Submission to the UN Committee On Migrant Workers for the Draft General Comment No.5 on Migrants’ Right to Liberty and Freedom from Arbitrary Detention

Submitted in April 2019
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 Submission to the UN Committee On Migrant Workers for the
Draft General Comment No.5 on Migrants’ Right to Liberty and Freedom from Arbitrary Detention

The Global Detention Project (GDP) welcomes the opportunity to provide input for the CMW General Comment No.5 that aims to provide authoritative guidance to States in implementing the obligations under the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW). The GDP is an independent research centre based in Geneva that investigates immigration-related detention including national laws, policies, practices, places and conditions of detention for migration-related reasons in all world regions.

Through their monitoring work for over a decade, CMW members are well placed to know that data on the practice and legislation with regards to the right to liberty and freedom from arbitrary detention protected under ICRMW Articles 16 and 17 is rarely forthcoming. Based on the relevant international legal framework applicable to immigration detention the GDP has developed a methodology to identify, analyse and compare states' laws and practices of immigration detention.

The GDP posts its research findings, including "country profiles", thematic working papers, statistics, domestic legislation and detaining and monitoring institutions in a public on-line database on its website. The GDP currently displays findings on over 100 countries with substantive and updated information relevant to the CMW, including for 37 States Parties to the ICRMW. (As a rule, data on the GDP website is sourced and dated.) Should CMW members find it useful, the GDP can present the database and website to members when the CMW is in session.

See for instance our country page for Egypt (the first State party to ratify the ICRMW in 1993):

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And see for instance the section on "Domestic legislation" from our country profile on Indonesia (ICRMW ratification in 2012):

**Domestic Law**

- **A. LEGAL TRADITION**
- **B. LAWS AND REGULATIONS**
- **C. GROUNDS FOR ADMINISTRATIVE IMMIGRATION-RELATED DETENTION**

### Immigration-status-related grounds

<table>
<thead>
<tr>
<th>NAME</th>
<th>OBSERVATION DATE</th>
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</thead>
<tbody>
<tr>
<td>Detention for unauthorised exit</td>
<td>2015</td>
</tr>
<tr>
<td>Detention to prevent unauthorised entry at the border</td>
<td>2015</td>
</tr>
<tr>
<td>Detention for unauthorised entry or stay</td>
<td>2015</td>
</tr>
<tr>
<td>Detention to effect removal</td>
<td>2015</td>
</tr>
</tbody>
</table>

**D. CRIMINALIZATION OF IMMIGRATION-RELATED OFFENCES**

**E. LENGTH OF DETENTION**

<table>
<thead>
<tr>
<th>Maximum length for administrative immigration detention in law.</th>
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<tbody>
<tr>
<td>NUMBER OF DAYS</td>
</tr>
<tr>
<td>-----------------</td>
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<tr>
<td>3650</td>
</tr>
</tbody>
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The CMW questionnaire for General Comment No.5 is designed to collect detailed information on individual countries, thus non-governmental organisations with a global brief face challenges in completing the questionnaire. The GDP suggests that CMW members use information posted on the GPD website to harvest data for countries for which it has not received completed questionnaires.

ICRMW provisions relating to liberty and rights during detention have been described as "more elaborate ... more enumerated" in the first substantive compendium on the Convention. However, the unique ratification pattern for the ICRMW, with the absence of States parties from regions of the world where immigration detention is practised on a large scale, has hampered the universal application of ICRMW's provisions on deprivation of liberty. Thus, "The full breadth of potential application of ICRMW safeguards during administrative detention of migrants remains to be tested as countries with the largest immigration detention estates evade scrutiny of their policies and practice through non-ratification of the Convention."²

To take this gap into account, and within the framework of the current process on the strengthening of the treaty body system and the development of synergies between

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committees, CMW members might want to read a GDP Working Paper that analyses how the human rights treaty monitoring bodies—including CMW—monitor implementation of provisions related to deprivation of liberty and protection from arbitrary detention throughout the full breadth of the international human rights legal framework and across the world.³

We note that General Comment No.5 "will also assist States in implementing relevant commitments contained in the Global Compact on Migration, as well as assist other stakeholders with advocacy initiatives in this context".⁴ This is particularly important as one of the 23 objectives of the Global Compact for Safe, Orderly and Regular Migration,⁵ provides a detailed set of safeguards and that indicators will be necessary to review progress at the national level in implementing states commitments.⁶

⁵ Objective 13. Use migration detention only as a measure of last resort and work towards alternatives.