



FWCC Oral Statement to be delivered at the 39th session of the Human Rights Council

Interactive Dialogue with the Working Group on Arbitrary Detention

Revised Deliberation #5 on deprivation of liberty of migrants

Check against delivery

Friends World Committee for Consultation (Quakers) thank the Working Group on Arbitrary Detention for their timely revision and update of Deliberation 5 on deprivation of liberty of migrants, which reflects relevant international law and jurisprudence.¹ This clarity on criteria for lawful use of immigration detention is much needed in the context of the overuse and misuse of detention for migration related purposes including as a deterrent to those exercising their right to seek asylum.

We would like to highlight:

- the prohibition on the deprivation of liberty of children²
- the duty of individualised assessment³
- the requirement of exceptionality of detention⁴
- the presumption of alternatives to detention⁵
- the non-use of detention for those in situations of vulnerability or risk⁶

The conditions for the lawful use of immigration detention set out in the Deliberation are reflected in the Global Compact for Safe, Orderly and Regular Migration, due to be adopted in December.⁷ Objective 13 of the Compact includes a commitment to:

prioritize noncustodial alternatives to detention that are in line with international law, and to take a human rights-based approach to any detention of migrants, using detention as a measure of last resort only.⁸

¹ Revised deliberation No. 5 on deprivation of liberty of migrants, Annexed to Report of the Working Group on Arbitrary Detention, A/HRC/39/45 of 2 July 2018 http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/39/45

² Working Group on Arbitrary Detention Revised deliberation No. 5 on deprivation of liberty of migrants, paras.11, 40

³ Working Group on Arbitrary Detention Revised deliberation No. 5 on deprivation of liberty of migrants, paras.14, 19, 20, 22, 23, 24

⁴ Working Group on Arbitrary Detention Revised deliberation No. 5 on deprivation of liberty of migrants, paras.12-24

⁵ Working Group on Arbitrary Detention Revised deliberation No. 5 on deprivation of liberty of migrants, paras. 16, 24, 40

⁶ Working Group on Arbitrary Detention Revised deliberation No. 5 on deprivation of liberty of migrants, paras. 40-42

⁷ Intergovernmentally negotiated and agreed outcome of the Global Compact for Safe, Orderly and Regular Migration of 13 July 2018, <https://refugeesmigrants.un.org/intergovernmental-negotiations>, Objective 13, para. 29

⁸ Intergovernmentally negotiated and agreed outcome of the Global Compact for Safe, Orderly and Regular Migration of 13 July 2018, <https://refugeesmigrants.un.org/intergovernmental-negotiations>, Objective 13, para. 29

The Deliberation provides useful guidance to States as they take steps to review practice and act on this commitment, highlighting community-based alternatives to detention as a key tool to ensure immigration detention is only used as an exceptional measure and that detention of migrants in situations of vulnerability never takes place.

The actions to implement this commitment include, to:

Review and revise relevant legislation, policies and practices related to immigration detention to ensure that migrants are not detained arbitrarily⁹

Our question for you is:

How can the Working Group work with States to support and advise them as they implement the Compact and undertake such reviews and revision?

ENDS

Delivered by Cassidy McKenna, Programme Assistant (Human Rights and Refugees)

⁹ Intergovernmentally negotiated and agreed outcome of the Global Compact for Safe, Orderly and Regular Migration of 13 July 2018, <https://refugeemigrants.un.org/intergovernmental-negotiations>, Objective 13, para. 29(c). In full:

Review and revise relevant legislation, policies and practices related to immigration detention to ensure that migrants are not detained arbitrarily, that decisions to detain are based on law, are proportionate, have a legitimate purpose, and are taken on an individual basis, in full compliance with due process and procedural safeguards, and that immigration detention is not promoted as a deterrent or used as a form of cruel, inhumane or degrading treatment to migrants, in accordance with international human rights law