



# THE IMPACT OF COVID-19 ON THE HUMAN RIGHTS OF MIGRANTS

SUBMISSION TO THE UN SPECIAL RAPPOREUR ON THE HUMAN  
RIGHTS OF MIGRANTS:

CALL FOR INPUT ON THE IMPACT OF COVID-19 ON THE HUMAN  
RIGHTS OF MIGRANTS

*GLOBAL DETENTION PROJECT*

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## THE GLOBAL DETENTION PROJECT MISSION

The Global Detention Project (GDP) is a non-profit organisation based in Geneva that promotes the human rights of people who have been detained for reasons related to their non-citizen status. Our mission is:

- To promote the human rights of detained migrants, refugees, and asylum seekers;
- To ensure transparency in the treatment of immigration detainees;
- To reinforce advocacy aimed at reforming detention systems;
- To nurture policy-relevant scholarship on the causes and consequences of migration control policies.

### **Global Detention Project**

3 rue de Varembé

1202 Geneva

Switzerland

**Email:** [admin@globaldetentionproject.org](mailto:admin@globaldetentionproject.org)

**Website:** [www.globaldetentionproject.org](http://www.globaldetentionproject.org)

# SUBMISSION TO THE UN SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF MIGRANTS: CALL FOR INPUT ON THE IMPACT OF COVID-19 ON THE HUMAN RIGHTS OF MIGRANTS

## 1. INTRODUCTION

The Global Detention Project (GDP) is pleased to provide this submission to the Special Rapporteur on the human rights of migrants in response to his [call for input](#) on the impact of COVID-19 on the human rights of migrants. This submission primarily focusses on the treatment of people in immigration detention during the pandemic, relying on the information developed by the GDP within the scope of our [COVID-19 Immigration Detention Monitoring Platform](#). The submission principally addresses questions 1 and 3 in the Special Rapporteur's call for input.

## 2. BACKGROUND

The threat that COVID-19 poses in prisons and detention centres everywhere became abundantly clear shortly after the onset of the pandemic in early 2020. On 25 March 2020, UN High Commissioner for Human Rights, Michelle Bachelet, emphasised the particular vulnerabilities faced by detainees: "Covid-19 has begun to strike prisons, jails and immigration detention centres. In many countries, detention facilities are overcrowded, in some cases dangerously so. People are often held in unhygienic conditions and health services are inadequate or even non-existent."<sup>1</sup>

Recognising the important repercussions that the crisis would have on immigration detainees, in April 2020 the GDP launched its [COVID-19 Immigration Detention Monitoring Platform](#). This platform is intended to serve as a regularly updated information source documenting how countries are responding to the pandemic in their migration control policies and their treatment of key populations of concern—including undocumented migrants, asylum seekers, refugees, and stateless persons—with a particular focus on people in detention and deportation procedures. To support this documentation project, we created an online, multilingual COVID-19 detention survey and sent information requests to government agencies, international organisations, National Human Rights Institutions (NHRIs), NGOs, and local academics and researchers, asking targeted questions regarding the measures States had taken to protect non-nationals.

During its first several months in operation, the GDP's COVID-19 platform received 90 information responses (40 survey responses, and 50 email responses) from a range of official institutions, including: Paraguay's *Direccion General de Migracion*, the Croatian Ministry of Interior, Belarus' Deputy Minister of the Interior Ministry, the Swedish Parliamentary Ombudsman's Office, the Spanish Ministry of Labour and Immigration, and multiple IOM and UNHCR country offices. Our work on the platform was also supported by input from numerous NGO partners and individual academic researchers, who provided regular updates for the platform. Thanks in part to their assistance—as well as the survey responses we received—as of 14 June 2021, some 14 months after launching the platform, the GDP had published 441 updates covering every country in the world (with the exception of the Holy See).

The operations of our COVID-19 platform have provided the GDP with an enormous amount of data about how states have responded to the pandemic, which has enabled us to observe several key trends, including:

- A gradual though temporary diminishing of detention populations in some countries, particularly those where detention time limits would be impossible to adhere to in light of the grounding of removal flights.
- A double standard in many countries with respect to efforts to mitigate the impact of the pandemic in prison populations vis-à-vis immigration detention centres, including giving more attention to releasing non-violent convicts than immigration detainees.

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<sup>1</sup> OHCHR, "Urgent Action Needed to Prevent COVID-19 'Rampaging Through Places of Detention' – Bachelet," 25 March 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745>

- The conversion of shelters and reception facilities into *de facto* detention centres, where forced confinement extended beyond that imposed on general populations and where conditions left non-nationals unable to socially distance.
- The reluctance of some States to establish firewalls between health and immigration authorities, resulting in many non-nationals fearing arrest and detention should they seek COVID-19 testing, treatment, and vaccination.
- The importance of ATDs as a COVID response in countries with no time limits in their immigration detention regimes, but the potentially harmful role ATDs could have in countries with strict detention time limits.
- The important role played by humanitarian agencies, in particular UNHCR, in providing sanitary supplies to refugee populations.
- An increase in anti-migrant rhetoric in many countries, blaming migrants and refugees for spreading COVID-19.
- The imposition of severely restrictive border measures with the aim of stopping the spread of the virus, but which included numerous practices that violate fundamental human rights norms, including arbitrary mass pushbacks and the use of ad hoc detention sites in often remote border regions.

**We urge the Special Rapporteur to consult [this platform](#) for further information detailing the immigration detention measures states have adopted within the context of the pandemic.**

### 3. HEALTHCARE RESPONSES & MEASURES IN DETENTION

#### 3.1 Releases

The GDP has documented various instances in which countries took affirmative steps to protect immigration detainees—both by issuing moratoriums on new detention orders, and by releasing some or all immigration detainees.

A widely recognised case is **Spain**, which had emptied its mainland detention centres (*Centros de Internamiento de Extranjeros* (CIEs)) by 6 May 2020. With borders closed and air travel curtailed, deportations effectively became impossible. As such, the rationales and legal justifications for many detention orders were erased, prompting the country’s Interior Ministry to order the release of detainees. (The move was in line with Article 15(4) of the EU Returns Directive, which states that “when it appears that a reasonable prospect of removal no longer exists... detention ceases to be justified and the person concerned shall be released immediately.”) It is worth noting, however, that opposite measures were adopted in the country’s North Africa enclaves of Ceuta and Melilla, where thousands faced forced confinement in hitherto “open” reception centres (Centres for the Temporary Stay of Immigrants, or CETIs). Moreover, despite a second wave of COVID-19 infections sweeping Europe and many countries’ borders remaining closed, Spanish authorities ordered the reopening of its CIEs towards the end of September 2020.<sup>2</sup>

While the release of detainees in Spain was largely justified in legal terms, several other countries released detainees as a health precaution—a means of preventing overcrowding and congestion, and thus protecting detainees from the spread of the virus. In **Canada**, the immigration detention population was reduced by more than half by 19 April 2020. Although this decrease was not the result of a general release policy (detainees were instead released following individualised detention review hearings), reports indicate that the threat of exposure to COVID-19 was factored into release decisions.<sup>3</sup>

**Crucial, however, is the fact that many countries have refused to release immigration detainees during the pandemic, while others even stepped up their apprehension and detention of non-nationals, often based on calls for protecting “public health.”**

The dangers of failing to reduce detention populations have become clear in many countries: In the **United States**, infection rates in immigration detention centres far outpace that of both criminal prisons and the general population, and have led to outbreaks in neighbouring communities, where facility staff members live.

<sup>2</sup> Jesuit Refugee Service, “Legal Sense and Political Nonsense,” 4 June 2021, [https://sjme.org/wp-content/uploads/2021/05/Detention-Report-2020-SJM\\_concise.pdf](https://sjme.org/wp-content/uploads/2021/05/Detention-Report-2020-SJM_concise.pdf)

<sup>3</sup> Global Detention Project, “Immigration Detention in Canada: Progressive Reforms and Missed Opportunities,” April 2021, <https://www.globaldetentionproject.org/countries/americas/canada#country-report>

These outbreaks have been tied to authorities' refusal to aggressively decongest facilities.<sup>4</sup> In **Malaysia**, COVID cases sky-rocketed in facilities following the detention of hundreds of refugees and undocumented migrants (including children) as part of anti-migrant raids—justified by authorities as anti-COVID campaigns.<sup>5</sup>

**Just as importantly, our survey has revealed many cases where countries released prisoners but not immigration detainees, revealing a stark double standard and underscoring the critical difference between the two forms of imprisonment: immigration detention as a method of permanently removing people for the public; incarceration as a step toward eventually reintroducing people to society.**

### 3.2 Detention conditions

The conditions that immigration detainees face inside detention facilities have taken on new importance during the COVID-19 pandemic. While many countries made extraordinary efforts to implement safeguards for migrant and refugee populations, often with the help of UN agencies like UNHCR and the WHO, detention centres have often been overlooked. Poor hygiene and sanitation facilities, minimal ventilation, overcrowding, and restricted access to medical care—all too often the hallmarks of immigration detention centres—are widely acknowledged to increase the risks of COVID-19 contagion amongst confined populations.<sup>6</sup>

**Healthcare and hygiene:** The GDP identified numerous issues of concern in detention facilities, including delayed COVID-19 testing; the failure to provide personal protective equipment (or, as in the case of the **Netherlands**, the ban on the use of face masks)<sup>7</sup>; lack of soap and other cleaning supplies; and shortage—and poor conditions of—sanitation facilities.

**Use of isolation:** In many countries, overcrowding and the impossibility of social distancing within detention facilities prompted authorities to order the use of isolation for quarantining newly arrived detainees, as well as those with suspected infections. In **Norway's** Trandum Detention Centre, newly arrived detainees have been locked in their rooms and allowed just 1.5 hours outside each day. According to the centre's supervisory board, the isolation measure is "disproportionate" and the legal basis for the practice is "questionable." They pointed out that detainees appear to have no ability to legally challenge their isolation. The board urged the facility to reassess its quarantine policy and investigate increased testing to reduce detainees' isolation time.<sup>8</sup>

## 4. DE FACTO DETENTION FACILITIES

Since the onset of the pandemic, the GDP has received increasing numbers of reports detailing the detention of non-nationals as a quarantine measure.

In October 2020, we reported on **Italy's** use of "quarantine ships" for the confinement of asylum seekers and migrants. Initially established in April 2020 by Decree n.1287/2020, the ships were intended to temporarily hold people rescued at sea who did not have a place of safety in the country. However, as well as placing newly arrived foreigners on the ships, others were transferred from reception centres and other migrant structures—some of whom had been in the country for "several years."<sup>9</sup> In **Paraguay** and **Uzbekistan**, reports have highlighted the detention of returning migrants in unsanitary and over-crowded state-run quarantine facilities for far longer than the recommended 14 days;<sup>10</sup> while in **Bangladesh** authorities have confined refugees and asylum seekers on the remote island of Bhasan Char under the guise of COVID-19 quarantine measures.<sup>11</sup>

<sup>4</sup> See: I. Niu, E. Rhyne, and A. Byrd, "How ICE's Mishandling of Covid-19 Fueled Outbreaks Around the Country," 25 April 2021, <https://www.nytimes.com/video/us/10000007707896/immigration-detention-covid.html>

<sup>5</sup> Global Detention Project, "Malaysia—COVID-19 Updates," <https://www.globaldetentionproject.org/countries/asia-pacific/malaysia# covid-19-updates>

<sup>6</sup> See, for example, International Detention Coalition, "COVID-19 Impacts on Immigration Detention: Global Responses," 2020, <https://bit.ly/3cF0h7T>

<sup>7</sup> Global Detention Project, "Netherlands – COVID-19 Update," 9 October 2020, <https://www.globaldetentionproject.org/countries/europe/netherlands# covid-19-updates>

<sup>8</sup> Global Detention Project, "Norway—COVID-19 Updates," <https://www.globaldetentionproject.org/countries/europe/norway# covid-19-updates>

<sup>9</sup> Global Detention Project, "Italy – COVID-19 Updates," <https://www.globaldetentionproject.org/countries/europe/italy# covid-19-updates>

<sup>10</sup> Global Detention Project, "Submission to the Universal Periodic Review: Paraguay," 19 October 2020,

<https://www.globaldetentionproject.org/submission-to-the-universal-periodic-review-paraguay>; Global Detention Project, "Uzbekistan – COVID-19 Updates," <https://www.globaldetentionproject.org/countries/asia-pacific/uzbekistan# covid-19-updates>

<sup>11</sup> Global Detention Project, "Bangladesh – COVID-19 Update," 24 September 2020, <https://www.globaldetentionproject.org/countries/asia-pacific/bangladesh# covid-19-updates>

The need to view places of quarantine as sites of detention was emphasised by Sir Malcom Evans, the outgoing chairperson of the Subcommittee on the Prevention of Torture (STP), in his statement to the 75<sup>th</sup> session of the UN General Assembly in October 2020. He said: **“One particular issue that has arisen in some countries is whether places of quarantine are places of ‘detention’ for the purposes of the OPCAT. Let me take this opportunity to answer this clearly: they are, and access cannot be denied to them.”**<sup>12</sup>

Previously, in its Deliberation No.11, the Working Group on Arbitrary Detention also stated that mandatory quarantine facilities established in response to COVID-19 are *de facto* forms of deprivation of liberty. As such, “When placing individuals under quarantine measures, States must ensure that such measures are not arbitrary. The time limit for placement in mandatory quarantine must be clearly specified in law and strictly adhered to in practice. ... Any deprivation of liberty that has no legal basis or is not carried out in accordance with the procedure established by law is arbitrary.”<sup>13</sup>

Similarly, the GDP has identified numerous instances in which previously open facilities were locked-down as a COVID-19 measure—resulting in the creation of *de facto* detention facilities. In **Cyprus** for example, two reception centres (the Temporary Accommodation Centre in Kokkinotrimithia (“Pournara”) and the Kofinou Reception and Accommodation Centre) were placed in a strict lockdown in November 2020. Residents, amongst whom number several dozen children, subsequently faced *de facto* detention—in violation of provisions of international conventions and national laws in relation to the treatment of asylum seekers including families with children and unaccompanied minors.<sup>14</sup>

**The GDP encourages the Special Rapporteur to urge authorities to provide the same legal guarantees and health safeguards provided to prisoners for migrants and asylum seekers confined in quarantine facilities that have become *de facto* detention centres since the onset of the pandemic.**

## 5. FIREWALLS

The GDP has received frequent reports highlighting the fact that when public health authorities are required to report undocumented people to immigration authorities, refugees, asylum seekers, and migrants are significantly less likely to request medical care and attention—out of fear of arrest and detention.

As the International Federation of Red Cross and Red Crescent Societies noted in 2020, “Migrants who do not have the necessary documents may fear reprisals if they make themselves known in order to access services or report abuses. They may also be particularly fearful of responding to COVID-19 contact-tracing questions and participating in tracing efforts given their lack of legal status. Undocumented migrants, for example, have reported being anxious about seeking medical help and fearful of charges or being reported to immigration authorities and deported in the UK. Some have suspected that support initiatives are intended to identify and deport them.”<sup>15</sup> Similarly, as the joint guidance from the Committee on Migrant Workers, Special Rapporteur on the Human Rights of Migrants, and UN High Commissioner for Human Rights states, “Enact firewalls between immigration enforcement and the provision of COVID-19 vaccination, in order to prevent fear or risk of reporting, detention, deportation and other penalties as result of migration status. Vaccine registration should not be used to collect nor share information about migration status.”<sup>16</sup>

The GDP has identified numerous countries, in addition to the **United Kingdom**, that have failed to establish firewalls between health and immigration authorities during the pandemic, including **Malaysia, Lebanon,** and

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<sup>12</sup> UN Subcommittee on the Prevention of Torture, “Statement by Sir Malcolm Evans, Chairperson Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,” 15 October 2020, [https://www.globaldetentionproject.org/wp-content/uploads/2020/11/Statement\\_OPDAT\\_GA75.pdf](https://www.globaldetentionproject.org/wp-content/uploads/2020/11/Statement_OPDAT_GA75.pdf)

<sup>13</sup> UN Working Group on Arbitrary Detention, “Deliberation No. 11 on Prevention of Arbitrary Deprivation of Liberty in the Context of Public Health Emergencies,” 8 May 2020, <https://www.globaldetentionproject.org/wp-content/uploads/2020/11/WGAD-Deliberation-No-11.pdf>

<sup>14</sup> Global Detention Project, “Cyprus – COVID-19 Updates,” <https://www.globaldetentionproject.org/countries/europe/cyprus#covid-19-updates>

<sup>15</sup> International Federation of Red Cross and Red Crescent Societies (IFRC), “Least Protected, Most Affected: Migrants and Refugees Facing Extraordinary Risks During the COVID-19 Pandemic,” 2020, <https://reliefweb.int/sites/reliefweb.int/files/resources/IFRC-report-COVID19-migrants-least-protected-most-affected.pdf>

<sup>16</sup> UN Committee on Migrant Workers, UN Special Rapporteur for the Human Rights of Migrants, and UN High Commissioner for Human Rights, “Joint Guidance Note on Equitable Access to COVID-19 Vaccines For All Migrants,” 8 March 2021, <https://bit.ly/35g6hjh>

**South Africa.**<sup>17</sup> Others, however, took important steps to safeguard the health of non-nationals and the wider community. In January 2020, the **Republic of Korea** announced that it was scrapping the requirement for medical staff to report undocumented migrants to immigration authorities. As the country's then Prime Minister Chung Sye-Kyun said on 29 April 2020, "Due to their unstable status, there is a high chance that they won't seek testing even though they have suspected (COVID-19) symptoms and this is a blind spot that is possibly leading to community transmission. ... If we label them illegal immigrants and crack down on them, they will go into hiding more deeply, which could create a blind spot."<sup>18</sup> (It is worth noting, however, that many undocumented migrants in the country were reportedly unaware of this new protection, and that activists reported that some non-nationals remained fearful of seeking assistance.)<sup>19</sup>

**The existence of systems that actively discourage undocumented persons from seeking testing, treatment, and vaccinations during the pandemic threatens both the health and wellbeing of refugee and migrant communities, as well as the wider community. It is thus in the interests of all that non-nationals are protected from retribution should they seek medical care—and that the existence of firewalls between health and immigration authorities is clearly communicated to non-nationals.**

## **6. ALTERNATIVES TO DETENTION**

The GDP's COVID-19 survey includes a specific question asking whether governments have turned to "alternatives to detention" as a mechanism for diminishing detainee populations in the face of the clear health threats posed by COVID in detention settings. **Aside from a small handful of cases, we found that ATDs were not used in any systematic way by governments. And in cases where they were used, the rationale for their use was closely linked to the nature of the immigration detention regime in question.** Thus, for example, **Spain**, which quickly drew down its immigration detention population, made no use of its available ATD measures when it released people from detention, despite some reports to the contrary.<sup>20</sup> Rather, the rationale for Spain's decision to empty its detention centres rested on its realisation that detainees could not be deported within the limited timeframe available due to border closures, and thus it was forced to release people completely rather than continue with their immigration procedures in ATD programmes.

Two important countries where ATDs were used as a pandemic response were **Canada** and the **United Kingdom**. Notably, these countries have markedly different laws to Spain: they both provide unlimited detention measures whereas Spanish law provides only sharply limited detention terms. Thus the logic of ATDs became very clear: where countries have no limits in their detention systems, using ATDs could be an important tool to manage people outside detention while keeping them firmly within removal procedures. As we saw this trend emerge, the GDP actively sought to engage advocates and other actors to be cautious in calling on governments to use ATDs in response to COVID-19, especially governments with limited detention regimes, because such calls could send the misleading message that advocates were encouraging countries to pursue deportation and other restrictive measures that could have the unintended consequences of doing more harm than good, in addition to presenting governments with recommendations contrary to their laws.

**We urge the Special Rapporteur to carefully define the conditions under which his Mandate urges countries to employ ATDs as a COVID-19 response measure, especially in countries where this could imply a continuation of onerous and potentially abusive immigration control procedures.**

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<sup>17</sup> Global Detention Project, "Malaysia – COVID-19 Updates," <https://www.globaldetentionproject.org/countries/asia-pacific/malaysia# covid-19-updates>; Global Detention Project, "Lebanon – COVID-19 Updates," <https://www.globaldetentionproject.org/countries/middle-east/lebanon# covid-19-updates>; Global Detention Project, "South Africa – COVID-19 Updates," <https://www.globaldetentionproject.org/countries/africa/south-africa# covid-19-updates>

<sup>18</sup> Global Detention Project, "Republic of Korea – COVID-19 Updates," <https://www.globaldetentionproject.org/countries/asia-pacific/republic-of-korea-south-korea# covid-19-updates>

<sup>19</sup> Global Detention Project, "Republic of Korea – COVID-19 Updates," <https://www.globaldetentionproject.org/countries/asia-pacific/republic-of-korea-south-korea# covid-19-updates>

<sup>20</sup> UN Network on Migration, "Annex to Policy Brief – COVID-19 & Immigration Detention: What Can Governments and Other Stakeholders Do?" February 2021, [https://migrationnetwork.un.org/sites/default/files/docs/annex\\_to\\_policy\\_brief\\_on\\_atd\\_and\\_covid-19.pdf](https://migrationnetwork.un.org/sites/default/files/docs/annex_to_policy_brief_on_atd_and_covid-19.pdf)