

Report of Global Online Peer Learning Exchange

How to sustain and expand the use of alternatives to immigration detention in the aftermath of the COVID-19 pandemic ?



Co-hosted by the UN Network on Migration Working Group on Alternatives to Detention and the Permanent Missions of Portugal and Thailand in Geneva

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Context, Participation and Overview of the Agenda

At a pivotal moment for immigration detention policies and practices, with many States making decisions that will determine whether or not the COVID-19 pandemic is a watershed moment in the use of detention for migration-related reasons, this online workshop brought together government peers from all regions to discuss how to build on the momentum created by the ongoing health crisis to sustain and expand the use of alternatives to immigration detention (ATDs).

The meeting started with a session giving voice to key actors implementing ATDs – a government official responsible for the rollout of ATD pilot programs, a case manager supporting released migrants in the community, and two migrant women benefitting from a community-based ATD project. Then there was a deep dive into the mental and physical health implications of detention for individuals and societies: that highlighted how public health considerations changed immigration detention in 2020. Following this, several government officials from different regions presented on the development on ATDs pre-COVID-19 and since COVID-19 and addressed the question of creating an enabling environment for sustaining and expanding the use of ATDs in different contexts. The meeting ended with a discussion between governments about the issues raised and the way forward.

This was a closed meeting, held under the Chatham House Rule, for representatives from relevant governmental departments at national, regional and global level. 117 participants attended the peer learning exchange, including more than 60 officials from 31 governments. The other participants were UN agencies, regional intergovernmental organisations, representatives of academia and civil society organisations, all of them members of the UN Migration Network Working Group on Alternatives to Detention.

The remote format for the exchange, as a result of the COVID-19 pandemic, allowed for the presence of government practitioners from capitals and across regions, as well as officials based in Geneva. It also allowed for the participation of directly impacted communities and experts working with migrants and authorities in detention and community settings on a daily basis.

Snapshot of positive impacts of community-based ATD programs as reported during the meeting by two migrant women and a case manager

Two migrant women benefitting from a community-based ATD program for families in Bangkok reported that they had been reunited with their children since their release from detention to the host community, which greatly benefitted the children's wellbeing. The children are now able to attend school, and the women have freedom of movement, which enables them to interact with their friends and to practice their religion freely by attending church. The community-based case management program has helped them to connect with service providers and to engage with the host community. The women called for governments to release those still detained, such as their spouses.

The **case manager** running a community-based ATD program in Cyprus described his role of acting as a focal point between individuals in detention or at risk of being detained and the relevant authorities - building trust with them through people-centred and engagement-based case management; ensuring that they are informed about all available options as part of the immigration/asylum/return process; and making any necessary specialist referrals. Monitoring and evaluation of this ATD program has shown that engagement-based case management reduces the

risk of absconding and disengaging, paves the way to access rights and services, respects individuals' dignity, and strengthens their capacity to engage in the host society while their applications are pending – making them more willing to comply with immigration requirements and the outcome of their processes, including returns.

Health impacts of detention

Physical health

As presented by one of the experts intervening during the meeting, on removing a person's liberty, any government has a duty of care to ensure every individual placed in any form of detention has access to essential goods, services and rights to preserve their safety and dignity. Places of detention create a perfect storm for ill-health. Prison health has a direct impact on public health. Therefore, there is a public health imperative to provide healthcare in detention - that requires a whole-of-government approach. Diseases do not stay within walls, e.g. in some settings tuberculosis (TB) has spread from detention centres into the community. COVID-19 is a highly infectious illness, evidenced by outbreaks in virtually all detention systems globally, which then impacts the wider community.

While any detention setting is challenging in terms of public health, immigration detention presents particular risks. The high turnover of immigration detainees and the, often overcrowded, conditions compared to criminal detention settings exposes more people to potential infection. Detained migrants face additional cultural and linguistic barriers and they often suffer from physical and/or mental ill-health prior to detention. In relation to the pandemic, it was noted that two of the top chronic illnesses seen in immigration detention are high blood pressure and diabetes, which are both linked to more severe COVID-19 outcomes.

ICRC data from 40 immigration detention centres in different regions shows that on average there is under one medical consultation per person per year, and a very low rate of health authorities' monitoring visits, with less than one per quarter.

Mental health

Data presented during the meeting shows that any person, and particularly any child, exposed to immigration detention conditions is at high risk of experiencing mental illness because of a combination of contributing factors, including pre-migration trauma and exposure to stress in the country of origin; pre-migration health problems; the migration journey (displacement, camps, and insecurity while in transit); and the post-migration environment (e.g. migration processes in the host country, immigration detention and the uncertainty and arbitrariness associated with it, perceptions within the host community leading to experiences of hostility, discrimination and racism). These stresses are mediated by an individual's personal and social resources and resilience. But post-migration stresses, especially immigration detention and host community hostility, corrode resilience and can lead to mental illness. Finally, the indefinite nature of immigration detention and the uncertainty that it creates, in particular when compared to criminal detention, is particularly toxic to migrants' mental health.

Research shows that psychiatric disorders (e.g. PTSD, major depression) tend to appear between 3 and 24 months after a migrant is detained if s/he is denied access to treatment or has no opportunity to leave detention, leading to a range of more severe psychiatric disorders such as suicidal behaviours.

Evidence presented by experts at the meeting that illustrates the mental health impacts of immigration detention

Immigration detainees on Manus Island in Papua New Guinea showed extraordinarily high rates of mental illness - over 79% of people exhibited Post-Traumatic Stress Disorder (PTSD), 88% major depression, and 93% PTSD and/or depressive anxiety disorder. This is for a population which entered detention in a relatively good mental health condition without symptoms, but quickly developed psychiatric illnesses due to the detention conditions, in particular due to the indefinite and arbitrary nature of immigration detention.

In another Australian detention centre, over 40% of detainees were exhibiting symptoms requiring specialist treatment. 2 – 18 months after release from detention and living in a supported community environment, the former detainees showed a significant decrease in levels of psychiatric symptoms. This underlines that social and community normalisation is strongly protective against the development of mental disorders, and ATDs that allow migrants to live in the community and have access to rights and services while their applications are being processed contribute to good mental health.

Trends and lessons learned from changes in immigration detention policies and practices before and during the COVID-19 pandemic

Following the focus on health, the meeting moved on to discuss recent changes in various governments' policies and practices aimed at reducing immigration detention (before and during the pandemic) and to address the question of how to create and support an enabling environment for sustaining and expanding the use of ATDs.

The next segment was opened with a focus on recent changes in immigration detention in Spain, followed by five presentations by government officials from different countries, and Q&A and discussion sessions.

Recent trends in immigration detention

A number of governments shared how they have piloted or are exploring new and expanded ATD options as a measure to contain and prevent the spread of COVID-19, as well as how to sustain and strengthen these practices. Crises tend to create new opportunities and it should be recognized that the COVID-19 situation has created momentum to introduce, continue or scale up the use of ATDs. However, participants also noted that they have observed worrying trends that have resulted in increased use of immigration detention. For example, in some countries, courts stopped sitting, leading to cases not being heard, and to no recourse for people in migration-related detention to be released.

Shifts in policies and practices generated by the pandemic have not come without challenges and gaps, but some governments have shown that migration can be humanely and effectively governed without detention. In Spain, the Ombudsman worked with government ministries to guarantee that the release of individuals detained for migration-related purposes was in accordance with necessary health security measures and that a mechanism was in place to provide humanitarian assistance. Coordination measures allowed for the gradual release of individuals and referral to agencies, their families and communities for support. Coordination with civil society was essential to ensure that they had access to health, housing and other services regardless of migration status.

All individuals detained for migration-related purposes in mainland Spain were released and the immigration detention centres were closed. However, with borders reopening and some returns

resuming, Spain is going back to using pre-removal detention despite the fact that the first few months of the pandemic showed it to be unnecessary. Further multi-stakeholder support would be required to sustain the promising advances seen in 2020.

Often it was governments that already had an enabling environment for ATDs in place which were able to shift policies and practices further and more quickly when the pandemic struck. They demonstrated that the use of immigration detention could be reduced and that ATDs could be safely utilized during the pandemic by rapidly adapting case management to COVID-19 requirements, achieving in some instances case resolution for individuals in ATDs.

Drivers for change towards ATDs before and during the pandemic

It is not only the high health risks of COVID-19 in immigration detention that led to these changes of policies and practices. Some national laws align with the current international legal framework in requiring that children should never be detained for migration related purposes, and that a migrant can only be detained for the shortest period of time if justified by a legitimate purpose, such as a reasonable chance of removal within a reasonable timeframe, failing which she or he must be released. Border closures leading to a lack of prospect for removal during the first months of the pandemic has also led to reductions in the use of immigration detention and an increase in the use of ATDs in some States.

In some States, such as Canada, drivers for recent policy and practice change pre-date the COVID-19 crisis and include significant pressure in relation to international obligations, demand from the general public and the media, a wish to reduce the costs related to the immigration detention system, and concerns arising about inconsistent detention practices across different parts of the country.

Breaking the silos in government – Need for a whole-of-government approach

A number of governments that have taken significant steps towards ATDs, such as Thailand and Canada, recognised that they had achieved this through working with several relevant government agencies and line ministries, gaining their support and moving forward together. Thailand reflected this is a challenging journey where it is key to raise awareness across all relevant government departments and actors - such as those responsible for policing, immigration, housing, social welfare, children and youth, and education - about the government's human rights obligations and rights-based migration governance goals.

Signing of Memoranda of Understanding (MoUs) between multiple government agencies and reaching agreement on Standard Operating Procedures (SOPs) specifying the responsibilities of each of them were important steps. These, drafted and implemented with the support of relevant UN agencies and civil society organisations, cover all of the phases from arrival to case resolution – identifying procedures for assessment, screening, and referral to appropriate services and housing (if needed).

There are a number of pieces that need to be in place and a variety of government departments and other actors that must be engaged to make ATDs successful. This includes officers who know how to use adequate screening and assessment tools and mechanisms, as well as trained case managers, social workers and lawyers. Ministries of Foreign Affairs can play a key convening role, and the involvement of government actors in charge of communications with the general public and of national human rights institutions is also essential.

As part of its national plan for implementation of the Global Compact for Migration (GCM), one of the participating governments created an interagency committee that works on improving processes regarding migration flows and border management, promoting the integration and reception of

migrants, supporting the connection of migrants with their countries of origin in the event of a return, and strengthening partnerships with countries of origin and transit. This interagency committee plays an essential role and has allowed for a broad and very inclusive vision of migration, which has helped implement policies that move away from the use of immigration detention, focus on integration and align migration policies with the Sustainable Development Goals (SDGs) and other national policies.

Comprehensive and systematic approaches – Need for a whole-of-society approach

Governments highlighted how partnering with relevant stakeholders is an essential element to the success of ATDs. While relevant UN agencies and other global actors can provide funding, training and guidance; national and local NGOs are key to ensure tailored capacity building, adequate screening and referral mechanisms, case management, and sustainable community-based accommodation when needed. These organisations also have an ability to look at each migrant’s needs individually. Governments that have engaged in working with civil society on ATDs appreciated the benefits of effective and open collaboration. Canada, which is rolling out a large-scale ATD program, contracts various civil society organizations (CSOs) to provide Community Case Management and Supervision. These CSOs assess individuals’ needs and refer them to support services in the community. This helps to mitigate risk factors and to manage individual cases through engagement-based case resolution.

Starting with the possible - Addressing new challenges that arise

A number of governments reported finding ways to embark on the process of moving away from the large-scale use of immigration detention as the norm by starting with whatever changes (sometimes small-scale actions) seemed possible in practice. One of the tactics suggested by governments was the drafting of an MoU and related SOPs between government departments. This framework can set up a clear roadmap; clarify roles, priorities, as well as funding and capacity needs; and has proven to reduce immigration detention and increase the use of ATDs in practice. For example, something as simple as setting up administrative procedures that ensure that government agencies responsible for immigration detention can obtain up-to-date information from government departments responsible for housing and social welfare about accommodation options in the community and about how to make referrals can be the beginning of the journey towards a new migration policy that does not rely on immigration detention.

Governments, such as Thailand, stressed that there is a need to ensure constant improvement and to address new challenges as they arise, for example regarding issues such as age determination for older children or proof of documentation.

Changes in service provision and case management due to COVID-19 has created additional challenges and opportunities. The pandemic has prompted an acceleration of the use of digital reporting, with two governments noting successful experiences. A government is looking at introducing a blended approach to reporting with a range of options, including increasing the use of online modalities.

Border closures and flight restrictions have led to a need for longer-term availability of accommodation, support and services, including mental health assistance. However, this has happened at a time when many community services have become limited or ceased further enrolment due to the pandemic. A solution introduced to address this gap that could be further explored is remote community support programming (e.g. by telephone).

Compliance rates with ATDs are very high

For example, between June 2017 and November 2020, Cyprus Refugee Council's ATD pilot has provided engagement-based case management to 96 individuals, of whom only 4 absconded or disengaged. An independent evaluation of the results of the European Alternatives to Detention Network pilots in Cyprus, Bulgaria and Poland from 2017 to 2019 found that, of a total of 126 individuals receiving case management: 86% remained engaged, 12% disengaged or absconded, 2% were forcibly removed, and 25% achieved case resolution, with a permanent or temporary migration outcome.

Importance of independent monitoring and evaluation of ATDs and calls for more information on case resolution

The importance of independent monitoring and evaluation of ATD pilot programs to understand what works and what doesn't was highlighted, along with the need to examine the case resolution outcomes, time taken to case resolution, and levels of compliance, as well as the frequency, duration, and nature of the contact with beneficiaries of pilot ATD programs and migrants' experience of the service. Some governments called for more information on case resolution through ATDs. The European Migration Network is planning an evaluation of ATDs, which will also address the issue of case resolution.

Some of the practices and strategies for reducing immigration detention currently in use or being explored that were referred to by governments in the exchange are:

- Immigration bail with regular reporting (a blended range of reporting options including digital and voice reporting)
- Provisional release on grounds of health and other circumstances
- Pastoral and case management support through social workers, ensuring that (adult) ATD participants receive support including: registration and attendance at primary (and secondary) healthcare services; dentist and mental health services; locally-based activities; access to language classes; and access to legal services and independent legal advice
- Housing, subsistence and case management support
- Community case management and supervision
- Coordination by the Ombudsman's Office with the authorities to ensure that former detainees were referred to humanitarian reception and assistance agencies and/or their families for accommodation and support
- Appointment of an official guardian (for adults) who can conduct regular checks and report regularly to the immigration agency
- Strategy for alternative care for unaccompanied migrant children
- Establishment and renovation of shelters for unaccompanied migrant children, and formulation of human rights-based guidelines to the running of these shelters
- National Referral Mechanism to help identify vulnerable migrants and refer them for assistance and ATDs to prevent them from being detained
- Passing of a legal initiative that allowed all people who had already spent time in detention and who could not appear before court to be released from immigration detention
- Temporary regularisation of migrants and inclusion of migrants regardless of legal status in social security systems, along with access to healthcare and other support measures

Next steps towards sustaining and expanding the use of ATDs

The peer learning meeting ended with a discussion on next steps towards sustaining and expanding ATDs and on how to continue building up a community of practice and creating opportunities for further peer learning exercises.

- 1- GCM Champion Countries should prioritize Objective 13 as part of GCM implementation at the global, regional and national levels.*

Participating governments acknowledged that their ATD practices were not perfect, but this does not prevent them from making a commitment to keep moving forward, bringing other governments (GCM champions and beyond) into this discussion and showcasing the effectiveness of ATDs and of a range of actions that have been taken to make these ATDs possible. The GCM regional reviews in 2021 in preparation for the IMRF (International Migration Review Forum) in 2022 provide a concrete opportunity to do this.

- 2- Participants should explore co-convening and engaging in further conversations and peer learning exchanges about reducing the use of immigration detention and ATDs -- within and among governments and with all relevant stakeholders.*

This exchange shows that a whole-of-government approach -- breaking siloes within governments and bringing together immigration authorities, law enforcement actors, health ministries, child protection and welfare entities – is a key element of success when implementing ATDs. It is also fundamental to involve civil society, UN agencies, researchers, local authorities, technical experts, and migrants themselves through whole-of-society approaches. The process of convening a peer learning exchange and of connecting the dots across disciplines can be replicated in a country context, in a specific region, and even at the municipal level. These meetings can focus on a few key issues that are challenging to practitioners, such as cost, sustainability, case resolution, etc.

- 3- Move from pilot to scale on ATDs.*

The moment for proving concept has passed. There are enough ATD projects around the world, as illustrated during this exchange, that show that ATDs work and that detention is not necessary as a tool for migration management. For governments to engage in widespread scaling-up of ATDs, two structural, long-term shifts are required - reforming legislative and policy frameworks and changing the narrative on immigration detention. The COVID-19 pandemic has opened up opportunities for both that should be seized.

- 4- Seek support from the UN Migration Network for peer learning, technical support and filling gaps in expertise.*

The UN Migration Network Working Group on Alternatives to Detention – which includes UN agencies, civil society, local authorities, young people and other stakeholders – is committed to support the daily work of government officials at capital level willing to take forward policies and practices that aim at reducing or ending the use of immigration detention. This peer learning exchange was an important step towards supporting the creation of a community of practice on alternatives to immigration detention that can become embedded in the UN Migration Network and support the implementation

of Objective 13 of the GCM. The peer learning exchange showed the constellation of actors needed to make ATDs work. The UN Migration Network Working Group will endeavour to continue to broaden the spectrum of disciplines that we represent and to keep breaking siloes, and aims to reconvene a follow-up global peer learning meeting in mid-2021 to continue the conversation started in November 2020, take stock of progress made since, and explore ways of continuing peer learning exchanges and further building a community of peer practitioners after the UN Migration Network Working Group on ATD comes to an end later this year.

Already existing global peer learning initiatives in which participating governments have actively engaged, such as the Cross Regional Peer Learning Platform on Alternatives to Child Immigration Detention, co-facilitated by IDC and UNICEF, could support in providing peer learning spaces after mid-2021, in collaboration with the UN Migration Network.

The next global peer learning meeting is being planned for mid-2021 and will be open to all governments.

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 co-lead by UNHCR, UNICEF and the International Detention Coalition (IDC) and its members comprised representatives of UN agencies, civil society organizations, young people, local governments and technical experts working on immigration detention and alternatives all over the world.

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