



Detention of migrants as a response to global migration: the legal framework and beyond

GFMD-CMW Side Event on Migrants 19 May 2016, Geneva

A panel discussion on the impact of the existing international normative framework; promotion and protection of the rights of migrants, including women and children; challenges and best practices in the context of international migration

Organised by the Permanent Mission of Bangladesh and
the Committee for the Protection of the Rights of All Migrant Workers
and Members of Their Families

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Presentation Structure

- I. Population movements → Setting the facts straight
- II. Immigration detention → Legal framework
- III. Implementation monitoring → Committee on Migrant Workers
- IV. Challenges & best practices

I. Setting the Facts Straight : reading the right statistics

Year	International migrants as percentage of the population	Total international migrants in million	World population in billion
1970	2.2	81.5	3,706
1980	2.3	99.8	4,453
2000*	2.9	174.9	6,085
2010	3.1	214	6,842
2015	3.3	243.7	7,336

* In 1989, there were 2.4 million persons in the USSR born outside the country. In 2000, due to the USSR break-up into a number of independent countries there were a total of 29.2 million persons born outside their country for all the countries that used to be part of USSR. According to UNDESA, this resulted in adding about 27 million persons to the 2000 world total international migrant stock.

Challenges for Research on Immigration Detention

Methodology → comparative purposes

Frequent legal reforms

Discrepancy between law and practice

Opacity v. access to information

Terminology

From euphemistic migration discourse

illegals, illegal aliens, bogus asylum-seekers, clandestine, infiltrators, non-deserving, queue jumpers v. genuine & deserving, migration crisis

To → policy language blurring detention practices

migration “management”, border control, neighbourhood policies, returns/readmission v. expulsion/deportation, risks & threats, hotspots

To → opaque language for immigration detention

“accommodation in guesthouses for foreigners”, “removal centres”, “migratory stations”, “rétention”, “border reception centres,” “repatriation centres”, “accommodation in the temporary stay facilities for foreigners”, “specialized homes for temporary accommodation of foreigners”, “depots”, shelters

II. International Human Rights Legal Framework: The right to liberty: protection from arbitrary detention

Detention must be:

- Prescribed by law
- Necessary and proportionate to a legitimate aim
- Imposed as a last resort
- As short as possible
- Subject to administrative or judicial review

ICRMW detention-related provisions

ICRMW provisions related to immigration detention and rights in detention are included in Part III which covers the human rights of *both* documented and undocumented migrant workers and members of their families.

Migrant workers and members of their families 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

ICRMW Article 16 (4)

Further ICRMW detention-related provisions

Procedural standards

- Right to information (notification of the legal and factual reasons for arrest) in a language the person concerned understands + information on one's rights
- Right to legal assistance
- Assistance of an interpreter
- Right to challenge the legality of deprivation of liberty before a court
- Right to consular assistance
- Right to compensation for unlawful detention

Conditions of detention (same rights as nationals)

- Visits by family members
- Protection against having to bear the cost of detention
- Right to be treated with humanity and respect for cultural identity
- Separation from convicted criminals
- Protection against torture, or cruel, inhuman or degrading treatment or punishment

CMW Implementation Monitoring

Main Recommendations

- Need for statistics on detention
- Conditions of detention (overcrowding, food, medical care & hygiene, investigations and sanctions for ill-treatment)
- Length (issues of indefinite detention, shortest possible duration)
- Respect of international and ICRMW norms and standards including safeguards against arbitrary detention (exceptional, last recourse, case by case determination, due process, lawful)
- Procedural standards (access to information, legal aid, effective legal remedies, due process in judicial and administrative proceedings, appeal & complaints procedures)
- Legal (segregation from convicted criminals) and gender segregation
- Administrative detention in dedicated facilities
- Consular assistance for nationals abroad

CMW Interpretation

Criminalizing irregular entry into a country exceeds the legitimate interest of States parties to control and regulate irregular migration, and leads to unnecessary detention. While irregular entry and stay may constitute administrative offences, they are not crimes per se against persons, property or national security .

General Comment no.2 on the rights of migrant workers in an irregular situation and members of their families

The Committee recalls that irregular entrance into a country or expiration of authorization to stay is an administrative infraction, not a criminal offence. Consequently, such situation cannot imply a punitive sanction. The Committee recalls that children should never be detained on the basis of their or their parents' immigration status, and urges the State party to: (a) Remove from its legislation any provision that considers any irregular immigration situation as a criminal offence.

Concluding observations on Belize in the absence of a report § 27 CMW/C/BLZ/CO/1 (2014)

Trafficking and Smuggling

UN Convention against Transnational Organized Crime
and Smuggling & Trafficking Protocols

Smuggling → Lack of legal avenues for migration
→ Lack / denial of asylum processing

Trafficking → Identification mechanisms for victims
→ Protection from detention

IV. Challenges & Best Practices

Challenges

Extra-territoriality

Privatization, securitization

Mandatory Detention

Detention of asylum-seekers

Best practices

Campaign for alternatives to detention

Ending detention of children

Detention monitoring (OP-CAT, NPMs, NHRIs)

UN SG call for global compact on refugees and migrants + world conference in 2018

For further reference



[English](#) > [Human Rights Bodies](#) > [CMW](#)

The Committee

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[Meeting of States parties/Elections](#)

Basic documents

[Convention](#)

[Rules of procedure](#)

[Rules of Procedures](#)
- INT/CMW/ROP/7249
- HRI/GEM/3/Rev.1/Add.1

[Frequently asked questions](#)

[Annual reports](#)

The work of the Committee

Key documents related to reporting cycles

[States parties reports](#)

[Lists of issues \(LOIs & LOIPR\)](#)

[Replies to LOIs](#)

[Concluding observations](#)

Reporting to the

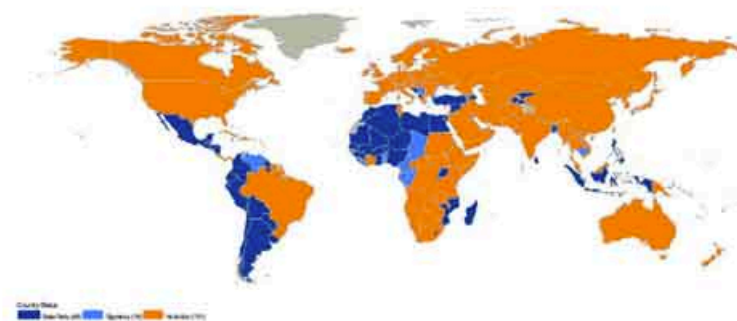
COMMITTEE ON MIGRANT WORKERS

Monitoring the protection of the rights of all migrant workers and members of their families

The Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) is the body of [independent experts](#) that monitors implementation of the [International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families](#) by its State parties. It held its first session in March 2004.

[More about the Committee on Migrant Workers...](#)

Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families



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[Migration, human rights and governance - Handbook for Parliamentarians N° 24](#)

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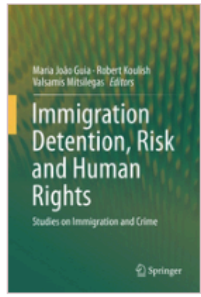


The world's largest immigration detention system ...

The United States may account for nearly half of the world's immigration detainees and deportees.

[U.S. Immigration Detention Profile](#)

Featured Publications



Sovereign Discomfort: Can Liberal Norms Lead to Increasing Immigration Detention?

External Staff Publications | Michael Flynn | April 2016

Liberal democracies betray discomfort at public scrutiny of immigration detention, neglecting to release statistics, cloaking detention in misleading names, and limiting what they define as deprivation of liberty. These countries have also expanded their detention activities and encouraged their neighbors to do the same. What explains this simultaneous reticence towards and embrace of detention?

[Read more](#)



Who Is Responsible for Harm in Immigration Detention? Models of Accountability for Private Corporations

Working Papers | Theodore Baird | February 2016

This paper argues that private corporations can and should be held responsible for structural injustices that take place in immigration detention regimes in which they operate. It draws on literature from business ethics to evaluate various ethical arguments for assessing corporate responsibility, emphasising models that may lead to the prevention of harm and suffering. In particular, the paper employs a...

GDP News & Activities

Submission to the UN Human Rights Committee: Denmark

April 2016

In its Submission to the HRC, the GDP raises concerns about whether a new amendment to Denmark's Aliens Act increases the possibility that asylum seekers could face arbitrary detention when...[Read more](#)

Submissions to the Committee on the Rights of the Child: Bulgaria and Slovakia

April 2016

The GDP has made submissions on Bulgaria and Slovakia to the UN Committee on the Rights of the Child addressing concerns about the treatment of accompanied and unaccompanied minors in...[Read more](#)

Submission to the Human Rights Committee on Thailand

New publication

There are alternatives:
A handbook for preventing unnecessary
immigration detention

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RT @idceurope: TURKEY: A gap between law and practice for migrants & asylum seekers? A must-read piece.
<https://t.co/4LwovSQgsY> <https://t.co/4LwovSQgsY>
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About IDC

The International Detention Coalition (IDC) is a unique global network, of over 300 civil society organisations and individuals in more than 70 countries, that advocate for, research and provide direct services to refugees, asylum-seekers and migrants affected by immigration detention.

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Recommendation
Approaching The 19
September High-
Level Plenary Meeting**



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We Are Proud To Welcome Nine
New Members To The IDC's
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Detention & Stateless



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& more humane alternatives
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