

POLICY BRIEF

Experiences and Challenges Faced by Migrant Women Affected by Immigration Detention

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IN BRIEF

EXPERIENCES AND CHALLENGES FACED BY MIGRANT WOMEN AFFECTED BY IMMIGRATION DETENTION



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Summary

This policy brief addresses the gendered impact of immigration detention on migrant women. It advocates for the implementation of alternatives to detention which respond to gender-specific needs. Conditions in immigration detention—characterized by overcrowding, abuse and lack of healthcare—intensify physical and mental health issues, especially for women and gender-diverse people, who face unique vulnerabilities. These include heightened risks of sexual and gender-based violence, limited access to reproductive health services and a lack of gender-responsive water, sanitation and hygiene facilities. Migrant women's experiences in immigration detention are also affected by multiple and intersecting forms of discrimination, family separation and inadequate safety protection. This brief also explores gender-responsive approaches to ending immigration detention, emphasizing the need for community-based, non-custodial alternatives to detention that address intersectional challenges and protect the dignity, safety and health of migrant women and gender-diverse people.

Introduction

Immigration detention is one of the most critical human rights violations of our times. Fundamentally, immigration detention is a punitive tool focused on deprivation, criminalization and separation—depriving people of their freedom and liberty, due process and access to critical services, while separating people from their families, communities and livelihoods.¹ No migrant should be subjected to prolonged or arbitrary immigration detention. In recognizing this, the Global Compact for Safe, Orderly and Regular Migration (GCM) stipulates that States should be working towards alternatives to detention (ATD), which are non-custodial and community-based.²

The negative and long-lasting impacts of immigration detention are well documented. However, analysis of the gendered impacts of detention on migrants is lacking. This policy brief seeks to bridge this gap by exploring the intersection of gender and immigration detention. In particular, it examines the specific challenges faced by migrant women affected by detention and proposes alternatives.



BOX 1

Definitions

Migrant women: In this policy brief, the term ‘migrant women’ refers to women who cross international borders, in all their diversity, inclusive of age, class, race, ethnicity, migration status, HIV status, religion, disability, gender identity and expression, among others.

Intersectionality: Intersectionality recognizes that people’s lives are shaped by their identities, relationships and social factors. These combine to create intersecting forms of privilege and oppression depending on a person’s gender and existing power structures such as patriarchy, ableism, colonialism, imperialism, homophobia and racism.

Gender-diverse people: This term is used to specifically refer to people who have gender identities or expressions that are outside of the gender binary. It may be used alongside the term ‘transgender’, depending on the context.³

Immigration detention: The practice of imprisoning, detaining or restricting the freedom of a person for immigration-related reasons.

Alternatives to detention (ATD): Any law, policy or practice which stipulates that persons should not be detained for reasons relating to their migration status.⁴

The challenges and risks of immigration detention

Across countries, conditions in immigration detention are harsh, with frequent reports of overcrowding, inadequate food and nutrition, and lack of water, sanitation and hygiene (WASH) facilities. The substandard conditions of immigration detention are compounded by strict detention regimes — long periods of confinement and isolation, limited access to common areas, insufficient recreational or leisure activities, and little to no visitation options.⁵

Migrants in detention often report mistreatment and physical, verbal and psychological abuse by detention authorities.⁶ Lack of procedural safeguards, including

complaint, review and justice mechanisms, further exacerbates people’s difficult experiences in detention. Migrants are often held in inhumane conditions for months or even years—sometimes indefinitely—while awaiting repatriation or for their cases to be processed, aggravating the negative impacts of detention on their physical health and mental well-being.

Several research studies, including a recent report from the World Health Organization (WHO), have shown the devastating impact of even short periods of immigration detention on mental and physical health.⁷ High rates of depression, anxiety and post-traumatic stress disorder (PTSD) are commonly reported, alongside suicidal ideation and self-harm.⁸ Children in immigration detention are at high risk of manifesting trauma-related symptoms and experiencing developmental regression and poor psychological adjustment.⁹



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International human rights law upholds everyone’s right to liberty and security and restricts the use of immigration detention only as a measure of last resort and for the shortest possible period of time.¹⁰ It also underscores that immigration detention is never in the best interest of children and that it is a form of violence against children.¹¹

The gendered experiences and impact of immigration detention

A feminist and intersectional lens helps to better understand the impacts of immigration detention on migrant women with their diverse identities and experiences. Analysis of migration is often gender-blind, not accounting for the ways that gender norms, roles and power dynamics affect women at all stages of migration—from the decision to leave and experiences during the journey to the realities upon arriving in a new country.¹² Viewing immigration detention through an intersectional lens ensures that the specific experiences and challenges faced by migrant women, girls and gender-diverse people are identified and subsequently addressed. The following section highlights some of these challenges in the context of immigration detention.

SEXUAL AND GENDER-BASED VIOLENCE

Migrant women in detention face a high risk of sexual violence from male guards and detainees, with reported instances of rape, sexual harassment and assault, coercion to get sexual favours, groping, unwanted kissing, fondling or touching, insults and voyeurism, among others. Rape (and threats of rape and sexual assault) is known to be used as a means of coercion to elicit confessions and to exert control over women detainees, often by humiliating and dehumanizing them.¹³ Male guards coerce women detainees, reportedly promising privileges (such as private rooms or access to services) and protection, in exchange for sexual acts. Reports have emerged of male guards watching women detainees while they were naked or partly dressed, dressing or undressing, showering or using toilet facilities.¹⁴ There are also reports of male guards entering women's bedrooms without notice, handling them, searching through their underwear and even strip-searching them.¹⁵ In some country contexts, gang rape by guards and the rape of young girls and boys has been identified and reported by groups that monitor human rights.¹⁶

Gender-diverse people, especially transgender women and gender nonconforming people, often face heightened risks of abuse and sexual violence in immigration detention. This is deeply rooted in homophobia and transphobia, where violence against gender-diverse people is based on intolerance and used as a means to exert power and control.¹⁷ In many contexts, they are detained according to their assigned sex at birth, leaving them at risk of physical

and sexual violence from male detainees. Even when transgender women or gender-diverse people are placed in women-only facilities, they may face harassment from detention staff, due to their divergence from gender norms.

Complaint and redress mechanisms in relation to sexual violence are often lacking, if available at all. Women in immigration detention often face retribution and/or inaction when complaints are submitted, which discourages reporting of sexual violence.¹⁸

Given the high risks of sexual violence faced by women in and prior to detention, access to essential services for victims or survivors of gender-based violence is critical.

SEXUAL AND REPRODUCTIVE RIGHTS AND HEALTH SERVICES

Access to gender-responsive sexual and reproductive health services are frequently lacking in immigration detention facilities worldwide, including limited or no access to medical practitioners trained in women's health issues, specifically gynaecology and obstetrics. Women in detention also lack access to preventive healthcare services such as screening for cervical and breast cancer. Transgender women have limited or no access to gender-affirming care such as counselling and hormone therapy, which can have serious mental, physical and medical implications.¹⁹

Women's rights to reproductive justice and bodily integrity are often severely violated in immigration detention, where they have little to no access to contraception, testing for and treatment of sexually transmitted infections, including HIV and AIDs, and abortion services.

Immigration detention is particularly damaging for women who are pregnant. Even though pregnant women should never be in immigration detention, many countries continue to detain pregnant women, often without necessary safeguards and arrangements for their care. They lack adequate food and medical care, including prenatal and postnatal care, which, combined with the stress and trauma of detention, can lead to severe complications such as miscarriages, pre-term births, neonatal death, excessive and prolonged bleeding, infections, perinatal mood disorders and PTSD.^{20, 21} There are reports of women giving birth in detention without medical support or any postnatal care provided to the mother and newborn. When women are transferred to hospitals for delivery, they can be shackled and restrained during their medical procedures, and immediately taken back to detention after they give

birth.^{a, 22} Immigration detention does not adequately provide for the needs of women who are breastfeeding or lactating, such as private facilities to breastfeed or equipment to express breast milk, which can lead to serious health implications for the mother and child.²³

INADEQUATE ACCESS TO GENDER-RESPONSIVE WATER, SANITATION AND HYGIENE

Immigration detention rarely provides for the WASH needs of women, girls and gender-diverse people, including regular and unrestricted access to clean water, safe and private sanitation facilities and menstrual hygiene products. Regular access to clean water and sanitation is critical for everyone and essential for women^b who are menstruating, pregnant, caring for children or experiencing menopause, or who have given birth of access to clean water, which is commonly reported in detention centres, has a disproportionate impact on women and girls and can worsen existing health issues or create new ones.

Access to private, sanitary toilet facilities is essential for women and gender-diverse people in detention, yet many are held in overcrowded conditions with inadequate WASH infrastructure and little to no access to basic cleaning products, undermining their health, dignity and safety.”

Menstrual hygiene products, as well as their access, availability and ability to change products when needed, are lacking in most detention centres.²⁴ Research has reported that women and people experiencing menstruation in detention centres often have to pay to receive sanitary napkins, and are sometimes subject to humiliating practices such as having to prove they are menstruating.^{c, 25} If menstrual hygiene products are not accessible or individuals are unable to pay, they may resort to using unhygienic substitutes which can increase the risk of infection.²⁶

a This practice has been widely condemned by rights groups and international bodies as inhumane and degrading, yet continues to be practised.

b UN Women and IDC acknowledge that some transgender and gender-diverse people experience menstruation and pregnancy. For the purpose of this policy brief, the term “women” is used to reflect the experiences of menstruation and pregnancy in detention that emerged from the research, which were exclusively narratives from cisgender women. For more information on the specific experiences of gender-nonconforming people in immigration detention, see IDC. 2016. [LGBTI Persons in Immigration Detention](#). Position Paper. June.

c The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has stated that failing to provide these basic necessities can amount to degrading treatment.

IMPACTS OF IMMIGRATION DETENTION ON WOMEN’S MENTAL HEALTH

The feeling of being treated like a criminal, despite having committed no crime, has been frequently raised by women in detention, who struggle to understand why they were detained.²⁷ The lack of information around their arrest and detention, case progression and expected length of time in detention can often lead to feelings of confusion, desperation and hopelessness. Family separation, which immigration detention often causes, also has a severe negative impact on women’s mental well-being, especially the separation from their children.²⁸



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The fear of abuse and sexual violence has an inherent impact on women’s mental health.²⁹ Reports of guards abusing and intimidating women with taunts and threats, leaves them feeling deeply frightened.³⁰ For survivors of gender-based violence, this experience of indignity and invasion of privacy, especially by male guards, and the risk of again facing gender-based violence can lead to deep feelings of vulnerability, shame, insecurity and dehumanization, significantly affecting their mental health, including inducing PTSD. These experiences are also racialized, with women of colour facing greater discrimination and abuse based on their race and, often, culture and religion, and LGBTIQ+^d women are similarly punished for expressions of their sexuality.³¹

d An acronym for lesbian, gay, bisexual, transgender, intersex and queer people. The plus sign represents people with diverse sexual orientation, gender identity, gender expression and sex characteristics who identify using other terms or none.

For some women, being detained reawakens trauma and depression linked to previous experiences of sexual and gender-based violence, and the powerlessness they experience in detention similar to that provoked by the sexual and physical abuse they have experienced.³²

Transgender women who have their gender identity invalidated by being detained in facilities for cisgender men, putting them at a much higher risk of violence and discrimination, suffer significant negative mental health impacts. Due to a lack of gender-responsive infrastructure, safeguards and training, transgender people are often segregated and placed in isolation or solitary confinement, under the guise of safety and protection. However, the practice of solitary confinement can draw heightened attention to transgender detainees, leading to stigma and increased harassment. Further, isolated or solitary confinement leads to grave impacts on detainees' mental health, including anxiety, hallucinations, panic attacks, obsessive thinking, paranoia, nightmares and self-directed violence.³³ International law and standards have recognized these harms and have acknowledged that prolonged solitary confinement amounts to torture and a violation of international law.³⁴

LACK OF GENDER-RESPONSIVE DETENTION FACILITIES AND PROCESSES

The current systems of immigration detention are incompatible with women's human rights. In almost all contexts, detention does not provide adequate safety and care for women and protection of their rights. The lack of sex-segregated facilities places women at a higher risk of violence, exacerbated by protocols such as locking detainees in closed cells overnight and cutting off the electricity supply, leaving detainees in total darkness.³⁵ The lack of female staff and guards, which is common in many immigration detention centres, further heightens women's risk of sexual abuse.

Despite growing numbers of women in detention,³⁶ immigration detention facilities and their operational procedures are not being adapted to respond to women's

needs. Unlike the UN Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), which set out guidelines on the treatment of women in the criminal justice system, there are no comparable guidelines for immigration detention. Though some countries have issued guidance on gender-specific services and needs, these are often not comprehensive and are inconsistently applied.³⁷ This lack of guidance translates into a lack of procedural safeguards, preventing detained women from having access to critical information about their arrest and detention, as well as their right to legal support, their right to review and challenge their detention, and access to consular assistance in a language they understand.

Research has also shown that in contexts where children are detained, they are often placed in women's facilities, reinforcing expectations of women as caregivers. Some countries transfer women with children into more "humane" detention centres, which also reinforces the idea that women are only deserving of protection and better treatment when they are performing their role as mothers.³⁸



Photo: Richard Juilliart/Shutterstock

e The term 'cisgender' is used to refer to people whose experience of gender is, or is perceived to be, in conformity with the sex assigned to them at birth. It is often used in contrast to transgender.

BOX 2

Immigration detention as a site of agency and resistance

In spite of the harsh conditions and consequences they face, women, girls and gender-diverse people in immigration detention consistently demonstrate resilience and resistance, standing up for their rights and exercising their agency, despite their constrained circumstances.

Women have gone on hunger strikes and protested in order to receive healthcare and medical attention, not only for themselves, but in solidarity with other women in detention.³⁹ This solidarity helps create and strengthen support structures for navigating the difficulties of immigration detention. Through collective action with civil society organizations and advocates, women have also brought public and media attention to their lived experiences in detention.⁴⁰

Women in detention also use art as a means of resistance—colourfully decorating their bedrooms to counter the gloomy and depressing nature of immigration detention centres and participating in collective song when a fellow detainee is released.⁴¹ Quieter acts of resistance, such as exercising their agency in making difficult choices have also been reported. For example, some women have rejected their release in order to keep their families together.⁴²

Gender-responsive approaches to ending immigration detention

ALTERNATIVES TO DETENTION

Alternatives to immigration detention (ATD) is a rights-based and rights-centred approach to ending immigration detention. ATD shifts the emphasis of migration governance away from security and restrictions, and towards pragmatic and proactive solutions that are based on human rights, involving community case management and resolution. While there is no universally accepted definition of alternatives to immigration detention, the International Detention Coalition defines ATD as “any law, policy, or practice by which persons are not detained

for reasons relating to their migration status”.⁴³ At its core, ATD is a more humane, effective and affordable practice to govern migration without relying on systems of immigration detention.

ATD constitutes a range of interventions including screening and assessment mechanisms, holistic case management, community placement, freedom of movement and exercise of the human rights to liberty, work, education and health. Rights-based ATD excludes any measure which deprives people of their liberty, or imposes onerous monitoring, tracking or surveillance measures.⁴⁴

Increasingly, digital technologies have become integrated into border and migration management, and are prominently used in practices such as electronic tagging and monitoring. However, these are forms of de facto detention contrary to ATD, given the deprivation of liberty and curtailment of freedom of movement.⁴⁵

The systematic adoption and implementation of non-custodial, rights-based ATD ensures that women and gender-diverse people are not placed in immigration detention and their rights are not violated. Well-implemented ATD policies and programmes have the potential to assist women and gender-diverse people to live in communities while their migration cases are under review, with access to gender-responsive services and support for their specific needs and circumstances.

PROMISING PRACTICES

Enshrining non-detention and non-discrimination in migration policy

Non-detention protects everyone from the harmful impacts of immigration detention. Many Latin American countries do not rely on immigration detention, instead promoting non-detention as the default, favouring freedom of movement and a path to integration. Ecuador and Uruguay, for instance, have incorporated principles of gender equality, human rights and non-discrimination into their broader migration policies and Colombia prioritizes policy responses based on regularization and the expansion of migration pathways, instead of using immigration detention for migration governance purposes.⁴⁶ These policies fundamentally shift the approach to migration from one based on security to one protecting migrants’ human rights. Rather than detention, these government systems enable migrants’ right to work and access to services, while case management and migration procedures are ongoing.

Using domestic legal frameworks to prohibit immigration detention

While gender-responsive approaches continue to be missing in most laws, policies and practices, some countries have incorporated gender considerations in their approaches to immigration detention; however, these have been far from comprehensive and progressive. In line with international standards, several countries have prohibited the use of immigration detention for specific groups of women, such as pregnant women, refugee and asylum-seeking populations, or survivors of violence.

Taiwan, for instance, introduced amendments to its immigration law to prohibit the detention of women over five months pregnant, who had recently delivered or who had suffered a miscarriage.⁴⁷ Similarly, in Hong Kong and Kazakhstan, policies restrict the detention of pregnant women, with Kazakhstan also prohibiting detention for women with young children.⁴⁸ Indonesia exempts refugee and asylum-seeking populations from detention and has provisions in place which facilitate alternative placement options and special medical care for pregnant women,⁴⁹ while Kenyan and Tanzanian laws exempt trafficking survivors from criminal penalties, including detention, and also specify the need for measures to ensure the dignity and safety of refugee and asylum-seeking women and girls.⁵⁰

Belgium, Ireland and Mexico have prohibited child immigration detention and Malawi broadly prohibits the detention of all children, including migrant children, who are instead referred to relevant child protection authorities. Similarly, in Egypt and Jordan, migrant and refugee children have been mainstreamed into national child protection systems and policies on foster care and

ATD for unaccompanied and separated children have been developed.⁵¹

While these examples signal promising practices that work towards protecting women and girls from the harms of immigration detention, they continue to frame women and gender-diverse people through a lens of vulnerability, rather than agency, while at the same time reinforcing patriarchal gender roles.

Providing legal status and protection to survivors of violence

Issuing documentation to migrant women and gender-diverse people who are survivors of gender-based violence can ensure that they have the necessary legal status to exempt them from arrest and detention on immigration grounds alone.

Some countries, including Australia and New Zealand, have visa and documentation processes which support migrant women survivors of domestic violence to access legal status and provide humanitarian visas for women at risk. However, there are gaps in implementation, limiting conditions and confusing processes which exclude many women from successfully obtaining these visas. The Government of the United Kingdom allows survivors of domestic abuse who are on spousal or partner visas indefinite leave to remain,⁵² but this scheme excludes women on other visa types and the application cost is high.⁵³ In the Republic of Korea, visas are issued to trafficking survivors and foreign survivors of sexual and gender-based violence and child abuse, granting them permission for temporary stay with opportunities to transfer to longer-term visas or naturalization, and exemption from immigration penalties, including detention.⁵⁴

Recommendations

The following recommendations provide guidance to governments, civil society, UN agencies and other relevant stakeholders on the importance of establishing and promoting holistic alternatives to immigration detention which are gender-responsive, respect human rights, are based in the community and maintain family unity. Specific measures are proposed to governments as they transition to migration governance systems that do not rely on immigration detention.

REVISE LAWS AND POLICIES

- Take immediate steps towards abolishing immigration detention for all migrants, with urgent priority to ending:
 - Detention where conditions are inhumane and degrading
 - Detention without time limits
 - Detention of survivors of gender-based violence and trafficking in persons
 - Detention of pregnant women and women who just gave birth
 - All forms of solitary confinement or punitive measures
- Ensure that efforts to reduce and end immigration detention and implement ATD respond to, and are designed with, the diverse and intersecting identities, needs and experiences of women and gender-diverse people.
- Repeal existing laws to end the detention of children, in line with international law.
- End the use of digital surveillance and monitoring technologies, such as electronic tagging and monitoring, that deprive migrant women and gender-diverse people of their freedom of movement and dignity.
- Establish monitoring, accountability and reporting mechanisms for the implementation of alternatives to immigration detention.
- Provide access to legal status and protection permits for victims and survivors of trafficking in persons and of sexual and gender-based violence, including domestic violence and intimate partner violence. Establish robust, independent and impartial oversight mechanisms to

monitor and regularly report on immigration detention practices and facilities, including the conditions and treatment of women and gender-diverse people.

- Ensure these mechanisms have the power to investigate complaints, enforce standards and hold authorities accountable.
- Establish robust mechanisms to prevent sexual and gender-based violence in immigration detention, including training for staff, increasing the ratio of female staff, the provision of private spaces for women, oversight mechanisms and the establishment of confidential complaint mechanisms.
- Ensure that the development of laws and policies on detention and alternatives to detention are informed by sex-disaggregated data and gender statistics.

Provide gender-responsive services

- Ensure that alternatives to detention include access to services for migrant women, including health and sexual and reproductive health services, psychosocial services, legal and justice services and social services.
- Guarantee access to:
 - Safe and gender-responsive water, sanitation and hygiene (WASH) facilities
 - Menstrual hygiene products
 - Gender-responsive complaint mechanisms.
- Provide gender-responsive healthcare, including preventative health, sexual and reproductive health, prenatal and postnatal care, and gender-affirming care.
- Provide psychosocial support for women and people with diverse SOGIESC in detention, especially for survivors of sexual and gender-based violence.
- Provide access to essential services including health, social and justice services for victims and survivors of gender-based violence.
- Ensure strong firewalls—separations between immigration enforcement activities and public services—for migrant women to be able to safely report sexual and gender-based violence and other abuse and access essential services without the fear of detention and deportation.

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Photo: Joshua Hanson

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