



Reflections on the UN Network on Migration's Listening Sessions on Alternatives to Detention (held on Wednesday 20 May 2020), Rasika Jayasuriya

Partners came together from around the world to share what's playing out on the ground with immigration detention during the COVID-19 pandemic in last week's listening sessions facilitated by the Network. They candidly painted a very real picture about what is working and what continues to harm migrants, including children, detained in this time of crisis.

Discussion was informed by the [Network's recent policy brief](#) that is grounded in the [Global Compact for Migration](#) and calls for a moratorium on detention and the release of detained migrants into community-based alternatives.

The message across both sessions was overwhelmingly clear.

If authorities in countries like Spain, Belgium and the UK can release people from immigration detention during this pandemic, then why would we return to a broken system afterwards?

It's no secret that immigration detention is harmful

We know that – with or without COVID-19 – immigration detention frequently violates the human rights of migrants. And it is *always* a violation of children's rights under international law. We know that detention can devastate children's physical, emotional and psychological health and well-being; that there are serious risks of sexual and gender-based violence in detention; and that crowded and unsanitary conditions pose challenges to public health at the best of times.

What is clear is that these risks and harms are being exacerbated by COVID-19, and the worrying developments that were raised by people on the ground from across all regions are deeply troubling.

We heard of undocumented men, women and children being rounded up and detained in South-East Asia; people being held indefinitely with no detention orders and the suspension of judicial review in Europe; prisons being designated as places of immigration detention and migrants detained for perceived lockdown violations in Southern Africa; migrants willing to return to their countries of origin being stuck indefinitely in harsh detention conditions because of travel restrictions in Northern Africa; and a blanket refusal to release people from immigration detention in North America despite the steady rise of COVID-19 in these facilities.

Our attention was repeatedly drawn to how legal representatives and NGOs worldwide are being denied access to clients and information about where they are being held; to the systematic reduction of services in places of detention affecting security, food, sanitation, access to menstrual hygiene products and availability of essential medication for people with chronic health conditions; to the lack of hygiene and protective measures for detainees and staff; and to the sheer impossibility of physical distancing in overcrowded facilities.

These practices only heighten the risk of COVID-19 spreading through already vulnerable parts of our population, and they fuel fear that further undermines public health and human rights the world over. Fear of detention is stopping undocumented migrants from coming forward for testing and treatment; racism and xenophobia is growing in host communities, with detention measures aggravating perceptions of migrants as carriers of COVID-19; and detainees forcibly returned to countries of origin are being stigmatised based on fears that they will bring the virus with them.

But not all governments have used COVID-19 as an excuse to adopt measures that violate the rights of people on the move. In stark contrast, participants shared promising practices from around the world that reflect a growing momentum to end immigration detention as a migration management response, especially for children.

The crisis has proven that detention is unnecessary

Some governments have stepped up as leaders during this crisis, departing from populist rhetoric that criminalises undocumented migrants and building instead on a new narrative that is emerging – one that recognises that countries of destination are dependent on migrants and human mobility.

We were reminded about Portugal temporarily granting migrants with pending residency applications and asylum seekers the rights of permanent residents during the pandemic, and Italy regularising hundreds of thousands of migrant workers, to ensure that people are not detained and have access to healthcare and other public services during the outbreak. We heard about a federal judge in Mexico ordering the release of migrants most at risk of COVID-19 and of all children being held in detention; and immigration authorities in Japan recommending the proactive use of the provisional release of irregular migrants as an infection control measure.

We learned how Spain managed to empty its immigration detention centres in just six weeks, bringing the number of detained migrants from 600 to zero – detainees have been released, immigration detention suspended, and public prosecutors ordered not to ask judges to issue detention measures. This was warranted on the grounds that under Spanish law, detention is a short-term measure to ensure removal that could not be achieved since borders were closed. One judge also cited humanitarian grounds, recognising that detention centres are not safe since they cannot prevent the spread of the virus. And in the UK, pressure from litigation proceedings brought by civil society against the government has led to the release of more than 600 people, with numbers of detainees falling from 1000 in March to 368 in April and judges granting bail at a rate of 95% in immigration decisions.

These figures and responses beg the question: If these people – who are not criminals – can live in the community now, then why were they not already living in the community while their cases were being resolved? And why can they not continue to do so, particularly since we know that non-custodial, community-based alternatives are cheaper, more humane and – coupled with case management – more effective in achieving case resolutions?

These promising practices are ad hoc responses to the stark reality of what immigration detention means for people – children, families, the elderly and vulnerable – during this pandemic. But there is a risk that detention will continue to harm people beyond COVID-19, and participants expressed uncertainty and anxiety about whether people will be re-detained as countries ease emergency measures.

This crisis is an opportunity to build lasting change

Yet such responses need not remain ad hoc. The disparate but promising practices that we see emerging across regions – thanks to tireless advocacy by civil society, proactive efforts by local governments and targeted interventions by the judiciary – are showing us a way forward post-pandemic; a way where migration can be governed effectively without defaulting to detention.

This must be accompanied by a radical shift in the narrative, where migrants are no longer criminalised and used for political point-scoring. Otherwise we risk what we heard of in the sessions – instances where governments have been able to ignore their own legislative and constitutional safeguards around the use of immigration detention due to populist anti-migrant sentiments.

Sustainable and scalable alternatives to detention are not just ideas. We have seen before – and in this crisis – that they work. And [civil society has costed this](#) to show that divestment from detention and investment in alternatives will not only save lives but save billions of dollars as well; a particularly salient equation when we consider the economic impact of COVID-19. This should be an awakening for policymakers. We can manage migration without locking up children, women and men who are not criminals – migration status is not a crime. This is our chance to do things differently. And so, I repeat the question, in the incisive words of one participant, ‘if we can do without detention at this point, then what is the justification for returning to it when relative normality returns?’

These opinions do not necessarily reflect those of the UN Network on Migration, its Secretariat, or its constituent parts. We look forward to hearing your thoughts and contributions and will endeavor to share them here.