



EL SALVADOR
ISSUES RELATED TO IMMIGRATION
DETENTION

Submission to the Committee on the Protection of the Rights of
All Migrant Workers and Members of their Families

El Salvador

33rd Session, 5 – 16 October 2020

Submitted in September 2020

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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El Salvador: Issues Related to Immigration Detention

Global Detention Project (GDP)

The Global Detention Project (GDP) welcomes the opportunity to provide information for consideration in the third periodic report of El Salvador (CMW/C/SLV/3) to the Committee on Migrant Workers (CMW).

The GDP is an independent research centre based in Geneva that investigates immigration-related detention. As per the GDP's mandate, this submission addresses El Salvador's implementation of Articles 16, 17, 22, and 23 of the CMW, and thus focuses upon the State party's laws and practices on issues related to detention and deportation for migration-related reasons. This submission also takes into account the joint General Comment No.4 (2017) of the Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families and No.23 (2017) of the Committee on the Rights of the Child on "State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return," which states that "child and family immigration detention should be prohibited by law and its abolishment ensured in policy and practice."¹

Legal framework

El Salvador's legislation makes use of a euphemistic term—"arresto"—to denote immigration detention. This is contained in Article 60 of the 1958 Migration Law (*Ley de Migración, Decreto Legislativo N°2772, del 19 de Diciembre de 1958*) whereby a non-citizen who enters El Salvador in an undocumented manner, can be punished with a fine, which can be replaced by a detention ("arresto") of up to 30 days. Despite the Supreme Court's ruling in 2003 that such deprivation of liberty would be unconstitutional due to Article 14 of the Salvadorian constitution ordering that the deprivation of liberty ordered by an administrative organ can only last up to five days, in practice, migrants who are apprehended without papers are routinely detained to

¹ Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families and Committee on the Rights of the Child, "Joint General Comment No.4 (2017) of the Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families and No.23 (2017) of the Committee on the Rights of the Child on State Obligations Regarding the Human Rights of Children in the Context of International Migration in Countries of Origin, Transit, Destination and Return, CMW/C/GC/4-CRC/C/GC/23," 16 December 2017, <https://www.refworld.org/docid/5a12942a2b.html>

prepare their deportation.² In 2014, the average length of detention was 30 days although some cases have reportedly lasted considerably longer.³

Concerning implementation of ICRMW Articles 16 and 17

In its Concluding Observations to the initial report of El Salvador on 1 May 2014 (CMW/C/SLV/CO/2), the CMW raised the issue of administrative detention: “The Committee views with concern the systematic detention of Salvadoran migrant workers, prior to repatriation, in destination and transit countries because of their irregular status. The Committee recommends that the State party strengthen cooperation with transit and destination countries in order to ensure that the detention of Salvadoran migrant workers in an irregular situation in such countries is used only as a last resort.”⁴

The country opened a dedicated immigration detention facility in 2008, called the *Centro de Atención Integral para el Migrante* (CAIM). The centre is managed by the Migration Directorate (*Dirección General de Migración y Extranjería*) and is located at the premises of the Ministry of Justice and Public Security in San Salvador.⁵ In 2015, IOM, in coordination with the Salvadoran government, inaugurated the reconstruction of the CAIM. The centre’s capacity to receive and process arrivals was increased by 75 percent and the new reception area will now be able to receive 200 people. According to IOM, the centre received at that time some 230 people per day including unaccompanied children, families, and migrants returning from Mexico.⁶

In its written responses to the Committee on Migrant Workers in 2008, the Salvadoran government stated that the building has three floors and a basement and that there is a kitchen, an eating room, a visiting room, and an entertainment room as well as a recreation room. The government said that migrants receive adequate food; medical and psychological assistance; and social assistance.⁷ **The GDP has been unable to find any more recent reports on the facility.**

² Instituto Centroamericano de Estudios Sociales y Desarrollo (INCEDES) & Sin Fronteras (Eds.), “*Estudio Comparativo de la Legislación y Políticas Migratorias en Centroamérica, México y República Dominicana*,” Grupo Comersia, November 2011, p.197, https://sinfronteras.org.mx/wp-content/uploads/2018/12/ESTUDIO_COMPARATIVO-3.pdf; C. E. Marquez, G. Bonnici & V. Martinez, “*¿Que Esperamos del Futuro? Detención Migratoria y Alternativas a la Detención en las Américas*,” International Detention Coalition, 2017, p.20, <https://www.refworld.org/topic,50ffbce5124,50ffbce5145,590c4c9b4,0,,,SLV.html>

³ International Detention Coalition, “*Informe Regional: Detención Migratoria y Alternativas a la Detención en las Américas*,” October 2014, p.23, <https://idcoalition.org/wp-content/uploads/2016/08/3.-Informe-Regional-Detencion.pdf>

⁴ Committee on Migrant Workers, “Concluding Observations on the Second Periodic Report of El Salvador,” CMW/C/SLV/CO/2, 2 May 2014, paras. 50-51.

⁵ Instituto Centroamericano de Estudios Sociales y Desarrollo (INCEDES) & Sin Fronteras (Eds.), “*Estudio Comparativo de la Legislación y Políticas Migratorias en Centroamérica, México y República Dominicana*,” Grupo Comersia, November 2011, p.199, https://sinfronteras.org.mx/wp-content/uploads/2018/12/ESTUDIO_COMPARATIVO-3.pdf

⁶ International Organisation for Migration (IOM), “*La OIM Inaugura Reconstrucción de Centro de Atención al Migrante en el Salvador*,” 7 March 2015, <https://www.iom.int/es/news/la-oim-inaugura-reconstruccion-de-centro-de-atencion-al-migrante-en-el-salvador>

⁷ Committee on Migrant Workers, “*Respuestas Escritas del Gobierno de la Republica de El Salvador en Relación Con la Lista de Cuestiones (CMW/C/SLV/Q/1) Recibidas por El Comité Para la Protección de*

According to the Salvadoran immigration authority's website, the CAIM functions "as a shelter for non-citizens who find themselves in irregular situation in El Salvador, where migrants are offered care and protection while they wait to be deported to their country of origin.⁸ The centre has a reception area, two medical units, a nursing area managed by the Ministry of Health, ten cubicles for interviews, an area to provide people with information about the consular services of the Ministry of Foreign Affairs, a space dedicated to interviews and the management of special cases by the National Police; and an area suitable for the distribution of immediate basic humanitarian assistance.⁹

Covid-19

Since the onset of the Covid-19 pandemic, El Salvador has faced enormous migration pressures, including ongoing return flights of nationals from countries like the United States as well as pressures on its borders related to trans-migration across Central America, in particular by people seeking passage north.

According to some reports, during the early phases of the pandemic (after border closures), migrants and/or asylum seekers were being kept in *ad hoc* situations in border zones, which prevented them from journeying onward but without any specific administrative or judicial orders. The GDP has been unable to find additional information about these situations, but this would follow a pattern seen in other parts of the world resulting from travel restrictions and the impact of emergency measures on migrants and asylum seekers, who have frequently found themselves deprived of liberty but without a clear legal basis.

According to IOM, more than 1,100 persons have been returned to El Salvador, most from the United States (97.2 percent) from 11 March to 30 April 2020.¹⁰ For instance, on 7 April 2020, 70 Salvadoran nationals were returned to El Salvador from the United States. Upon arrival, they were transferred to one of the 11 quarantine centres in the country for a duration of 30 days. Five days after their arrival, one returnee developed symptoms of Covid-19, but medical authorities only provided him with paracetamol and did not test him for the disease. A month later, when around 100 people were being held in the quarantine centre, the government decided to test all detainees. It was then confirmed that four persons had contracted Covid-19. The returnees had been held in different immigration detention centres in the United States managed by Immigration and Customs Enforcement (ICE) in Texas, Taylor, and Rio Grande. In the South Texas Detention Complex, where one of the

los Derechos de Todos los Trabajadores Migratorios y de Sus Familiares en Relación con el Examen del Informe Inicial de la Republica de El Salvador (CMW/C/SLV/1), CMW/C/SLV/Q/1/Add.1, 24 October 2008.

⁸ Migración & Extranjería, "Atención y Resguardo de Migrantes," accessed on 24 August 2020, <https://bit.ly/33qhLPV>

⁹ International Organisation for Migration (IOM), "La OIM Inaugura Reconstrucción de Centro de Atención al Migrante en el Salvador," 7 March 2015, <https://www.iom.int/es/news/la-oim-inaugura-reconstruccion-de-centro-de-atencion-al-migrante-en-el-salvador>

¹⁰ International Organisation for Migration (IOM), "Encuesta de Medios de Vida a Población Migrante Retornada en El Salvador en el Marco del Covid-19," 27 May 2020, <https://reliefweb.int/report/el-salvador/encuesta-de-medios-de-vida-poblacion-migrante-retornada-en-el-salvador-en-el>

Salvadoran national was held awaiting deportation, ICE reported that 32 persons had tested positive for the virus. According to the four returnees, ICE did not test them for the virus during their detention or before returning them. Only their temperature was taken on some occasions and before they boarded the return flight.¹¹

The country's Ombudsman (*Procuraduría para Derechos Humanos* or PDDH) announced in May that they were growing increasingly concerned about the spread of the virus in quarantine centres, especially after three people in one of centres tested positive. Yet, the Ombudsman stated that relevant authorities had not communicated the exact number of Covid-19 cases within the centre and that the director of the Salvadoran immigration authority, Ricardo Cucalon, had violated the PDDH law as he had refused to provide information to the ombudsman. According to a PDDH report, the director of the immigration authority did not respond to two requests sent on 27 April and 11 May and requested that his personnel do not collaborate with the PDDH.¹²

On 14 May, a habeas corpus action was presented to the Supreme Court by twenty-two returnees, urging authorities to allow them to return to their homes, having been detained for forty-five days and having been tested for Covid-19 twice. In addition, poor hygienic conditions within the centre have also been cited as a reason for the request. Social distancing is not being implemented and when it rains, mattresses get wet and the centre floods. On 20 May, the Ministry of Health informed detainees that they would be transferred to their homes. However, as of 29 May, 108 Salvadoran nationals remained in the *Gimnasio Nacional* quarantine centre.¹³

Questions

- Can the government provide disaggregated statistics on the number of people detained for immigration-related reasons—including for the purpose of deportation—in 2017, 2018, and 2019?
- Can the government provide details on the number of unaccompanied and accompanied children who were placed in immigration detention in 2017, 2018, and 2019?
- Can the government provide a status update on the *Centro de Atención Integral para el Migrante* (CAIM)? Is it still in operation? Does it operate as a fully secure facility that prevents detainees from leaving the facility without permission?
- Can the government provide information about any other facilities or prisons in the country that are used for immigration-detention purposes?

¹¹ G. Caceres and N. Rauda, “*Cuatro Deportados por Estados Unidos Dieron Positivo al Covid-19 en El Salvador*,” *El Faro*, 29 May 2020, https://elfaro.net/es/202005/el_salvador/24467/Cuatro-deportados-por-Estados- Unidos-dieron-positivo-al-covid-19-en-El-Salvador.htm

¹² G. Caceres and N. Rauda, “*Cuatro Deportados por Estados Unidos Dieron Positivo al Covid-19 en El Salvador*,” *El Faro*, 29 May 2020, https://elfaro.net/es/202005/el_salvador/24467/Cuatro-deportados-por-Estados- Unidos-dieron-positivo-al-covid-19-en-El-Salvador.htm

¹³ G. Caceres and N. Rauda, “*Cuatro Deportados por Estados Unidos Dieron Positivo al Covid-19 en El Salvador*,” *El Faro*, 29 May 2020, https://elfaro.net/es/202005/el_salvador/24467/Cuatro-deportados-por-Estados- Unidos-dieron-positivo-al-covid-19-en-El-Salvador.htm

- What is the relevant authority that monitors immigration detention in the country?
- Has the relevant authority in the country conducted a recent visit to the CAIM to evaluate detention conditions? Are reports on detention conditions published?
- Have people been released from immigration detention due to the Covid-19 crisis?
- Following the habeas corpus action presented to the Supreme Court regarding conditions in quarantine centres, have people been allowed to return to their homes?
- During the Covid-19 border closures, how did the government accommodate foreigners who were apprehended while crossing into El Salvador, including people who were seeking to cross El Salvador as part of migration journeys north? Were *ad hoc* camps set up to prevent people from journeying onward? Where were these located and who managed them? How many people are/were detained at these sites? What is the current status of these sites?