



## WORKING GROUP ON ALTERNATIVES TO IMMIGRATION DETENTION



# COVID-19 & Immigration Detention: What Can Governments and Other Stakeholders Do?

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## OVERVIEW

The United Nations Network on Migration is committed to supporting all partners in pursuit of the implementation of the Global Compact for Migration, recognizing that this cooperative framework provides an invaluable tool for ensuring all in society can contribute to a collective response to COVID-19 and are protected equally against its impact.

To that end this briefing is part of a series by the Network looking at different aspects of the COVID-19 pandemic and how they relate to migrants and their communities. The present document aims to provide practical guidance to States and other stakeholders in preventing and responding to COVID-19 in the context of immigration detention, highlighting instances of promising practices as useful models to draw from. We look forward to feedback from all partners, and to updating these recommendations on an ongoing basis.

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The COVID-19 pandemic is disproportionately affecting people in vulnerable situations and marginalized communities. Migrants are no exception, particularly those in immigration detention.<sup>1</sup> In the often-overcrowded facilities where they are detained, misinformation is common, physical distancing impossible, hygiene and sanitation inadequate, and human resources stretched.

Once the novel coronavirus spreads in a place of detention, both migrants and staff are at high risk of infection and have limited access to personal protective equipment. Migrants often struggle to get adequate information and health services. The elderly, children, women, persons with disabilities and others face additional challenges. It is thus not surprising that tension has recently spiraled in immigration detention centers due to rising anxiety among detainees about COVID-19.

While a growing number of States are prioritizing the rights of migrants and opting for decongesting detention facilities, others are unfortunately detaining more migrants for longer periods of time or releasing them only to deport them unlawfully. Reasons for this include border closures; suspension of immigration proceedings and returns; public health concerns being used to justify discriminatory blanket detention of migrants without due process; limited capacity to manage alternatives to immigration detention; and the impossibility to conduct cross-border case management during the pandemic.

The impacts of the increased use of immigration detention in the context of COVID-19 are severe – indefinite detention in overcrowded facilities for some, prolonged situations of vulnerability for others, heightened risk of infection for all: detainees, staff, their families and their communities.

Over the past few weeks, a wealth of legal and policy positions and operational guidance has been produced unpacking the parameters established by international law to which States must adhere in their responses to the COVID-19 crisis, including to protect all those deprived of liberty.<sup>2</sup>

The present document aims to build on and complement these positions and guidance, supporting States and other stakeholders in preventing and responding to COVID-19 by prioritizing alternatives to immigration detention.

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<sup>1</sup> **Immigration detention** is defined here as any setting in which a person is deprived of liberty for reasons related to migration, regardless of its physical location, the name or justification used, or its classification in domestic law. **Alternatives to immigration detention** is not a legally defined term and has therefore been interpreted in distinct ways. Regardless of these different approaches, there is broad consensus that alternatives to immigration detention are a wide range of non-custodial measures and practices that, based on human rights, avoid the use of detention for reasons related to migration.

<sup>2</sup> Joint [global statement](#) issued by OHCHR, UNHCR, IOM and WHO on the effects of the COVID-19 crisis on refugees, migrants and stateless persons, calling for the release of refugees and migrants in detention; Joint [press release by the Special Rapporteur on the Human Rights of Migrants and the Special Rapporteur on Trafficking in Persons](#); [Advice of the Subcommittee on Prevention of Torture](#) to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic; Inter-Agency Standing Committee [Interim Guidance on COVID-19: Focus on persons deprived of their liberty](#); [Council of Europe Commissioner for Human Rights Statement](#) calling for the release of immigration detainees; UNICEF and the Alliance for Child Protection in Humanitarian Action [Inter-Agency Technical Note on COVID-19 and Children deprived of their Liberty](#); [OHCHR Guidance on the Human Rights Dimensions of COVID-19: Migrants](#); WHO interim guidance on [Preparedness, prevention and control of COVID-19 in prisons and other places of detention](#); IOM, [COVID-19 Analytical Snapshot #9: Immigration detention](#), April 2020.



In particular, it seeks to help States and other stakeholders to operationalize Objective 13 of the Global Compact for Migration, where governments reaffirmed the commitment “to prioritize non-custodial alternatives to detention that are in line with international law, and to take a human rights-based approach to any detention of migrants, using detention as a measure of last resort only.” This involves, among other things, “reduc[ing] the negative and potentially lasting effects of detention on migrants by guaranteeing due process and proportionality, that it is for the shortest period of time, [and] that it safeguards physical and mental integrity”; “provid[ing] access to justice for all migrants who are or may be subject to detention, as well as access to information and the right to regular review of a detention order”; and “protect[ing] and respect[ing] the rights and best interests of the child at all times, regardless of migration status, by ensuring availability and accessibility of a viable range of alternatives to detention in non-custodial contexts, favoring community-based care arrangements that ensure access to education and health care and respect the right to family life and family unity, and by working to end the practice of child detention in the context of international migration.”<sup>3</sup>

Taking this commitment into account and in view of the current COVID-19 pandemic, the United Nations Network on Migration calls on States, working in partnership with relevant stakeholders, to:

- 1. Stop new detentions of migrants for migration- or health-related reasons and introduce a moratorium on the use of immigration detention.**
- 2. Scale up and urgently implement non-custodial, community-based alternatives to immigration detention in accordance with international law.**
- 3. Release all migrants detained into non-custodial, community-based alternatives, following proper safeguards.**
- 4. Improve conditions in places of immigration detention while alternatives are being scaled up and implemented.**

Below are practical recommendations, a call to action, promising practices and resources aimed at supporting States and all relevant stakeholders to meet the four asks outlined above.

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<sup>3</sup> [Global Compact for Safe, Orderly and Regular Migration](#), Objective 13.



## 1. PRACTICAL RECOMMENDATIONS

### 1.1. Prevention

- Suspend the issuing of detention orders for new arrivals and for undocumented migrants in the community on the basis of migration status, including pre-removal detention orders, and stop immigration raids.
- Establish public health protocols to prevent and mitigate COVID-19 risks for new arrivals, such as health screenings, testing, and quarantine and self-isolation in non-custodial community-based settings that preserve family unity and are proportionate to those used for nationals of the State in similar circumstances; ensure access to legal assistance; and provide relevant information in a language migrants understand, in an accessible format, and in a culturally appropriate manner.
- Ensure access to health services for all migrants, including for prevention, early detection and early treatment of COVID-19, as well as mental health, psychosocial support and gender-based violence services.
- Apply specific safeguards for migrants in vulnerable situations such as the elderly, children, women and persons with disabilities, paying particular attention to unaccompanied and separated children and to child or female heads of household.
- Provide ad-hoc training, personal protective equipment and psychosocial support to all frontline workers so they can continue to receive and screen new arrivals and identify appropriate care arrangements for them.

### 1.2. Release

While calling for the release of all migrants in immigration detention, we must note that release should never result in situations of homelessness or destitution and should never lead to immediate deportation without due process. Instead, States should release migrants into alternatives to immigration detention, where they can access essential services regardless of status, including healthcare, adequate housing, food, water and sanitation.

- Immediately release all migrants in detention to protect their rights and health and that of staff in immigration detention facilities.
- Prioritize the immediate release of all children – whether unaccompanied, separated or in families – from immigration detention, as children should never be detained for reasons related to their or their parents' migration status and immigration detention is never in a child's best interests.
- Prioritize the immediate release of persons in pre-removal detention where deportations have been halted or are de facto unfeasible, as detention in these cases becomes arbitrary.



- Ensure that the release of all migrants in detention follows strict safeguards to prevent and respond to COVID-19, including access to health screenings, testing and health services when necessary, mandatory self-isolation, and relevant information in a language they understand, in an accessible format, and in a culturally appropriate manner.
- Review any conditions imposed on released migrants as part of implementing alternatives to immigration detention so these are adequate to the realities of COVID-19, avoiding in particular any measures that would require in-person check-ins or put migrants' health and safety at risk.
- Apply minimal restrictions to liberty only if and when necessary, ensuring these are proportionate and based on an individual assessment. Registration of residence or reporting by phone or video may be suitable options in the context of COVID-19.
- Guarantee access to transportation for released migrants that complies with public health safeguards and ensures their ability to safely reach the location where they have been placed.

### **1.3.Placement and Case Management**

- Ensure availability of adequate placement options in the community. All options should ensure an adequate standard of living and comply with COVID-19 requirements such as physical distancing, possibility for quarantine and self-isolation, and limited or no need to use public transportation.
- In cases where migrants do not have their own place of residence, the following alternative accommodation and placement options can be used, provided they comply with COVID-19 requirements as above:
  - ✓ accommodation in the community through relatives, friends or diaspora networks;
  - ✓ rented flats or clusters of flats with subsidies;
  - ✓ shelters operated by civil society organizations;
  - ✓ open centers;
  - ✓ national shelters;
  - ✓ various types of government-owned facilities;
  - ✓ hotels or other vacant vacation facilities; and
  - ✓ family- and community-based alternative care for unaccompanied and separated children, as well as children who have lost their parents or primary caregivers to COVID-19 (including kinship care, foster care, independent living arrangements and other family-type facilities; or, as a last resort and only temporarily, quality residential care).
- Use screening, referral and assessment mechanisms – adapted to COVID-19 realities – to inform placement and case management decisions, paying particular attention to migrants in situations of vulnerability and to specific needs based on age, gender and disability.



- Draw a contingency plan to ensure adequate staffing, timely processing, and quality in implementing the different elements of alternatives to immigration detention throughout the pandemic. This can involve using remote case management modalities that are less human resource intensive, such as tele-reporting and case follow up by audio or video, as well as partnering with civil society to supplement government social work capacity.
- Provide qualified and comprehensive case management with the support of social workers, lawyers, civil society partners, or community volunteers, paying special attention to potential COVID-19 symptoms.
- Do not suspend or fast track immigration proceedings without due process. Adapt these instead, along with relevant legal counseling and case management, to the realities of COVID-19, including by limiting in-person exchanges; by resorting to remote communication modalities by audio or video where appropriate and in a way that does not jeopardize migrants' access to justice; and by providing adequate personal protective equipment to case managers, social workers and lawyers when performing their duties.

#### **1.4. Regularization and Access to Services**

- Mitigate irregularity and related fear of detention by, inter alia, continuing immigration proceedings, putting in place regularization schemes, and issuing or extending temporary visas or residency status.
- Build trust among migrants and assure them that any lifting of restrictions or shifts in policy due to the gradual ending of the COVID-19 crisis will not be considered as grounds for re-detention and subsequent deportation.
- Establish firewalls between service providers and immigration authorities to prevent situations where undocumented migrants avoid seeking medical attention or other essential services out of fear of being detained and deported.
- Promote information and communication campaigns and other initiatives to foster inclusion, to address mistrust and xenophobia against migrants, and to explain how firewalls work, reassuring migrants that they can access services without anybody asking about their migration status and without fear of being detained and deported.
- Ensure that all migrants in the community, including those released, are included in national and local COVID-19 responses that guarantee access to healthcare, housing, food, water and sanitation, education, social security and other services regardless of status.
- Suspend the automatic discharge of unaccompanied and separated children turning 18 from public care to avoid risk of homelessness and immigration detention.



### 1.5. Conditions in Immigration Detention

While release takes place and alternatives to immigration detention are being scaled up and implemented, all stakeholders are encouraged to collaborate in improving conditions in places of immigration detention, in particular to ensure that detainees are able to protect themselves from COVID-19, have access to health services – including prevention, early detection and early treatment – and that their rights and access to other essential services are not unlawfully restricted by measures taken in response to COVID-19. Stakeholders are encouraged to consult the detailed guidance and recommendations already issued by, among others, [WHO](#), the [Inter-Agency Standing Committee](#) and [UNICEF and the Alliance for Child Protection in Humanitarian Action](#), in particular in relation to:

- Ensuring that migrants in detention have access to the same standard of healthcare as is available in the community, including facilities, goods and services.
- Improving water, sanitation and hygiene in places of detention.
- Guaranteeing that migrants in detention have regular access to information on COVID-19 developments and on preventive health measures to protect themselves. Information should be provided in a language they understand, in an accessible format, in a culturally appropriate manner, and include practical advice that is adapted to the specific circumstances of their place of detention.
- Making available adequate spaces for quarantine and self-isolation, ensuring that any decision to resort to containment measures in the context of COVID-19 is fully guided by public health purposes and regulations, is non-discriminatory, and safeguards migrants' dignity and confidentiality.
- Preserving family unity to the extent possible, ensuring that the best interests of the child is the primary consideration in any decision to temporarily separate families for health-related reasons and considering alternative ways to keep the family in close contact, including through phone or video. If a competent authority determines that separating an infant or young child from a parent or primary caregiver is necessary and in her best interests, the child should always be placed in the care of a family member or close friend of the family known to the child.
- Adapting safeguarding policies to protect children from violence, abuse and exploitation.
- Guaranteeing that national human rights institutions and other independent monitoring actors can access places of immigration detention during the pandemic.
- Ensuring that migrants in detention continue to have access to family visits, legal counsel, social workers and other support services, including by using remote communication modalities by audio or video that are adapted to the realities of COVID-19.





## **2. A CALL TO ACTION: MOVING AWAY FROM IMMIGRATION DETENTION ONCE AND FOR ALL**

The COVID-19 pandemic has created momentum for alternatives to immigration detention as a viable solution to mitigate public health concerns while ensuring access to human rights and essential services for migrants. Importantly, release from immigration detention must be accompanied by alternatives that are rights-based and guarantee adequate living conditions so migrants are not subject to unlawful deportation or left destitute or homeless.

This momentum presents a unique opportunity to look beyond the current crisis and showcase concretely how migration can be governed without resorting to detention, as envisioned by the framework for action provided by the Global Compact for Migration, including in its Objective 13.

States, United Nations entities, civil society organizations and other actors are encouraged to redouble their collaborative efforts to phase out the use of immigration detention – building on steps forward taken during the pandemic, documenting the positive impact of alternatives, reflecting on lessons learned, and ending as a matter of priority the detention of children, families and other migrants in vulnerable situations.

This will entail targeted advocacy and peer learning, as well as proactively engaging the media and general public to highlight the negative effects of immigration detention and how alternatives provide better outcomes for migrants, communities and the countries hosting them. It will also mean seizing this opportunity to pass laws, policies and regulations decriminalizing irregular migration and expanding access to safe, orderly and regular migration pathways.

## **3. PROMISING PRACTICES**

The below list will be regularly updated and soon include a more regionally balanced selection of promising practices led by national and local governments, civil society and other stakeholders. This preliminary snapshot attempts to highlight positive elements of specific responses but does not assess each practice comprehensively. As such, the inclusion of an example on the list does not signify that all elements of the response or practice of the country or stakeholder in question are considered positive, or that its practical implementation is flawless.

### **3.1. Prevention**

- [Spain](#) is housing some new arrivals and migrants released from pre-removal detention with family members and communities. Access to local health and social services is guaranteed.
- Temporary accommodation centers in [Turkey](#) are regularly disinfected and staff have been required to wear masks and gloves since the early stages of the pandemic. Hygiene kits and personal protective





equipment have been distributed to residents of these centers and common areas have been rearranged to facilitate physical distancing. Pre-admission health screenings and regular follow-up by physicians from the Provincial Health Directorates are conducted.

- The [UK](#) has refrained from detaining nationals from 49 countries to which deportation is currently not possible.

### **3.2. Release**

- In [Mexico](#), a federal judge ordered the Mexican government to release from detention migrants most at risk of contracting COVID-19, including those who are older than 60 years of age, pregnant women and those who suffer from chronic diseases, as well as to immediately transfer all unaccompanied and separated girls and boys in detention to community-based shelters for children.
- In [Norway](#), a number of people have been released from pre-removal detention in the National Police Immigration Detention Center, in light of the current challenges in carrying out deportations. Those released are required to remain in a stated location, either a private address or asylum reception center.
- [Spain](#) is committed to release all individuals in migration detention and has emptied most immigration detention facilities.
- In the UK, over [350 migrants were released following a legal challenge and all further cases are to be reviewed](#).
- In [Zambia](#), Home Affairs announced the release of all migrants in immigration detention.

### **3.3. Regularization and Access to Services**

- [France](#) extended all residence permits by three months starting on 16 March 2020, thereby guaranteeing access to work, social rights and social security for those who might otherwise be vulnerable due to expirations of their permits during the pandemic.
- [France](#) extended protection for all children in the government's care until the end of the COVID-19 emergency, including unaccompanied and separated children and young adults under 21 who were previously cared for by the French child welfare services.
- In [Greece](#), although asylum services were temporarily suspended starting 13 March 2020 —including registration of asylum requests, asylum interviews and appeals in asylum cases — the asylum service stated that applicants' cards and residence permits due to expire during the suspension would remain valid.
- [Ireland](#) announced that all immigration permits due to expire between 20 March and 20 May 2020 will be automatically renewed under the same conditions for a period of two months.



- [Ireland](#) has introduced a COVID-19 Pandemic Unemployment Payment which is accessible to all workers irrespective of legal status. The government has confirmed that “there are no plans in place to share any data we receive as part of an immigrant’s application for a COVID-19 Pandemic Unemployment Payment with GNIB (Immigration Authorities) or the Department of Justice and Equality.”
- [Malaysia](#) announced that non-citizens (which includes undocumented persons) who come forward for testing will not be arrested or detained.
- [Poland](#) has provided an extension to all migrants who hold work permits, visas or temporary residence permits for a further 30 days after the end of the emergency measures currently in place.
- [Portugal](#) has given migrants who have applied for residency temporary full citizenship rights during the pandemic.
- In the [UK](#), the visas of those whose leave expired on 24 January 2020 or after and are in the UK because of travel restrictions or self-isolation related to COVID-19, will be extended until 31 May 2020. Further, all National Health Services are accessible and free for everyone regardless of their immigration status in the UK. This includes COVID-19 testing and treatment, even if the result is negative.
- The [Slovak Republic](#) has extended residency permits for non-citizens as an exceptional crisis measure.
- [Thailand](#) exceptionally approved automatic visa extensions for foreigners until 30 April 2020 to prevent crowds at immigration centers.
- In [Zambia](#), Home Affairs announced that migrants released from immigration detention will be regularized, as they are not able to return to their countries and would be overstaying their permits and therefore at risk of detention.

### **3.4. Access to Benefits and Housing**

- In [Belgium](#), multiple cities have increased their capacity to shelter homeless people, including migrants, also creating separate, isolated spaces for people with COVID-19. About 100 people have been hosted in a [local hotel](#) and others in [campsites](#).
- [California](#) set up a \$75 million Disaster Relief Fund that will support undocumented Californians impacted by COVID-19 who are ineligible for unemployment insurance benefits and disaster relief due to their migration status. Approximately 150,000 undocumented adult Californians will receive a one-time cash benefit of \$500 per adult with a cap of \$1,000 per household to deal with the specific needs arising from the COVID-19 pandemic.
- In [Chicago](#), the mayor signed an executive order to ensure that refugee and migrant communities have equal access to benefits and services provided by the city, including COVID-19 disaster relief.



- In the [UK](#), following a legal challenge, the Secretary of State agreed to extend free school meal entitlements temporarily to all children, provided their families meet the usual income threshold for free school meals. The COVID-19 scheme enables eligible children to have school meals delivered and collected from school or access to £15 weekly vouchers per eligible child.

### **3.5. Civil Society Support**

- [The European Youth Foundation \(EYF\)](#) has issued a call for youth organizations to apply for funding for activities which respond to needs at local or national level arising from the COVID-19 crisis. Priority will be given to activities that demonstrate solidarity and support to people affected by the crisis, such as support to particularly vulnerable groups of people, including the homeless, and to health and social services. This may be an opportunity for youth organizations to help address the particular challenges faced by migrants in the context of COVID-19, including to support the implementation of alternatives to immigration detention.



## 4. RESOURCES

The below list includes COVID-19-specific guidance and policy documents, as well as tools and practical resources on alternatives to immigration detention that may prove useful in the current context. It will also be regularly updated.

### 4.1. Guidance and Policy Documents

- Joint [statement issued by the UN Network on Migration on COVID-19](#)
- Joint [global statement issued by OHCHR, UNHCR, IOM and WHO](#) on the effects of the COVID-19 crisis on refugees, migrants and stateless persons, calling for the release of refugees and migrants in detention
- Joint [press release by the Special Rapporteur on the Human Rights of Migrants and the Special Rapporteur on Trafficking in Persons](#)
- [Advice of the Subcommittee on Prevention of Torture](#) to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic
- Inter-Agency Standing Committee (IASC) [Interim Guidance on COVID-19: Focus on persons deprived of their liberty](#)
- [Council of Europe Commissioner for Human Rights Statement](#) calling for the release of migrants in detention
- UNICEF and the Alliance for Child Protection in Humanitarian Action [Inter-Agency Technical Note on COVID-19 and Children deprived of their Liberty](#)
- [OHCHR Guidance on COVID-19 and the Human Rights of Migrants](#)
- OHCHR [Recommended Principles and Guidelines on Human Rights at International Borders](#) (see guideline 8, Avoiding Detention)
- Global Migration Group, [Principles and Guidelines on the Human Rights Protection of Migrants in Vulnerable Situations](#) (see principle 8, Ending Immigration Detention)
- WHO interim guidance on [Preparedness, prevention and control of COVID-19 in prisons and other places of detention](#)
- [IOM, COVID-19 Analytical Snapshot #9: Immigration detention](#), April 2020

### 4.2. Tools and Practical Resources

- [Guidelines for virtual monitoring of children, their families and residential care facilities during the COVID-19 pandemic, Changing the Way We Care.](#)
- [COVID-19 Technical Note on Children and Alternative Care](#) by the Better Care Network, ACPHA and UNICEF.
- The Global Detention Project maintains a [COVID-19 Global Immigration Detention Platform](#), featuring updated information about how different countries are responding to the COVID-19 pandemic in relation to immigration detention.



- The International Detention Coalition curates a [COVID-19 page](#) with updated information on [key developments and impacts](#) of the pandemic on immigration detention and alternatives, focusing on promising practices. This includes impacts and developments as reported by IDC members working on the ground at the national and local level.
- UNHCR papers on [Options for governments on care arrangements and alternatives to detention for children and families](#) and [Options for governments on open reception and alternatives to detention](#) feature good practices on alternatives to immigration detention.
- International Detention Coalition [publications](#), including IDC's handbook [There Are Alternatives](#), provide examples of positive practices and practical guidance on implementing alternatives to immigration detention.
- [Model of alternative care for migrant, asylum-seeking and refugee children](#) by UNICEF and the Government of Mexico.
- The [European Alternatives to Detention Network](#) develops evidence-based guidance on practical implementation of successful alternatives to immigration detention.
- PICUM publications provide guidance for NGOs to advocate on [alternatives to immigration detention](#) and for governments and civil society organizations to implement [case management](#) for these alternatives.

The [United Nations Network on Migration](#) was established to ensure effective, timely and coordinated system-wide support to States in their implementation, follow up and review of the Global Compact for Safe, Orderly and Regular Migration.

The Working Group on Alternatives to Immigration Detention is one of six thematic working groups established under the Network, tasked with promoting the development and implementation of human rights-based alternatives to detention in the migration context. The Working Group is comprised of representatives of UN agencies, civil society organizations, young people, local governments and technical experts working on immigration detention and alternatives all over the world. The drafting of this document has benefitted from their broad and diverse experience.

While recognizing the mandate of the Working Group as limited to migration, UNHCR recalls that the recommendations in this document are also relevant and applicable to refugees and asylum-seekers in immigration detention. In addressing challenges related to COVID-19 and preserving public health, measures taken need to respect the human rights of all concerned, regardless of migration status.