



Alternatives to Immigration Detention

Detention is one of the crucial features of immigration law enforcement. It serves to ensure that people arrested for immigration violations are held while their immigration status is determined or until they are deported. Nonetheless, in many cases, “the detention of migrants lacks regulation altogether and falls into a legal vacuum, leaving migrants with little or no safeguards or remedies for any abuse suffered while in detention or for arbitrary or extended detention.”¹ Our concern is that the Covid-19 pandemic has dramatically amplified and multiplied existing challenges, weaknesses and abuses characterizing most detention centers around the world. This includes chronic violence, overcrowding, limited access to basic services, including health, and a culture of disrespect and dehumanization.

In most cases, detention does not achieve any goal, let alone the forced repatriation of the detainees. It is also very expensive and costs are passed on to taxpayers.

The Migrants & Refugees Section of the Dicastery for Promoting Integral Human Development calls for systematically exploring and adopting non-custodial alternatives to immigration detention and to putting an end to this practice altogether.

Reasons

When immigration detention is used, it should be used as an administrative measure. Indeed, “most international bodies consider the criminalization of irregular entry as disproportionate and recommend that it be considered an administrative infringement.”²

In accordance with the principle of the best interests of the child, children “must be spared any form of detention related to migratory status.”³ This exception should also apply to their parents and siblings, in order to uphold the integrity of the family.

Any person wishing to apply for international protection and exhibiting signs of physical or mental health problems, or having been trafficked, should never be detained in relation to their migratory status.

¹ IOM, *Immigration Detention and Alternatives to Detention*, https://www.iom.int/sites/default/files/our_work/ODG/GCM/IOM-Thematic-Paper-Immigration-Detention.pdf

² Ibidem.

³ Pope Francis, *Message for the World Day of Migrants and Refugees 2018*.

According to the Social Doctrine of the Church, any detention - understood as punishment - should only be inflicted according to the seriousness of the crime and with the aim of discouraging “behavior that is harmful to human rights and the fundamental norms of civil life, and [repairing], through the penal system, the disorder created by criminal activity.”⁴ It is difficult to reconcile immigration detention with this principle.

Non-custodial alternatives to immigration detention, such as non-governmental reception centers and other community-based placement programmes, ensure better protection of the rights and dignity of irregular migrants. In addition, they are more effective and less expensive and are in line with Objective 13 of the Global Compact for Safe, Regular and Orderly Migration.⁵ Lastly, they also ensure the full participation and ownership of civil society, faith-based organizations, employers, private individuals and other stakeholders in identifying solutions, rather than only promoting a border control and security-focused approach to immigration.

Methods

Alternatives to immigration detention should not be confused with alternative forms of immigration detention. For example, release on bail, regular reporting to the authorities and electronic tagging sometimes jeopardize the effectiveness of non-custodial programmes and should be avoided, whenever possible.

Community-based placement programmes for irregular migrants have been already successfully implemented in a number of countries. The institutionalization of differentiated schemes aimed at placing irregular migrants within individual families, community-run reception centers or self-managed housing programmes are often the key to their success.

All placement programmes should be understood as temporary and oriented to finding a solution for the irregular situation of beneficiaries, be that the definitive regularization of their status or their repatriation. In either case, beneficiaries should be provided with temporary visas and means to prepare themselves adequately for the envisioned solution.

⁴ *Compendium of the Social Doctrine of the Church*, 402.

⁵ “We commit to ensure that any detention in the context of international migration follows due process, is non-arbitrary, is based on law, necessity, proportionality and individual assessments, is carried out by authorized officials and is for the shortest possible period of time, irrespective of whether detention occurs at the moment of entry, in transit or in proceedings of return, and regardless of the type of place where the detention occurs. We further commit 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.” *Global Compact for Safe, Regular and Orderly Migration*, 29.

Special placement schemes should always be developed for minors and their families, as well as for persons seeking international protection, persons with signs of physical or mental health problems, and persons that show signs of having been trafficked.

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