**UN Committee on Migrant Workers General Comment No. 5 on**

**Migrants’ Human Right to Liberty and their Protection from Arbitrary Detention**

**Questionnaire**

**December 2018**

This questionnaire has been created to collect information from States, civil society organizations, intergovernmental entities, academic institutions, and other interested parties for the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) in its drafting of General Comment No. 5 on Migrants Workers’ Right to Liberty and Protection from Arbitrary Detention. CMW invites these stakeholders to submit responses to this questionnaire in accordance with their expertise and capacity. Parties are asked to provide detailed information including sources, data, statistics, evidence, and documentation as available. Parties need not answer every question, and may submit information in alternate formats.

Input may be sent electronically in Word format to the email: cmw@ohchr.org with the subject line, “Submission for General Comment on Migrants’ Right to Liberty.” **Submissions should not exceed ten pages in length and should be received by 1 April 2019.** Written contributions will not be translated and should preferably be submitted in English. Submissions in French and Spanish will also be accepted.

**Organization Information**

Name of Organization Completing Form:

Country:

Contact Information:

Date:

**Part A: General Information**

1. Please describe the process by which migrants are detained in your country. Which authorities are tasked with this responsibility? Who or what body oversees these authorities?
2. Where do arrests and detentions take place? Is force typically used during arrest or detention? Are there standards for treatment of migrants during an arrest? To what extent are migrants informed of what is going on during an arrest (why they are being detained, possible charges against them, etc.)?
3. Who are the personnel that staff facilities that hold people in detention (corrections officers, law enforcement, social workers, etc.)? What are the professional qualifications of staff at these detention facilities? Who oversees staff at detention facilities?
4. Who owns the facilities used to house migrants who are detained? Who operates the facilities used to house detained migrants? Are facilities that house detained migrants public or private?
5. Does your country monitor detention facilities? Who monitors detention facilities? What are the standards that detention facilities must adhere to?
6. During detention, do detainees have access to communication with their families, legal counsel, and their own consular authorities? Are detainees provided with information on the process they are going through?
7. Are the particular needs of women and other groups of people met? Is consideration given to the status of asylum seekers, victims of torture and trafficking, and other migrants who are particularly vulnerable?
8. Does the detention process look any different if minors are involved?

**Part B: Legal Treatment**

1. What is the legal basis for detaining migrants in your country? What purpose does detention of irregular migrants serve? How has this purpose been articulated through legislation and through the judicial system and public policies? Please identify any relevant cases in your country’s court system.
2. Is immigration governed by criminal law or administrative law?
3. Does the immigration detention proceed *ex officio* or there is an individualized analysis of its pertinence and proportionality?
4. Does legislation establish a maximum amount of time for immigration detention? What is the maximum amount of time that someone can be detained? Are there any exceptions or extensions allowed by law?
5. Does legislation provide any mechanism to challenge the legality of the detention?
6. Is there any national legislation that guarantees legal representation or interpreters in immigration proceedings? Is there a guarantee of access to free legal representation?
7. Is there any legislation that establishes the right to consular assistance for migrants? Is this right guaranteed in practice?
8. Does your country recognize the due process rights of non-citizens to the extent that it recognizes the due process rights of citizens? If not, what are the differences?
9. Is information available to detainees regarding the processes of requesting asylum or applying for refugee status?
10. What do proceedings that determine migration status look like? Who is the decision-maker or decision-makers? What are the qualifications of the decision-makers? Are they appointed or elected?
11. Is there a duty to ensure that decisions are duly motivated by legal reasoning? How is that ensured in practice?
12. How much time elapses after arrest before a determination of migration status is made? How long does the initial determination of status process take?
13. If families are involved, are their cases determined separately or together? Is consideration given to the special circumstances of children?
14. What are the consequences of a finding of irregular migration? Is an individual who is found to have entered the country in an irregular manner returned to detention or moved to a different facility? Are the conditions different for individuals found to be irregular migrants? Are irregular migrants eligible to be released on bond/bail until a final determination has been made?
15. Is there a right to appeal of finding of irregular migration status? What does the appeal of a finding of irregular migration status look like? How much time elapses from a judgment of irregular migration status to an appeal? What due process guarantees are given during the appeal process of a finding of irregular migration status? Does the appeal process have suspensive effect regarding deportations?

**Part C: Impact on Detainees**

1. Please describe the impact that detention has on detainees’ physical and mental health.
2. Please describe the varying impacts on particularly vulnerable groups, including racial and ethnic minorities. What systems or practices are in place to prevent discrimination in both proceedings and detention?
3. Please describe the way in which detention of migrants in your country particularly affects children who are detained. How does the detention affect education? Are educational resources available in the facilities in which they are held? Please describe any of these programs.
4. Is consideration given to keeping families together?
5. Are children typically kept in detention? How long?
6. How does the detention of migrants in your country particularly affect women? Are health resources for women made available to women in detention? How can women in detention access health resources? Are resources available for pregnant women in detention? How are pregnant women accommodated with respect to the conditions of detention?

**Part D: Alternatives to Detention**

1. What alternatives to detention exist in your country? Please describe these alternatives to detention and how they are generally perceived and implemented in your country.
2. Have all detainees access to alternatives to detention? How many persons get an alternative to detention in comparison with the number of detainees?
3. Have there been any policies proposed in your country that could achieve the same objectives as detention? How have these proposals for alternatives to detention been received in your country? Are proposals for alternatives to detention generally met with favor or have they been rejected? Please describe the criticisms of the policies for alternatives to detention by the general public. If these proposals have been rejected, what was the rationale for rejecting them?

**Part E. Additional information**

Please add any other information that you consider to be relevant for the CMW to take into account in the elaboration of this general comments.