

GLOBAL DETENTION PROJECT

SUBMISSION TO THE **SPECIAL RAPPORTEUR ON TORTURE**
CONCERNING THE **CALL FOR INPUTS FOR PRACTICAL**
MEASURES TO REDUCE AND PREVENT PRISON
OVERCROWDING

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THE GLOBAL DETENTION PROJECT MISSION

The Global Detention Project (GDP) is committed to ending arbitrary and harmful migration-related detention practices around the world, and to ensuring respect for the fundamental human rights of all migrants, refugees, and asylum seekers. To achieve this, we seek to:

- Increase public knowledge and awareness of immigration detention policies.
- Expand coverage of immigration detention by human rights monitoring bodies and other international agencies.
- Expand partnerships with local and international civil society organisations working to end arbitrary and harmful immigration detention practices.
- Strategically target research and advocacy so that it effectively challenges arbitrary and harmful detention laws and policies.

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CONCERNING THE CALL FOR INPUTS FOR PRACTICAL MEASURES TO REDUCE AND PREVENT PRISON OVERCROWDING

1. Introduction

- 1.1 The [Global Detention Project](#) is pleased to provide this submission in response to the Special Rapporteur's call for input for the forthcoming report on practical measures to reduce and prevent prison overcrowding.
- 1.2 This submission seeks to focus attention on the need to evaluate the role that increasingly restrictive immigration enforcement measures are having in boosting the numbers of people deprived of their liberty in countries across the globe today. We strongly believe that any report that seeks to explore ways to limit prison overcrowding must take into account the growing numbers of migrants, refugees, and asylum seekers who are being placed behind bars as part of criminal, administrative, or ad hoc procedures stemming from their irregular status.
- 1.3 The submission is made in light of this mandate's longstanding concerns about the harmful nature of immigration detention as well as concerns expressed in this call for input about the need for safeguards to ensure that "alternatives to detention" genuinely replace deprivation of liberty and do not result in expanding harmful surveillance of growing numbers of persons who would otherwise not have been detained ('net-widening').
- 1.4 We wish to draw particular attention to the Special Rapporteur on Torture's 2018 report to the 37th session of the Human Rights Council (A/HRC/37/50), which states that the "margins of permissibility of migration-related detention are narrow, in terms of both substantive justification and duration, and the mere fact that detention is authorized by national law does not exclude its arbitrariness under international law. In the view of the Special Rapporteur, criminal or administrative detention based solely on migration status exceeds the legitimate interests of States in protecting their territory and regulating irregular migration, and should be regarded as arbitrary."ⁱ
- 1.5 We also note the current mandate holder's previous work on immigration detention, including the 2022 journal article he co-authored titled "Torturing environments and multiple injuries in Mexican migration detention." That study's finding of "structural human rights violations" inherent in Mexico's immigration detention regime could equally apply to detention systems in countless countries across the globe today.ⁱⁱ

2. The Many Forms of Immigration Detention

- 2.1 Immigration detention assumes many different forms across the globe and there is no easy definition of this measure. In Europe, North America, and most other migrant destination countries, immigration detention is regulated as an administrative procedure intended to ensure removal or completion of other immigration or asylum procedures. However, in many countries immigration detention is mainly applied as part of a criminal process related to charges of unauthorised entry or stay in a country, including in Jordan, Lebanon, Morocco, and other countries, which are today being pressured by their neighbours to halt the movement migrants and refugees.
- 2.2 At the same, we are witnessing today the emergence of ad hoc forms of immigration detention, in particular because of efforts by the United States to deport third-country nationals to countries across Africa and Latin America. In many of these countries, deported persons are being held in hotels, prisons, or other ad hoc sites without any legal provision supporting their imprisonment and in some cases without any public accountability at all.
- 2.3 As the case of the detention of third-country deportations illustrates, the sites of immigration detention are as diverse as the reasons for such measures. As part of our work at the Global Detention Project, we have documented nearly 3,000 sites that have been used for immigration-related detention purposes over the past two decades.ⁱⁱⁱ In the European Union, directives require member states to use specialised facilities for confining people who are in immigration return procedures. However, elsewhere in the world—in the United States, South Africa, Egypt, and Switzerland, for instance—police stations and prison systems have been widely used in addition to dedicated centres. In many countries, particularly those that do not have well developed legal frameworks for migration-related detention or face surges in the numbers of arrivals, people may be confined in ad hoc detention centres such as abandoned hotels, shipping containers, open air camps, warehouses, or other informal sites.

3. Lack of Data about Immigration Detention

- 3.1 We are inundated today with reports about how countries in the Global North and the Global South are ramping up the arrest, detention, and deportation of migrants, refugees, asylum seekers. Driven by the efforts of wealthy countries to “externalise” migration controls, new immigration detention practices have spread across the globe over the past two decades.^{iv} However, efforts to properly account for these enforcement practices and measure their growth are hampered by the lack of publicly available data in most countries about how many people are confined in

immigration detention as well as by official efforts to shield immigration detention practices from public scrutiny and independent monitoring.

- 3.2 These persistent and widespread failures to ensure transparency of immigration detention regimes were recently highlighted by the World Health Organisation, which in its January 2026 evidence brief “Health in Immigration Detention” noted: “The review found a lack of data on detainee health and health care provision because of limitations in information provided by official government bodies; lack of access by independent monitoring bodies to immigration detention facilities in many countries; gaps in immigration detention health care reporting; and other migration-related challenges affecting health, such as lack of medical records and the occurrence of language barriers.”^v
- 3.3 Concerns about the lack of transparency of immigration detention systems and practices are long-standing. In a 2015 study, a team of non-governmental investigators reported repeatedly requesting basic migration detention data—how many people detained annually, numbers of children and asylum seekers detained, locations of detention centres—from 33 countries across Europe and North America, employing an iterative process based on access to information laws in each country over a two-year period. Only six countries provided complete responses.^{vi}
- 3.4 More recently, in 2020, the UN-appointed Independent Expert on Children Deprived of Liberty released the first ever [Global Study on Children Deprived of Liberty](#). The Independent Expert issued questionnaires to all countries asking for data on children in all forms of detention. However, only 42 countries answered questions concerning migration-related detention of children. Based on evidence from the questionnaires and an exhaustive review of available statistics, the Global Study estimated that no fewer than 80 countries detained children for migration purposes, with the annual number of detained children reaching a conservative estimate of 330,000.^{vii} In contrast, the UN High Commissioner for Refugees, in a review of 12 countries, found that in 2014 there were nearly 165,000 children detained.^{viii}

4. The Challenges of Alternatives to Detention in the Migration Context

- 4.1 A key global effort to challenge the use of immigration detention is the promotion of “alternatives to detention,” which are advocated in the Global Compact for Migration. However, this campaign has faced numerous challenges that stem from the particular nature of immigration detention, in addition to the “net-widening” impact of ATDs that have also been documented in criminal justice settings.

- 4.2 To properly understand the challenges of ATDs in the immigration context, it is useful to compare administrative immigration detention to its penal counterpart, criminal imprisonment. Most modern prison systems are intended to serve as a form of punishment while at the same time preparing prisoners for eventual return to their societies. Immigration detention, on the other hand, has no such reform agenda because most people entering detention are never intended to return to society, but rather to be permanently removed.
- 4.3 This inherent quality of immigration detention makes it both resistant to reforms, as well as challenging for the introduction of ATDs, at least as per the concept used in criminal justice contexts. Properly understood within the framework of immigration procedures, ATDs are intended to operate as procedural guarantees aimed at testing whether a detention measure is both necessary and proportionate to the expected goal of the immigration adjudication process. If a state decides that the elements of a particular case merit consideration of a detention order, before imposing that measure officials must first assess whether a non-custodial measure—like placement in a special home in a community or imposition of reporting requirements—will be sufficient.
- 4.4 However, this concept of ATDs as a baseline procedure for preventing arbitrary immigration detention is not how it is being advertised today, and increasingly it is not how it is being used by states. The International Organization for Migration, which helps oversee implementation of the Global Compact for Migration, defines ATDs as “*Any legislation, policy or practice, formal or informal, aimed at preventing the unnecessary detention of persons for reasons relating to their migration status*” [emphasis added].^{ix}
- 4.5 This definition of ATDs, which lifts ATDs from their limited procedural role as a tool for preventing arbitrary detention, has led to the promotion of various misleading and potentially harmful concepts and policy proposals, including the claim that access to asylum procedures should be considered an alternative to detention and that upon arrival at borders, all undocumented migrants and asylum seekers should be automatically offered ATDs. Not only does this formulation undermine ATDs’ role as a test for preventing arbitrary detention it also undermines the primacy of the right to liberty as a fundamental guarantee for all people, citizens and non-citizens.
- 4.6 Reconceived in this expanded way, ATDs in the immigration context have been transformed in policy contexts, leading to net-widening of surveillance on a massive scale. In the United States, as of 11 July 2026, Immigration and Customs Enforcement (ICE) had 183,181 persons under various forms of monitoring, including electronic tagging, as part of its ATD program. This was in addition to the 65,765 people in detention on that same day, among the highest numbers of immigration detainees ever recorded in the U.S.^x

- 4.7 Similarly in Europe, the European Union’s new Return Regulation frames ATDs as a tool to be used entirely separate from or in parallel to detention measures and removes the requirement to assess less coercive measures as part of detention decision-making procedures. This undermines EU member states adherence to the right to liberty and injects arbitrariness into migration enforcement procedures. In response to the proposed draft of the regulation, a large group of UN experts and special procedures, led by the UN Special Rapporteur on the human rights of migrants, released a letter that argued that any ATD provision that is not strictly connected to a necessity and proportionality evaluation procedure is not a “genuine” ATD, stating: “Labelling such measures as ‘alternatives to detention’ is ... misleading and normalises the use of restrictive measures and surveillance. We oppose using alternatives to detention as alternatives to release and turning personal freedom into an exception.”^{xi}

5. Recommendations

- 5.1 Because many countries across the globe use prisons to hold immigration detainees—both for administrative and penal reasons—and as immigration detention measures are rapidly expanding across the globe today, any proposal to reduce prison overcrowding must call on all states to:

5.1a Cease the use of prisons and other criminal justice facilities for the purposes of administrative immigration detention, in line with expert interpretations of relevant human rights norms, including the Working Group on Arbitrary Detention’s *Revised Deliberation No. 5* (2018), which states: “The detention of asylum seekers or other irregular migrants must not take place in facilities such as police stations, remand institutions, prisons and other such facilities since these are designed for those within the realm of the criminal justice system” (paragraph 44).

5.1b Adopt laws decriminalising infractions related to unauthorised entry or stay in a country, in line with the expert advice and findings of numerous human rights bodies, as reflected in the Special Rapporteur on Torture’s 2018 report (quoted above), which states: “In the view of the Special Rapporteur, criminal or administrative detention based solely on migration status exceeds the legitimate interests of States in protecting their territory and regulating irregular migration, and should be regarded as arbitrary.”

5.1c Ensure that immigration detention is only used as a last resort, for the least amount of time necessary, only when determined to be absolutely necessary based on grounds provided in law, and prohibited for use in cases involving at-risk groups including children and families, pregnant and breast-

feeding women, the elderly, victims of trafficking, refugees and asylum seekers, torture survivors, people with specific disabilities, stateless persons, as well as all individuals for whom there is no possibility of removal from the country.

- 5.2 Call on states to employ a constrained and measured use of alternatives to detention in the context of administrative immigration procedures**, that they be used only as part of procedures to test the necessity and proportionality of detention orders and to prevent arbitrary detention.
- 5.3. Call on states to document their immigration detention measures and regularly release statistics and data** about how many people are placed in immigration detention, where they are detained, how long they are detained, and desegregated for age, gender, nationality, and grounds for detention.

ENDNOTES

- ⁱ Human Rights Council, “Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,” A/HRC/37/50, 23 November 2018, <https://documents.un.org/doc/undoc/gen/g18/347/27/pdf/g1834727.pdf>
- ⁱⁱ J. Manek, A. Galán-Santamarina, and P. Pérez-Sales, “Torturing environments and multiple injuries in Mexican migration detention,” *Humanities and Social Sciences Communications* volume 9, Article number: 263 (2022)
- ⁱⁱⁱ Global Detention Project, List of Immigration Detention Centres, <https://www.globaldetentionproject.org/detention-centres/list-view>
- ^{iv} M. Flynn, “There and Back Again: On the Diffusion of Immigration Detention,” *Journal on Migration and Human Security*, 2014, <https://www.globaldetentionproject.org/there-and-back-again-on-the-diffusion-of-immigration-detention>; D. Ghezelbash *Refuge Lost: Asylum Law in an Interdependent World*, Cambridge University Press, 2018, <https://www.cambridge.org/gb/academic/subjects/law/comparative-law/refuge-lost-asylum-law-interdependent-world?format=HB&isbn=9781108425254>; D. S. FitzGerald, *Refuge Beyond Reach: How Rich Democracies Repel Asylum Seekers*, Oxford University Press, 2019, <https://global.oup.com/academic/product/refuge-beyond-reach-9780190874155?cc=us&lang=en&>
- ^v World Health Organisation, “Health in immigration detention: Evidence brief for policy and practice,” 2026, <https://www.who.int/publications/i/item/9789240119444>
- ^{vi} Global Detention Project and Access Info Europe, “The Uncounted: The Detention of Migrants and Asylum Seekers in Europe,” 17 December 2015, <https://www.globaldetentionproject.org/the-uncounted-the-detention-of-migrants-and-asylum-seekers-in-europe>
- ^{vii} M. Nowak, “UN Global Study on Children Deprived of Liberty,” 2019, <https://omnibook.com/view/e0623280-5656-42f8-9edf-5872f8f08562/page/1>
- ^{viii} UN High Commission for Refugees, “Beyond Detention: A Global Strategy to Support Governments to End the Detention of Asylum-Seekers and Refugees,” 2014, <https://www.unhcr.org/uk/protection/detention/53aa929f6/beyond-detention-global-strategy-support-governments-end-detention-asylum.html>
- ^{ix} International Organisation for Migration, “Alternatives to Detention,” <https://www.iom.int/alternatives-detention>
- ^x Statistics compiled by TRAC Immigration, <https://tracreports.org/immigration/quickfacts/>
- ^{xi} Mandates of the Special Rapporteur on the human rights of migrants; the Working Group on Arbitrary Detention; the Special Rapporteur on the rights of persons with disabilities, et al, Letter dated 26 January 2026, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=30660>