



"GOOD PRACTICES AND INITIATIVES OF GENDER-RESPONSIVE MIGRATION LEGISLATION, POLICIES, AND PRACTICES"

Submission to the Special Rapporteur on the Human Rights of Migrants

GLOBAL DETENTION PROJECT

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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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I. PREFACE

The Global Detention Project (GDP) welcomes the opportunity to provide this input to the Special Rapporteur on the Human Rights of Migrants ahead of his forthcoming report to the 74th session of the General Assembly on “good practices or initiatives of gender-responsive migration legislation, policies and practices.” 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 regions of the world.

The Special Rapporteur’s questionnaire to stakeholders seeks to collect detailed information on individual countries concerning a broad range of immigration policies. However, the GDP’s brief is global and focused on immigration-related detention. Thus, our responses to the SR’s questions narrowly concern the issue of immigration detention but are based on research findings from more than 100 countries.

Please note, rather than framing our responses as “good” or “best” practices in relation to immigration detention, the GDP prefers to employ the concept of “harm reduction,” which recognises the intrinsic harm of immigration detention and thus the contradiction—from a human rights perspective—of calling for “better” detention.¹

II. CONTEXT AND OVER-ARCHING CONCERNS

Women and girls, as well as marginalised gender groups and gender-nonconforming individuals, can face terrifying abuses in immigration detention in countries across the globe. The Global Detention Project has focused particular attention in its reports on women migrants, refugees, and asylum seekers—including those who are pregnant, have young children, or are victims of trafficking—because they are being placed behind bars on account of their immigration status at increasingly higher rates, reflecting in part the fact that women and girls now make up nearly half of the world’s migrant population.² This is happening despite numerous calls by government watchdogs and authoritative human rights bodies that states refrain from detaining such people.

Among the over-riding concerns about women, girls, and gender-nonconforming individuals in immigration detention is the fact that historically, rules and regulations concerning prison operations and procedures were developed almost exclusively for a male inmate population. This gender gap has become steadily more problematic as the number of women being placed behind bars has started to increase in recent decades.³

In recognition of this gap, in 2010 the UN General Assembly adopted the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, also known as the “The Bangkok Rules.” These rules are intended to assist governments in developing minimum

¹ See: Global Detention Project, “Harm Reduction in Immigration Detention: A Comparative Study of Detention Centres in France, Germany, Norway, Sweden, and Switzerland,” October 2018, <https://www.globaldetentionproject.org/wp-content/uploads/2018/10/Harm-Reduction-in-Immigration-Detention-GDP-Norwegian-Red-Cross.pdf>

² Global Detention Project, “International Women’s Day: Focusing Attention on the Abuses Women Suffer in Immigration Detention,” 7 March 2019, <https://www.globaldetentionproject.org/international-womens-day-2019>

³ Emma Bracy, “More than 700,000 women and girls are in prison around the world,” New York Times 28 September 2015.

standards on a host of issues, including prison administration procedures, health care requirements, and the treatment of children who accompany their mothers in prison.⁴

No specific set of internationally recognised rules, however, have been developed for women or other gender groups in immigration detention, which in most countries takes the form of an administrative procedure outside the criminal justice system. We urge the Special Rapporteur to take into account this gap when addressing “good practices or initiatives of gender-responsive migration legislation, policies and practices.”

In addition, very few statistics exist about how many women and girls are languishing in immigration detention centres or what the conditions of their detention are. Officials in some countries that the GDP has investigated have informed us that they do not keep or provide disaggregated data on detainees, including with respect to age and gender. This is a critical barrier to developing proper public oversight over the treatment of women, girls, and gender-nonconforming individuals in immigration detention systems.

We urge the Special Rapporteur to consider the clear and urgent problems associated with failure to adequately account for their detainee populations when addressing “good practices or initiatives of gender-responsive migration legislation, policies and practices.”⁵

III. SPECIAL RAPPORTEUR'S QUESTIONS

- **How do/es the country/ies on which your organisation is working define “gender responsiveness”?**

The GDP has not come across concepts of “gender-responsiveness” in relation to laws, policies, and practices in immigration detention. Although women migrants and asylum seekers are often recognised as “vulnerable,” despite there being no international definition of “vulnerable groups,” in the GDP’s experience domestic legislations rarely provide an exhaustive list of vulnerable persons nor do they refer to the specific protection needs that should apply to women in immigration detention.

- **Please provide information on any existing or forthcoming good practices or initiatives of gender-responsive migration legislation, policies or practices in the country/ies your organisation is working on. (Should you provide information on legislation or policy, kindly submit the original text, accompanied by an English translation if it is in a language other than the six official UN languages.)**

In Taiwan, important legislative reforms were made in 2015, when the country amended Section 38 of its Immigration Act to end the detention of various vulnerable groups—amongst whom are women who

⁴ For more information, see Penal Reform International, “UN Bangkok Rules,” <http://www.penalreform.org/priorities/women-in-the-criminal-justice-system/bangkok-rules-2/>

⁵ See, for example, the joint report by the Global Detention Project - Access Info Europe, “The Uncounted: The Detention of Migrants and Asylum Seekers in Europe,” available at: <https://www.globaldetentionproject.org/the-uncounted-the-detention-of-migrants-and-asylum-seekers-in-europe>. To complete this report, we sent a basic survey concerning immigration detainee populations to nearly 50 countries. Many countries responded by saying they did not keep disaggregated statistics on this issue. Although the survey did not focus on gender, based on the responses we received from states, we included as a top recommendation to states the collection and public distribution of detention data “disaggregated by gender.”

are more than five months pregnant, as well as those who have recently given birth or suffered a miscarriage. These changes came after the Taiwan Great Judges found the previous version of Section 38 to be unconstitutional.⁶

In Europe, a rare instance when “vulnerable groups” are mentioned in legislation is in Belgium’s Alien Law Article 1 (12),⁷ which provides a definition of “vulnerable persons” that includes: accompanied and unaccompanied minors, disabled persons, elderly persons, pregnant women, isolated parents with minor children, victims of torture, rape, or another grave form of psychological, physical, or sexual violence. Despite this, the Aliens Act does not make any other reference to these vulnerable persons—other than minors—in relation to provisions that relate to immigration detention. However, according to another piece of Belgian legislation, women who are more than 28 weeks pregnant cannot be forcibly removed and therefore cannot be detained.⁸ Vulnerability assessments are also necessary before issuing a detention order, as well as during detention and prior to deportation. For instance, on 1 October 2018, a Belgian court suspended the transfer of a Cameroonian female victim of gender-based violence back to Greece due to both her vulnerability and deplorable conditions in Greece.⁹

Another case is Bulgaria. Article 17 of the *Law on Asylum and Refugees* (LARB) includes a definition of vulnerable persons: Persons from a vulnerable group “shall be minors, unaccompanied minors, persons with disabilities, elderly people, pregnant women, single parents with juveniles, victims of trafficking in human beings, people with severe health problems, people with mental disorders and those who have suffered torture, rape or other serious forms of mental, physical or sexual violence.”

The *Law on Foreigners in the Republic of Bulgaria* (LFRB) Article 14(2), which regulates places of immigration detention, provides that non-citizens of different genders, families, and minors should be accommodated in “separate parts of the bed sector.”¹⁰ Furthermore, LARB Article 45e(4) provides that female asylum seekers should be separated from males, unless they are relatives and the women have given their consent.

In practice, the European Committee for the Prevention of Torture (CPT) reported that in October 2017, accommodation at Bulgaria’s Lyubimets Detention Centre was “particularly dangerous for women and minors (including infants), who had to share the same dormitories with often unrelated adult men (the latter accommodated together with their respective families), locked at night in total darkness (electricity being switched off between 11 p.m. and 7 a.m.).” In July 2018, NGOs also reported detainees’ complaints that dormitories in Busmantsi and Lyubimets were locked at night, meaning that they could not go to the toilet.

⁶ Government of Taiwan, “Immigration Act,”

<https://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=D0080132>; International Detention Coalition, “Children and Pregnant Women No Longer Detained in Taiwan,” 9 February 2015, <https://idcoalition.org/news/new-limits-detention-taiwan/>

⁷ Government of France, “5 DECEMBRE 1980. - Loi sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers,” updated up to 24 December 2018, <https://bit.ly/2cmfb3k>

⁸ Government of France, “Circulaire du 29 mai 2009 relative à l'identification d'étrangers en séjour irrégulier, M.B., 15 juillet 2009. »

⁹ European Database of Asylum Law (EDAL), “Belgium – CALL Suspends Dublin Transfer of Vulnerable Applicant to Greece,” 1 October 2018, <https://bit.ly/2JorEa3>

¹⁰ Government of Bulgaria, « Ordinance No. 13-1201 of 1 June 2010 on the Procedure for the Temporary Accommodation of Foreigners in the Special Homes for the Temporary Accommodation of Foreigners and Their Units and for the Organization of Their Activity (in Bulgarian:) Наредба № 13-1201 От 1 Юни 2010 Г. За Рѣда За Временно Настаняване На Чужденци В Специалните Домове За Временно Настаняване На Чужденци И В Техните Звена И За Организацията И Дейността Им (Загл. Изм. - Дв, Бр. 52 От 2017 Г., В Сила От 30.06.2017 Г.),” <https://lex.bg/bg/laws/ldoc/2135684112>

The CPT thus recommended that women and minors should not share dormitories with unrelated adult male detainees. In its response to the CPT in October 2018, the Government of Bulgaria announced that a new regime would be introduced, and that dormitories housing families and children would no longer be locked at night.

In [France](#), the General Controller of Places of Deprivation of Liberty (CGLPL) has noted that no specific provision for the reception of women is provided for in the legal framework for detention centres. Only Article R. 553-3 (10) of the Code of Entry and Residence of Foreigners and Asylum (CESEDA) recalls the prohibition of mixing men and women within detention rooms, except for families. The CGLPL emphasised health concerns for pregnant women in detention including higher incidences of miscarriage in detention; and lack of access to women's hygiene kits in detention centres and transit zones, particularly those at airports. Another CGLPL recommendation dealt with access to medical care for pregnant women and girls, and gender segregation in detention. The CGLPL denounced that women detainees were searched by male guards and urged the authorities to pay particular attention to the situation of women detainees to avoid perceptions of insecurity.

On a few occasions, [CEDAW](#) has urged states not to penalise refugees and asylum seekers, in particular women and girls, for irregular entry and stay in the country (see [Algeria, 2012](#); [Bahamas, 2012](#)).

- **Please indicate any challenges and/or obstacles in the implementation of gender-responsive migration legislation and/or policies?**

As mentioned previously, there is generally a lack of transparency and statistical data regarding the detention of women and marginalised gender groups. UN member states should thus be encouraged to respond to recommendations by treaty monitoring bodies, special procedures, and the Universal Periodic Review of the Human Rights Council to provide age and gender-disaggregated statistical data on deprivation of liberty for migration status.

Another challenge is the absence of an appropriate legal framework for detention on grounds of immigration status or adequate detention centre operating standards. For instance, during a recent review of operations of detention centres in several European countries, the GDP found that in some cases officials were unable to provide information about the numbers of women staff members in sections of the facilities used for detaining women.¹¹

In [Lebanon](#), the absence of a legal framework has resulted in a lack of procedural safeguards (effective right to legal counsel, information on reasons for detention in a language the detainee understands, a detention time-limit, the review of detention orders, a right to challenge detention, and access to consular assistance upon request from the detainee). Staff members at the detention facility have historically not included women members (according to the Special Rapporteur on contemporary forms of slavery, in 2012 they were all are men) and non-custodial measures do not appear to be systematically considered before placing a person in detention. It is unclear if Lebanon employs adequate screening procedures to identify trafficked persons, in particular women and children in detention, and to release them and provide them with protection.

¹¹ See: Global Detention Project, "Harm Reduction in Immigration Detention: A Comparative Study of Detention Centres in France, Germany, Norway, Sweden, and Switzerland," October 2018, <https://www.globaldetentionproject.org/wp-content/uploads/2018/10/Harm-Reduction-in-Immigration-Detention-GDP-Norwegian-Red-Cross.pdf>

- **Based on the experience accumulated with these interventions so far; as well as the lessons learned, what would have to be done differently to maximise the gender responsive impact of these interventions?**

UN Member states should put in place vulnerability screening assessment mechanisms before a decision to detain is made.

Children, boys and girls, should never be detained, nor should their parents be when in family situations, as established in the joint CRC-CMW General Comment concerning the treatment of child migrants.

Special care and procedures must be developed to meet the needs of women and marginalised gender groups in immigration detention.

Pregnant women should not be detained.

When women are detained, they should not be supervised by male guards. Only female guards should be present.

Women and gender groups who may be vulnerable to abuse and mistreatment must be separated from male populations in detention centres.

- **What support could other stakeholders (other than governments) provide to make migration policies, legislation, and practices more gender responsive?**

Independent regular domestic monitoring by national human rights institutions, national preventative mechanisms under OPCAT, members of parliament, and non-governmental organisations should be provided for in law and allowed in practice.

Staff in detention centres should be trained in the specific vulnerability and needs of women and girls.

Independent complaint mechanisms should be established, with sanctions for staff who abuse women in detention with redress and compensation mechanisms.