Global Detention Project Submission to the UN Committee on Migrant Workers (CMW)

25th Session (29 August – 7 September 2016)

Honduras

Geneva, August 2016

Issues concerning immigration detention

The Global Detention Project (GDP) welcomes the opportunity to provide information relevant to the consideration of the initial report of Honduras (CMW/C/HHND/1 19 May 2016) with respect to the implementation of the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (ICRMW), ratified by Honduras in 2005.

The GDP is an independent research centre based in Geneva that investigates immigration-related detention. As per the GDP's mandate, this submission focuses on the State party's laws and practices concerning detention for immigration-related reasons.[1]

It is a follow up to our Submission of 11 March 2015 in relation to the list of issues Prior to Reporting. The Global Detention Project September 2015 Honduras Immigration Detention Profile is annexed to this submission.

ICRMW Articles 16 and 17

Honduras has a dedicated infrastructure for immigration-related detention, as it notes in the paragraph 105 of the State report. In addition, in its September 2015 profile on immigration detention policies in Honduras, the GDP highlights several key aspects of the country's immigration detention system (please see the attached "Annex"). However, as our 2015 report additionally notes, the Migration Law does not appear to contain grounds directly providing for immigration detention. Rather, there are grounds for deportation, which seem to trigger detention measures. Deportation may be ordered when: a non-citizen has entered or stayed in the country using false documents; remains in the country following the cancellation of a right to stay; or has entered the country without authorization (Migration Law, article 88). Foreigners also face expulsion after serving penal sentences, for undertaking activities not allowed by his/her permit, or for re-entering to the country after expulsion (Migration Law, article 89).

With regards to implementation of the ICRMW in Honduras:

[1] This submission is based in part on GDP research on Honduran immigration detention policies and practices, which is summarized in its report "Immigration Detention in Honduras," September 2015. The report is available at: https://www.globaldetentionproject.org/countries/americas/honduras.

Can Honduran authorities explain what is meant by the statement in paragraph 119 of the State report, which states that "no migrant workers have been deported"? Who actually gets deported following detention?

Paragraphs 105 to 120 of the Initial report of Honduras deal with immigration detention. However, *only* paragraphs 105 and 119 cover the detention of migrants *inside* Honduras; the all paragraphs focus on detention in the United States of America.

Key question?

What are the grounds provided in law, including in *both* immigration and criminal law, that allow the detention of migrants? Does the law provide for specific penalties or punitive sanctions—in addition to administrative detention—for violations related to unauthorized entry, exit, or stay in the country (see reference to "administrative sanctions" in paragraph 119)? Do detainees have access to legal counsel? Do they have the right to appeal against detention order? Does a court review detention order?

The maximum period of detention appears to be 90 days. What is the average detention period in practice? Does Honduras provide alternatives to detention? If so, what kinds of alternatives are used? Are minors protected from immigration detention?

How many migrants were detained in 2014, 2013, and 2012? In general, does Honduras maintain statistics on the numbers of people placed in immigration detention annually, the number of people in detention any given time, the number of people removed or deported annually, the average length of immigration detention, or the nationalities of detainees? If so, can it make these statistics available?

Please indicate whether the following categories of individuals can be placed in immigration detention: **minors** (anyone under 18 years of age), **asylum seekers**, **bona fide refugees**, **pregnant women**, **victims of torture**, or **victims of trafficking**.

Detention centres

Noting that Honduras has two operational specialized immigration detention centres (Centros de Atencion al Migrante Irregular) in Tegucigalpa and Choluteca, (State Report § 105) please provide information on conditions of detention of migrant workers and members of their families: (What are the capacities of these centres? Are women and men detained separately? Are families separated?

What institutions can visit these centres (Ombudsman, NGOs)? Do they regularly conduct visits? Does Honduras make use of any additional facilities for the purposes of detaining foreign nationals for immigration-related reasons, even for very short periods of time?

Has the Instituto Nacional de Migración drafted, approved and published the regulations for assistance and stay in dignity in detention centres for migrants (reglamento para la

asistencia y estancia digna en los centros de detención de migrantes)? This was due in 2014.[2]

ICRMW Part IV, in particular Article 68

Reports indicate that in the past Honduran authorities collaborated with officials from other countries, namely the United States, to undertake multilateral anti-smuggling operations that led to the arrest of both suspected smugglers and undocumented migrants from third countries. These operations reportedly led to the detention of numerous third-country nationals, the costs of which were at least in part paid by U.S. officials.[3] Has Honduras recently or does it currently have any similar collaborative anti-smuggling arrangements in place with other countries targeting alleged smuggler in Honduras? If so, have these operations led to the detention of third-country nationals on grounds of immigration status? Does the government receive money from any foreign government to detain and deport people from its territory?

[2] Action 61, "Plan Nacional de Acción en Derechos Humanos en el Tema Derechos de Las Personas Migrantes", Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Initial reports of States parties due in 2006, Honduras, CMW/C/HND/1, 19 May 2016, Annex 3. http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=HND&Lang=EN

[3] See, for example, Michael Flynn, "Donde Esta La Frontera?" Bulletin of the Atomic Scientists, https://www.globaldetentionproject.org/wp-content/uploads/2016/06/Flynn_frontera.pdf.

Annex:

Honduras Immigration Detention Profile

September 2015

Honduras has one of the highest murder rates in the world, is plagued with very high levels of crime and gang violence, and most of its population is mired in poverty. In recent years, it has seen tens of thousands of adults and children seek the assistance of people smugglers to flee the country; upwards of a million Hondurans (or about 10 percent of the population) live abroad. In 2014, the arrival of thousands of Honduran children at the U.S.-Mexico border sparked a public panic in the United States, and many children and families ended up in hastily established detention centres as they awaited deportation back to Honduras.[1]

Honduras also serves as a transit country for people from neighbouring countries as well as so-called extracontinentals seeking passage north. A vast majority of transiting people come from Cuba, but there are also migrants from Nicaragua, Colombia, the Dominican Republic, and India.[2]

Undocumented migrants are subject to detention even though the country's immigration legislation fails to clearly provide for this practice. According to statistics provided by the Migration Directorate the country detained 2,526 migrants in 2013 and 1,198 in 2012.[3] The main countries of origin of detainees are Cuba, India, Bangladesh, Somalia, Peru, Ecuador, and Bolivia.[4]

The country's migration policy is provided in the 2003 Migration Law (*Ley de Migracion y Extranjeria*) and the 2004 Migration Regulation (*Reglamento de la Ley de Migracion y Extranjeria*). Both the Law and Regulation are vague on the issue of detention. The only provision that explicitly mentions immigration detention is article 8(16) of the Migration Law, which describes the responsibilities of the Migration Directorate (*Dirección General de Migración y Extranjería*), recently rebranded as National Institute for Migration (*Instituto Nacional de Migracion*). One of its responsibilities is to temporarily detain (*custodiar*, literally "to guard" or "to keep") migrants in special assistance centres ("centros especiales de atencion") while their migration status is being decided or deportation or expulsion organized.

Grounds for deportation and expulsion appear to indirectly serve as grounds for detention. Under the Migration Law, deportation may be ordered when: a non-citizen has entered or stayed in the country using false documents; remains in the country following the cancellation of a right to stay; or has entered the country without authorization (Migration Law, article 88). Foreigners also face expulsion after serving penal sentences, for undertaking activities not allowed by his/her permit, or for re-entering to the country after expulsion (Migration Law, article 89).

The law fails to provide a maximum length of detention. However, authorities interpret some provisions of the Migration Law, which are unrelated to detention, to limit the length of detention to 90 days. In practice, however, migrants tend to be detained for two to four weeks. There are no alternatives to detention, in law or in practice.[5]

The Migration Law also fails to provide any detention-related procedural safeguards. Observers in Honduras told the Global Detention Project that in practice detained migrants are informed about reasons for their detention and have access to a lawyer, paid by them, if they request. However, in the majority of cases, the only legal advice given to detainees is provided by civil society

organizations. Some migration officers speak English and can help detainees understand the process; however, this practice is not systematic or predictable. The only possibility to appeal detention is to bring habeas corpus action. Yet, such appeals are extremely rare in practice. There is no automatic review of detention.[6]

Honduras operates two dedicated immigration detention facilities. Like its neighbours, the country employs euphemisms to name these centres, which are officially called Centros de Atención al Migrante Irregular (CAMI), or "Irregular Migrant Attention Centre." (Nicaragua, for example, calls its facility the "Migrants Shelter Centre.").The centres are located at the premises of the Migration Directorate in Tegucigalpa and Choluteca. Before opening the centres around 2010, migrants were already detained in these facilities, however in an informal manner. Both centres have a capacity to detain approximately 20 migrants but usually there are no more than 10 people on a given day.[7]

Men and women are detained separately. Minors, following a short period of detention while their age is determined, are released from the centres and placed in care centres managed by the National Directorate for Children and Family (*Dirección Nacional de la Niñez y la Familia*). If a child travels with his mother, they are both placed in a care centre.[8]

According to GDP sources in Honduras, the cost per detainee per day is around 12 USD (this includes only food, drinking water, and items of the basic hygiene).[9] Reportedly the conditions of detention are very basic, both in terms of food and equipment of the centres. In general, authorities tend to allow visits by civil society organizations. The Ombudsperson, who is authorized by law to monitor all the places of detention in the country, visits the centres on rare occasions.[10]

Honduras and U.S. Anti-Smuggling Operations

Observers have criticized the United States for pressuring Honduras and its neighbours to detain transiting migrants because it is cheaper.[11] A case in point was Honduras' involvement in U.S.-led anti-smuggling operations during the 1990s and 2000s called "Operation Disrupt," which targeted migration and smuggling activities in the Dominican Republic, Costa Rica, Ecuador, Honduras, and Canada.[12]

In 1997, when "Disrupt" anti-smuggling operations were subsumed under the rubric a larger U.S. initiative called "Global Reach," U.S. immigration officials significantly broadened the scope of their Latin American activities. These included undertaking annual multilateral interception operations with law enforcement personnel from dozens of Latin American countries. According to activists in these countries, during the operations, U.S. immigration agents accompanied local authorities to restaurants, hotels, border crossings, checkpoints, and airports to help identify and apprehend suspicious travelers.[13]

In a series of yearly press statements in the late 1990s and early 2000s, U.S. authorities proudly announced the results of each operation. In 2000, for example, the INS (U.S. Immigration and Naturalization Service) declared that year's Disrupt operation, "Forerunner," to be the "largest anti-smuggling operation ever conducted in the Western Hemisphere." Involving agents from six Latin America countries, the operation nabbed 3,500 migrants and 38 smugglers.[14]

Forerunner was followed in 2001 by "Crossroads International," which the INS again described as the "largest multinational anti-smuggling operation ever conducted in the Western Hemisphere," this one resulting in the arrest of 75 smugglers and the interdiction of some 8,000 migrants from

39 countries. “The wide-ranging anti-smuggling operation was directed by the INS Mexico City District Office and involved … law enforcement officers in Columbia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Mexico, Panama, and Peru,” said a press statement.[15]

Officials in countries participating in the U.S.-led anti-smuggling operations often received U.S. budgetary assistance to help detain and deport migrants. In 2000, for example, the U.S. Catholic Conference of Bishops (USCCB), which had sent a delegation to Central America to study regional migration issues, issued a scathing press release decrying U.S. interdiction activities in the region. As part of the trip, the bishops representatives visited a prison in Tegucigalpa, Honduras, that was filled with migrants who had been detained during Operation Forerunner. Said the press release:

“We are gravely concerned with the human impact of Operation Forerunner, a multilateral regional effort purportedly designed to apprehend and prosecute human smugglers, or ‘coyotes,’ who provide transport to migrants through the region and on their journey north. We strongly agree that these smugglers, who charge migrants as much as $5,000 to shepherd their trip, should be captured and brought to justice. However, Operation Forerunner has had the effect of targeting migrants more than the persons who smuggle them, resulting in many migrants being placed in substandard prisons in the region without representation or the opportunity to apply for asylum. … The results of Operation Forerunner give us pause as to the real objectives of the initiative. In each of the countries visited, the governments apprehended only a handful of ‘coyotes’ while capturing several thousand migrants, jailing many of them, and returning them to their countries. The U.S. government has been intimately involved in these interdiction efforts, offering teams of ‘advisors’ to the Central American governments and paying for the return of extra-regional migrants to their homes. As one U.S. embassy official informed us, ‘It is less expensive to take care of the problem here than when they reach the United States.’” [16]

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[1] Telesur, “Migrant Mothers, Children Could Be Freed from US Detention,” 12 May 2015, "http://www.telesurtv.net/english/news/Migrant-Mothers-Children-Could-Be-Freed-from-US-Detention-20150512-0004.html"
[2] Hondudiario. "ACNUR conocerá causas de migración hondureña a Costa Rica." 29 January 2015. http://www.hondudiario.com/?q=node/16656
[3] Hondudiario. "ACNUR conocerá causas de migración hondureña a Costa Rica." 29 January 2015. http://www.hondudiario.com/?q=node/16656
[4] Undisclosed source. Phone calls with Izabella Majcher (Global Detention Project). September 2015.
[5] Undisclosed source. “GDP Questionnaire on Honduras.” September 2014. Undisclosed source. Phone calls with Izabella Majcher (Global Detention Project). September 2015.
[6] Undisclosed source. “GDP Questionnaire on Honduras.” September 2014. Undisclosed source. Phone calls with Izabella Majcher (Global Detention Project). September 2015.
[7] Hondudiario. "ACNUR conocerá causas de migración hondureña a Costa Rica." 29 January 2015. http://www.hondudiario.com/?q=node/16656. Undisclosed source. Phone calls with Izabella Majcher (Global Detention Project). September 2015.
[8] Undisclosed source. “GDP Questionnaire on Honduras.” September 2014.
[9] Undisclosed source. Email exchange with Izabella Majcher (Global Detention Project). September 2014.

[10] Undisclosed source. Phone calls with Izabella Majcher (Global Detention Project). September 2015.
[11] U.S. Conference of Catholic Bishops (USCCB). 2000. "Statement on Visit to Central American Nations of Guatemala, El Salvador, Honduras." 10 November 2000.
[12] For more detailed information about these anti-smuggling operations, see Michael Flynn, "There and Back Again: On the Diffusion of Immigration Detention," Journal on Migration and Human Security, 2014, http://jmhs.cmsny.org/index.php/jmhs/article/view/31.
[13] Michael Flynn, "Donde Esta La Frontera," Bulletin of the Atomic Scientists, July/August 2002, http://www.globaldetentionproject.org/fileadmin/publications/Flynn_frontera.pdf.
[14] U.S. Department of Justice (DOJ). 2000. "INS and Central American Governments Disrupt Alien Smuggling Operations." INS Press Release. October 17, 2000.
[15] U.S. Department of Justice (DOJ). 2001. "Largest Multinational Alien Smuggling Operation Results in 7,898 Arrests in Latin America and Caribbean, International Cooperation of 14 Nations Called Key to Success," INS Press Release. June 27, 2001.
[16] U.S. Conference of Catholic Bishops (USCCB). 2000. "Statement on Visit to Central American Nations of Guatemala, El Salvador, Honduras." 10 November 2000.