatives to Detention". *Refuge: Canada's Journal on Refugees*, 33(2), 32-44.

9 Directorate General of Immigration instruction no. IMI-UM.01.01-2827, 30 July 2018

10 30 people (June 2019) eight people (June 2020), UNHCR Indonesia Monthly Data

11 SUAKA received two reports in 2020 from people of Jordan and Syria origin that directly referred to and handled by UNHCR.

12 <https://www.aljazeera.com/news/2020/09/300-rohingya-ashore-aceh-months-sea-200907051150987.html>

13 <https://reliefweb.int/report/indonesia/largest-rohingya-group-arrive-indonesia-2015-receives-support-north-aceh>

14 More Rohingya refugees in Aceh die of respiratory illness <https://www.thejakartapost.com/paper/2020/09/13/more-rohingya-refugees-die-of-respiratory-illness.html>

15 <https://www.theguardian.com/world/2019/sep/13/its-impossible-to-do-anything-indonesias-refugees-in-limbo-as-money-runs-out>

16 <https://www.antarane.com/berita/1631018/pengungsi-asing-di-kalideres-sulit-terapkan-protokol-kesehatan>

BEYOND DETENTION

Although under a less onerous regime, immigration still governs refugees outside of institutions, even during the pandemic.¹⁷ As Antje Missbach noted, while refugees in Indonesia are not detained, the alternative forms of detention do not nullify the containment of refugees.¹⁸ The restriction of freedom is also evident in the enforcement of immigration policies toward all facets of refugees' lives, particularly limitations on sustenance-seeking activities. Ironically, as economic activities are slowing down during the pandemic, immigration officials' scrutiny over refugees' livelihood has also decreased.

In this period of insecurity, the disjunction between immigration enforcement and Indonesia's efforts to ensure refugees' health and wellbeing becomes all the more apparent. Despite the fact that half of Indonesia's refugee population settled in the Greater Jakarta area, one of the most impacted regions in Indonesia, refugees are still struggling to access COVID-19 tests. In a recent interview with Mozghan Moaref, a human rights and refugee advocate, she expressed the refugee community's concerns over the inability to self-isolate and personally pay for COVID-19 tests.¹⁹ "We have always been in lockdown" she said, lamenting over the restrictive living conditions for refugees in Indonesia, far before the pandemic started.

IOM stated their engagement with the national authorities to ensure COVID-19 services are available for foreign nationals, including refugees.²⁰ National regulation also stated that COVID-19 related healthcare expenses for patients are covered by the government. However, the coverage only applies to positive cases while the suspected cases, those who were in contact with positive ones, should cover the cost for their own tests.²¹ To provide a better picture, the PCR (polymerase chain reaction) test in Indonesia costs around one to two million Rupiah (70 to 140 USD), almost half the monthly minimum wage in Jakarta.²² Moreover, social assistance schemes to buffer the impact of economic downturns limit the assistance to people registered in the national social welfare database, excluding refugees and asylum seekers.^{23,24}

LONGER WAIT, LONGER UNCERTAINTIES

The situation is worsened with curtailed refugee status processing and resettlement due to the pandemic. UNHCR Indonesia's June 2020 statistics showed a significant decrease (67%) of newly registered cases compared to June 2019. The decrease possibly indicates a slower case registration process due to the pandemic. While the correlation between the registration process and COVID-19 warrants further explanation from the respective agency, the delays in resettlement have been more apparent. IOM and UNHCR announced the temporary suspension of resettlement in March 2020.²⁵ Compounded with the COVID-19 pandemic, the prolonged stay will undoubtedly continue to strain the refugee community in Indonesia.

SUMMARY

Indonesia is in a relatively better situation than many other countries as it ended immigration detention in practice before the pandemic – so does not have clusters in detention centers. However, the COVID-19 pandemic laid bare the shortcomings of Indonesia's alternatives to detention, especially for asylum seekers and refugees. The Government of Indonesia and related stakeholders should work in cultivating access to decent livelihoods, housing, and basic services for refugees not only to survive, but also sustain their lives. In the end, it is not only the absence of restrictions that define freedom but also the availability of options.

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17 <https://faktualnews.co/2020/08/28/petugas-rudenim-sidak-penampungan-imigran-di-sidoarjo/230873/>

18 Missbach, A. (2017)

19 Mozghan Moaref interview with Dr. Sal Clark, Swinburne University of Technology, in 10 September 2020. <https://youtu.be/AHysFJcOmw>

20 <https://www.iom.int/news/iom-ramps-response-covid-19-pandemic-refugees-indonesia>

21 Minister of Health instruction HK.02.01/MENKES/295/2020, 24 April 2020

22 <https://en.antaranews.com/news/135764/jakarta-sets-provincial-minimum-wage-for-2020>

23 Minister of Social Affairs decision 54/HUK/2020, 16 April 2020

24 In a June meeting with the COVID-19 national cluster for vulnerable population that SUAKA attended, the government pledged the commitment to include asylum seekers and refugees as vulnerable group. However, there is no apparent changes to date.

25 <https://www.unhcr.org/news/press/2020/3/5e7103034/iom-unhcr-announce-temporary-suspension-resettlement-travel-refugees.html>

INDEFINITE IMMIGRATION DETENTION AND THE COVID-19 PANDEMIC IN JAPAN

On 24 June 2019, Sunny, a Nigerian detainee who spent 20 years of his life in Japan, died of starvation in the Omura Immigration Center in Nagasaki.¹ Sunny's tragic death resonated powerfully because he was one of the 200 hunger-striking detainees who challenged the notorious practice of indefinite immigration detention in a most desperate and self-harming manner.² A year after Sunny's death, the landscape of immigration detention has been significantly affected by the COVID-19 pandemic. Japan has responded to the pandemic by releasing a large number of migrant detainees. Yet, the overall pattern of human rights violations of migrant detainees,³ as well as government dismissal of their life conditions does not appear to have shifted.

This article documents Japan's recent measures against the COVID-19 pandemic in the country's 17 immigration detention facilities. The article also discusses the plight of detainees, as well as of provisionally released migrants. Since the mounting threat of the coronavirus in mid-April 2020, Japan's Immigration Services Agency (ISA), the country's sole government agency that manages and operationalizes migrant admissions, detention, and deportation, has implemented a set of pandemic-specific measures to reduce the potential risks of cluster infections in the immigration detention facilities. The overcrowded detention facilities that limit the physical mobility of detainees are seen as an immediate public health threat because detention violates Japan's coronavirus prevention rules of "Three Cs" (closed spaces, crowded places, and close-contact setting).⁴ Human rights lawyers argue that the immigration authorities should release detained migrants immediately since no detainee could be deported due to the travel bans in their countries of origin.⁵ This is a valid claim because immigration detention was originally designed as a *temporary administrative non-punitive* measure to ensure the removal of the migrant. As a response to the mounting criticisms of health violations in the detention facilities, ISA released a pandemic health guideline in early May.⁶ Two crucial measures included in the guideline are the reduction of the number of detained migrants by granting more provisional release permits,⁷ as well as the reduction of in-person contact among detainees in detention facilities.

Between April and August 2020, the number of detained migrants declined to nearly one-third of the original detainee population recorded prior to the pandemic. In June 2019, there were 1,253 migrants held in the country's 17 immigration facilities.⁸ In early April 2020, three weeks after the World Health Organization's declaration of the coronavirus as a pandemic on 12 March, the total number of detainees still remained at 1,130. However, by early July, the number significantly dropped to 518 and by early September, it declined further.⁹ According to a local migrant advocacy group, Ushiku-no-kai, the East Japan (*Higashi-Nihon*) Immigration Center issued more than 170 provisional release approvals between 1 April and 15 June.¹⁰ Given the current travel restrictions and bans that are imposed by many countries in the Global South, those who obtained provisional release were technically granted a temporary exemption from deportation during the pandemic. Japan's provisional release system is considered as an integral measure of non-custodial alternatives to detention that the UN Network on Migration's Working Group on Alternatives to Immigration Detention emphasizes.¹¹

In addition to releasing a large number of detainees, in-person contact among detainees in these facilities has been significantly minimized. According to Ushiku-no-kai, by mid-July, detainees were no longer sharing their room with other detainees in the East Japan Immigration Center.¹² Despite these health prevention measures, detained migrants are continuously exposed to the risks of potential cluster infections. The first case of a detainee being infected by COVID-19 was reported in the Tokyo Regional Immigration Bureau in early August 2020.¹³

While recognizing the urgency of the current preventive and protection measures, as well as a certain degree of freedoms that long-term detainees are temporarily granted, it would seem that the current "flexible" measures are not grounded on the principle of respect of detainees' inalienable human rights, especially the rights to life and freedom. These measures fail to recognize the inherent harms and excessive violence that Japan's contemporary immigration detention system has produced. This is evident by the fact that those who are released are left without any government support or basic protection from increased health risks.¹⁴ According to Amigos (*Kitakanto Iryosodankai*), a migrant health support group, an increasing number of migrants under provisional release are desperately seeking support

1 <https://digital.asahi.com/articles/ASM8N64P3M8NUPQJ00P.html>

2 https://www.amnesty.or.jp/news/2019/1008_8361.html

3 In this article, I use the term "migrant" to refer to a wide range of non-citizen residents who are indiscriminately subject to the control of domestic immigration laws in the host country. These include undocumented long-term residents, temporary foreign workers, and asylum-seekers.

4 <https://www.mhlw.go.jp/content/10900000/000615287.pdf>

5 <https://www.tokyo-np.co.jp/article/17138>

6 <http://www.moj.go.jp/content/001319553.pdf>

7 <http://www.asahi.com/ajw/articles/13383320>. Another measure was to limit the number of visitors, most of whom are family members and advocacy groups. For example, the East Japan Immigration Center (*Ushiku Nyukan*) suspended visitations of detainees between late April and early June.

8 <https://mainichi.jp/articles/20191110/ddm/005/070/041000c>

9 <https://www.sankei.com/politics/news/200704/plt2007040019-n1.html> Four main facilities house detainees in Japan. These are located in Tokyo, Ibaraki, Nagasaki, and Nagoya. The number of detained migrants in the Tokyo Regional Immigration Bureau was 200 in August 2020. <https://mainichi.jp/articles/20200807/k00/00m/040/224000c?pid=14612>. The number of the East Japan Immigration Center (Ibaraki) was 100 in July 2020 (<http://www011.upp-so-net.ne.jp/ushikunokai/>). The number of the Omura detention facility (Nagasaki) was 63 in April 2020 <https://www.nishinippon.co.jp/item/n/598186/>. Although I do not have data on the Nagoya detention facility, the estimated number of detained migrants was about 400 in early September 2020. Thus, two-thirds of the original detainees were released during the pandemic.

10 Members from Ushiku-no-kai regularly visit detained migrants, especially long-term detainees. They have been conducting detention visits since 1994.

11 During the height of the global COVID-19 pandemic in April 2020, major international human rights NGOs and international organizations including UNHCR jointly published a report to demand the immediate release of detained migrants and asylum-seekers from detention facilities (The Working Group on Alternatives to Immigration Detention, United Nations Network on Migration. 2020. COVID-19 & Immigration Detention: What Can Governments and Other Stakeholders Do?). https://migrationnetwork.un.org/sites/default/files/docs/un_network_on_migration_wg_atd_policy_brief_covid-19_and_immigration_detention.pdf

12 Prior to the pandemic, there were four to five detainees sharing a room (<http://www011.upp-so-net.ne.jp/ushikunokai/>).

13 <https://mainichi.jp/articles/20200807/k00/00m/040/224000c>

14 <http://www.asahi.com/ajw/articles/13383320>

for health services, food, and shelter.¹⁵ Many released migrants are also primary victims of the country's mandatory and indefinite detention system. The United Nations calls indefinite detention as arbitrary detention, a notorious violation of international human rights law. Due to the protracted and repeated deprivation of liberty and freedom in detention, released migrants experience significant risks not just because of the pandemic but also because of the detention-specific health risks that these detained individuals were forced to endure. Depression, post-traumatic stress, high blood pressure, and strokes are disproportionately prevalent among long-term detainees.¹⁶ Furthermore, due to protracted isolation and disconnection from outside communities, many released migrants face loss of kinship and community ties. They are also under constant surveillance of government agencies. What the COVID-19 pandemic clearly reveals are the prevailing vulnerabilities, especially the deprivation of the right to have rights, of both detained and temporarily released migrants.

The intensification of vulnerabilities of both detained and released migrants is rooted in Japan's draconian detention policy. ISA has implemented an excessively inflexible and coercive policy that reinforces mandatory and indefinite immigration detention. Such an illiberal detention policy is tied to the hyper-criminalization of undocumented migrants and asylum-seekers, especially after Tokyo won the bid for the 2020 Olympic games (which were subsequently postponed due to the pandemic) in 2013.¹⁷ The statistical presence of "illegal aliens" was considered a great threat to public safety, especially in light of the country's proclamation that it is "the safest country in the world."¹⁸ On a wide range of indicators – provisional release approvals, approval rates of Special Permission to Stay, and indefinite detention – the conditions of migrant detainees worsened severely. The number of provisional release approvals declined by half between 2016 and 2018.¹⁹ The number of detained migrants receiving Special Permission to Stay (SPS), Japan's de facto amnesty program, has also significantly declined. In 2004, there were 13,239 undocumented migrants under deportation order who received SPS. However, only 1,255 undocumented migrants were granted SPS in 2017.²⁰ In 2019, prior to the pandemic, the number of long-term detainees was at a record high. As a share of the total number of detained migrants in Japan, long-term detainees comprised 50 percent: 679 out of 1253 detainees were held more than 6 months in June 2019.²¹ Furthermore, the number of detainees who were held more than 18 months increased from 238 in July 2018 to 393 in June 2019.²² Overall, data indicate that the period leading up to the Olympics saw a sharp ratcheting up of punitive measures against detained migrants.

In June 2020, in the middle of the COVID-19 pandemic, the Ministry of Justice that governs ISA, released a proposal on immigration detention and deportation based on recommendations by the expert committee for the Justice Minister (*Shiteki Kondankai*).²³ The expert committee was originally set up in October 2019 after the tragic death of the Nigerian detainee in June 2019 as well as the widespread hunger strikes by long-term detainees between June and September 2019.²⁴ One of the most controversial proposals was the criminalization of long-term detainees, as well as of those who went missing after they obtained provisional release. Instead of recognizing the lack of due process and the unlawfulness of indefinite detention, the proposal blamed long-term detainees' "unwillingness to return home (*kikoku kishi*)."²⁵ The Japan Federation of Bar Associations was critical of this report, noting that long-term detainees' own reasons for remaining in Japan were dismissed.²⁶ The majority of these individuals are asylum-seekers who seek protection from potential political and social violence, as well as long-term residents who have already established close biological, kinship, and cultural ties to Japan's local communities. The proposal by the Ministry of Justice ignores these compounded humanitarian concerns and ends up re-emphasizing Japan's consistent lack of concern for the rights of migrants.

Thus, data on the excessive violence of indefinite detention prior to the pandemic, as well as the Ministry of Justice's recent proposal to criminalize long-term detainees, strongly indicate that the government's deep antipathy toward migrant detainees' rights remains consistent. The government's decision, at the height of the global pandemic, to release a large number of detained migrants should really be understood as a very small temporary measure, induced only by a uniquely devastating health crisis. In the absence of the COVID-19 pandemic, the pattern of treatment of migrant detainees, as witnessed by the death of Sunny, the Nigerian immigrant, has not fundamentally changed.

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15 <https://mainichi.jp/articles/20200422/k00/00m/040/316000c>

16 Based on my meetings with long-term detainees in the East Japan Immigration Center between 2016 and 2019. Some cases eventually led to deaths in detention facilities (<https://www.reuters.com/article/us-japan-detention-drugs-special-report-idUSKCNOWAIWA>).

17 <https://www.theguardian.com/sport/2013/sep/07/tokyo-host-2020-olympic-games>

18 http://www.moj.go.jp/ENGLISH/m_hisho06_00008.html

19 <https://www.toben.or.jp/message/pdf/200114ikensho.pdf> Tokyo Bar Association, "A proposal to set an upper limit on the period of detention as well as to apply relevant international human rights norms to foreigners who are not able to be removed from the country," January 2020, p.3 <https://www.toben.or.jp/message/pdf/200114ikensho.pdf>.

20 Ministry of Justice, Japan. 2005. *Immigration Control in Recent Years*, page 59. <http://www.moj.go.jp/content/000007280.pdf> Ministry of Justice, Japan. 2019. *Immigration Control in Recent Years*, page 66. <http://www.moj.go.jp/content/001241964.pdf>

21 <https://digital.asahi.com/articles/ASM8N64P3M8NUPQJ00P.html>; Tokyo Bar Association, January 2020 <https://www.toben.or.jp/message/pdf/200114ikensho.pdf>.

22 Tokyo Bar Association, January 2020, p.2.

23 <http://www.asahi.com/ajw/articles/13494829>

24 https://www.nichibenren.or.jp/library/pdf/document/opinion/2020/opinion_200318_4.pdf

25 <http://www.moj.go.jp/content/001322460.pdf> https://www.nichibenren.or.jp/library/pdf/document/opinion/2020/opinion_200318_4.pdf

26 https://www.nichibenren.or.jp/library/pdf/document/opinion/2020/opinion_200318_4.pdf

COVID-19 IN LIBYA MAY INCREASE THE RISK OF DETENTION FOR MIGRANTS AND REFUGEES

BACKGROUND: MIGRATION DETENTION IN LIBYA

Long a destination country for migrant workers, Libya has also become a key transit country for those attempting to reach Europe via the Central Mediterranean Route. Since the early 2000s, Gaddafi's government started a more active co-operation at tackling illegal migration across the Mediterranean. Under current Libyan law, irregular stay, entry, and departure have been criminalized and sanctioned with fines and imprisonment¹. In practice, migrants and refugees are subject to arbitrary and indefinite detention upon disembarkation by the Libyan Directorate for Combating Illegal Migration (DCIM)².

In 2017 the European Union (EU) endorsed a new Memorandum of Understanding (MoU) between Italy and Libya aimed at stemming irregular flows³. Italy committed to provide material support to the Libyan border police and assist in establishing so-called "temporary camps" under the management of the DCIM. In 2012, the European Court of Human Rights (ECtHR) had ruled that Italy's practice of returning intercepted migrants to Libya was illegal⁴. Hence, the new MoU aims at strengthening the capacity of Libyan authorities to directly intercept irregular migrants⁵.

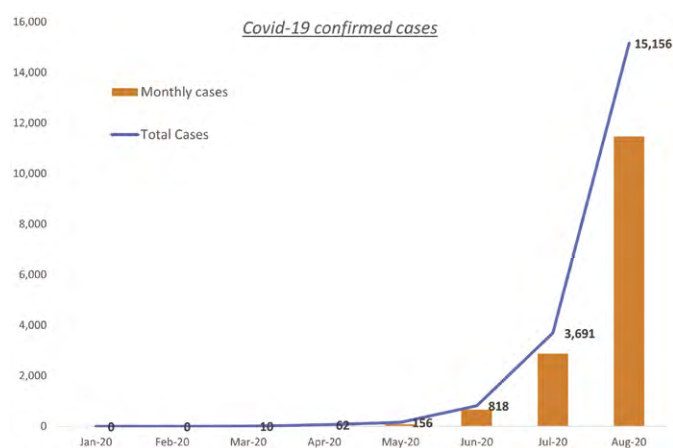
According to human rights groups, an increase in sea interceptions by the Libyan Coast Guard (LCG) soon followed, contributing to a surge in detentions and overcrowding at DCIM facilities⁶. Refugees and migrants apprehended at sea are often automatically transferred to detention centres. Furthermore, there are additional informal centres controlled by local armed groups, where detainees are particularly vulnerable to being held for ransom or sold for forced labour⁷.

Existing reports have documented human rights violations and abuses within the country's detention centres. In-depth interviews with refugees and migrants between 2016 and 2019 describe conditions of massive overcrowding, dire sanitary conditions as well as inadequate food and medical care⁸. Widespread abuses inflicted by guards and militia members are also documented.

COVID-19 RESPONSE IN LIBYA

As many other countries, Libya declared a state of emergency in response to the spread of COVID-19, which was followed by measures aimed at restricting movements⁹:

- 15 March – Closure of schools and "non-essential" businesses.
- 16 March – Closure of border crossing points via land and sea.
- 22 March – First curfew (6 PM to 6 AM) imposed.
- 24 March – First official COVID-19 case announced in Tripoli.
- 27 June – Complete lockdown in the South.
- 26 July – Misrata airport reopened for commercial flights from/to Istanbul.
- 3 August- Misrata airport temporarily closed; flights moved to Tripoli Mitiga airport.
- 31 August- High schools gradually reopen (primary and middle schools remain closed).



Source: WHO (2020).

On 17 March 2020 UNHCR halted third-country resettlement departures; evacuation flights were also suspended until August 2020¹⁰. Given the closure of international borders, IOM also interrupted the voluntary humanitarian return programme for five months, resuming on 20 August 2020¹¹.

1 Relevant provisions are contained in Law No. 6 (1987) *Regulating Entry, Residence and Exit of Foreign Nationals to/from Libya*, as amended by Law No. 2 (2004); and Law No. 19 (2010) *on Combating Irregular Migration*.

2 Amnesty International (2017). *Libya's dark web of collusion: Abuses against Europe-bound refugees and migrants*.

3 Uselli, S. (2017) *Italy-Libya agreement: the Memorandum text*. Associazione per gli studi giuridici sull'immigrazione (ASGI).

4 European Court of Human Rights (2012). *Grand Chamber Judgment Hirsi Jamaa and Others v. Italy*.

5 Heller C. and Pezzani L. (2018) *Mare Clausum. Italy and the EU's undeclared operation to stem migration across the Mediterranean*. Forensic Oceanography.

6 Human Rights Watch (2019). *No escape from hell: EU policies contribute to abuse of migrants in Libya*.

7 UNOCHA (2020). *2020 Humanitarian Response Monitoring*.

8 UNSMIL-OHCHR (2018). *Desperate and dangerous: Report on the human rights situation of migrants and refugees in Libya*.

9 Reuters (2020). *Libya's Tripoli government declares emergency, shuts down ports, airports*.

10 UNHCR (2020). *IOM, UNHCR announce temporary suspension of resettlement travel for refugees*. Press Release.

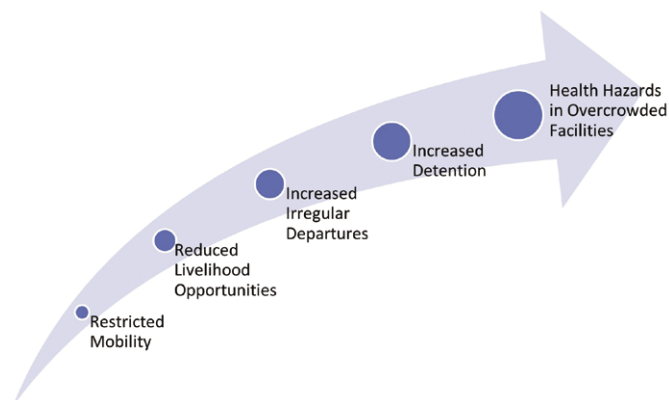
11 ANSAMED (2020). *Libya: IOM, first migrant repatriation after 5-month pause*.

In April 2020, Italy and Malta both declared their ports unsafe for disembarkation owing to the COVID-19 pandemic¹². This added to logistical difficulties that led several NGOs to halt their search and rescue (SAR) operations. Further, the few operating vessels have been docked in ports for several weeks because of quarantine procedures¹³. As a result, between March and August, SAR operations along the Central Mediterranean Route have largely been suspended¹⁴.

The COVID-19 pandemic has also reduced the ability of humanitarian actors in Libya to provide assistance and carry out monitoring functions. On the one hand, access to detention centres has reportedly been inconsistent. On the other hand, the paucity of resources limited the Libyan National Centre for Disease Control (NCDC)'s capacity to perform medical checks at disembarkation points for returned migrants¹⁵.

MAIN IMPACT ON MIGRANTS AND REFUGEES

The main impact of border closures and restricted mobility on migrants and refugees can be summarized as: (i) reduced economic opportunities and food security; (ii) increased irregular departures, interceptions and related detention; (iii) increased overcrowding of detention facilities and related health hazards.



Source: authors.

According to the IOM Displacement Tracking Matrix (DTM)¹⁶, 74 percent of migrants in Libya have limited or no access to health services, which makes them vulnerable to infectious diseases. Although more than 80 percent of the migrants in Libya have access to water and sanitation,

this is not the case in the South of the country where 43 percent of migrants reportedly do not have regular access to water or sanitation¹⁷. This exposes them to a higher risk of contracting COVID-19.

Closed borders, together with the deteriorating socio-economic situation in Libya and the lack of access to basic services, have made refugees and migrants in Libya more prone to seek the services of human smugglers. The European Border and Coast Guard Agency (Frontex) recorded 8,489 migrants irregularly crossing on the Central Mediterranean Route¹⁸ between January and June 2020, compared to only 3,872 during the first half of 2019 (+119%)¹⁹. One possible reason is that migrants in Libya reportedly faced stricter restrictions on mobility, declined livelihood opportunities and food security levels compromised²⁰. According to IOM, the percentage of migrants reporting to be unemployed rose from 17% in last February to 29% in June 2020²¹.

Travel restrictions and loss of economic opportunities may have exposed migrants to increased risk of trafficking, in particular women migrant workers²². As migrant domestic workers are not fully covered by national labour laws²³, even when violations of rights are flagrant only a few are reported. Victims of abuses fear losing their jobs and therefore their permit to stay in the country (which could lead to detention and deportation). Reducing labour mobility and employment opportunities, the pandemic has also affected the willingness of migrant victims to report abuses perpetrated by their employers.

The formal policy of detention has remained in place in Libya. Between March and August 2020, about half of the refugees and migrants disembarked in Libya were transferred to detention centres managed by the DCIM²⁴. As a likely consequence of COVID-19's destabilizing effect in Libya, attempted sea crossings increased in 2020 compared to 2019. According to the IOM's Missing Migrants Project, there have been 23,141 attempts to cross the Mediterranean Sea in the first seven months of 2020 (+103%), compared with 11,373 in the first seven months of 2019²⁵. As of 17 September 2020, UNHCR reported 8,074 refugees and migrants were intercepted and returned to Libya (+21%), compared with 6,650 during the same period in 2019²⁶.

12 Tondo L. (2020). *Italy declares own ports 'unsafe' to stop migrants arriving*. The Guardian; Scicluna C. (2020). *Malta says it can no longer rescue, accept migrants*. Reuters.

13 Zander M. (2020). *Coronavirus crisis hampering Mediterranean migrant rescues*, Deutsche Welle; Reidy E. (2020). *How COVID-19 halted NGO migrant rescues in the Mediterranean*. The New Humanitarian.

14 Office of the High Commissioner for Human Rights (2020). *Press briefing note on Migrant rescues in the Mediterranean*.

15 United Nations Security Council (2020). *Implementation of resolution 2491 (2019)*. Report of the Secretary-General S/2020/876.

16 IOM DTM (2019). *Migrants Needs and Vulnerability Assessment*.

17 Ibid.

18 See <https://frontex.europa.eu/along-eu-borders/migratory-map/> for a map of main Mediterranean Routes.

19 Frontex (2020). *Detections of illegal border crossings*.

20 IOM DTM (2020). *Migrant Emergency Food Security Report*.

21 IOM DTM (2020). *COVID-19 Mobility Tracking #3*.

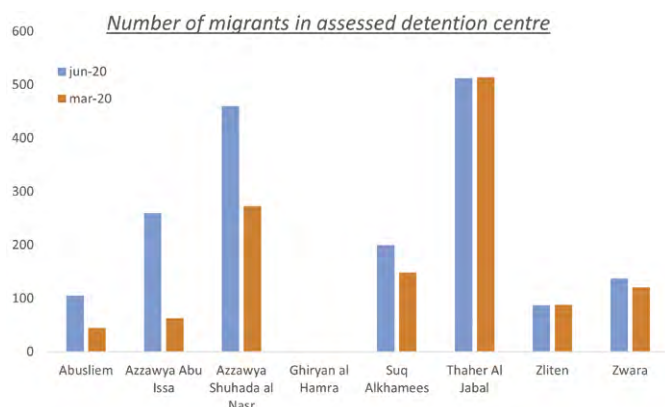
22 Office for Democratic Institutions and Human Rights (2020). *Addressing Emerging Human Trafficking Trends and Consequences of the COVID-19 Pandemic*. Organization for Security and Co-operation in Europe (OSCE).

23 United Nations Economic and Social Commission for Western Africa (2020). *Situation Report on International Migration 2019: The Global Compact for Safe, Orderly and Regular Migration in the Context of the Arab Region*.

24 United Nations Security Council (2020). *Implementation of resolution 2491 (2019)*. Report of the Secretary-General S/2020/876.

25 See <https://missingmigrants.iom.int/region/mediterranean>.

26 UNHCR (2020). *Update Libya (18 September 2020)*; UNHCR (2019). *Update Libya (20 September 2019)*.



Source: IOM DTM Detention Centre Profile Generator (2020).

The overcrowding in many detention facilities in Libya – which already undermines hygiene, health, safety, and human dignity – within the COVID-19 context has posed additional challenges. Migrants deprived of their liberty are de facto unable to respect distancing measures to protect themselves from contracting the virus²⁷. Further, detainees’ weak nutritional status and severe medical conditions, including tuberculosis, put them at greater risk of contracting COVID-19²⁸.

In June and July 2020, more than 100 migrants and refugees rescued at sea after departing Libya tested positive for COVID-19, prompting concerns that the virus could be spreading among refugees and migrants in Libya²⁹. Further, this heightens the risk of xenophobia and intolerance towards migrants, increasingly perceived as responsible for the spread of the virus. Misperceptions that migrants are vectors of communicable diseases are widespread even among health workers. This may result in additional limitations in accessing basic services, including health services³⁰.

To conclude, COVID-19 and measures to contain its spread have taken a high toll on migrants and refugees in Libya. Besides direct health-related concerns because of specific vulnerable conditions, the pandemic is also having the two-fold adverse effect of disrupting employment opportunities in an already fragile context and exposing migrants to heightened risk of detention and abuse.

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27 Office of the High Commissioner for Human Rights (2020). *COVID-19 and its human rights dimensions*.

28 United Nations Security Council (2020). *Implementation of resolution 2491 (2019). Report of the Secretary-General S/2020/876*.

29 Ibid.

30 IOM (2020). *Facts about Migration in Libya*.

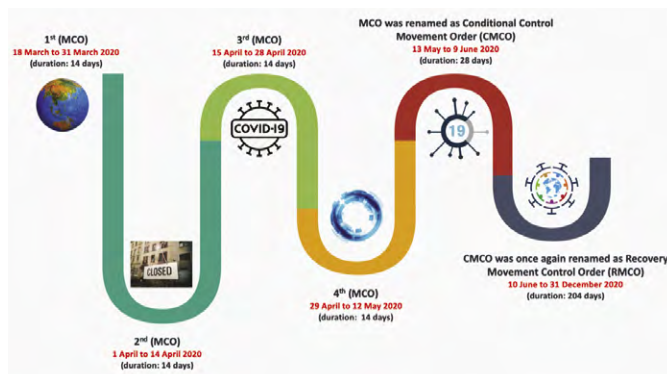
COVID-19 IN MALAYSIA: PUSHING MIGRANT WORKERS FURTHER AT THE MARGIN

INTRODUCTION

Malaysia confirmed its first positive COVID-19 case on 25 January 2020 – two weeks before the World Health Organization (WHO) declared COVID-19 as a global pandemic. Since then, there was a rapid increase in positive COVID-19 cases reaching nearly 8,700 cases with 121 deaths by 30 June 2020. As experienced in other countries, precarious living conditions and poor access to health care and working conditions have contributed significantly to the rapid transmission of COVID-19, particularly among low-paid and unskilled migrant workers. In Malaysia, prior to the outbreak, some migrant workers were already living in cramped workers' accommodation and unsanitary conditions, with poor access to healthcare, further exacerbated by lack of workers' protection. The implementation of various phases of Malaysia's Movement Control Orders (MCOs) and the way the government addressed the situation facing between 2 and 5 million migrant workers (including irregular migrants) had significant negative consequences on their already precarious living and working conditions. This article reviews the government's response and the negative consequences towards migrant workers and concludes with key recommendations.

GOVERNMENT-INITIATED CONTROL ORDERS

Malaysia was one of the countries which took early prevention actions by implementing a series of MCO beginning on 18 March 2020. The figure below shows the different phases of the MCO until the end of 2020.¹



Malaysian Economic Statistics Review, Vol.1/2020.

GOVERNMENT'S RESPONSES AFFECTING MIGRANT WORKERS

When Malaysia recorded its first positive COVID-19 case on 25 January 2020, the Ministry of Health (MOH) released a government circular, indicating that migrant workers were exempted from paying the outpatient fees to get COVID-19 tested at government facilities.² However, on 23 March 2020, the government announced that migrant workers should pay for testing and treatment fees related to COVID-19.³ In early May 2020, the government once again announced that all migrant workers were required to undergo a COVID-19 swab test but the cost will be borne by the employers.⁴

On the issue of arrest and detention of undocumented immigrants, initially, the government on 22 March 2020 had given its assurance that it would not arrest and detain undocumented immigrants including those who were seeking care and medical tests at government health facilities.⁵ This commitment was made in response to the rising positive COVID-19 cases involving the Rohingya refugees.

However, on the eve of Labour Day, hundreds of undocumented migrant workers and refugees were arrested in a massive raid operation conducted in Kuala Lumpur. The raid was launched despite the earlier assurance that undocumented immigrants should have had nothing to fear to get COVID-19 tested. Several weeks later, additional operations were conducted in Kuala Lumpur and Selangor, where thousands of undocumented workers and refugees, including women and children, were rounded-up and detained in immigration detention centres.

Migrant advocates such as Tenaganita and Refuge for Refugees had earlier voiced concern that the immigration raids were conducted "inhumanely".⁶ In response to critiques from migrant advocates, the government denied it and stressed that migrant workers were treated humanely throughout the conduct of immigration raids and their detention.⁷

NEGATIVE POLICY CONSEQUENCES TO MIGRANT WORKERS

The chain of events and responses by the government have shown inconsistency and lack of coordination between different government agencies in handling issues concerning migrant workers. This had also prompted significant negative consequences facing migrant workers, not only to their health and well-being, but their hiring and immigration status in Malaysia. Several negative consequences are discussed below.

1 Department of Statistics, Malaysia (DOSM). 2020. Malaysian Economic Statistics Review, Vol.1/2020. <https://www.dosm.gov.my/v1/index.php?r=column/pdfPrev&id=a2VhN3FvUnp5Y1c5ZmRlaENpSFkwQT09>

2 Ministry of Health (MOH). 7 May 2020 to 12 June 2020. Daily Update on COVID-19. Available at <https://kpkkesihatan.com>

3 CodeBlue. 23 March 2020. Health DG Says Free COVID-19 Tests, Treatment For Foreigners, After PM Says Payments Required. Available at <https://codeblue.galencentre.org/2020/03/23/health-dg-says-free-covid-19-tests-treatment-for-foreigners-after-pm-says-payments-required/>

4 The Star. 4 May 2020. Ismail Sabri: Compulsory COVID-19 tests for all foreign workers. Available at <https://www.thestar.com.my/news/nation/2020/05/04/ismail-sabri-compulsory-covid-19-tests-for-all-foreign-workers>

5 Malay Mail. 22 March 2020. Come forward so we can take care of you, Putrajaya says as 4,000 tabligh event attendees still untested. Available at <https://www.malaymail.com/news/malaysia/2020/03/22/come-forward-so-we-can-take-care-of-you-putrajaya-tells-tabligh-event-atten/1848976>

6 Malay Mail. 1 May 2020. Tenaganita condemns raids on undocumented migrants, refugees in Kuala Lumpur. Available at <https://www.malaymail.com/news/malaysia/2020/05/01/tenaganita-condemns-raids-on-undocumented-migrants-refugees-in-kuala-lumpur/1862190>

7 Malaysiakini. 2 May 2020. Arrested undocumented migrants were tested for COVID-19, no mistreatment. Available at <https://www.malaysiakini.com/news/523677>

Immigration raids instil fear amongst undocumented migrant workers

Immigration raids conducted since 1 May 2020 had instilled fear among migrant workers, especially those without a valid travel document, to come forward to get COVID-19 tested. Because of this fear of being arrested, some undocumented migrants went into hiding and that hampered containment efforts by the MOH.⁸

Immigration detention centres are becoming COVID-19 hotspots

Between 1 and 25 May 2020, over 2,000 undocumented immigrants had been arrested and detained in various immigration detention centres. This caused a growing number of detainees in already crowded immigration detention centres. The Human Rights Commission of Malaysia (SUHAKAM) cautioned that the lack of physical distancing coupled with the existing poor health system and hygienic practices in many detention centres increased the risk of a rapid COVID-19 outbreak.⁹

By 3 June 2020, about 4,908 COVID-19 samples had already been undertaken in four immigration detention centres in Kuala Lumpur, Selangor and Putrajaya. About 465 positive COVID-19 cases were identified among detainees (123 (India), 76 (Indonesia), 108 (Bangladesh), 66 (Myanmar), 45 (Pakistan), 18 (China), 7 (Sri Lanka), 5 (Nepal), 4 (Cambodia), 3 (Philippines), 2 (Egypt) and 4 (other countries)).¹⁰ Importantly, the MOH reported that it still had more than one thousand detainees awaiting further results of their COVID-19 test. This had already indicated that more cases of COVID-19 were likely to be identified, and suggested that immigration detention centres were becoming COVID-19 'hotspots'.

Escalating positive COVID-19 cases outside immigration detention

While the overall number of active cases of COVID-19 saw a declining trend between May and June 2020, the new positive COVID-19 cases among non-citizens, especially the migrant worker population, had escalated tremendously. From 7 May to 12 June 2020, the number of COVID-19 positive non-citizens rose from 9 to 1,413 cases. This constitutes about 72 per cent of the total positive COVID-19 cases recorded during the same period. To put it differently, more than two out of every three new COVID-19 infections recorded over this period were non-citizens.

Emerging COVID-19 clusters

Similarly, the period between May and June 2020 saw a growing number of new COVID-19 clusters involving different groups of migrant workers. These include, amongst others, four immigration detention centre clusters in Bukit Jalil, Semenyih, Sepang and Putrajaya respectively; the Pedas Linggi cluster which was announced on 2 May 2020; a cleaning company cluster on 29 May 2020; and several construction site clusters in Kuala Lumpur and Selangor.

Risk of irregularity

SUHAKAM reported that many migrant workers during MCOs were not allowed to work by their employers, and did not receive any form of communication from the employers.¹¹ Workers were in the dark about their status of employment, and importantly, their immigration status since their working pass needs to be annually renewed by the employers. This not only raises concern on retrenchment among migrant workers but the risk of "irregularity".

Labour rights violations

SUHAKAM claimed growing labour rights violations during the pandemic. Some migrant workers were not being paid their monthly salary, with some employers allegedly withholding migrant workers' salaries.¹² Similarly, the Malaysian Trade Union Congress (MTUC) reported common labour rights violations such as unfair termination of employment, unpaid wages and poor living conditions. Some workers were allegedly required to work during the MCO in non-essential work.

CONCLUSION AND RECOMMENDATIONS

The lack of coordination and consistency in the way the government agencies addressed issues affecting migrant workers led to undesirable actions and negative consequences facing migrant workers. The pandemic has once again revealed the precarity and vulnerability of migrant workers, whether it be in the exclusion from, or unintended consequences of policy. Similarly, the pandemic has further exacerbated workers' lack of protection, and exploitation committed by employers. This calls for serious policy consideration and immediate remediation in addressing the rights, welfare and safety of migrant workers.

This article recommends the government to refrain from undertaking immigration raids targeting those already in the country during the pandemic. Instead, implement a special regularization program to legalize their immigration status. The government should also provide access to immigration detention centres for independent monitoring and humanitarian aid. Finally, the pandemic suggests that it is the right time to strengthen current labour laws and policies, ensuring the rights and well-being of migrant workers are protected.

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8 MalaysiaKini. 1 May 2020. *Tenaganita condemns raids on undocumented migrants, refugees in Kuala Lumpur*. Available at <https://www.malaymail.com/news/malaysia/2020/05/01/tenaganita-condemns-raids-on-undocumented-migrants-refugees-in-kuala-lumpur/1862190>

9 SUHAKAM. 28 May 2020. *Dialogue with Vulnerable Communities: An Assessment of Needs and Next Steps Amid COVID-19 Pandemic*. Available at <https://www.suhakam.org.my/dialogue-with-vulnerable-communities-an-assessment-of-needs-and-next-steps-amid-covid-19-pandemic/>

10 Ministry of Health (MOH). 7 May 2020 to 12 June 2020. *Daily Update on COVID-19*. Available at <https://kpkesehatan.com>

11 SUHAKAM. 28 May 2020. *Dialogue with Vulnerable Communities*.

12 Ibid.

BETWEEN OBLIVION AND CRIMINAL NEGLECT: MIGRANTS AND REFUGEES DURING THE COVID-19 HEALTH EMERGENCY IN MEXICO

From the moment COVID-19 was declared an international public health emergency by the World Health Organization (WHO)¹, it was clear that States would need to implement urgent public health measures for its detection, prevention, containment, and treatment. COVID-19 was eventually declared a pandemic on 11 March 2020.

Although state responses were not homogenous due to the particular characteristics of the pandemic, most countries implemented either voluntary or obligatory limitations on the freedom of movement and/or on personal freedoms, such as geographical restrictions within or between cities, total or partial border closures, preventive isolation, curfews, and obligatory lockdowns or quarantines.² All carried profound social, economic and political implications for the various governments, and not least, for migrants.

Guarantees and protections of the rights of the migrant – particularly irregular migrant- and refugee populations in the face of the pandemic, were late in coming and contained intrinsic problems and contradictions. If no state was prepared for the pandemic, even less were they able to adopt an approach that would deal with the specific needs of a heterogeneous and vulnerable population, who, in addition, is on the move, uprooted and frequently criminalized by restrictive State immigration policies. At least, this was the case in Mexico.

Even prior to the outbreak of the pandemic, the violation of rights and the vulnerability of people in situations of irregular, transit, or destination migration, were already concerning. In May 2019, after a brief period during which the federal government had exercised its sovereignty and defined its own immigration policies, it gave in to pressure and trade threats from the United States.³ Mexico began to reinforce control and detention of migrants, with measures such as the militarization of the southern border⁴. Mexico also agreed to accept asylum seekers from a variety of countries who were forcibly returned from the United States, and to keep them along the northern border in accordance with the Migrant Protection Protocols so-called “Remain in Mexico” program⁵.

At the same time, the Mexican Refugee Commission (COMAR) was experiencing a serious backlog in dealing with asylum seekers. Of the little more than 90,000 people who had requested asylum in Mexico between January 2018 and October 2019, 70% were still waiting for resolution of their cases at the end of 2019.⁶

Thus, on 28 February 2020, when Mexico registered its first case of COVID-19,⁷ around 8,000 people had already been detained for immigration reasons⁸ in 59 migrant detention centers.⁹ Just over 11,000 asylum seekers had recently arrived in the country,¹⁰ adding to the existing backlog of thousands in process with the COMAR. At the same time, a conservatively estimated 10,000 people awaited their interviews and hearings in the United States along the northern Mexican border under the Migrant Protection Protocols. Migrants and refugees thus already faced immigration and state policies that, by act or omission, systematically violated their freedoms and civil, social, and cultural rights.

In March 2020, the situation worsened. The Mexican State's policies and actions regarding migrants oscillated between measures proposed by federal health bodies that overlooked the migrant population, its characteristics and composition, and immigration policies of enforcement and control. This resulted in: increased vulnerability and invisibility of the migrant population; fewer possibilities for assistance and access to humanitarian services; exposure to the risk of contracting COVID-19; violations of the right to health, life, security, integrity and personal freedom, among others; and finally, a lack of access to justice and effective judicial protection against the violations to which they were subjected.

On one hand, on 20 May 2020, the Mexican State began implementing measures for the control and epidemiological monitoring of COVID-19. These included social distancing and the suspension of non-essential activities in the public, private and social sector, as well as voluntary “sheltering” at home by the population¹¹, under the slogan of “Remain at Home”.

- 1 World Health Organization (WHO). Declaration on the second meeting of the International Health Regulations (2002) Emergency Committee regarding the outbreak of the new coronavirus, 30 January 2020. Available at: [https://www.who.int/es/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-\(2005\)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-\(2019-ncov\)](https://www.who.int/es/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov))
- 2 Latin American and Caribbean Economic System (SELA). COVID-19: summary of the main measures, actions and policies. 2 September, 2020. Available at: <http://www.sela.org/media/3219723/covid-19-resumen-de-las-principales-medidas-estados-miembros-sela.pdf>
- 3 COLVIN Jill, LONG Colleen. *Trump announces new Mexican tariffs in response to migrants*. May 30, 2019. Available at: <https://apnews.com/afec271c5f9c4fdb82f57b48cb593add>; Michael D. Shear and Maggie Haberman. *Mexico Agreed to Take Border Actions Months Before Trump Announced Tariff Deal*. June 8, 2019, Available at: <https://www.nytimes.com/2019/06/08/us/politics/trump-mexico-deal-tariffs.html>
- 4 SEMPLE, Kirk. Mexico's National Guard, a 'Work in Progress,' Deployed to Curb Migration. June 14, 2019. CThe New York Times. Available at: <https://www.nytimes.com/2019/06/14/world/americas/mexico-migration-national-guard.html>
- 5 US Department of State. U.S.-Mexico Joint Declaration. June 7, 2019. Disponible en: <https://www.state.gov/u-s-mexico-joint-declaration/>
- 6 Asylum Access Mexico. *Information note on Asylum in Mexico*. January 2020. Available at: <https://asylumaccess.org/wp-content/uploads/2020/01/HOJA-INFORMATIVA-SOBRE-EL-ASILO-MEXICANO.pdf>
- 7 DOF. Monday 30 March 2020. Agreement in which the epidemic caused by the SARS-CoV2 virus (COVID-19) is declared a health emergency due to force majeure.
- 8 The figure is not exact. It uses, as a point of reference, the number of people detained in February 2020, according to official statistics provided by the Immigration Policy Unit. Migration Statistics Bulletin, 2020. Available at: http://www.politicamigratoria.gob.mx/work/models/PoliticaMigratoria/CEM/Estadisticas/Boletines_Estadisticos/2020/Boletin_2020.pdf
- 9 Citizens Council of the National Immigration Institute. *Migrants in detention in Mexico. Mission for the Monitoring of Detention Centers and Temporary Shelters of the INM*. July, 2017. P. 42. Available at: https://observatoriocolef.org/wp-content/uploads/2018/04/CCINM-Informe_Final-Monitoreo.pdf
- 10 The figures correspond to the number of asylum seekers in the months of January and February 2020. From December 2019, official figures regarding refugees in Mexico are only published in graph format by the Coordinator of the Mexican Refugee Commission on his personal twitter account. (@AndresRSilva_) “COMAR en números”, 5 March, 2020, Available at: https://twitter.com/AndresRSilva_/status/1235779099412619265
- 11 Remain at home is understood as the voluntary limitation on movement, remaining at homes for as long as possible.

These measures clearly did not consider an irregular migrant population and/or those in transit across the country, nor the impact of such measures on this population. Furthermore, those who had not been detained and lived in the community generally lacked stable housing and the financial resources to guarantee their basic needs. With the suspension of non-essential activities, migrants were among the first to lose their employment, and both their jobs and housing became increasingly precarious, making them more vulnerable to immigration detention.

With time, and the official declaration of a health emergency, the federal government did eventually create protocols and guidelines for vulnerable populations. The “Protocol for the prevention and attention of suspected and confirmed cases of COVID-19 in Detention Centers and Temporary Shelters of the National Immigration Institute” and the “Preventive measures for Detention Centers and Temporary Shelters” were developed for the detained migrant population. Subsequently, in May 2020, a care and coordination plan was announced that included border checkpoints, medical units, shelters, places of refuge and private accommodation.

These measures came late and were deficient and widely ignored in institutional practice. Thus, for example, the social distancing and hygiene health measures established for detention centers, did not take account of the prevailing physical conditions of these centers, nor were alternative measures considered that would avoid detention in such places. The measures therefore served no purpose in guaranteeing and effectively protecting either the health, or the physical, emotional, or psychological well-being of migrants.

The National Immigration Institute (INM) continued with the identification and detention of migrants with a view to deportation. However, the regular operation of the immigration system was affected by total, partial or intermittent border closures, among which were those of the northern Central American countries, and the return to Mexico of migrants from various countries under Title 42 of the United States Code.¹² This resulted in erratic and negligent actions on behalf of the INM, that violated human rights and that were aimed essentially at getting rid of migrants.

Initially, the INM extended the detention of migrants, amid undignified conditions that violated their rights. The resulting desperation led to at least five riots in detention centers in the north and south of the country, between 26 March and 6 April: in Tapachula, Tenosique, Villahermosa, Hermosillo and Piedras Negras. One of these resulted in the negligent death of an asylum seeker and several people were injured.

In a second phase, the INM began to transfer people between detention centers, abandon them on the border, encourage their irregular crossing into Guatemala,¹³ or simply released them with no provisions to protect or guarantee their rights. This occurred within a context in which DIF shelters (responsible for receiving unaccompanied migrant children) had significantly reduced their operations, as had civil society organizations that provide accommodation to migrants and refugees. Nevertheless, among other targeted actions for migrants, various civil society organizations offered spaces and support for the implementation of alternatives to detention in the absence of a response from the immigration, health, or any other authorities.

The Mexican State faced limitations and enormous challenges in protecting public health in the face of COVID-19. While recognizing its intention to respond to the presence and context of migrants and detention, including the recent initiative by the health authorities to provide statistics regarding numbers of COVID-related cases and deaths of migrants, none of these actions really sought to guarantee and protect the dignity and human rights of migrants and asylum seekers.

The pandemic has confirmed, once again, that current immigration policies, and discrimination and institutional and social xenophobia in Mexico, are structural features that constantly inhibit and violate migrants’ human rights. In the new, post-COVID reality, it will be worth reflecting on and responding to such structural elements that endanger people’s lives, liberty, security, and integrity.

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This article has been translated into English from the original in Spanish

12 CDC. Legal Authorities for Isolation and Quarantine: CDC’s Role. February 24, 2020. Available at: <https://www.cdc.gov/quarantine/aboutlawsregulationsquarantineisolation.html>

13 UNHCR communication: “Concerns regarding transfers from the northern border to the southern one in the framework of the COVID-19 emergency”. Sent to the Executive Secretary of the Inter-secretarial Commission for Integral Attention in Matters of Migration (CIAIMM) of the Foreign Affairs Ministry and obtained through a request for access to information (INAI) folio:500112720, SRE, 3 June 2020.

THE IMPACT OF PANDEMIC ON THE RISK OF DETENTION FOR STATELESS PERSONS IN POLAND

Statelessness in Poland remains a problem that is largely overlooked, mostly due to the underreported number of stateless persons, their mixed origin and dispersion across the country. As statelessness is not typically linked with a specific minority group or a single ethnicity, identification of stateless persons is a challenging process, with the lack of dedicated and legally prescribed procedures making it even more difficult. Statelessness or risk thereof in the Polish context may often coincide with irregular stay. Procedural difficulties in establishing the citizenship of the person (or their identity) lacking adequate documentation may be used as justification for placing them in detention. The same rules may be applied in relation to stateless asylum seekers. There is, therefore, a clear link indicating a heightened risk of detention for stateless persons on Poland. The COVID-19 pandemic, on the other hand, has had an impact on the migration processes in general, and on the application of detention, their specific needs and situation in particular.

With no statelessness determination procedure in place and no legally prescribed definition of a stateless person in national law, there may be a significant number of stateless persons or persons at risk of statelessness in Poland who remain a hidden number, not included in any official reports or statistics. Experience of the Halina Niec Legal Aid Center and other NGOs providing legal assistance to persons seeking protection and foreigners indeed shows that statelessness often coincides with irregular status. Such persons are thus reluctant to contact the authorities out of fear of being placed in detention. According to a study by European Network on Statelessness, the risk of detention is an important factor deterring stateless persons from approaching the authorities,¹ a situation that is neither beneficial for the state nor for the persons concerned.

The most recent available data on stateless persons in Poland gathered through the Population Census is already outdated, as the census was carried out back in 2011. Nevertheless, it provides an interesting reference point in terms of the scale of statelessness in Poland. The census report recorded a considerably high number of over 8,000 persons of “unknown nationality” and 2,020 stateless persons. These numbers are to be treated with caution, however, as the information was gathered from declarations made by the census respondents, without any formal verification of their legal status. A mapping study on statelessness in the country, providing a more detailed overview of the statelessness population has been completed and the final report issued in September 2019 (UNHCR)². As of July 2020, statistics published by the Office for Foreigners put the total number of “stateless persons” and individuals of “unknown nationality” holding a valid residence permit at 382, of which 345 people were registered as stateless and 37 individuals were of ‘unknown nationality’. No information about the origin of these individuals is available³.

There is no published and publicly available data on stateless people in detention, though some figures are collected by the Polish Border Guard. UNHCR estimates for the stateless population in Poland are based on data from the 2011 census.

Polish law has no specific regulations dedicated to stateless persons and so, those whose nationality was deemed “uncertain”, who may have been at risk of statelessness or who are stateless, were undergoing the standard identification process as part of other administrative procedures they were qualified under (protection or return). According to Polish regulations, foreigners identified as “unreturnable” are eligible to receive the so-called “tolerated status” which guarantees them the release from detention and entitles them to stay in Poland. If unreturnability is caused by risk of grave human rights violations upon removal, they can be granted “humanitarian stay” instead. During the lockdown months, the Halina Niec Legal Aid Center has not recorded any decisions, however, where such permits would be issued based on the COVID-19 – related impossibility of removal.

In response to the global epidemic of COVID-19, Polish authorities have imposed far-reaching restrictions and security measures which bear a direct impact on the situation of foreigners, including stateless persons and persons at risk of statelessness.

On 13 March 2020, Polish Prime Minister announced the introduction of the state of epidemic emergency. On the same date three regulations were adopted, followed by a decision to announce the state of epidemic resulting in the closing of borders to foreigners.⁴ International passenger air flights and international rail travel were suspended.

However, the ban on entering Poland was not absolute. In particularly justified cases⁵, the commanding officer of a Border Guard outpost, upon authorisation of the Commander-in-Chief of the Polish Border Guard, can allow a foreigner to enter the territory of the Republic of Poland according to the procedure set out in the Act of 12 December 2013 on Foreigners (Journal of Laws of 2020, item 35). This last exclusion from the entry ban remained the only opportunity for foreigners trying to enter the territory of Poland in order to seek international protection. In practice however, the overall number of new asylum applications lodged in Poland has dropped significantly⁶, while the number of applications made at Polish external borders (especially the most frequently used Terespol border crossing on the border with Belarus) has dropped down to zero in the first months of the lockdown.

The newly introduced legal instruments, prompted by health security reasons, held no direct reference to foreigners with irregular status or stateless persons. The practice of courts related to the detention of foreigners and return procedures continued unchanged. As for the carrying out of deportations, the practice varied, depending on the country of removal. According to NGO and media reports, some

1 European Network on Statelessness (ENS), *Protecting Stateless Persons from Arbitrary Detention in Poland*.

2 UN High Commissioner for Refugees (UNHCR), Mapping Statelessness in Poland, September 2019, <https://www.refworld.org/docid/5da58e7e4.html>

3 Up-to-date statistical information is published on the Statelessness Index website run by the European Network on Statelessness (ENS): index.statelessness.eu

4 Regulation of the Minister of Health dated 13 March 2020, concerning the introduction of the state of epidemic emergency on the territory of the Republic of Poland; Regulation of the Minister of Internal Affairs and Administration dated 13 March 2020, concerning the temporary reintroduction of border control of persons crossing state border, being an internal border; Regulation of the Minister of Internal Affairs and Administration dated 13 March 2020, concerning the temporary suspension or limitation of border movements in selected border crossing

5 The ban was not applied to citizens of the Republic of Poland, foreigners who are spouses or children of citizens of the Republic of Poland or remain under permanent care of citizens of the Republic of Poland, holders of the Pole's Card, diplomats, persons who have the right of permanent or temporary residence in the Republic of Poland or a work permit, foreigners driving a vehicle intended for transporting goods

6 The number of asylum applications lodged in 2020: January – 372, February – 361, March – 166, April – 62, May – 133, June – 210. In comparison to the average 360 applications per month at the beginning of the year, the numbers have gone down by over 50% in March and by 83% in April.

deportations were executed seemingly uninterrupted, especially to Ukraine and the Russian Federation⁷, while in other cases the procedures were prolonged⁸.

As for foreigners placed in detention, NGO practice indicates that although protection proceedings were not hindered by the state of pandemic, and decisions were delivered in due time, return procedures were slowed down, which in some cases resulted in prolonged detention.

A direct effect of the lockdown was also the severe limitation of legal aid in detention. The Polish state guarantees free legal assistance to persons seeking international protection (limited to the appeal stage). In practice only several NGOs visit those placed in detention to provide legal information and legal assistance there. Legal aid in return proceedings is not funded by the state and NGO programs in most cases are focusing on protection and humanitarian cases only. Persons at risk of statelessness who have not applied for international protection may therefore experience significant difficulties in receiving legal assistance free of charge. Their unique status and lack of dedicated legal procedures make their status vulnerable as they might be threatened by prolonged and in some cases arbitrary detention. As part of the pandemic restrictions, the Border Guards have imposed a ban on visitors to detention centres which was lifted in mid-May. Most NGOs have suspended all their visits, and the availability of legal assistance was severely undermined. It is unclear how the scarcity of legal aid may have impacted the situation of detained stateless persons but since they are one of the most vulnerable groups at risk of prolonged detention, their cases call for special attention of human rights experts and institutions.

Special measures introduced by state authorities in relation to the pandemic although not directly concerning foreigners have had an undeniable impact on the situation of migrants, among which stateless persons are one of the most vulnerable groups. Limited access to legal aid, slowing down or suspending of administrative procedures and difficulties in carrying out removals have all contributed to exposing them to a heightened risk of prolonged detention.

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7 "Polska deportuje ludzi w czasie epidemii", Onet Wiadomości, 12 May 2020, <https://wiadomosci.onet.pl/tylko-w-otecie/uchodzcy-z-czeczenii-w-polsce-jak-wyglada-sytuacja-na-granicy/c2ygh3>

8 For example in relation to China.

IMMIGRATION DETENTION IN SAUDI ARABIA DURING COVID-19: A CASE-STUDY ON THE TREATMENT OF ETHIOPIAN MIGRANTS

Saudi Arabia introduced measures to limit the spread of COVID-19 beginning in March 2020, including suspending religious pilgrimages and halting international and domestic travel. On March 30, King Salman announced that everyone in Saudi Arabia would be entitled to medical care for COVID-19 regardless of their legal status in the country.¹

Infections remained low throughout March but began to spike in April and May. Despite government efforts to limit the spread of the coronavirus, Saudi Arabia had nearly 330,000 confirmed infections and 4,485 deaths as of mid-September 2020.²

The spike was seemingly driven by transmission among foreign migrant workers. In April, the Saudi Center for Disease Prevention and Control issued new guidelines to prohibit overcrowding in migrant housing.³ On May 5, the health minister announced that non-Saudis made up 76 percent of new cases recorded in Saudi Arabia.⁴

Saudi authorities released 250 immigration detainees in March but has not otherwise addressed the risks of locking large numbers of migrants in detention centers. The United Nations has called for alternatives to immigration detention during the pandemic,⁵ given the increased risk of contracting the novel coronavirus in the crowded and unhygienic conditions in most detention sites. But in Saudi Arabia, the detention of migrants during the COVID-19 pandemic has continued. And while it is difficult to find out what is happening inside those centers, a recent Human Rights Watch report indicates that the precautions and treatment for COVID-19 are minimal.

ETHIOPIAN MIGRANTS IN SAUDI ARABIA

An unpublished 2019 study⁶ found that over 90 percent of the migrants passing through Yemen to reach Saudi Arabia and other Gulf countries for work opportunities come from Ethiopia. A combination of factors, including economic difficulties, drought, and human rights abuses have driven hundreds of thousands of Ethiopians to migrate over the past decade, most traveling irregularly by boat over the Red Sea and then by land through Yemen to Saudi Arabia. The International Organization for Migration (IOM) estimated that nearly 140,000 migrants arrived in Yemen in 2019.

Migrants who cross irregularly into Saudi Arabia usually do so in the mountainous border area separating Yemen's Saada governorate and Saudi Arabia's Jizan province. Many are apprehended crossing the border or in the country's interior. About 260,000 Ethiopians, an average of 10,000 per month, were deported from Saudi Arabia to Ethiopia between May 2017 and March 2019, according to IOM.⁷

The detention of migrants in deplorable facilities in Saudi Arabia is a longstanding problem. In 2014, Ethiopian nationals in the Saudi capital, Riyadh, told Human Rights Watch that thousands of foreign workers were being held in makeshift detention facilities without adequate food and shelter before being deported.⁸ In 2019, Human Rights Watch identified approximately 10 prisons and detention centers where migrants were held for various periods.⁹

While deportations from Saudi Arabia to Ethiopia have been ongoing during the pandemic, the sheer numbers of Ethiopian migrants across the world who want to return makes it very difficult for Ethiopia to receive and process its nationals in quarantine in the capital, Addis Ababa¹⁰.

SAUDI ARABIA'S DETENTION OF ETHIOPIAN MIGRANTS DURING THE PANDEMIC

In April 2020, while most countries were in the middle of nationwide lockdowns, the Houthi armed group forcibly expelled thousands of Ethiopian migrants from northern Yemen using the COVID-19 pandemic as a pretext, forcing them to the Saudi border and killing dozens. Saudi border guards then fired on the fleeing migrants, killing dozens more, while hundreds of survivors escaped to a mountainous border area.

Ethiopian migrants told Human Rights Watch that after they spent days stranded without food or water, Saudi officials allowed hundreds to enter the country. The Saudis then arbitrarily detained hundreds if not thousands of Ethiopian migrants for months in unsanitary and abusive facilities without the ability to legally challenge their detention or eventual deportation to Ethiopia.¹¹

The three prisons most often cited by detained Ethiopian migrants among the 10 detention centers that¹² Human Rights Watch identified in 2019 were Jizan Central Prison in Jizan city, the Shmeisi Detention Center east of Jeddah, where migrants are processed for deportation, and a center near the town of al-Dayer in Jizan province along the border.

1 <https://english.alarabiya.net/en/News/gulf/2020/03/30/Coronavirus-Saudi-s-King-Salman-orders-treatment-for-all-including-visa-violators.html>

2 <https://coronavirus.jhu.edu/map.html>

3 <https://www.ft.com/content/c24262f1-2f13-4432-9eda-6ec5622f72e7>

4 <https://twitter.com/SaudiMOH/status/1257676389538566145/photo/1>

5 https://migrationnetwork.un.org/sites/default/files/docs/un_network_on_migration_wg_atd_policy_brief_covid-19_and_immigration_detention_0.pdf

6 <https://reliefweb.int/report/yemen/journey-africa-yemen-remains-world-s-busiest-maritime-migration-route>

7 <https://www.hrw.org/news/2019/08/15/ethiopians-abused-gulf-migration-route>

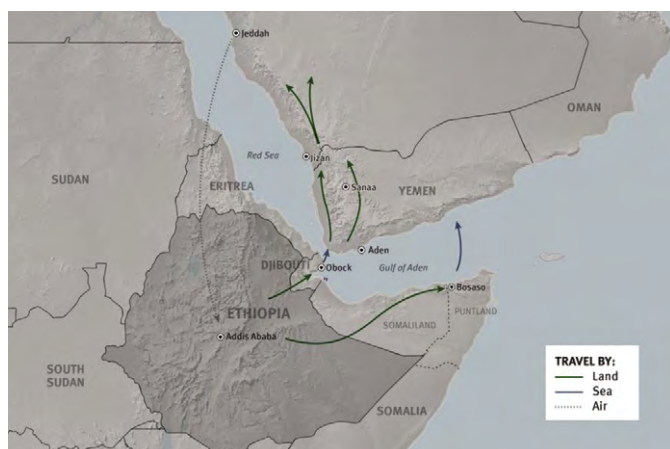
8 https://www.hrw.org/report/2014/05/25/yemens-torture-camps/abuse-migrants-human-traffickers-climate-impunity#_ftn187

9 <https://www.hrw.org/news/2019/08/15/ethiopians-abused-gulf-migration-route>

10 <https://www.iom.int/news/iom-ethiopia-assists-hundreds-returning-migrants-covid-19-quarantine-sites>

11 <https://www.hrw.org/news/2020/08/13/yemen-houthis-kill-expel-ethiopian-migrants>

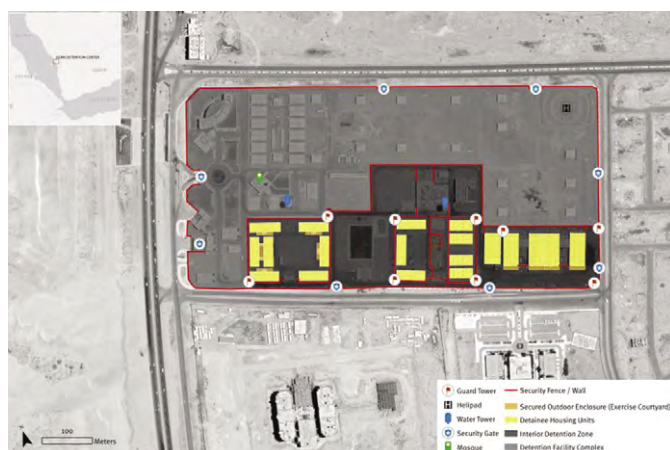
12 <https://www.hrw.org/news/2019/08/15/ethiopians-abused-gulf-migration-route>



Migration routes between Ethiopia and Saudi Arabia.
© Human Rights Watch



Satellite imagery showing the complex of the Jizan Detention Center in Jizan Province, Saudi Arabia. Satellite imagery © 2020 Maxar Technologies



Satellite imagery recorded on 9 August 2020, shows new buildings in the possible detention center of al-Dayer, Jizan Province, Saudi Arabia. Some of the buildings were completed in April 2020. Satellite imagery © 2020 Planet Labs

Ethiopian migrants described being taken in small cars and pickup trucks from the Saudi border to a detention facility in al-Dayer. Human Rights Watch has identified through open source technology a prison complex in al-Dayer that matched the descriptions of those interviewed.

Human Rights Watch spoke to women and girls who estimated that 300 to 500 of them were held in one room in severely overcrowded conditions after they were separated from the men. Human Rights Watch reviewed video footage sent by a person held in al-Dayer that depicts hundreds of women under a wire mesh roof, ankle deep in filthy water, screaming and crying.

Women and girls said their situation generally improved when they were taken to a detention facility in Jizan. Human Rights Watch analyzed satellite imagery together with witness accounts and found a complex in Jizan city. For men, the conditions deteriorated when they got to Jizan.

Both men and women consistently described poor detention conditions including overcrowding, blocked, inadequate, and overflowing toilets, lack of beds and blankets, lack of medical care including prenatal care for those who were pregnant, and inadequate food and water. They described serious skin problems they said were caused by the unhygienic conditions. Photo images and videos of detainees in al-Dayer and a detention center in Jizan corroborated the accounts.

Men described sleeping in the same clothes they had worn since they arrived with limited access to water to wash and no medical care. They said that their temperatures were taken when they entered Jizan, but that they have had no other COVID-19-related testing, prevention measures or guidance, or care. Three men said that prison guards beat them for asking for medical attention or complaining about the conditions. Given the lack of COVID-19 testing, Human Rights Watch was not able to verify if any of the Ethiopian migrants in detention contracted the novel coronavirus.

Human Rights Watch spoke to six women who had been transferred from Jizan to the Shmeisi Detention Center, near Jeddah, where conditions were described as better but still inadequate and from which some of the female interviewees were returned to Ethiopia.

IOM's office in Ethiopia registers migrants upon arrival in Ethiopia from Saudi Arabia. On June 9¹³ the organization had registered 3,000 Ethiopian returnees from Saudi Arabia since April. Based on migrant accounts gathered since the release of the statement in August, Human Rights Watch estimates that there are hundreds, perhaps thousands, of Ethiopian migrants pushed out of Yemen in April who remain in deplorable detention conditions in Saudi Arabia.

13 <https://www.iom.int/news/iom-ethiopia-assists-hundreds-returning-covid-19-affected-migrants>

RECOMMENDATIONS

The Saudi government should investigate and appropriately discipline or prosecute security personnel responsible for firing upon Ethiopian migrants at the Yemen border. Any “shoot on sight” order should be immediately revoked.

The authorities should also investigate allegations of abuse at migrant detention centers, and appropriately discipline or prosecute those found responsible. Immigration detention should be an exceptional measure of last resort, for the shortest period, and only if justified by a legitimate purpose. Children should never be detained for migration-related reasons.

In the interim, Saudi authorities should transfer migrant detainees to centers that meet international standards and should work with international agencies to bring migrant detention centers in line with international standards under the UN Standard Minimum Rules for the Treatment of Prisoners (“Mandela Rules”).

The Saudi authorities should urgently identify and release children along with their family members, and provide safe alternatives to detention to which humanitarian agencies have regular access. They should also identify and release pregnant and nursing women in line with international guidelines on the detention of asylum seekers.

Those released from detention facilities should undergo adequate medical screening to ensure they receive, if necessary, proper care and follow-up.

Beyond the immediate crisis of Ethiopian migrants in detention, Saudi Arabia should ratify the 1951 Refugee Convention and establish asylum procedures consistent with international standards for stateless people and foreign nationals at risk of persecution in their home countries. Saudi Arabia should immediately allow the UN High Commissioner for Refugees to exercise its mandate by allowing it to determine asylum seekers’ refugee status and facilitate durable solutions, including integration in Saudi Arabia, for those recognized as refugees.

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SINGAPORE'S MIXED RESPONSE TO COVID-19: MIGRANT WORKERS SIDELINED

INTRODUCTION

Singapore's response to the COVID-19 pandemic has been mixed. Initially seen as one of the better examples of managing the pandemic early on with efficiency and decisiveness, that reputation has now been marred with her handling of the country's migrant population. Once deemed the "gold standard of near-perfect detection" by Harvard epidemiologists¹, initial praise for the country's efforts at containing the virus have unfortunately not reached all sectors of society in an equal way. This paper will be structured in a way that focuses on the country's social security responses, including any changes in policies and regulations around enforcement and immigration detention during the pandemic. Given the predominance of the migrant worker issue in Singapore, the rest of this paper will heavily focus on the state's response, to the handling of the pandemic among the migrant worker population.

IMMIGRATION AND POLICY RESPONSES

Immigration policy has also not fundamentally altered in light of the pandemic, but measures have been taken for travellers who are authorised to travel to Singapore under current conditions. All travellers entering Singapore, which includes citizens, permanent residents, and long-term pass holders, are required to quarantine in government-designated facilities or in their homes (depending on whether they are entering from a select list of approved countries). Singapore citizens and permanent residents returning home will have their costs of staying in these government-designated facilities covered by the government, given that they departed Singapore before 27 March 2020, the date on which the country issued a travel advisory to not leave. If found guilty of an immigration-related offence, offenders are expected to remain in Singapore for the duration of the investigation, and serve prison time if relevant to the offence, and would be required to purchase their own ticket home at the end of the investigation.

Work permit holders make up approximately 1 million out of nearly 6 million people in the country, however, more than half of the people who contracted COVID-19 have been work permit holders in Singapore. However, there have not been any changes to immigration detention policy, or none have been publicly communicated by the government to date. The policy in Singapore remains that people who are liable on immigration-related offences can be detained in any police station, immigration depot, prison, or any other place that has been appointed for such a purpose by the Controller of Immigration.²

On the issue of refugee-related detention, Singapore is not a signatory to the 1951 Refugee Convention.³ There is also no domestic legislation for the protection of refugees or asylum seekers. Those guilty of immigration-related offenses such as still being in Singapore irregularly are usually overstayers, such as those who legally entered the country on a tourist or work visa and stayed after that expired. Overstayers can

be imprisoned, and male overstayers aged under 50 found guilty of this offence may also be caned⁴. Work permit holders are usually not eligible for citizenship, and maximum terms for employment are commonly clearly laid out. These policies have not changed during this pandemic. It is rare that those seeking asylum have been able to enter Singapore legally except on a tourist visa and would be found guilty of overstaying, and Singapore has not accepted those seeking asylum through boat arrivals (such boats have not been allowed to enter Singapore territorial waters). Such cases, even though possible, have not been reported.

In the Singapore prison system, no cases have been reported thus far, and this can be credited to the government undertaking several measures to ensure the virus does not spread in prisons. All inmates have had to undergo daily temperature checks, and safe distancing measures have been put in place. Those who may be feeling unwell are given masks to wear and immediately separated from the rest of the inmates and monitored. Newly admitted inmates are also housed separately and monitored for the first 14 days.⁵

PANDEMIC RESPONSES TO MIGRANT WORKERS

Migrant workers and Singapore's treatment of them during the COVID-19 pandemic now appears to dominate discussion on the country's handling of the pandemic. Singapore has 43 migrant worker dormitories that house an approximate 280,000 male work permit holders.⁶ Employing companies, often construction companies, pay for their workers to be housed in these privately-owned and run dormitories. A majority of work permit holders who have contracted COVID-19 did so in these dormitories.

The dormitories have long been criticised for being substandard and overcrowded, with less than sanitary conditions. Several civil society organisations, especially those working closely with migrant workers, had previously warned of the potential for infection or disease to spread in these dormitories. In late March 2020, Transient Workers Count Too, a migrant rights group in Singapore, warned that the "risk of a new cluster among this group remains undeniable"⁷ While the government did take preventative steps to curb the possible spread of the virus in the dormitories by closing communal spaces and staggering meal times and recreation hours, it has been criticised for not being enough. This is especially because the bunk-bed dormitory rooms can sleep up to 20 people (several other reports say 12 people), and maintaining any social distancing would be impossible.⁸ The government also announced other measures to contain any outbreak in dormitories, such as gazetting and locking down the S11 and Westlite Toh Guan dormitories, which house 19,000 workers among them.⁹ This locking down was extended to all dormitories in April 2020, separating infected clusters with those not infected, and moving out the approximately 7,000 workers who worked in essential services. They were moved to alternative accommodation such as vacant apartments, floating hotels or military camps. Officers

1 <https://www.bbc.com/news/world-asia-54082861>

2 <https://www.globaldetentionproject.org/covid-19-immigration-detention-platform>

3 <https://www.unhcr.org/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html>

4 Caning is a form of corporal punishment in Singapore that is still used in conjunction with a prison sentence for certain crimes as laid out in legislation, including certain immigration-related offences

5 <https://www.channelnewsasia.com/news/singapore/crime-fighting-covid-19-precautions-prisons-police-station-court-12658234>

6 <https://www.channelnewsasia.com/news/singapore/factory-converted-dormitories-fcd-migrant-workers-isolation-12802428>

7 <https://www.bbc.com/news/world-asia-54082861>

8 <https://www.ft.com/content/Ofdb770a-a57a-11ea-92e2-cbd9b7e28ee6>

9 <https://www.straitstimes.com/singapore/worker-dorms-thinned-out-fewer-blocks-gazetted-as-isolation-areas>

from Singapore's armed and police forces helped to implement these measures, including enhancing medical support and facilitating testing for the virus.

The treatment of migrant workers, by locking them down in dormitories for what has now been almost six months has gained criticism from civil society. While citizens and residents living under the lockdown (or circuit-breaker as it was called) have benefitted from greater leniency such as being able to go to shops to purchase necessities and be outdoors for exercise, these workers have effectively been confined for this duration of time, with most unable to leave the confines of their rooms or dormitories at most. Reports have already emerged of deteriorating physical and mental health among these workers due to their prolonged isolation in these rooms which they share with up to 12 people.¹⁰ With many migrant workers locked down in their dormitories, with many not even being allowed to come out of their shared rooms, this is hardly surprising. Regrettably, there have been several reports of attempted suicides, self-harm or deaths.¹¹

CONCLUSION

Singapore's response to, and global acclaim for her handling of this pandemic, while initially precedent-setting, has now largely been shaped by the country's poor response to dealing with outbreaks within the migrant worker community. The physical, emotional and mental cost of this pandemic among the migrant worker community in Singapore unfortunately remains incredibly high. However, the pandemic has also shed new light on the conditions migrant workers have been living in, and this attention has seen an increase in charitable donations, along with dorm operators working to improve living conditions. Belated as it might be, at least one possible development to emerge from Singapore's pandemic response will be finally prioritizing and treating the migrant worker community with the dignity and respect they deserve.

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¹⁰ <https://www.globaldetentionproject.org/covid-19-immigration-detention-platform>

¹¹ <https://www.reuters.com/article/us-health-coronavirus-singapore-migrants/spate-of-suicides-among-migrant-workers-in-singapore-raises-concern-idUSKCN2510QP>

COVID-19 AND IMMIGRATION DETENTION: A SOUTH AFRICAN PERSPECTIVE

The COVID-19 pandemic brought about an onset of challenges on a global scale for many states and citizens alike, particularly for the refugee, undocumented migrant, and stateless communities residing in the Republic of South Africa. This paper examines how the COVID-19 pandemic has affected South Africa's approach to dealing with immigration detention.

INTRODUCTION

Immigration detention in South Africa has long been riddled with both substantive and procedural irregularities, which have been exacerbated by the COVID-19 pandemic. On 15 March 2020, President Ramaphosa declared a state of disaster under the Disaster Management Act, and announced that the government would be taking urgent and drastic measures to manage the disease. A few days later, on 21 March 2020 a nationwide lockdown was instituted under the Disaster Management Regulations. The Regulations limited certain rights and freedoms and led to the halting of service provision at a number of state departments, including Department of Home Affairs (DHA) and Refugee Reception Offices (RRO's) responsible for migrant permit renewals¹ and birth registration.

In January 2020, the Refugee Act from 1998 was amended through the Refugee Amendment Acts of 2008, 2011 and 2017, which came into force with the publication of the accompanying lockdown regulations. Under the new laws, refugees and asylum seekers are given five days to process a claim once they have entered the country and register at a RRO with their transit visa. Asylum seekers are then given a limited Section 22 permit, which is to be renewed every six months while awaiting the adjudication process. The holder of a section 22 permit has the right to work and study and is protected against deportation to their country of origin. The asylum process can be long and onerous in South Africa with RRO's often lacking the capacity to process asylum claims swiftly.

The commencement of South Africa's nationwide lockdown was accompanied by the suspension of services at RROs. Furthermore, the DHA has failed to comply with the statutory limits of detention. However, this compliance has since improved. Moreover, matters pertaining to immigration violations lack consistent and effective judicial oversight. Immigration policies have become increasingly restricted physically as well as administratively under the guise of health concerns. For example, during the pandemic, South Africa constructed over 40 kilometers of emergency barriers along its border with Zimbabwe to ensure that no undocumented or infected person crosses into the country. This imposed greater challenges for refugees and migrants along different stages of the immigration process for access to basic needs and risk of detention.

COVID-19 RESPONSE: STATE ACTIONS AND POLICIES

From the South African State's response to the COVID-19 pandemic, three key policies can be highlighted as essential to the operation of immigration detention during these unprecedented times: (i) regulations governing the lockdown and border closure, (ii) regulations governing

law enforcement responsibilities and (iii) closure of RRO's and non-renewal of permits. With RRO's remaining closed and not renewing permits, births are not being registered and access to places of detention by lawyers is limited. On 25 March 2020, the government announced that asylum seekers whose visas expire after 16 March 2020 would not be penalized or arrested. Yet, security forces continued to arrest and deport undocumented migrants, justifying this as a measure to contain the spread of the virus. Xenophobic prejudices held by security officials have also led to the targeted harassment and arrest of foreign nationals and asylum seekers for petty offences, placing them in overcrowded detention centers where social distancing remains near impossible. The purpose of the lockdown is to curb the spread of the virus; further congesting already densely populated areas such as detention centers, police holding and correctional facilities circumvents that very purpose. As a result of some of the lockdown restrictions, courts are not able to serve the effective oversight role as they usually do and remand prisoners are often stuck indefinitely without judicial oversight. However, on 31 March 2020, Directions were issued in terms of Regulation 10 of the Regulations under the Disaster Management Act, 2002² which provided that "an accused person arrested for a petty offence must be released and warned to appear in court on a future date".

Lastly, a subsequent policy emerged in the Immigration Act 13 of 2002³, "Determination of Correctional Facilities as Places of Detention of Illegal Foreigners Pending Deportation", which designated various correctional facilities/centers as places of detention of "illegal foreigners pending deportation" for purposes of COVID-19. This policy is particularly problematic as South Africa's borders are closed thereby preventing deportations from occurring and once again, contradicted the cause of decongesting places of detention.

DISPROPORTIONATE IMPACT OF COVID-19 POLICIES ON UNDOCUMENTED MIGRANTS

The implementation of the above-mentioned policies has been applied unevenly among South African citizens and non-nationals. Civil society organizations have since become aware of the disproportionate impact that the lockdown and the Regulations have had on migrant communities; this has been largely due to the criminalization of foreign nationals and asylum seekers who have violated the COVID-19 related Regulations which has resulted in a slew of human rights violations and deprivations. Further, the lack of accountability mechanisms has been highlighted through countless reports written on misconduct by law enforcement. These reports documented arbitrary arrests of validly documented non-nationals and the arrest and remand of undocumented non-nationals. Further concerns have since been raised such as the indefinite detention/remand of non-nationals as well as their continued detention after scheduled release dates. This has been observed in contrast to South African citizens who, upon arrest for violation of the Regulations, have since been released.

On the other hand, in line with the prescribed Directions, almost 20,000 low risk inmates have been released from prison in order to curb the spread of the virus in prisons due to overcrowding, yet parallel to this, and as mentioned, there has been an increase in detention for migrants for petty crimes. Furthermore, there have been significant barriers in

1 Pre-COVID-19 and the national lockdown, the Department of Home Affairs was already overwhelmed with a backlog of administering permits which made life for asylum seekers even harder.

2 (GG 43107 GN 318), https://www.justice.gov.za/legislation/notices/2020/20200331-gg43191-GoN440_COGTA.pdf

3 (GG 43292 GN 512), <https://edit.laws.africa/works/akn/za/act/gn/2020/512/media/publication/za-act-gn-2020-512-publication-document.pdf>

accessing detention facilities, as well as limited capacity to monitor such detention facilities. This proves that the preventative measures that were put in place in prisons and detention facilities were tailored only towards natural citizens of the state and further amplifies the dehumanization of migrants in South Africa. According to civil society organization Sonke Gender Justice, there have been concerns regarding detainees contracting COVID-19. When the first case was detected in March 2020, prisons and detention facilities were operating at roughly at 200-300% capacity, with inmates sharing beds or sleeping on the floor. These conditions are worsened by the occurrence of other issues in prisons such as assault, sexual violence, and high rates of HIV.

Another prevalent example of how policies often disproportionately affect undocumented migrants is through birth registration. As mentioned earlier, the closure of RROs during lockdown has led to births not being able to be registered and with ports of entry being closed and many asylum seekers being detained, this poses challenges particularly for unmarried parents. On 1 September 2020, the Constitutional Court of South Africa heard an application from the Centre for Child Law to declare section 10 of the Births and Deaths Registration Act 51 of 1992 invalid and unconstitutional as it excluded unmarried fathers from registering their children under the father's surname in the absence of the mother or the mother's consent. They contended that there is an insurmountable barrier if the mother's consent or presence is required where it is impossible to do so. The court further highlighted how the DHA's lack of recognition in the civil birth registration system exposes the children to the risk of being excluded from the educational system and from accessing social assistance and healthcare.

Finally, there have been very few relief schemes available to non-nationals during the lockdown, which has resulted in an increased number of human rights concerns. Many South African citizens have qualified for economic relief schemes to assist with the economic consequences that the pandemic and subsequent lockdown have brought on. However, because migrants are not citizens, they have been excluded from the majority of effective relief. For example, the Unemployment Insurance Fund (UIF), the primary relief plan for workers who have lost their jobs due to the virus, prevents migrants from receiving any income, as it is limited to South African nationals. The immigrants that are employed by South African nationals are at the whim of their employers, where it is largely up to their discretion as to apply for the UIF. In conjunction with the harmful conditions migrants have had to live under during the pandemic, the systemic discrimination against migrants has resulted in deprivation of their most basic needs such as food, water, income, healthcare and most importantly, their liberty.

CONCLUSION

In the wake of a global health pandemic, rigid lockdown orders have highlighted concerns over the manner in which immigration detention is used as a tool to criminalize non-nationals at a time where no effective judicial oversight is possible. The surge of arrests and detention of non-nationals illustrates the urgent need to address and reform alternatives to detention for petty, administrative crimes. The continued harassment of non-nationals feeds into xenophobic biases that lead to the unnecessary and prolonged detention for migrants, along with its deplorable conditions, during a public health crisis that has claimed the lives of many.

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SPAIN: ALTERNATIVES TO IMMIGRATION DETENTION ARE THE ONLY WAY OUT

Spain has led the way in releasing migrants from immigration detention facilities during the COVID-19 pandemic. And it did so due to the ever-present pressure of civil society organizations, who counted with the Spanish Ombudsman as a powerful ally. The government and the competent judges reacted and emptied all detention facilities within weeks, but bearing in mind that it was an exceptional and temporary measure compelled by the emergency situation. That is, the release of all migrant detainees is solely a consequence of the pandemic, but never part of a strategy aiming to reduce or end detention. This has not been a priority of the Spanish authorities, who even announced the construction of a new detention facility some months before the coronavirus struck the country. Now that the country is temporarily free from immigration detention, it is time to take this opportunity to implement alternatives.

IMMIGRATION DETENTION IN SPAIN

International law mandates that detention must only be used as a last resort. European Union law, by virtue of the Return Directive¹, asserts the same principle. It is unclear whether the Spanish legislation complies with international or EU law. Spain's Immigration Act includes detention as an interim measure within a list that includes different alternatives on the same footing. Thus, the law does not state that detention can only be applied if no other less coercive means can be used. On top of that, according to the same law, detention *must* be used when removals cannot be enforced within the first three days in cases of "devolución"². In practice, however, detention in these cases is not always enforced if there is no prospective removal, and third-country nationals are usually sent to reception programs run by civil society organizations, such as Fundación Cepaim, in coordination with the Ministry of Inclusion, Social Security and Migrations. In the so-called "expulsión", detention *may* be used, and it is actually enforced over the different alternatives available. Research shows that, in practice, alternatives are rarely implemented and therefore, detention is the only measure applied. Measures such as surrendering passports and documents are not used as alternatives *per se*, as they are only implemented once migrants must be released when the maximum period of 60 days in detention has been reached.³

In Spain, immigration detention is therefore one of the measures that competent judges have at their disposal to ensure deportations. No other reason justifies the detention of third country nationals in the so-called Foreigners Internment Centers (*Centro de Internamiento de Extranjeros*, also known as CIE). After the maximum period of 60 days, migrants must be released and cannot be detained again for the same reason.

DETENTION DURING THE PANDEMIC: THE RESPONSE BY CIVIL SOCIETY AND THE STATE

Civil society organizations have been continuously reporting and warning about the heinous conditions inside the CIE,⁴ and even the Spanish Ombudsman denounced the shameful circumstances surrounding immigration detention.⁵ When the state of alarm was declared by the government on 14 March 2020, the voices against immigration detention for reasons relating to the poor, inadequate and unsafe situation of detainees grew stronger as the pandemic posed life-threatening consequences to anyone inside. News about migrant detainees and workers who tested positive proved civil society right about the CIE as being completely unsuited to prevent the spread of the virus within their walls.

Moreover, detention had lost its legal basis altogether as it could no longer ensure deportations. By the time Spain closed its borders on 18 March, over 60 countries had already announced some kind of travel restriction to people arriving from Spain. By the beginning of April, the number of countries which either banned their entry or canceled air and maritime connections with Spain rose to over 150.⁶ Therefore, travel was severely restricted, pending removals were canceled, and prospective ones were ruled out. For that reason, migrant detainees had to be released. And they were. Not as early as civil society organizations and activists demanded, but within six weeks, every CIE was empty for the first time in history.

Judges are the competent authorities to issue both detention and release orders of third-country nationals. They detain migrants when public prosecutors ask for such interim measures. Detentions stopped soon, as the Public Prosecutor's Office issued an internal note on 31 March ordering public prosecutors across the country to refrain from seeking the detention of migrants who were to be expelled from the country.⁷ The number of migrant detainees started to drop as judges found that detention could not be sustained as an interim measure to ensure deportations that no longer were feasible. In addition, one judge also announced the release of migrants from one particular CIE on humanitarian grounds,⁸ as its facilities were not fit to prevent the spread of COVID-19 and to keep detainees safe from any threat to public health, just as social organizations and the Spanish Ombudsman had previously concluded on several occasions. The judge further noted that the conditions inside the CIE favored the transmission of the virus and that he based his decision solely on reasons relating to public health, public order and humanitarian grounds. That is, even if removals could be enforced, migrant detainees had to be released.

1 Directive 2008/115/EC, also known as the Return Directive sets forth the standards for returning third-country nationals to their home countries. Article 15 states that "unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States *may* only keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process".

2 The Spanish law establishes a separate disciplinary procedure for third-country nationals. The term *devolución* refers to the removal order issued against a person who has been intercepted while entering Spain's territory without an authorization. This is the case of migrants who are intercepted at sea or at the border. On the other hand, *expulsión* is used to describe the procedure initiated against a third-country national who is found on the territory without a permit to stay in the country.

3 European Commission (2013). Evaluation on the application of the Return Directive (2008/115/EC). Final Report. European Commission – DG Home Affairs, p. 31-32.

4 For a better understanding of life inside a CIE, see reports by the Jesuit Migrant Service in Spain. The latest one, *Informe CIE 2019: Diez años mirando a otro lado*, is available at: <https://bit.ly/3ic0sbj>.

5 Defensor del Pueblo (2019). *Informe anual 2018. Mecanismo Nacional de Prevención*. Available at: <https://bit.ly/3haLxwT>.

6 Las Provincias (16 April 2020). Los países que prohíben la entrada a españoles por la crisis del coronavirus. Available at: <https://bit.ly/3byV7bG>.

7 Fiscalía General del Estado (2020). Nota interna de extranjería núm. 1/2020. Del internamiento cautelar administrativo de extranjeros; de la sustitución total de las penas privativas de libertad por la expulsión; y de la sustitución del proceso penal por la expulsión. Available at: <https://bit.ly/2ROZaEe>.

8 Juzgado de Instrucción nº. 8 (Las Palmas de Gran Canaria). Procedure 455/2020, 31 March 2020. Available at: <https://bit.ly/3c6wDqm>.

The release process followed a similar pattern across the country. Migrants who had a home to go to were the first ones to be set free. If they lacked any relatives in the country, they were sent to social organizations running reception projects, such as the humanitarian assistance program for undocumented migrants at Fundación Cepaim, a nationwide organization focusing on social inclusion and intercultural coexistence, which received 46 migrant detainees in Madrid, Valencia and Murcia.

THERE IS AMPLE ROOM FOR ALTERNATIVES

Civil society organizations and activists have welcomed this approach, although they feel it is a measure that has been compelled by the situation and the lack of legal basis for immigration detention while deportations cannot be enforced, instead of being part of a wider strategy by the government to gradually reduce detention. In practice, detention occupies the whole spectrum of applicable interim measures, and there is room for alternatives to fill the big gap left during the pandemic.

As the former Special Rapporteur on extreme poverty and human rights put it after his visit to Spain in early 2020, civil society in this country is “one of the most vibrant” he had ever encountered.⁹ Indeed, social organizations have the capabilities, the experience and the willingness to pilot alternative-to-detention programs first, and to ultimately manage established community-based alternatives in the future. For instance, the aforementioned nationwide humanitarian assistance program managed by the Ministry of Inclusion, Social Security and Migrations and implemented by organizations such as Fundación Cepaim has been running for over a decade. It provides accommodation and covers the basic needs (food, hygiene and local travel) of its beneficiaries, who are assisted during three months by a team of social workers and, sometimes, even by lawyers and psychologists. The programme provides migrants released from CIE with skills that would support their social inclusion in Spain. Social organizations have the staff and tools needed to ensure successful pilot programs.

IT IS TIME FOR ALTERNATIVES

There are no migrant detainees now in Spain for reasons relating to their immigration status. Detention is not a measure that can be taken to ensure deportations in the near future due to the pandemic and its uncertain nature. It is now the time for the Spanish competent authorities to make use of this moment as an opportunity to implement community-based alternative-to-detention pilot programs. Spain led the way releasing migrants from detention, and it should at least give way to alternatives in order to comply with human rights standards in this field. The pandemic has shown that alternatives to detention are the only way out and a shift away from detention is needed now more than ever.

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⁹ OHCHR (2020). Statement by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights, on his visit to Spain, 27 January – 7 February 2020. Available at: <https://bit.ly/2R75tWG>.

THAILAND'S RESPONSE TO COVID-19, URBAN REFUGEES AND ASYLUM SEEKERS, AND IMMIGRATION DETENTION

INTRODUCTION

Thailand is home to approximately 5,000 urban refugees and asylum seekers (collectively, refugees), with over 200 refugees detained in immigration detention centres.¹ A rights-based assessment of the country's social security response to the COVID-19 pandemic reveals the continued sidelining of the needs of refugees who experience marginalisation in Thai society.²

During the pandemic, the Royal Thai Government (RTG) has continued arresting and detaining refugees for immigration-related offences. Further, while some precautions have been implemented to prevent the risk of an outbreak in detention, these precautions fall short of human rights and public health standards. This is despite repeated advocacy from various human rights groups for the RTG to halt arrests of refugees, consider alternatives to detention for detained refugees, and improve conditions in detention facilities.

COVID-19 INFECTIONS IN THAILAND

The RTG has generally managed to contain local transmissions of the COVID-19 virus better than its neighbouring countries in Southeast Asia. At the time of writing (12 September 2020), the country has reported 3,461 cases.³ UNHCR Thailand reported in June 2020 that there were 2 reported cases of COVID-19 amongst refugees.⁴ These numbers do not include the 65 detainees in Songkhla immigration detention centre who tested positive for COVID-19 in May 2020.⁵ According to Human Rights Watch, these 65 detainees include 18 ethnic Rohingya women and children.⁶

SOCIAL SECURITY RESPONSE TO COVID-19

The RTG's social security response to the pandemic has not sufficiently included the needs of urban refugees. All foreigners, including refugees, can access free COVID-19 testing and treatment if they meet the RTG's criteria.⁷ However, many refugees fear accessing testing and treatment due to financial reasons if they do not meet the RTG's criteria, fear of being arrested, and lack of adequate information.⁸ These challenges are consistent with the observations by the UN Committee on Economic, Social and Cultural Rights (CESCR) that refugees in Thailand "still face obstacles in accessing basic health care services".⁹ Further, the RTG has not secured the underlying determinants of health for refugees, including the interrelated rights to work, adequate standard of living, housing, water, and sanitation.¹⁰ The advent of COVID-19 has done little to shift the RTG's perception of refugees in Thailand.

ARRESTS

Refugees continue to be arrested and detained under the Immigration Act B.E. 2522.¹¹ These arrests have continued despite attempts at advocacy and interventions from UNHCR and NGOs. Further, the majority of refugees have not benefited from the RTG's leniency in granting visa amnesties to foreigners whose visas expired from 26 March 2020, as these amnesties do not apply to refugees who already entered Thailand before January 2020.¹² On the contrary, they are at a higher risk of arrest, as the immigration authorities have warned that there will be a crackdown for overstaying.¹³

- 1 These numbers are current as of 15 June 2020: UNHCR, *Protection Working Group – COVID-19 Response Coordination Sub-group for Urban Asylum-seekers and Refugees*, 15 June 2020, https://www.unhcr.org/th/wp-content/uploads/sites/91/2020/08/Urban-Dashboard_for_COVID-19-15062020.pdf. These numbers do not include refugees living in the nine temporary shelters along the Thai-Myanmar border. It also does not include groups of individuals who are unable to officially register with UNHCR Thailand, including ethnic Rohingya persons.
- 2 This is despite Thailand's obligation under the International Covenant on Economic, Social and Cultural Rights (ICESCR) to take into special consideration the needs of the most vulnerable or marginalised, such as refugees. Committee on Economic, Social and Cultural Rights (CESCR), *CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, <https://www.refworld.org/pdfid/4538838d0.pdf>.
- 3 Today, *Thailand finds second Covid-19 infection after long absence*, 11 September 2020, <https://www.todayonline.com/world/thailand-finds-second-covid-19-infection-after-long-absence>.
- 4 UNHCR, *Protection Working Group – COVID-19 Response Coordination Sub-group for Urban Asylum-seekers and Refugees*, 15 June 2020, https://www.unhcr.org/th/wp-content/uploads/sites/91/2020/08/Urban-Dashboard_for_COVID-19-15062020.pdf.
- 5 Human Rights Watch, *Thailand Should Free Detained Migrants Amid Pandemic*, 8 May 2020, <https://www.hrw.org/news/2020/05/08/thailand-should-free-detained-migrants-amid-pandemic>.
- 6 Ibid.
- 7 Daron Tan and Manachaya Yankittikul, *A Looming Catastrophe: COVID-19, Urban Refugees, and the Right to Health in Thailand*, 11 May 2020, <https://rli.blogs.sas.ac.uk/2020/05/11/a-looming-catastrophe-covid-19-urban-refugees-and-the-right-to-health-in-thailand/>.
- 8 UNHCR, *COVID-19 Impact Assessment: Urban Refugees and Asylum-Seekers in Thailand*, July 2020, https://www.unhcr.org/th/wp-content/uploads/sites/91/2020/08/UNHCR-Thailand-Urban-COVID-19-Impact-Assessment_July-2020.pdf, at 16.
- 9 CESCR, *Concluding observations on the combined initial and second periodic reports of Thailand*, UN Doc. E/C.12/THA/CO/1-2, 19 June 2015, at para 29.
- 10 Daron Tan and Manachaya Yankittikul, *A Looming Catastrophe: COVID-19, Urban Refugees, and the Right to Health in Thailand*, 11 May 2020, <https://rli.blogs.sas.ac.uk/2020/05/11/a-looming-catastrophe-covid-19-urban-refugees-and-the-right-to-health-in-thailand/>. See also UNHCR, *COVID-19 Impact Assessment: Urban Refugees and Asylum-Seekers in Thailand*, July 2020, https://www.unhcr.org/th/wp-content/uploads/sites/91/2020/08/UNHCR-Thailand-Urban-COVID-19-Impact-Assessment_July-2020.pdf, at 23 – 24.
- 11 Immigration Act B.E. 2522 (1979). An English translation is available at: https://web.krisdika.go.th/data/outside/outside21/file/Immigration_Act_B.E._2522.pdf.
- 12 James Morris and Son Nguyen, *Stranded foreigners must get embassy letter, new visa or leave Thailand to avoid arrest by police*, 14 September 2020, <https://www.thaiexaminer.com/thai-news-foreigners/2020/07/13/stranded-foreigners-letter-from-embassies-or-leave-thailand-to-avoid-arrest/>.
- 13 Ibid.

DETENTION PROCEDURES FOR NEW DETAINEES

The RTG have put in place precautions to avoid the introduction of the virus into detention centres from newly admitted detainees. These include ensuring that immigration officers who work closely with new detainees wear personal protective equipment, face masks or face shields, and gloves. The officers will check the temperature of new arrivals and observe whether they display any relevant symptoms. If new detainees have a fever above 37.5°C or display any COVID-19 symptoms, the officers will send them directly to the hospital. New detainees are then detained in a reception cell for 15 days to observe whether they display any COVID-19 symptoms, separate from existing detainees.¹⁴

FURTHER PRECAUTIONS TAKEN

The RTG has also introduced other measures to stem the risk of an outbreak in detention. All officers are required to take their temperature before entering the facility and to wear masks at all times. At the time of writing, immigration detention centres have closed for visitors to avoid infection to the detainees. When visitation was permitted, all visitors had their temperatures checked and were required to wear masks at all times. The authorities also limited the number of visitors to 20 people at one time and enforced social distancing restrictions for visitors.¹⁵ However, the RTG's ban on visitors to detention centres has not eliminated the risk of infection, because there is still a constant flow of detention staff in and out of the centres.¹⁶

DETENTION CONDITIONS

Conditions in detention remain extremely unpleasant and overcrowded. According to reports received from individuals who have been detained, immigration officers routinely clean the detention areas with salt and water. Further, detainees who display COVID-19 symptoms will be immediately sent to the hospital.

However, our reports indicate that social distancing is not observed in detention and is virtually impossible because of the overcrowding in cells. Additionally, detainees are not provided with masks, soap, or hand sanitisers. According to our reports, this is the case in various immigration detention centres across Thailand, including Suan Phlu, Prachuap Kirikhan, Maesot, and Ranong.

BAIL AND ALTERNATIVES TO DETENTION

The RTG has not released all refugees from detention, and has not increased their use of non-custodial alternatives to detention. This is in spite of attempts from NGOs and the detainees' families to apply for bail on the basis of COVID-19. Thus, the bail policy remains the same as before COVID-19: only those with serious medical conditions, and mothers and children can be successfully bailed out of detention. Mothers and children are allowed to be bailed out under the Memorandum of Understanding among various ministries of the RTG ("MOU").¹⁷ We are heartened by reports that there have been no children who are persons of concern to UNHCR in immigration detention since May 2020. However, this does not include ethnic Rohingya women and children who are detained in Songkhla detention centre, as reported by Human Rights Watch in May 2020.¹⁸

ADVOCACY EFFORTS FROM HUMAN RIGHTS ORGANISATIONS

Human rights organisations have been advocating for the RTG to take a more refugee-inclusive and rights-based approach to its COVID-19 response. For instance, Human Rights Watch urged the RTG to release detained refugees and migrants, ensure adequate social distancing in detention, ensure access to health services, and consider a temporary moratorium on police checks for migration documents.¹⁹ UNHCR Thailand recommended civil society organisations to continue advocating for the RTG not to penalise refugees for illegal stay, particularly those seeking health care.²⁰ Several refugee rights advocates called for the RTG to halt arrests of refugees for immigration-related offences, ensure non-discriminatory access to healthcare, safeguard refugees' underlying determinants to health, implement alternatives to detention for refugees, and ensure an adequate standard of living in immigration detention centres.²¹

14 Thai Immigration Bureau, Department of Youth and UNICEF, *Manual for prevention operation and the child protection in the immigration detention centre under the COVID19 situation*, 3 June 2020.

15 Ibid.

16 Daron Tan and Manachaya Yankittikul, *A Looming Catastrophe: COVID-19, Urban Refugees, and the Right to Health in Thailand*, 11 May 2020, <https://rli.blogs.sas.ac.uk/2020/05/11/a-looming-catastrophe-covid-19-urban-refugees-and-the-right-to-health-in-thailand/>.

17 This MOU is signed by the Royal Thai Police, Ministry of Social Development and Human Security, Ministry of Foreign Affairs, Ministry of Interior, Ministry of Health, Ministry of Education, and Ministry of Labour on 21 January 2019. This MOU is implemented to protect the rights of the child, especially for the alternative to detention to certain types of children, including unaccompanied minors, separated children, refugee children, children who are victims of human trafficking, and vulnerable children. See Thai Immigration Bureau, Department of Youth and UNICEF, *Manual for prevention operation and the child protection in the immigration detention centre under the COVID19 situation*, 3 June 2020.

18 Human Rights Watch, *Thailand Should Free Detained Migrants Amid Pandemic*, 8 May 2020, <https://www.hrw.org/news/2020/05/08/thailand-should-free-detained-migrants-amid-pandemic>.

19 Ibid. See also, *Urgent call for COVID-19 response for Refugees and Asylum Seekers*, 22 May 2020, https://www.hrw.org/sites/default/files/media_2020/06/200522%20Letter%20Thailand%20Prime%20Minister_0.pdf.

20 UNHCR, *COVID-19 Impact Assessment: Urban Refugees and Asylum-Seekers in Thailand*, July 2020, https://www.unhcr.org/th/wp-content/uploads/sites/91/2020/08/UNHCR-Thailand-Urban-COVID-19-Impact-Assessment_July-2020.pdf, at 8.

21 Daron Tan and Manachaya Yankittikul, *A Looming Catastrophe: COVID-19, Urban Refugees, and the Right to Health in Thailand*, 11 May 2020, <https://rli.blogs.sas.ac.uk/2020/05/11/a-looming-catastrophe-covid-19-urban-refugees-and-the-right-to-health-in-thailand/>. See also, The Coalition for the Rights of Refugees and Stateless Persons, *Open Letter*, 18 May 2020, <https://www.facebook.com/crsp.thailand/posts/2796172823946244>.

In particular, we noted in March 2020 that halting visitors to detention is insufficient as the constant flow of detainees and staff in and out of the centres may still result in infections.²² This concern later manifested in Songkhla detention centres, where 65 detainees tested positive for COVID-19 about two weeks after an immigration officer who tested positive for COVID-19 visited the facility.²³

ASSESSMENT AND RECOMMENDATIONS

Despite these advocacy efforts, the RTG's COVID-19 response regarding refugees can be characterised as reactive rather than proactive, and falls short of international human rights and public health standards. On the one hand, we commend the immigration authorities' attempts to implement safeguarding measures in detention. In particular, the RTG's undertaking of risk assessments of new detainees, including collecting information on their medical history, their recent travel history, and possible contact with confirmed cases in the last 14 days, is in line with WHO guidelines.²⁴

On the other hand, the RTG's response can be improved further to eliminate the risk of an outbreak in these detention centres, especially in the event of a second wave of the virus in Thailand. We recommend that the authorities provide new and existing detainees with masks, gloves, soap, and hand sanitiser, and ensure that they are able to observe physical distancing, in line with WHO guidance.²⁵ The RTG should also consider heeding the CESCR's recommendations in 2015 to ensure "adequate living conditions in detention centres",²⁶ which are even more relevant now in the face of the pandemic.

Further, in line with guidance from the UN agencies,²⁷ we encourage the RTG to consider releasing all refugees from immigration detention, or, at the very least, increase the use of alternatives to detention for particularly vulnerable groups of detainees. This will also assist in easing the overcrowding in detention centres and reduce the strain on immigration authorities to implement adequate social distancing measures.

We reiterate the calls on the RTG to respect, protect, and fulfill the right to health of refugees during this pandemic. This will ultimately have an overall positive impact on the public health of the whole country. We further urge the RTG to see through its implementation of the national screening mechanism, which will hopefully regularise the legal status of individuals who cannot return to their countries because they fear danger from persecution.²⁸

The authors would like to personally thank Phillips, an individual who has sought asylum in Thailand. Phillips was instrumental in gathering the information about the precautions taken by immigration authorities in immigration detention centres and the living conditions in detention centres. The views expressed in this article belong to the authors and do not necessarily reflect those of the authors' employer or organisation.

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22 Daron Tan and Manachaya Yankittikul, *A Looming Catastrophe: COVID-19, Urban Refugees, and the Right to Health in Thailand*, 11 May 2020, <https://rli.blogs.sas.ac.uk/2020/05/11/a-looming-catastrophe-covid-19-urban-refugees-and-the-right-to-health-in-thailand/>.

23 Human Rights Watch, *Thailand Should Free Detained Migrants Amid Pandemic*, 8 May 2020, <https://www.hrw.org/news/2020/05/08/thailand-should-free-detained-migrants-amid-pandemic>.

24 World Health Organization, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention*, 15 March 2020, https://www.euro.who.int/__data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=1, at 8.

25 *Ibid.*, at 19.

26 CESCR, *Concluding observations on the combined initial and second periodic reports of Thailand*, UN Doc. E/C.12/THA/CO/1-2, 19 June 2015, at para 28.

27 International Organization for Migration, *OHCHR, IOM, UNHCR and WHO – Joint Press Release*, 31 March 2020, <https://www.iom.int/news/rights-and-health-refugees-migrants-and-stateless-must-be-protected-covid-19-response>.

28 *Thailand: Regulation of the Office of the Prime Minister on the Screening of Aliens who Enter into the Kingdom and are Unable to Return to the Country of Origin B.E. 2562 [Thailand]*, 25 December 2019, <https://www.refworld.org/docid/5e675a774.html>.

COVID-19 AND THE MULTI-ACTOR EMERGENCY RESPONSE IN TUNISIA: AN EFFECTIVE STEP FOR A MORE AWARE AND INCLUSIVE DEBATE ON MIGRATION?

INTRODUCTION

In mid-March 2020, despite very low numbers of people in the country being infected with COVID-19, a nationwide lockdown was imposed in Tunisia: all recreational venues, catering outlets and non-essential workplaces were closed, while non-essential journeys on foot and by car were banned. These measures, along with others, have had a particularly severe impact on migrants. Many work in precarious conditions in the informal sector and saw their incomes drop to zero for several consecutive months. This situation was compounded by the other problems faced by migrants, such as the language barrier, making it harder for them to access information about health and safety; difficulties obtaining health care due to their irregular status; living conditions which did not always allow them to take precautionary measures to protect their health; and having to contend with rising discrimination. During the COVID-19 crisis, the usual economic, legal and social difficulties experienced by migrants have become increasingly acute.

IMPACT AND CONSEQUENCES OF THE COVID-19 CRISIS ON MIGRANTS IN TUNISIA

The measures taken by the Tunisian government to address the pandemic have had a huge impact on many migrants' lives. According to several civil society and international organisations, including Terre d'Asile Tunisia, the Association for Leadership and Development in Africa, the Tunisian Red Crescent, the International Organisation for Migration, Médecins du Monde and By Lhwem, despite very few migrants suffering from COVID-19 in spring 2020, the social crisis was already more than apparent by that time.

Terre d'Asile Tunisia observed the following direct consequences of the crisis on migrants: loss of employment and income during and after the lockdown, exacerbating precarious living conditions and causing some migrants to lose their housing. Requests for voluntary return assistance rose as a result of these difficulties and have yet to return to normal levels due to ongoing restrictions and sporadic boat departures to Europe.

Terre d'Asile Tunisia has also witnessed an increase in discrimination towards migrants, especially black migrants, both in their everyday lives and in their access to health care, as noted by the Mixed Migration Centre (MMC)¹. Migrants have been automatically associated with COVID-19 and viewed as potentially contagious. Other consequences of the crisis include a rise in community violence and an increase in the number of pregnant single women.

In legal terms, there have been problems registering births with the local authorities and following up on court cases, as the courts have been closed for several months.

A RAPID, TAILORED RESPONSE FROM CIVIL SOCIETY ORGANISATIONS ACROSS TUNISIA

A range of initiatives were quickly launched to mitigate this situation: some were organised spontaneously by citizens, while others were put in place by established civil society organisations or local and national authorities. Despite being largely invisible in Tunisian society,

migrants were the target of a wave of solidarity. They were therefore able to benefit from emergency aid overseen by national or community bodies. For example, in Grand Tunis, several community associations grouped together to create the COVID-19 African Solidarity Unit. The unit gathered requests from people in difficult circumstances, launched a fundraising appeal and managed the distribution of food to beneficiaries². In Sfax, several associations (including Terre d'Asile Tunisia, Association Innocence, and Green Crescent) also identified the needs present among migrants and jointly organised distributions of provisions, with coordination and facilitation from the Sfax municipal council. However, levels of mobilisation varied between regions in Tunisia and the restrictions on mobility in place prevented people on the ground from reaching affected groups in some regions, especially those in rural areas and in the south of the country.

Very little public material assistance was available to foreigners. This is why fundraising appeals were launched so quickly. Donations from individuals, embassies and consulates, associations, town councils, banks and companies provided funding for food and helped with healthcare costs. Assistance with rental payments also helped to protect people from eviction and potential detention, among other risks.

Other services offered to migrants by civil society organisations included counselling and psychological support, mediation (in particular with landlords), awareness raising and mobilisation of community structures, information campaigns and translation of decisions made by the government (which were unavailable to those who did not speak Arabic).

Coordination mechanisms were quickly put in place between different support structures to ensure equitable distribution of available resources. There were significant difficulties involved, especially when it came to sharing beneficiaries' personal information: data protection became an obstacle to effective aid distribution.

Nevertheless, this emergency aid made a major impact. Situations of extreme precarity were generally evaded. Evictions were rare. The public sector, national organisations and community associations quickly coordinated with one another and organised themselves as the weeks went on. Community actors were among the main providers of aid, despite being offered very limited inclusion in decision-making mechanisms prior to the crisis.

COLLABORATION BETWEEN CIVIL SOCIETY ORGANISATIONS AND GOVERNMENT AUTHORITIES

One of the most notable aspects of the emergency initiatives taken during the spring 2020 crisis was the unprecedented practice of collaboration between civil society organisations and government authorities. Spearheaded by several associations and local collectives, a 'Committee to Monitor the Humanitarian Situation of Foreigners Living in Tunisia' was quickly founded, led by the Minister of Human Rights. This initiative culminated in the creation of an online platform allowing migrants' needs to be surveyed and aid received from private sector donors to be distributed to them.

1 <http://www.mixedmigration.org/resource/4mi-snapshot-refugees-and-migrants-access-to-health-services-in-tunisia-a-focus-on-discrimination-and-covid-19/>

2 An overview of some local and national initiatives launched is available here: <https://www.terre-asile-tunisie.org/index.php/38-actualites/actualites-mdm/588-consequences-de-la-pandemie-pour-les-migrants-et-initiatives-solidaires>

The authorities' efforts to assist migrants during the crisis are without parallel and represent a significant step forward for migrants' inclusion in Tunisian society more generally. However, these efforts were impacted by several factors: the need to collect personal data to avoid multiple donations to a single person; the irregular status and risk of detention and expulsion of many beneficiaries; the insufficient amount of private funds raised and the almost complete absence of public money; and the failure to apply this aid mechanism in regions outside the capital. Finally, the presence of multiple public actors working with migrants and the absence of a single, central body to manage the national migration strategy hindered the implementation of a faster, more effective response to the crisis.

SPECIFIC ACTIONS TO ASSIST MIGRANTS IN DETENTION

Migrants in detention were the target of specific action by several associations in Tunisia. This was part of a broader international appeal to provide assistance to migrants held in detention centres where their lives are endangered by poor sanitary conditions. In the country, people subject to expulsion are held in a detention centre (the 'Ouardia Centre') until they are able to find a way of funding their repatriation. During this period, field missions to the Ouardia Centre were organised to provide emergency aid and to ensure that migrants' rights were being protected. This allowed Terre d'Asile Tunisia, for example, to help 50 detainees by distributing hygiene and protection kits, as well as food, and to record their testimonies in order to raise wider awareness and improve coordination between associations. Several associations working together as a coalition (Terre d'Asile Tunisia, Lawyers without Borders, World Organisation against Torture, and Tunisian Forum for Economic and Social Rights) lobbied for improved measures to protect the health of the people held in Ouardia, demanding the immediate release of the detainees in view of the exceptional circumstances. However, the emergency situation also acted as a trigger for broader, more far-reaching legal and political advocacy to highlight the irregularities of migrant detention, considered to be abusive,³ by this coalition of associations, who called for an immediate end to the practice.

In early June 2020, the coalition of organisations helped a group of 22 migrants detained in Ouardia to take their cases to the administrative court. On 16 July, the court issued a historic ruling, ordering their detention to be suspended on the grounds that it contravened Tunisian law and the country's international commitments. The migrants were released several weeks later.

Besides the specific outcome of this action, it is also relevant to note the collaboration between civil society organisations and public bodies, in this case the National Authority for the Prevention of Torture (INPT), which helped to make the lobbying campaign a success.

CONCLUSION: WHAT NEXT?

The response to the COVID-19 crisis in spring 2020 was beset by obstacles and difficulties. Nevertheless, it saw the emergence of new, promising dynamics for the future of migration in Tunisia. There was a clear sense of solidarity towards the migrant population, migrants were included in the decisions affecting them within associations, and unprecedented levels of collaboration emerged between civil society organisations and the authorities. The COVID-19 crisis also provided an opportunity for lobbying for an improved response to migration by the authorities and better conditions for work and stay for migrants, as well as challenging existing practices that restrict individual freedoms, such as detention. To varying extents, this lobbying appears to have made an impact on the Tunisian authorities, who have been open to more inclusive discussions with civil society organisations, including community associations. The efforts of civil society organisations to transform these intentions into action must continue in the future, in collaboration with town councils which are becoming more and more sensitive to their responsibility for local migration governance. These organisations must also continue to closely monitor changes in the discourse and perceptions towards migrants to ensure that the discrimination they suffer, which worsened in spring 2020, is brought to an end.

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This article has been translated from the original in French

³ Indeed, there are no legal grounds for this practice in Tunisian law. Detainees do not receive written notification of their confinement and are also unable to challenge the deprivation of their liberty. Moreover, the Ouardia Centre is not legally registered as a detention centre. Officially speaking, it is a 'reception and orientation centre', which is currently under the oversight of the Ministry of the Interior. In practice, however, it is a place of incarceration.

UK: CIVIL SOCIETY ENGAGEMENT ON IMMIGRATION DETENTION AMID COVID-19

UK civil society engagement on immigration detention is dynamic and responsive. Several NGOs regularly deliver support and services inside detention centres¹, and there are many more involved in advocacy and campaigning for detention reform². As a result, there was a robust civil society response at the early stages of the COVID-19 pandemic, advocating on behalf of people in detention and making widespread calls for release. Inside detention, effective social distancing was impossible, with restricted facilities and limited hygiene measures putting people at increased risk³. There were also a number of concerns about effective quarantine and prolonged periods of isolation, and the impact this might have on mental health, particularly in the context of the UK having no time limit on immigration detention.

The UK Government 'lockdown' effectively also shut down all support within immigration detention: legal and social visits were suspended, and people in detention were given limited access to elements of the daily regime. NGOs in contact with people at this time reported higher levels of anxiety, stress and most worryingly, cases of self-harm⁴. Volunteer visitor groups – part of the Association of Visitors to Immigration Detainees (AVID) national network – began offering telephone or skype support where possible. This ensured that there was at least some level of continued support for people in detention during the crisis. As the crisis progressed and the Government began to facilitate release on an unprecedented scale, some groups also began to offer support for those leaving detention, frantically working to fill a gap as many were released into effective destitution and further risk.

Throughout the crisis, information from the Government and detention centre management was sparse. Groups who had previously delivered services inside centres noted a downturn in communication and the absence of any clear information or guidance became an increasing problem, making it difficult for groups to prioritise support and to be able to identify those who may be most vulnerable. As the crisis deepened, despite collective attempts by NGOs to monitor numbers and share information, it became increasingly difficult to ascertain the extent to which the COVID-19 crisis had reached inside detention.

With borders closing and flights suspended across the globe, the necessity and lawfulness of continued detention were also called into question. This was especially pertinent at the peak of the pandemic, as the prospect of imminent removal from the UK for people pending deportation reduced significantly. Human rights charity Detention Action launched two legal challenges in March 2020 requiring the Home Office to identify and release all those with underlying health conditions and to review the lawfulness of detention of all others given the impossibility of removals⁵.

While this legal challenge did not achieve its intended outcome of release for all, it certainly added great pressure to the Government and resulted in mass releases of people from immigration detention. As of May 2020, there were only 368 people in immigration detention, which is the lowest number within the past decade⁶.

Alongside these two major legal challenges, civil society voices from across the spectrum continued to exert pressure on the Government to release people from detention. Central to this was the contribution made by people with lived experience of immigration detention. For example, the 'These Walls Must Fall' group in South Yorkshire wrote to the Home Secretary adding much needed lived experience voice to the debate⁷. They used their first-hand experience of detention to highlight that it is impossible to have spatial distancing or self-isolation in detention due to people having to share cells and rooms, multiple people sharing toilets, shower rooms, dining facilities, exercise yards and other spaces. The advocacy group Freed Voices made similar calls to the Home Secretary in a letter drawing attention to the 'risk to life' of continued removals⁸. Several other NGOs voiced their frustrations and concerns in writing, including a coalition of NGOs and lawyers coordinated by Bail for Immigration Detainees who highlighted the 'very real risk of an uncontrolled outbreak of COVID-19 in immigration detention'⁹.

IMMIGRATION DETENTION IN THE 'NEW NORMAL': AVOIDING BUSINESS AS USUAL?

Despite numbers reaching an all-time low in April 2020, immigration enforcement resumed as the UK emerged from lockdown. Even by the end of June 2020, numbers were slowly crawling back up again, with 698 people once again in detention across the UK¹⁰. While these numbers are still relatively low, it remains to be seen whether the suspension of some elements of the hostile environment and the facilitation of large-scale releases at the peak of COVID-19 will lead to any long-term changes. Many are worried that the UK is returning to "business as usual", ignoring the opportunity to consider how this reduction in numbers in detention may be maintained.

To this end, 32 organisations have written collectively to the Immigration Minister to emphasise that the present situation provides an opportunity for collaborative thinking around some of the long-standing problems within the immigration detention system, including substantive issues with bail accommodation; flaws in pre-detention screening for vulnerability; ongoing issues with the Adults at Risk policy and other safeguards to identify and protect vulnerable people in detention¹¹.

1 See www.aviddetention.org.uk

2 See www.detentionforum.org.uk

3 See, for example: AVID (April 2020) http://www.aviddetention.org.uk/sites/default/files/images/AVID%20member%20letter_COVID19_FINAL.pdf and INQUEST (March 2020) <https://www.inquest.org.uk/covid-19-letter>

4 https://twitter.com/RefugeeTales/status/1255470935467012096?ref_src=twsrc%5Etfw%7Ctwtcamp%5Etweetembed%7Ctwtterm%5E1255470935467012096%7Ctwgr%5Eshare_3&ref_url=https%3A%2F%2Fwww.thecanary.co%2Ftrending%2F2020%2F04%2F30%2Fdetention-centre-detainees-terrified-as-coronavirus-spreads%2F

5 <https://detentionaction.org.uk/2020/05/12/update-immigration-detention-covid-19-and-where-we-stand-now/>

6 <https://detentionaction.org.uk/2020/05/12/update-immigration-detention-covid-19-and-where-we-stand-now/>

7 <https://detention.org.uk/these-walls-must-fall-yorkshire-statement-on-immigration-detention-and-covid-19/>

8 <https://detentionforum.org.uk/2020/04/23/open-letter-on-covid-19-to-the-home-secretary-from-freed-voices/>

9 <https://www.theguardian.com/world/2020/mar/14/coronavirus-call-to-release-uk-immigration-centre-detainees>

10 <https://www.gov.uk/government/publications/immigration-statistics-year-ending-june-2020/how-many-people-are-detained-or-returned>

11 https://hubble-live-assets.s3.amazonaws.com/biduk/redactor2_assets/files/1213/Detention_letter_to_Chris_Philp_MP_FINAL.PDF

NGOs are asking for the opportunity to meet with Government and to use this juncture as a chance to strategically consider the necessity of detention. At the time of writing there has been no response from the UK Government.

Against this backdrop, some recent changes to the UK's detention centres are worth noting. In July 2020 it was announced that a large facility in Lincolnshire, Morton Hall, would be re-roled from a detention centre to a foreign national prison¹². In August 2020 the notorious Yarls Wood, the UK's only dedicated detention centre for women, changed its status to a short-term holding facility for people reaching the UK via Channel crossings¹³. These developments have created uncertainty amongst civil society, with initial celebrations about closures almost immediately followed by an unease about immigration detention in other forms.

The challenge now for civil society is to ensure that the learnings from the reduction in numbers in immigration detention during COVID-19 can be captured and utilised. It could also be an opportunity for the Government to consider more broadly how it might manage people subject to immigration control in the community rather than via indefinite detention, building on the alternatives to detention pilots it has already committed to. Whether either will rise to the challenge remains to be seen.

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¹² <https://www.bbc.co.uk/news/uk-england-lincolnshire-53517836>

¹³ <https://www.theguardian.com/uk-news/2020/aug/18/yarls-wood-to-house-arrivals-from-small-boats-crossing-channel>

HOW PRIVATE PRISONS ARE EXACERBATING COVID-19 IN THE UNITED STATES AND BEYOND

The United States maintains the largest immigration detention infrastructure in the world.¹ Since the first person contracted COVID-19 in U.S. immigration detention in March 2020, Freedom for Immigrants has been monitoring the U.S. government's incompetent and lethal response to the pandemic in this supposed civil form of imprisonment.²

THE PANDEMIC HIGHLIGHTS PROBLEMS WITH PRIVATE PRISONS

Over 70 percent of people in U.S. immigration detention are caged in private prisons.³ In addition, many government-run facilities have components of their services managed by private contractors.⁴ We have found significant deficiencies in the responses to the pandemic by both private and public facilities, underscoring that the problems are systemic. However, the influence of private prisons and private prison contractors in compounding the effects of COVID-19 in U.S. immigration detention cannot be overstated.

The U.S. government has refused to track or make public information on the number of positive COVID-19 cases among Immigration & Customs Enforcement (ICE)'s third-party contract staff. In April, an ICE spokesperson said that the agency does not have an obligation to report instances in which private contract staff test positive for COVID-19.⁵ Later that month, two guards at a private immigration detention facility in Louisiana died from COVID-19.⁶

Essentially, the U.S. government has decided to adopt a head-in-the-sand approach to tracking the origins of COVID-19 cases in immigration detention. This is aggravated by the unwillingness of private prison contractors to test people in immigration detention.

For example, after an apparent suicide at the Mesa Verde Detention Facility in California,⁷ ICE lawyers advised the agency to initiate COVID-19 testing for everyone detained there.⁸ However, representatives of the private health care company Wellpath—which contracts with ICE at Mesa Verde—expressed concern that mass testing would result in high numbers of positive COVID-19 cases and that the GEO Group-run facility was not equipped to implement quarantines.

As a result, ICE chose not to administer testing at Mesa Verde. It is tragically unsurprising, then, that when a federal court judge ordered testing, more than half of the people detained at the facility tested positive.⁹

Mesa Verde is not an outlier. Since March 2020, approximately 5,640 people of the over 32,500 tested in immigration detention have been confirmed positive for COVID-19. This 18 percent infection rate is outrageously disproportionate to national and global averages, and at least six people have died.¹⁰ Of these deaths, five occurred at a private prison, and the sixth death occurred at the Glades County Detention Center that relies heavily on private correctional services.¹¹

We know that there is no way to social distance in immigration detention, which is why Freedom for Immigrants has urged the U.S. government to free all people from immigration detention¹² as Spain has accomplished.¹³ We also know that not properly testing, tracking, and preventing with personal protective equipment (PPE), combined with continued use of inter-facility and inter-agency transfers, needlessly accelerates the proliferation of COVID-19.

For instance, in early August at the privately-run El Valle Detention Facility in Texas, people who had tested positive for COVID-19 were transferred into the facility and held in housing units with people who had not been tested and did not display COVID-19 symptoms.¹⁴ Recent investigations show that ICE continues to move people from centers with COVID-19 cases to centers with no known cases and vice versa.¹⁵ These transfers are usually accomplished through private companies, such as GEO Group and Trailboss Enterprises.

PRIVATE PRISONS EXPAND DETENTION WORLDWIDE

Evidence suggests that the negative impact of private prison companies on the pandemic is not exclusive to the United States. For example, staff have tested positive at the GEO Group-run Wolston Correctional Centre in Australia, and like the United States, staff are not being required to wear PPE when in contact with detained people.¹⁶

1 Global Detention Project, *available at* <https://www.globaldetentionproject.org/countries/americas/united-states>.

2 Freedom for Immigrants, *available at* <https://www.freedomforimmigrants.org/covid19>.

3 The Sentencing Project, *available at* <https://www.sentencingproject.org/publications/private-prisons-united-states/>.

4 See, "Prison Companies Are Profiting Off of COVID-19: We Must Hold Them Accountable." IMM-Print. March 26, 2020, *available at* <https://imm-print.com/prison-companies-are-profiting-off-of-covid-19-we-must-hold-them-accountable/>.

5 Madan, Monique O. "Two workers at ICE Detention Center in Miami-Dade Test Positive for Coronavirus." Miami Herald, April 6, 2020, *available at* <https://www.miamiherald.com/news/local/immigration/article241791511.html>. See also Gardiner, Sarah. "Real Time Conditions Report, April 15, 2020 – April 29, 2020." Freedom for Immigrants, *available at* <https://www.freedomforimmigrants.org/s/FFI-April-29-COVID-19-Updated.pdf>.

6 <https://dfw.cbslocal.com/2020/04/29/2-ice-jail-guards-louisiana-die-coronavirus/>

7 Castillo, Andrea. "ICE said a 74-year-old was too dangerous to release. He died of apparent suicide." Los Angeles Times, May 20, 2020, *available at* <https://www.latimes.com/california/story/2020-05-20/immigrant-ice-detention-suicide-coronavirus>.

8 Gardiner, Sarah. "Real Time Conditions Report, July 17, 2020 – August 13, 2020." Freedom for Immigrants, *available at* https://www.freedomforimmigrants.org/s/FFI-August-13-COVID-19-update_FINAL-s9hs.pdf. See also <https://www.courtlistener.com/recap/gov.uscourts.cand.358452/gov.uscourts.cand.358452.489.7.pdf>.

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We should not be surprised. U.S.-headquartered multinational private prisons companies have been exporting their failed practices for decades. The world's first private prison company CoreCivic/CCA formed in 1983, followed by GEO Group in 1984. This is when immigration detention began its rapid expansion.¹⁷ The first government contracts for both companies were for immigration detention facilities in the United States.

These publicly-traded companies then began to pursue other English-speaking countries. For example, after European member states signed the Schengen agreement in 1990 to abolish border controls between member states, private prison companies began lobbying member states to secure the external borders by detaining immigrants.¹⁸ In the United Kingdom—the first European country to have outsourced detention to private companies¹⁹—a U.S. citizen died at a GEO-run immigration detention facility in 2011 due to medical neglect.²⁰

Likewise, Australia's first private prison was operated by Corrections Corporation of Australia, an international venture of the U.S.-based CCA/CoreCivic. South Africa's and New Zealand's first private prisons were operated by GEO Group.

The “success” of these publicly-traded, U.S.-based multinational prison corporations have inspired the founding of others, such as Management & Training Corporation, LaSalle Corrections, G4S, Mitie, Serco, Tascor, GEPSA, Emerald Correctional Management, and Community Education Centers. Despite thousands of lawsuits against private prisons worldwide—ranging from sexual battery to medical neglect to wrongful death—private immigration detention continues to expand.

A WORLD WITHOUT DETENTION IS WITHIN REACH

But this might soon be changing. While the pandemic is ravaging our communities, it also is exposing how immigration detention is not a safe or reasonable response to migration. Even GEO Group's shareholders are starting to question the company's efficacy. In July 2020, shareholders brought a securities class action lawsuit against GEO, alleging that the company misled investors about the effectiveness of its COVID-19 response and subjected people to significant health risks.²¹

In August, a federal judge halted the expansion of two new private immigration detention facilities in California.²² Freedom for Immigrants and the Immigrant Legal Resource Center brought this novel legal challenge under a 2017 California state law called the Dignity Not Detention Act. The Dignity Not Detention Act is the first law in the country to outlaw private immigration detention contracting. Now other states such as Washington and Maryland are following California's lead.

Even inside U.S. immigration detention, people are organizing against the system. Freedom for Immigrants has tracked over 100 protests, sign-on letters, and hunger strikes led by people inside since the start of the pandemic.²³ For example, people at the privately-run Irwin County Detention Center in Georgia organized a labor strike. They refused to work in the laundry room, kitchen, and commissary to protest transfers, lack of PPE, and continued detention.²⁴

It should be clear by now that immigration detention is an archaic institution that only benefits the companies profiting off of this failed experiment. As the pandemic continues to reach inside immigration detention and across borders so too should our moral outrage.

Multi-national prison corporations do not want immigrant rights advocates working in international solidarity with one another. Our work together threatens their stability and growth.

We cannot and should not stand for this. Moreover, we have an opportunity to do something about it. International law has enshrined the right to community visitation in immigration detention,²⁵ and we can enforce this right.

Community volunteers who visit people in immigration detention with groups such as Freedom for Immigrants have the power to consistently expose abuses rampant in immigration detention systems worldwide.

It is time for advocates to work across borders so that we can build a world where no person is imprisoned for crossing one.

CHRISTINA FIALHO
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