



SUBMISSION TO THE UN SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF MIGRANTS

INPUTS CONCERNING THE SPECIAL RAPPORTEUR'S
FORTHCOMING REPORT ON THE EXTERNALISATION OF
MIGRATION CONTROLS

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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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GLOBAL DETENTION PROJECT SUBMISSION TO THE UN SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF MIGRANTS

CONCERNING THE IMPACT OF THE EXTERNALISATION OF MIGRATION CONTROLS ON THE HUMAN RIGHTS OF MIGRANTS

The Global Detention Project (GDP) welcomes the opportunity to provide this submission concerning the Special Rapporteur's forthcoming report to the 80th Session of the UN General Assembly on the impact of the externalisation of migration controls on the human rights of migrants. The GDP is an independent research centre based in Geneva that investigates migration-related detention laws, policies, and practices across the globe to foster adherence to human rights in the treatment of detained migrants, asylum seekers, refugees, and stateless persons.

I. Introduction

The GDP congratulates the Special Rapporteur for choosing to produce a report on this critically important and timely topic that is impacting the ability of migrants across the globe to enjoy their fundamental human rights, including their right to liberty and their right to personal safety and security.

The issue of the externalisation of migration controls and enforcement measures is long-standing, especially with respect to efforts by some countries to shift immigration detention and interdiction operations beyond their borders. The recent efforts of the United States to send third-country migrants to prisons in El Salvador and elsewhere has highlighted the dangerous direction that many countries are taking today in their efforts to halt migration and refugee flows long before they reach their borders.

This submission seeks to provide context for better understanding the evolution of the externalisation of migration controls and to highlight venues for challenging these policies when they violate basic human rights.

II. The Externalisation of Immigration Detention

An early example of the externalisation of migration controls was Australia's "Pacific Solution," launched in the 1990s with the aim of deterring would-be migrants, interdicting vessels on the high seas, and transporting people to detention centres located in third countries. Despite Australia's decision to eventually end this policy because of the harms it caused individuals and in the face of growing global criticism, numerous other countries have sought to implement similar offshore detention and processing programmes.

Most recently, the U.S. government under the current administration of President Donald Trump has sought to boost detention operations at its offshore migrant centre in Guantanamo Bay, Cuba, and has ignored judicial rulings to send migrants to countries including El Salvador and South Sudan. Even as criticism and legal cases have mounted, the Trump administration has remained undaunted, ramping up plans to send migrants and asylum seekers to nearly every corner of the globe. According to one investigation, as of May 2025 the United States had "reportedly explored, sought, or struck deals with at least

19 countries: Angola, Benin, Costa Rica, El Salvador, Eswatini, Equatorial Guinea, Guatemala, Guyana, Honduras, Kosovo, Libya, Mexico, Moldova, Mongolia, Panama, Rwanda, Saudi Arabia, Ukraine, and Uzbekistan.”ⁱ

But the U.S. is far from alone in pursuing plans to externalise migration enforcement measures. The European Union has negotiated deals with—and provided billions of Euros to—countries across the Mediterranean region to block migration routes on land and at sea, often working with governments that fail to abide by basic human rights norms. Many of these externalisation programmes recall Australia’s offshore detention and processing operations. Since 2023, Italy has been spending millions of Euros to send detainees to centres in Albania, while numerous other countries like the UK have sought to send asylum seekers to processing centres overseas, including in Rwanda and elsewhere.

International organisations have also become increasingly involved in supporting externalisation programmes. The International Organisation for Migration (IOM), for instance, has long been involved in immigration detention operations around the world, including assisting offshore detention operations in places like Guantanamo (a role that only began receiving attention after the Trump administration’s announcement of plans to boost detention beds there by 30,000). Also, the UN High Commissioner for Refugees (UNHCR), long an opponent of offshore asylum processing schemes, has recently seemed to soften its stance and expressed support for EU to set up “return hubs” in third countries.

Detention is often at the heart of externalisation schemes. Under the guise of combatting the trafficking of people and assisting countries on the periphery of the Global North to better manage migration flows, wealthy states have invested heavily in boosting the detention capacities of “transit countries,” building “offshore” detention and processing centres, and encouraging neighbouring countries to develop legal and administrative processes that support migration-related detention operations.ⁱⁱ As a result, one scholar writes, “over the last two decades we have witnessed the emergence of new detention archipelagos that straddle the globe,” representing a very tangible—and menacing—barrier separating lands wracked by poverty and turmoil from the wealthier societies sought by many of the world’s migrants, refugees, and asylum seekers.ⁱⁱⁱ

And as the case of the Trump administration clearly shows, political leaders are increasingly bold in their pronouncements about the goals of this outward expansion of detention and processing. Importantly, it is not just populist or right-wing government’s that are expressing these harmful agendas. In 2021, Denmark’s Parliament adopted by a margin of 70-24 votes a law authorising the relocation of asylum seekers to centres in third countries outside the European Union. A spokesperson for the Social Democratic-led government said at the time: “If you apply for asylum in Denmark, you know that you will be sent back to a country outside Europe, and therefore we hope that people will stop seeking asylum in Denmark.”^{iv}

III. An Unintended Consequences of Externalisation: The Growing Relevance of the Migrant Workers Convention

As the cases discussed above make clear, one of the more damaging impacts of externalised migration control programmes is that they help shield destination countries from having to respect their obligations under the UN Refugee Convention by shifting processing procedures to poorer countries where the rule of law is often weak or non-existent. The EU’s

collaboration with Libya is one such example, revealing the deadly consequences of Europe's shift away from its embrace of the global refugee system.

However, as countries have sought to avoid their humanitarian responsibilities by pushing controls beyond their borders, they have also unintentionally boosted the importance and impact of other international venues for promoting the rights of all vulnerable migrants, including refugees and asylum seekers. Of particular relevance in this respect is the **Committee on Migrants Workers (CMW)**, the UN treaty body that oversees implementation of the most poorly ratified international human rights treaty, the **Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)**. Over the last two decades, the CMW has emerged as a critical arena for advocating for the protection of the fundamental rights of migrants and refugees ensnared in offshore control regimes. As of 2025, the CMW has been ratified by only 60 states, none of which are industrialised, migrant-receiving countries; but many of which are countries that are important externalisation targets. Thus, in an exemplary case of the “law” of unintended consequences, wealthy countries seeking to skirt their humanitarian and human rights obligations towards vulnerable people on the move have managed to breathe life into a treaty that they have shunned, ironically for the same reasons motivating their externalisation efforts.

To be sure, the ICRMW does not provide the same protections provided by the UN Refugee Convention, nor will it ever have the same on-the-ground impact. Nevertheless, the migrant worker convention provides many important protections, and efforts to promote those protections in states that have ratified the convention inevitably have blowback on those countries that have shunned it. Immigration detention is a critical area where this can be observed. Importantly, although the convention notes that it is not intended to cover “refugees” (Article 3d), its definition of “migrant workers” is broad, covering all non-nationals (Article 2).

Article 16 states that “Migrant workers and members of their families shall have the right to liberty and security of person.” Article 16(4) provides explicit protections for those in detention, stating that migrants “shall not be subjected individually or collectively to arbitrary arrest or detention; they shall not be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law.” Additionally, Article 16 requires the provision of procedural standards for migrant detainees—an oft overlooked aspect of administrative detention systems—including consular access, the right to be informed of the reasons for their detention, and due process rights.

The CMW has given increasing importance to detention and the right to liberty. An indication of this is its recent work producing General Comment No. 5 on Migrants' Rights to Liberty and Freedom from Arbitrary Detention, as well as its previous work—with the Committee on the Rights of the Child (CRC)—on the 2017 Joint General Comment on the Human Rights of Children in the Context of International Migration, which explicitly states that the detention of children for migration-related reasons is in all cases a violation of a child's best interests, a conclusion that CMW and CRC also extend to the families of children. In other words, whenever a country detains an unaccompanied child or a family with children, it is violating fundamental human rights. (Critically, the CMW-CRC comment covers countries that have ratified either of the conventions; the Convention on the Rights of the Child has been ratified by all but three countries: the United States, South Sudan, and Somalia.)

The importance given to detention by the CMW can also be gleaned in its jurisprudence, in the form of its Concluding Observations, which are provided during periodic reviews of states parties' implementation of the treaty. According to Grange and Majcher (2017), between 2004—when the committee held its first session—and 2016, at least half of its reviews contained recommendations related to immigration detention.^v Additionally, according to the Global Detention Project's analysis of Concluding Observations as of 2020, no fewer than 32 of the Convention's then 56 states parties had received recommendations concerning migration-related detention practices.



In some cases, the Committee has explicitly connected the abuses of migrants in states parties to the convention to the externalisation efforts of wealthy countries. For instance, in its Concluding Observations on Turkey, the Committee discusses the impact of the 2016 EU-Turkey agreement, highlighting “The lack of arrangements for reception and for processing asylum claims, as well as the lack of assurances against refoulement, in place in the State party before migrants started being returned from Greece under the agreement reached between the European Union and Turkey on 18 March 2016.” The Committee also urged Turkey to involve civil society groups in the implementation of the agreement and to provide “unhindered access to detention centres to enable them to support detained migrant workers and members of their families effectively.”

are fully consistent with the Convention,” the Committee’s general comments, and its joint general comments with the CRC on the human rights of children in the context of international migration.

Crucially, civil society groups are increasingly using the CMW’s treaty review process to raise awareness of how abuses suffered by migrants and asylum seekers in states parties to the migrant workers convention are directly related to externalisation. Thus, for instance, in a submission to the CMW concerning Niger, the Global Detention Project stated: “Niger has become a central focus of EU migration ‘management’ strategies, with some observers dubbing it ‘the southern border of Europe.’ By 2017, EU engagement had included a pilot project to convince migrants to stop their journeys; encouraging Niger to pass a law against migrant smuggling (Act No. 2015-36); a range of capacity-building projects for law enforcement authorities and the judiciary; and increased cooperation in the ‘fight against smugglers.’”

IV. Urgent Need for Reinvigorated Human Rights System to Help Fill Gaps in Protection and Advocacy

It is important to note that the CMW is not the only UN human rights monitoring body where advocates can seek to boost the protections of migrants, refugees, and asylum seekers who are ensnared in offshore control schemes and prevented from seeking refugee protection. Wherever wealthy countries are paying third countries to detain migrants and refugees, they are contributing to a range of human rights abuses that violate their obligations under numerous other international and regional human right conventions, including, *inter alia*:

- **The Convention on the Elimination of All Forms of Racial Discrimination**
- **The Convention on the Rights of the Child**
- **The International Covenant on Civil and Political Rights**
- **Convention Against Torture**
- **European Convention for Human Rights**
- **European Convention for the Prevention of Torture**
- **American Convention on Human Rights**

At the Global Detention Project, we have developed a methodology for harnessing the rights and protections provided in these and other instruments which involves systematically documenting evidence about harmful detention systems that is directly relevant to the norms provided in these treaties. We then use that evidence to present targeted recommendations to human rights monitoring bodies, including treaty bodies and special procedures. Thus, for example:

- When we learned about the detention in Ethiopia of refugee families who had fled Sudan, we presented the evidence to the Committee on the Rights of the Child (CRC) in advance of its review of Ethiopia, urging the Committee to develop recommendations that reflect its stated conclusions that any detention of a child for migration purposes is a violation of the best interest principle.^{vi}
- When the Working Group on Arbitrary Detention (WGAD) is planning a visit to a country where there are reports of the systematic arrest of people fleeing conflict, we prepare briefs for the Working Group laying out the evidence, urging it to investigate during their visits and to pressure officials to end harmful practices. In one recent

case, the WGAD issued important recommendations after its visit to the Bahamas—which has received important assistance and encouragement from the United States to detain migrants—regarding the arbitrary detention of people fleeing Haiti, which the GDP and our local partners had alerted them to prior to their visit.^{vii}

These cases illustrate the crucial importance that the human rights system has in filling gaps in protections that are opening up as countries evade their humanitarian responsibilities by externalising migration enforcement. Sadly, however, this system is also coming under threat, in particular the Treaty Body system. As the GDP and numerous other civil society partners noted in a recent open letter addressed to the 37th Annual Meeting of the Chairpersons of the UN Human Rights Treaty Bodies:

“Today, the treaty body system is facing a severe financial crisis that threatens its very functioning. Meetings are being cancelled, reviews postponed, and access by rights holders and civil society organisations diminished. As announced in the framework of the 37th Annual Meeting of the Chairpersons, six Treaty Bodies have been forced to cancel one of their three annual sessions this year, resulting in the postponement of at least 35 State party reviews until further notice. This will lead to additional delays in the already backlogged workload of the Committees, especially the individual communications procedure. Furthermore, Treaty Bodies with preventive and inquiry mandates will not be able to conduct planned on-site visits. These consequences are not abstract. They directly impact the enjoyment of rights by people and communities worldwide, particularly those already marginalised or under threat. We urge States parties to recognise that their decision to ratify international human rights treaties must be matched by a commitment to uphold the system that gives those treaties life.”^{viii}

V. Conclusion & Recommendations

There is an inexorable connection between externalisation and the growing refusal by countries across the globe to respect the fundamental rights of non-citizens. In the face of this, it is all the more important today to continuously remind states about their obligations to respect the fundamental rights of all vulnerable people on the move, citizens and non-citizens alike. And as externalisation efforts continue to undermine refugee protection, we must re-double our efforts to advocate for the rights and protections of all migrants through the monitoring mechanisms established by international and regional human rights conventions.

In light of these concerns and developments, the Global Detention Project urges the Special Rapporteur to use the occasion of their report on externalisation to call on all UN members states to:

- **Cease all harmful offshore detention and interdiction programmes**, and to review their collaborations with other countries to ensure that the treatment of all migrants, refugees, and asylum seekers are in line with both the responsibilities and duties of their partners but also their own. States must be reminded that their humanitarian and human rights obligations do not stop at their borders, and that they are responsible for any violations that occur as result of offshore programmes that they support.
- Encourage countries that have not yet done so to ratify the **Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**

(ICRMW) by nurturing recognition that the protection of the rights of migrants ultimately benefits both migrant destination and source countries, and underpins maintenance of a stable, healthy, and just international system.

- **Pay their assessed contributions to the UN in full** and on time in line with their obligations under the UN Charter (Article 17, paragraph 2). The ability of the Treaty Bodies and other human rights mechanisms to function should not be held hostage by budgetary shortfalls that are avoidable and political in nature.
- **Reaffirm their commitments to both the UN Refugee Convention and the human rights system** through both political and financial support.
- **Ensure the accessibility of treaty body processes, as well as other human rights mechanisms, to civil society and victims**, including through hybrid modalities, predictability, and protection for those who engage with the UN system.

ⁱ N. Turse and J. Valdez, "Trump Is Building A Global Gulag For Immigrants Captured By ICE," The Intercept, 15 May 2025, <https://theintercept.com/2025/05/15/trump-ice-immigrants-deport-prisons-cecot-libya/>

ⁱⁱ B. Frelick, I. M. Kysel, and J. Podkul (2016), 'The Impact of Externalisation of Migration Controls on the Rights of Asylum Seekers and Other Migrants', *Journal of Migration and Human Security*, Volume 4(4), <https://journals.sagepub.com/doi/pdf/10.1177/233150241600400402>

ⁱⁱⁱ Michael Flynn, "A New Gulag Archipelago: Protecting the Rights of Refugees and Migrants Deprived of Their Liberty in the Immigration Detention Belt Emerging across the Global South," paper presented at the 2018 Refugee Law Initiative Conference, <https://www.globaldetentionproject.org/refugee-protection-in-a-hostile-world>

^{iv} The Guardian (2021), 'Denmark Passes Law to Relocate Asylum Seekers Outside Europe', 3 June, <https://www.theguardian.com/world/2021/jun/03/denmark-passes-law-to-let-it-relocate-asylum-seekers-outside-europe>

^v M. Grange and I. Majcher (2017), 'When is Immigration Detention Lawful? The Monitoring Practices of UN Human Rights Mechanisms,' *Global Detention Project*, Working Paper No. 21, <https://www.globaldetentionproject.org/when-is-immigration-detention-lawful-monitoring-practices-of-un-human-rights-mechanisms>

^{vi} See: <https://www.globaldetentionproject.org/ethiopia-submission-to-the-un-committee-on-the-rights-of-the-child>

^{vii} See: <https://www.globaldetentionproject.org/the-bahamas-joint-submission-to-the-working-group-on-arbitrary-detention>

^{viii} See: <https://www.omct.org/en/resources/statements/urgent-support-needed-for-the-un-human-rights-treaty-bodies>