

These COVID-19 Analytical Snapshots are designed to capture the latest information and analysis in a fast-moving environment. Topics will be repeated from time to time as analysis develops. If you have an item to include, please email us at research@iom.int.

What is immigration detention?

Immigration detention refers to the deprivation of liberty of migrants for migration-related reasons, usually related to two situations:

- Upon arrival for establishing the identity and nationality of the person concerned or pending the processing of an immigration or asylum claim; or
- Upon removal, for enforcing an expulsion order when, for instance, the migrant is irregularly in the country.

Immigration detention often takes the form of administrative detention, that is, an administrative measure ordered by the administrative or judicial authorities of a State.

Except in countries where unauthorized entry is criminalized, immigration detention is not a criminal measure, as migrants have not committed a crime but an administrative offence. Hence, irregular migrants are to be detained separately from common law criminals, in facilities often referred to as immigration, processing, retention or removal centres.



Risks related to immigration detention during the pandemic

Concerning places of detention in general, including immigration removal centres, the World Health Organization notes that:



People deprived of their liberty, such as people in prisons and other places of detention, are likely to be more vulnerable to the coronavirus disease [...] outbreak than the general population because of the confined conditions in which they live together for prolonged period of time. Moreover, experience shows that prisons, jails and similar settings where people are gathered in close proximity may act as a source of infection, amplification and spread of infectious diseases within and beyond prisons.

Risks of contagion can be exacerbated by conditions of detention which are incompatible with the implementation of prevention measures against COVID-19, including social distancing in crowded facilities and basic hygiene measures in substandard sanitary conditions.



The situation of refugees and migrants held in formal and informal places of detention, in cramped and unsanitary conditions, is particularly worrying. Considering the lethal consequences a COVID-19 outbreak would have, they should be released without delay.

[Joint press release](#) from OHCHR, IOM, UNHCR and WHO



Responses amid the COVID-19 pandemic



Given the inability of States to carry out deportations given current travel restrictions in place worldwide, a number of countries have started to release some irregular migrants from immigration detention. This is, for instance, the case in [Spain](#), [Belgium](#) and [the United Kingdom](#).

In other [countries](#), some migrants with underlying health conditions have been released upon [judicial order](#) due to health risks posed by reported cases of COVID-19 infections in their detention facility.

From [UN agencies](#), to [regional](#) and [civil society](#) organizations, including [migration experts](#), calls are being made for States adopt alternatives to detention and release migrants from immigration detention in light of the devastating effects an outbreak of COVID-19 would have in such facilities for migrants and the broader community.

Immigration detention and alternatives to detention in international law

[International human rights law](#) regulates the deprivation of liberty of migrants by prohibiting their arbitrary detention. Detention is a last resort measure which becomes arbitrary if it is not [reasonable, necessary and proportionate](#), including if the grounds of detention are not justified anymore. This is for instance the case of detention upon expulsion when the prospects of removal appear to be neither real nor tangible due to legal impediments or practical obstacles.

When there is no tangible prospects of removal, there exist [alternatives to detention](#), such as:

- Arrangements and accommodation in the community and/or case management; and
- Restrictions to freedom of movements, such as registration of residence requirement, reporting mechanism, designated residence system, bail, bond and surety options or supervision system.

Migrant children

The [principle of the best interests of the child](#) is the primary consideration for all actions concerning children. This entails that their detention on the basis of their migration status or that of their parents is never in their best interests. According to the [UN Committee on the Rights of the Child](#), alternatives for children should be pursued in community-based contexts.

Conditions of detention under international law

[Immigration detention](#) should not be punitive and migrants, as any other persons deprived of their liberty, should be treated with humanity and dignity. This entails sufficient sanitary and living conditions, as well as enjoyment to [health care](#) as provided in the community.

This COVID-19 Analytical Snapshot has been produced by [IOM Research](#) (research@iom.int).

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