



GUATEMALA

ISSUES RELATED TO IMMIGRATION DETENTION

Submission to the UN Committee against Torture
72nd Session (November - December 2021)

Submitted in June 2021

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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GUATEMALA: ISSUES RELATED TO IMMIGRATION DETENTION

SUBMISSION TO THE UN COMMITTEE AGAINST TORTURE

72ND SESSION (NOVEMBER - DECEMBER 2021) - LIST OF ISSUES PRIOR TO REPORTING

SUBMITTED IN JUNE 2021

The Global Detention Project (GDP) is an independent research centre based in Geneva, Switzerland, that investigates the use of detention as a response to international migration. Its objectives are to improve transparency in the treatment of detainees, to encourage adherence to fundamental norms, to reinforce advocacy aimed at reforming detention practices, and to promote scholarship of immigration control regimes. As per the GDP's mandate, this submission focusses on the state party's laws and practices concerning detention for immigration-related reasons.

The GDP welcomes the opportunity to provide information relevant to the list of issues prior to the presentation of Guatemala's report with respect to the implementation of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), ratified by Guatemala in 1990.

CONTEXT

Situated between North and South America, Guatemala is both an important source of migrants and asylum seekers as well as a crucial transit country. In 2019, the country hosted around 80,000 migrants and asylum seekers, most of whom came from neighbouring Central American countries.¹ The country has also hosted significant numbers of so-called *extraregional* migrants from Colombia, China, India, and Ecuador. According to UNHCR, the country hosted 408 refugees and 631 asylum-seekers in 2019,² and 459 refugees and 728 asylum-seekers in 2020.³

LEGAL FRAMEWORK

Guatemala's migration-related detention framework is based on two laws: the 1998 Migration Law (*Ley de Migración, Decreto Número 95-98*) and the 1999 Migration Law Regulation (*Reglamento de La Ley de Migración, Número 529-99*). These regulate the entry, residence, detention, and removal of migrants. The country's immigration legislation uses euphemistic language in characterising the administrative detention of migrants and asylum seekers, referring to "*albergar*" (to shelter or accommodate). The Guatemalan Constitution of 1985

¹ United Nations Department of Economic and Social Affairs, "International Migration Wallchart 2019," ST/ESA/SER/A/431, accessed on 15 June 2021, https://www.un.org/en/development/desa/population/migration/publications/wallchart/docs/MigrationStock2019_Wallchart.pdf

² The figure represents mid-year data.

³ UNHCR, "Refugee Data Finder: Guatemala," accessed on 15 June 2021, <https://www.unhcr.org/refugee-statistics/download/?url=nLp00a>

provides for due process rights (including Articles 7, 8, 12 and 14) as well as safeguards against arbitrary detention (Article 6).

The Guatemalan Migration Institute (*Instituto Guatemalteco de Migración* or IGM), an agency of the Interior Ministry (*Ministerio de Gobernación*), is empowered – along with the police – to apprehend non-citizens and has custodial authority over immigration detainees.⁴ Non-citizens who enter or stay in the country without proper authorisation may be subjected to a fine, deportation, or expulsion measures. According to Article 111 of the Migration Law 1998, the IGM may “accommodate” (*albergar*) non-citizens who do not have required travel documents in designated centres (*centros destinados especialmente para este fin*), which are called “accommodation centres” or “shelters” (*centros de albergue*).

According to statistics published by the IGM, 1,319 non-citizens were detained for migration-related in 2020,⁵ 5,403 in 2019, and 1,041 in 2018.⁶

CONDITIONS IN DETENTION

Guatemala currently operates one *albergue* as a detention centre, located in “Zona 5” of Guatemala City, and this been in use since 2007.⁷ The centre, which has capacity for 100 people, confines women and men on the second and third floors respectively. Both floors have a similar set-up and are divided in two sections, namely a common area that is equipped with tables and chairs, TV, and air-conditioning, and a sleeping area with 25 bunk beds.⁸

Conditions at the centre have been repeatedly criticised. A 2019 report by the Guatemalan Ombudsman (*Procuraduría de los Derechos Humanos de Guatemala*) highlighted that families from Iraq and Yemen were being held in the centre and that the duration of their detention had not been defined. The report also noted that conditions within the shelter were inadequate for children and adolescents.⁹ In addition, a 2017 report by the Guatemalan Ombudsman found that while facilities were clean and in good condition, they lacked natural ventilation, a dining room, access for persons with disabilities, specific spaces for family groups, and a meeting place for parents and unaccompanied (or separated) children.¹⁰

⁴ Instituto de Estudios Políticos para América Latina y África & Médicos Sin Fronteras, “*Información Comparada Sobre Detención de Solicitantes de Asilo de Centroamérica y Caribe*,” 2007, http://www.gloobal.net/iepala/gloobal/fichas/ficha.php?entidad=Textos&id=4303&opcion=documento#ficha_gloobal

⁵ Instituto Guatemalteco de Migración, “*Informe General Estadístico: Enero – Diciembre 2020*,” accessed on 15 June 2021, <https://igm.gob.gt/wp-content/uploads/2017/09/INFORME-GENERAL-CORRESPONDIENTE-AL-MES-DE-DICIEMBRE-2020-FINAL-.pdf>

⁶ Dirección General de Migración, “*Informe Anual Estadístico Cuantitativo: Enero – Diciembre 2019*,” accessed on 15 June 2021, <https://igm.gob.gt/wp-content/uploads/2017/09/INFORME-ANUAL-2019.pdf>

⁷ Oficina de Prevención de la Tortura y otros tratos o penas crueles, inhumanos o degradantes, “*OPT inspecciona albergues de migrantes “de paso” en Guatemala*,” <http://www.mnp-opt.gob.gt/index.php/92-opt-inspeccionaalbergues-de-migrantes-de-paso-en-guatemala>

⁸ Undisclosed Source, “Global Detention Project Questionnaire: Guatemala,” November 2015.

⁹ Procuraduría de los Derechos Humanos de Guatemala, “*Informe Anual Circunstanciado de Actividades y de la Situación de los Derechos Humanos*,” 2019, <https://www.pdh.org.gt/documentos/informes/informes-anales/3859-informe-anual-circunstanciado-pdh-2019/file.html>

¹⁰ Procuraduría de los Derechos Humanos de Guatemala, “*Informe Anual Circunstanciado de Actividades y Situación de Derechos Humanos*,” 2017, <https://www.pdh.org.gt/documentos/informes/informes-anales/3857-informe-anual-circunstanciado-pdh-2017/file.html>

Moreover, in 2011 the UN Committee on Migrant Workers (CMW) urged Guatemala to improve conditions at the facility, ensuring the provision of basic social services, including food, healthcare, and hygiene conditions, and to ensure that men and women are duly separated.¹¹

In its 2019 concluding observations, the CMW expressed concern regarding the insufficient disaggregated statistics on *inter alia*, migrant workers in an irregular situation and migrant workers in detention. The Committee thus recommended that the State party: “verify the information on detained migrants and on unaccompanied migrant children and compare this information with that of neighbouring countries and destination countries.”¹² The Committee also recommended the phasing out of “all migration-related measures of deprivation of liberty and making any deprivation of liberty absolutely prohibited for children and adolescents. The Committee also [recommended] that the State party apply alternative measures for unaccompanied minors and that it places them in care centres run by personnel specialising in children.”¹³

COVID-19

As of 15 June 2021, Guatemala had reported 271,990 cases of COVID-19 and 8,465 related deaths. According to information supplied to the GDP by the IGM in June 2020, no moratorium on new immigration detention orders was established during the pandemic and non-nationals have been prohibited from entering the country.¹⁴

The greatest impact of COVID-19 on the migration situation facing Guatemala appears to have been deportations from the United States, which continued even after concerns were raised regarding the arrival of infected Guatemalan deportees.

According to news reports, on 20 April 2020 more than 5,000 Guatemalan nationals were in the custody of Immigration and Customs Enforcement Service (ICE) and the Office of Refugee Resettlement (ORR) in the United States. Of these, almost 4,000 were detained for immigration reasons and more than 1,000 were children.

Although public health experts and rights advocates repeatedly called for states to cease forced returns during the pandemic,¹⁵ the United States continued to deport Guatemalan after onset of the pandemic. Between 29 March and 22 May 2020, 1,200 undocumented migrants were deported. Large numbers of children have also been deported: between March and November 2020, 1,400 unaccompanied minors were expelled by U.S authorities to Guatemala. In October 2020 alone, some 407 Guatemalan children were expelled—a monthly figure that is far higher than the total number deported throughout all of 2019. On

¹¹ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, “Concluding Observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families: Guatemala,” CMW/C/GTM/CO/1, 18 October 2011.

¹² Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, “Concluding Observations on the second periodic report of Guatemala,” CMW/C/GTM/CO/2, 2 May 2019, para. 21(c).

¹³ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, “Concluding Observations on the second periodic report of Guatemala,” CMW/C/GTM/CO/2, 2 May 2019, para. 41.

¹⁴ Instituto Guatemalteco de Migración, Global Detention Project COVID-19 Survey, 9 June 2020, <https://igm.gob.gt/>

¹⁵ United Nations Network on Migration, “Forced Returns of Migrants Must be Suspended in Times of Covid-19,” 13 May 2020, <https://www.unicef.org/press-releases/forced-returns-migrants-must-be-suspended-times-covid-19>

arrival in Guatemala, child deportees are reported to have been placed under the care of the presidency's social wellbeing secretariat and housed in a shelter in Guatemala City, before being reunited with family members.¹⁶

Hundreds of COVID-19 cases have been detected amongst newly arrived deportees. On one occasion in April 2020, 70 of 76 deportees from Texas tested positive upon arrival in Guatemala City, and on 11 May 2020, official statistics reported that 102 infected migrants had been deported back to Guatemala.¹⁷ On 4 May, the Guatemalan Foreign Ministry reported that detainees accounted for more than 15 percent of all COVID-19 infections in the country.¹⁸

In response to the deportations from the United States, the Guatemalan government suspended several deportation flights and requested that United States authorities provide a health certificate for every deportee attesting that they are clear of COVID-19.¹⁹ However, according to the president of the "*Cooperacion Migrante*" organisation, COVID-19 positive migrants continued to arrive as the United States has carried out COVID-19 tests at random. Observers argue that the main obstacle to controlling the importation of COVID-19 cases is not deportations but rather the fact that the United States does "not have the capacity to control migratory flows on a land border as large as the one with Mexico."²⁰

Several observers, including the Guatemalan Ombudsman, have flagged as a matter of concern the conditions that newly arrived deportees face in Guatemala. Responding to a GDP COVID-19 survey, the Guatemalan Ombudsman reported that only certain returnees were being tested for COVID-19 upon their arrival and that they were required to quarantine in makeshift reception centres, prior to being allowed to return to their local communities. According to the BBC, returnees held in one such reception centre in the Guatemala City airport were forced to sleep on mats on the floor in a room inside the airport.²¹

In its response to the GDP's survey, the Ombudsman did not provide specific answers regarding immigration detention in the country and reported that they were unable to provide information detailing protective measures adopted in immigration detention facilities or to clarify whether any immigration detainees had been released.²²

¹⁶ J. Abbott, "US Accused of Using COVID as Excuse to Deny Children Their Right to Asylum," *The Guardian*, 10 November 2020, <https://www.theguardian.com/world/2020/nov/10/us-child-deportations-guatemala-pandemic>

¹⁷ R. M. Lima, "Guatemala: traen los deportados el coronavirus?" *DW*, 22 May 2020, <https://www.dw.com/es/guatemala-traen-los-deportados-el-coronavirus/a-53538482>

¹⁸ D. Gonzalez, "They Were Sending the Virus: Guatemala Reels After U.S. Deports Hundreds of Deportees with COVID-19," *Arizona Central*, 28 October 2020, <https://eu.azcentral.com/story/news/politics/immigration/2020/10/28/hundreds-deported-by-us-to-guatemala-during-pandemic-had-covid-19/5902239002/>

¹⁹ M. G. Díaz, "Coronavirus en Guatemala: los Contagios de COVID entre migrantes que llevaron al país a suspender los vuelos de deportados desde EE.UU.," *BBC News*, 21 April 2020, <https://www.bbc.com/mundo/noticias-america-latina-52364025>

²⁰ R. M. Lima, "Guatemala: traen los deportados el coronavirus?" *DW*, 22 May 2020, <https://www.dw.com/es/guatemala-traen-los-deportados-el-coronavirus/a-53538482>

²¹ M. G. Díaz, "Coronavirus en Guatemala: los Contagios de COVID entre migrantes que llevaron al país a suspender los vuelos de deportados desde EE.UU.," *BBC News*, 21 April 2020, <https://www.bbc.com/mundo/noticias-america-latina-52364025>

²² Procuraduría de los Derechos Humanos, Global Detention Project COVID-19 Survey, June 2020.

VIOLENCE AND PUSHBACKS AT THE BORDER

In mid-January, as thousands of mostly Honduran migrants—including many children—began crossing the Guatemalan border as part of a new “caravan” seeking passage to the United States, Guatemalan security forces forcefully repelled them, leading to scenes of violence and chaos near the border.²³ Videos posted on social media and news networks showed scuffles between migrants and soldiers, and police attempting to block the caravan using teargas, riot shields and sticks.²⁴ According to *Prensa Libre*, Guatemala’s immigration chief, Guillermo Diaz, told the migrants: “You cannot and will not get through. ... It is impossible for you to continue your journey. We invite you to return to your country of origin, you will not pass.”²⁵ Guatemalan authorities reported that on Saturday 16 January 2021, they had deported some 1,000 members of the “caravan,” including approximately 200 children.²⁶ Two days later, on 18 January 2021, Guatemalan troops forcibly cleared a road of nearly 2,000 migrants including many families with children, who had camped overnight after the clashes with security forces. Many of the migrants subsequently returned to the nearby village of Vado Hondo, apparently in search of alternative routes.²⁷

PRIORITIES

Based on the details provided in this submission, the GDP urges the UN Committee against Torture to consider requesting the following information from Guatemalan authorities:

- Information about conditions of detention within Zona 5 (Guatemala City) and measures taken to improve these.
- Information about makeshift reception centres where returnees are held, such as the reception centre in Guatemala City airport, and the measures authorities have adopted to protect those held inside.
- Measures taken in response to the COVID-19 pandemic to safeguard people in immigration detention in addition to any details about whether people were released from detention in response to the pandemic.
- Information regarding returns from Guatemala—and in particular, the return of “caravan” members—and the steps taken to safeguard migrants against *refoulement*.
- Information about investigations into abuses and mistreatment perpetrated by Guatemalan security forces during confrontations with migrants at borders with neighbouring countries.

²³ T. Phillips, “Migrant Caravan Trekking North to US Border Clashes with Guatemalan Troops,” *The Guardian*, 17 January 2021, <https://www.theguardian.com/world/2021/jan/17/migrant-caravan-trekking-north-us-border-clash-guatemala-troops>

²⁴ L. Sapalú, “Twitter 17 January 2021,” https://twitter.com/Lsapalu_eIP/status/1350572811123888130?s=20

²⁵ J. M. Vega, “Caravana Migrante: Ejército Enfrenta y Detiene Avance de Hondureños en el Kilómetro 177 de la Ruta del Atlántico,” *Prensa Libre*, 16 January 2021, <https://www.prensalibre.com/ciudades/chiquimula/caravana-migrante-ejercito-enfrenta-y-detiene-avance-de-hondurenos-en-el-kilometro-177-de-la-ruta-al-atlantico/>

²⁶ T. Phillips, “Migrant Caravan Trekking North to US Border Clashes with Guatemalan Troops,” *The Guardian*, 17 January 2021, <https://www.theguardian.com/world/2021/jan/17/migrant-caravan-trekking-north-us-border-clash-guatemala-troops>

²⁷ Reuters, “Guatemalan Troops Forcibly Clear Migrant Caravan from Highway,” *The Guardian*, 18 January 2021, <https://www.theguardian.com/world/2021/jan/18/guatemala-troops-migrant-caravan-honduras>