

# 3

## DETENTION AND RETURN

Tuesday, 15 June 2021, 3 PM CEST

### ACTION POINTS

Questions that should be answered when assessing strategies:

1. Does the country apply immigration detention measures? If it does, in what context (administrative, criminal, or ad hoc)? If it doesn't what are the reasons?
2. Does the country have laws that prohibit any group of people from being detained?
3. Is it a country of origin, transit, or destination?
4. Does the country have a time limit for immigration detention?
5. Does it have a mandatory or a discretionary detention policy?
6. How is the necessity and proportionality of each deprivation of liberty assessed?

The model of alternatives to detention is not a one-size fits all approach that fits globally. Our emphasis should be on the primacy of the right to liberty, an inherent right. Working locally, we need to assess the specific situation in each country. In some cases, alternatives to detention will work as a method to assess whether detention measures are necessary and proportionate, particularly in contexts of mandatory detention. It is necessary to frame alternatives to detention narrowly.

We need to go beyond the model of alternatives to detention, towards the complete eradication of the deprivation of liberty for immigration reasons.

We need to ask ourselves whether we are questioning enough why migrant workers are being detained for violation of administrative law. And ask why migrants pay the ultimate price in a system in which they are dependent on their employers. We need to question why labour migration is criminalized. Our response should consider using the judiciary more actively, to challenge detention procedures, focusing on bail and challenging deportation proceedings.

Impact litigation can lead a way. Legislation may provide safeguards against detention, but if there is no oversight, it will not be followed. Constitutional litigation is a pathway to promote judiciary oversight. Procedural guarantees are an interesting opportunity to question the decision to deprive a person of their liberty for an immigration enforcement.

Regional strategies are important, particularly advocacy that addresses the situations that result in immigration irregularity, and then in detention and deportations.

Alternatives to detention is a useful strategy when there is clear legal language that authorizes detention, and where we don't see that human rights language that reinforces the right to liberty has any chances. Alternatives to detention is a cost-effective measure, that is useful with some governments. It is a matter of strategy in particular contexts.

We need to question approaches to migration as a threat or a problem that demands a security response, including the militarization of immigration enforcement, detention, and deportation. The emphasis is on regularization, legal pathways, and how non-nationals enter a country, etc. We need to insist that migration is a human right and fight against xenophobia, which has become a political tool, under which migrants are viewed as a security threat.

Strategies to defund institutions responsible for detention and deportation and advocating against the role of private companies in both activities are also interesting strategies.

We need to unpack the complexity of the irregular immigration status. It is much more than a document and it is not actually addressed with a regularization program. It makes no sense that families live for decades in irregular status and that they are unable to overcome that situation. It is an administrative infraction with no statute of limitations, just like crimes against humanity. Comprehensive, holistic immigration policies indicate that we need to broaden the table and include local authorities, labor authorities, education authorities, health providers, etc. This is how we overcome a discussion based strictly on infraction - sanction and move towards discussing how to address the needs of that family. Solutions should not be limited to detention and alternatives to detention, but rather on inclusion. Those are the discussions that we should be having in all societies, regardless of the nationality of people. We don't need a different perspective. There are opportunities in the Global Compact on Migration. We need to move out from this small table. At the core, this is a social multidimensional discussion. We need to include more actors in the discussion.