



SUBMISSION TO THE UN COMMITTEE ON MIGRANT WORKERS

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.

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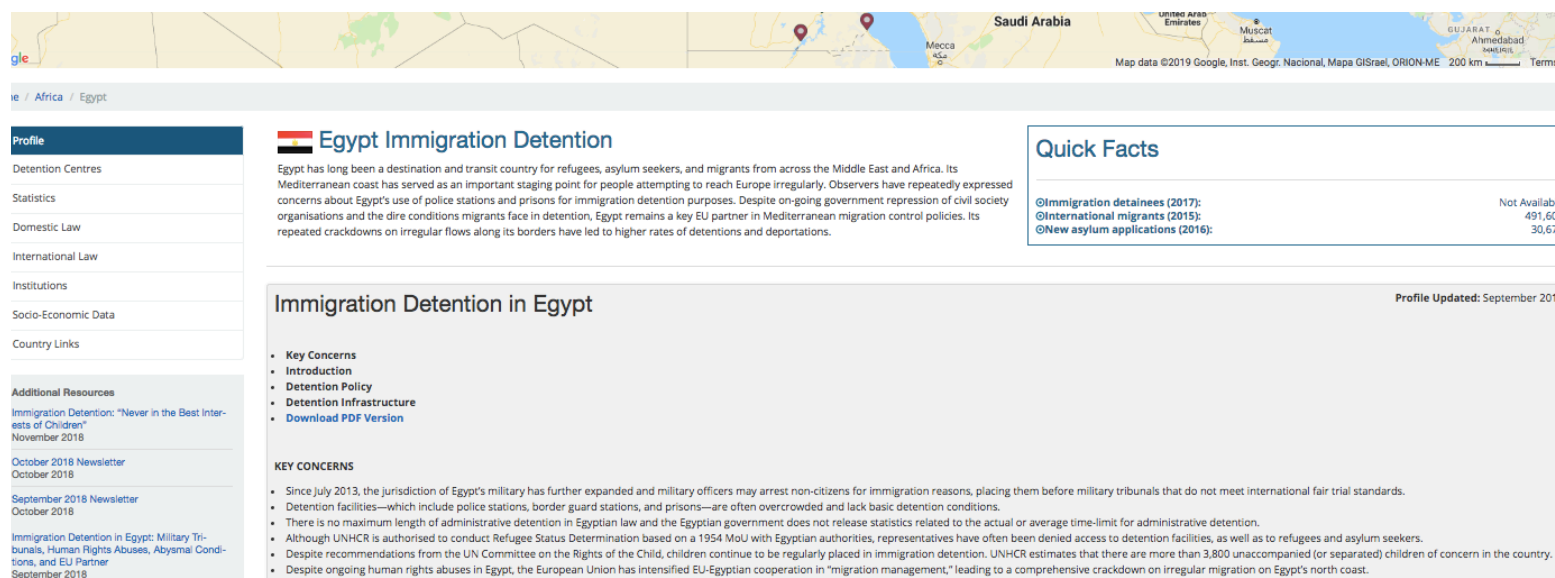
Draft General Comment No.5 on Migrants' Right to Liberty and Freedom from Arbitrary Detention

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):



ie / Africa / Egypt

Profile

- Detention Centres
- Statistics
- Domestic Law
- International Law
- Institutions
- Socio-Economic Data
- Country Links

Additional Resources

- Immigration Detention: "Never in the Best Interests of Children" November 2018
- October 2018 Newsletter October 2018
- September 2018 Newsletter October 2018
- Immigration Detention in Egypt: Military Tribunals, Human Rights Abuses, Abysmal Conditions, and EU Partner September 2018

Egypt Immigration Detention

Egypt has long been a destination and transit country for refugees, asylum seekers, and migrants from across the Middle East and Africa. Its Mediterranean coast has served as an important staging point for people attempting to reach Europe irregularly. Observers have repeatedly expressed concerns about Egypt's use of police stations and prisons for immigration detention purposes. Despite on-going government repression of civil society organisations and the dire conditions migrants face in detention, Egypt remains a key EU partner in Mediterranean migration control policies. Its repeated crackdowns on irregular flows along its borders have led to higher rates of detentions and deportations.

Quick Facts

Immigration detainees (2017):	Not Availab
International migrants (2015):	491,6
New asylum applications (2016):	30,6

Immigration Detention in Egypt

Profile Updated: September 2018

- Key Concerns
- Introduction
- Detention Policy
- Detention Infrastructure
- Download PDF Version

KEY CONCERNS

- Since July 2013, the jurisdiction of Egypt's military has further expanded and military officers may arrest non-citizens for immigration reasons, placing them before military tribunals that do not meet international fair trial standards.
- Detention facilities—which include police stations, border guard stations, and prisons—are often overcrowded and lack basic detention conditions.
- There is no maximum length of administrative detention in Egyptian law and the Egyptian government does not release statistics related to the actual or average time-limit for administrative detention.
- Although UNHCR is authorised to conduct Refugee Status Determination based on a 1954 MoU with Egyptian authorities, representatives have often been denied access to detention facilities, as well as to refugees and asylum seekers.
- Despite recommendations from the UN Committee on the Rights of the Child, children continue to be regularly placed in immigration detention. UNHCR estimates that there are more than 3,800 unaccompanied (or separated) children of concern in the country.
- Despite ongoing human rights abuses in Egypt, the European Union has intensified EU-Egyptian cooperation in "migration management," leading to a comprehensive crackdown on irregular migration on Egypt's north coast.

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

Expand all

Domestic Law

A. LEGAL TRADITION

B. LAWS AND REGULATIONS

C. GROUNDS FOR ADMINISTRATIVE IMMIGRATION-RELATED DETENTION

Immigration-status-related grounds		Show sources
NAME	OBSERVATION DATE	
Detention for unauthorised exit	2015	
Detention to prevent unauthorised entry at the border	2015	
Detention for unauthorised entry or stay	2015	
Detention to effect removal	2015	

D. CRIMINALIZATION OF IMMIGRATION-RELATED OFFENCES

E. LENGTH OF DETENTION

Maximum length for administrative immigration detention in law.		Show sources
NUMBER OF DAYS	OBSERVATION DATE	
3650	2015	

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 GDP 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.¹ 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

¹ Annex International Migration Review Special Issue: UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1991) 791.

² M. Grange, "The Migrant Workers Convention: A Legal Tool to Safeguard Migrants against Arbitrary Detention," in A. Desmond (ed), *Shining New Light on the UN Migrant Workers Convention*, Pretoria University Press, 2017, <https://bit.ly/2FD7qXS>

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

³ I. Majcher and M. Grange, "When is Immigration Detention Lawful? The Monitoring Practices of UN Human Rights Mechanisms: Global Detention Project Working Paper No. 21," *Global Detention Project*, 22 February 2017, <https://bit.ly/2qUBTHk>

⁴ United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families "Draft General Comment No. 5 on Migrants' Right to Liberty and Freedom from Arbitrary Detention, Concept Note and Questionnaire," December 2018, <https://bit.ly/2PScMhY>

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

⁶ General Assembly, Resolution 73/195, "Global Compact for Safe, Orderly and Regular Migration, A/RES/73/195," 11 January 2019, <https://bit.ly/2HUKXuK>



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