



JOINT SUBMISSION TO THE WORKING GROUP ON ARBITRARY DETENTION IN PREPARATION FOR ITS MISSION TO THE BAHAMAS IN DECEMBER 2023

ISSUES RELATED TO IMMIGRATION DETENTION

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ABOUT THE GLOBAL DETENTION PROJECT (GDP)

The Global Detention Project (GDP) is committed to ending arbitrary and harmful migration-related detention practices around the world, and to ensuring respect for the fundamental human rights of all migrants, refugees, and asylum seekers. To achieve this, we seek to:

- Increase public knowledge and awareness of immigration detention policies.
- Expand coverage of immigration detention by human rights monitoring bodies and other international agencies.
- Expand partnerships with local and international civil society organisations working to end arbitrary and harmful immigration detention practices.
- Strategically target research and advocacy so that it effectively challenges arbitrary and harmful detention laws and policies.

ABOUT THE CENTRO POR LA JUSTICIA Y EL DERECHO INTERNACIONAL (CEJIL)

CEJIL is a regional human rights non-governmental organization that focuses on strategic engagement with international human rights organizations, primarily the Inter-American Human Rights System. CEJIL has represented a large number of victims of human rights violations in various countries of the American continent, including in the Bahamas.

ABOUT THE CENTRO PARA LA OBSERVACIÓN MIGRATORIA Y EL DESARROLLO SOCIAL EN EL CARIBE (OBMICA)

The Caribbean Migrants Observatory (OBMICA) has 14 years of investigative work on migrations that concern the Dominican Republic from a gender perspective and a rights approach, working in networks and towards policy advocacy, to generate positive public opinion and public policies favorable to the human rights of migrant populations in the Caribbean.

SUBMISSION TO THE WORKING GROUP ON ARBITRARY DETENTION IN PREPARATION FOR ITS MISSION TO THE BAHAMAS IN DECEMBER 2023

The Center for Justice and International Law (CEJIL), the Global Detention Project (GDP), and the Centre for Migration Observation and Social Development in the Caribbean (OBMICA) are pleased to provide the Working Group on Arbitrary Detention (WGAD) this joint submission in preparation for the WGAD's visit to the Bahamas in November/December 2023.¹ This submission concerns the deprivation of liberty of migrants, refugees, asylum seekers, stateless persons, and other at-risk non-citizens. It addresses situations that mainly fall within the scope of the WGAD's Category IV of types of arbitrary detention: "when asylum seekers, refugees or migrants are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy."

To assist the WGAD in undertaking a comprehensive analysis of the situation concerning arbitrary deprivation of liberty in the Bahamas, this submission describes the migration context in the country and provides a summary of relevant migration-related policies and practices, as well as information about the conditions in the country's sole dedicated immigration detention centre, the Carmichael Road Detention Centre.

1. CONTEXT AND KEY CONCERNS

The archipelago of the British Commonwealth of the Bahamas, located to the east of the straits separating Cuba and the U.S. state of Florida, has a population of approximately 400,000 people. The country is both a destination and transit territory for asylum seekers and migrants, mainly from Cuba and Haiti, as well as increasingly from African countries, like Nigeria. The country's international migrant population numbers some 65,000, accounting for roughly 16 percent of its total population, with Haitians making up the largest single group.²

The Bahamas' immigration provisions, which are contained in its 1967 Immigration Act, are notably strict, providing criminal penalties, including incarceration, for infractions such as unauthorised entry and stay on its territory (Article 19.2).³ Additionally, any person who has been charged but not yet convicted of immigration-related violations is held in administrative immigration detention at the country's Immigration Detention Centre,⁴ which is commonly referred to as Carmichael Road Detention Centre.⁵

Importantly, the Working Group, in its Revised Deliberation 5 (paragraph 10), concludes that any form of criminal punishment for these types of immigration infractions "always exceed the

¹ Louby Georges, an independent expert based in the Bahamas, assisted in the production of this submission.

² World Population Review, "Immigration by Country 2023," website accessed on 12 June 2023, <https://worldpopulationreview.com/country-rankings/immigration-by-country>; Migration Data Portal, "Total number of international migrants at mid-year 2020," website accessed on 12 June 2023, https://www.migrationdataportal.org/international-data?i=stock_abs_&t=2020&cm49=84

³ Immigration Act (Chapter 191) (No. 25 of 1967)

⁴ The Department of Immigration website, "Apprehension and detention," <https://www.immigration.gov.bs/apprehension-detention-and-deportation/apprehension-and-detention/> (accessed on 29 October 2023)

⁵ Bahamas Immigration, "Annual Report 2022," The Department of Immigration," page 12, <https://www.immigration.gov.bs>

legitimate interests of States.” ***Imprisonment on these grounds thus must be viewed as an arbitrary form of detention.***

Statistics provided by the country’s immigration authority indicate that criminal-related immigration incarceration and pre-trial detention remain heavily used enforcement tools in the Bahamas. In 2022, 988 people were charged with immigration related offenses, the vast majority of which related to “illegal landing” (580 cases) or “overstaying” (241 cases). Of those cases, 640 resulted in criminal convictions.⁶ ***We urge the Working Group to address this extreme example of the arbitrary criminalisation of immigration infractions during its exchanges with officials in the Bahamas.***

The Bahamas also imposes “mandatory” administrative detention measures for several reasons, including pre-trial detention for criminal immigration cases, detention for people under “repatriation” orders, and breaches related to invalid permits.⁷ The numbers of people “committed” to detention under the mandatory measures have increased considerably in recent years, rising from 2,173 in 2021 to 4,949 in 2022.⁸ In Revised Deliberation 5 (paragraph 10), the Working Group notes that detention must comply with the principle of proportionality and as such, automatic and/or mandatory detention in the context of migration is arbitrary. ***We thus urge the Working Group to discuss with officials during its visit the adoption of legal reforms that end mandatory detention measures and ensure that detention is only used as a last resort, for the shortest period possible, and based on an individual assessment of each case.***

Children are also vulnerable to immigration detention in the Bahamas. In September 2023, media reports indicated that a 17-year-old Jamaican boy escaped from the Carmichael Detention Centre.⁹ This report is concerning as it indicates that children continue to be detained at the centre, in violation of the international prohibition on detention of children. ***We thus urge the Working Group to stress the prohibition of the immigration detention of children, as per paragraph 11 of the Revised Deliberation 5.***

The conditions of detention at the Carmichael Road Detention Centre have also been repeatedly criticised due to persistent overcrowding, lack of sanitation and nutrition, and restrictions on communications with family. Similar criticisms have also been leveled at the Fox Hill Prison, where people convicted of immigration violations are incarcerated.¹⁰

The arbitrary and punitive nature of the Bahamas’ immigration-related detention system has been the subject of important cases brought before the Inter-American Commission on Human Rights (IACHR) by the Center for Justice and International Law (CEJIL) concerning the arbitrary detention of Cuban and Haitian nationals.¹¹ In its findings on these cases (“merits reports”),

⁶ Bahamas Immigration, “Annual Report 2022,” The Department of Immigration, <https://www.immigration.gov.bs>

⁷ The Department of Immigration website, “Apprehension and detention,” <https://www.immigration.gov.bs/apprehension-detention-and-deportation/apprehension-and-detention/> (accessed on 29 October 2023)

⁸ Bahamas Immigration, “Annual Report 2022,” The Department of Immigration, <https://www.immigration.gov.bs>

⁹ The Nassau Guardian: “Jamaican Teen Escapes From Detention Center,” September 25, 2023, available at: <https://thenassauguardian.com/jamaican-teen-escapes-from-detention-center/>

¹⁰ See, for example, Inter-American Commission on Human Rights, Report No. 459/21, Case 12.071, Merits (Publication), Cuban and Haitian Nationals detained at and deported from the Carmichael Road Detention Center, Commonwealth of the Bahamas, December 31, 2021.

¹¹ In August 1998, CEJIL and the Open Society Institute submitted a petition to the IACHR on behalf of 120 Cuban nationals and 8 Haitian nationals who were detained at Carmichael Road Detention Center (Case 12.071). In May 2000, CEJIL submitted a second

issued in 2021, the IACHR made a series of recommendations based on its findings that the Bahamas violated Articles I (life, liberty, and security), II (equality before the law), V, (protection of honor, personal reputation, and private and family life), VI (right to family and protection thereof), VII (right to protection of mothers and children), XVIII (fair trial), XXV (protection from arbitrary detention), and XXVIII (right to asylum) of the American Declaration on the Rights and Duties of Man.¹²

However, the Bahamas has failed to respond in any substantive way to the merits report's findings and recommendations. We hope that during its country visit the WGAD is able to verify migration detention conditions and request information from the State; and make similar concluding recommendations to the Bahamas regarding migration detention conditions and the relevant legal framework.¹³ Details about these findings are provided below. ***We urge the Working Group to carefully review the IACHR's findings and to press the government of the Bahamas to implement all of the Commission's recommendations.***

2. RECOMMENDATIONS BY THE INTER-AMERICAN COMMISSION

A key recommendation by the Inter-American Commission was that the Bahamas end its policy of automatic detention of migrants, stating: "End the State's policy of automatic detention of migrants. In this regard, detention should be treated as the exception, and only carried out pursuant to a duly founded decision consistent with international standards."¹⁴

However, as has already been noted in this submission, the Bahamas continues to automatically detain and criminalise migrants in its territory, with a key focus of enforcement actions being Haitians fleeing the humanitarian and political crisis in that country.¹⁵ People entering the Bahamas irregularly may be accused of the crime of illegal entry and other violations of the Immigration Act, and therefore punished with fines, deportation orders, and detention; they sometimes also face prison sentences at Fox Hill.¹⁶

Numerous international agencies have ramped up pressure on the Bahamas to make necessary reforms in this regard. UNHCR has encouraged the Bahamas to "pursue alternatives to detention for asylum-seekers and refugees, to ensure that any restriction on their freedom of movement is applied only under those circumstances where it is necessary, reasonable, and

petition on behalf of 76 Cuban and 119 Haitian asylum seekers detained at the Fox Hill Prison (Case 12.282). These cases were subsequently consolidated and decided jointly by the IACHR in a public merits report dated December 2021.

¹² IACHR, Report No. 459/21, Merits (Publication), Carmichael Road Detention Center (Bahamas), 2021, ¶ 105.

¹³ See, for example, Inter-American Commission on Human Rights, Report No. 459/21, Case 12.071, Merits (Publication), Cuban and Haitian Nationals detained at and deported from the Carmichael Road Detention Center, Commonwealth of the Bahamas, December 31, 2021.

¹⁴ IACHR, Report No. 124/19, Case 12.071, Report on Merits (Final), Cuban and Haitian Nationals detained at and deported from the Carmichael Road Detention Center, Commonwealth of the Bahamas, 2019, ¶ 91(3)(f).

¹⁵ Office of the United Nations High Commissioner for Human Rights' submission to the Universal Periodic Review for The Bahamas, May 12, 2023, pages 6-8, available at: <https://www.ohchr.org/en/hr-bodies/upr/bs-index>

¹⁶ Office of the United Nations High Commissioner for Human Rights' submission to the Universal Periodic Review for The Bahamas, May 12, 2023, pages 7-8, available at: <https://www.ohchr.org/en/hr-bodies/upr/bs-index>

proportionate to the legitimate purpose achieved and justified by international law, and that the detention of any person in need of international protection is neither arbitrary nor indefinite.”¹⁷

The Attorney General claims that the government has instituted “reform mechanisms” to “ensure that the law is followed and deal with undue delay in the deportation of detainees.”¹⁸ In law, migrants have access to the writ of habeas corpus—though in practice, lack of access to counsel, lack of knowledge of the writ, and other barriers make access virtually impossible, as addressed above. ***We encourage the WGAD to consider requesting information from the State regarding the number of habeas petitions filed by migrants and any conditions that restrict migrants’ access to courts, specifically for the purpose of filing writs of habeas corpus.***

The IACHR also recommended the Bahamas “ensure undocumented immigrants and/or asylum seekers adequate and effective access to tribunals to challenge administrative decisions regarding the determination of their status.”¹⁹

According to the U.S. State Department, although the Bahamian Constitution provides the right for those arrested or detained to retain an attorney at their own expense, “the Public Defender’s Office and local law professors and alumni provide free legal representation to defendants on a limited basis. Access to legal representation was inconsistent, including for detainees at the detention center for migrants. Minors receive legal assistance only when charged with offenses heard by the Supreme Court.”²⁰

We urge the Working Group to press the Bahamian government to begin the process of adopting critical legal reforms in line with its recommendation in Paragraph 13 of Revised Deliberation 5: “Any form of detention, including detention in the course of migration proceedings, must be ordered and approved by a judge or other judicial authority. Anyone detained in the course of migration proceedings must be brought promptly before a judicial authority.”

In its merits report, the IACHR called on the Bahamas to pass legislation to regulate refugee status determination and other complementary international protection, guarantee the principle of non-refoulement, respect for the best interests of the child, and fundamental due process guarantees. The Bahamas has not complied with this recommendation to date, despite being a State Party to both the 1951 Refugee Convention and the 1967 Protocol. This failure to pass asylum legislation, alongside the continuing criminalisation of migration and policy of automatic, arbitrary detention, places individuals with international protection needs at risk.

UNHCR has recently highlighted this failure stating that it laments “the lack of refugee legislation, policies, and contacts in the government complicated its work to assist asylum

¹⁷ UNHCR, Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights’ Compilation Report Universal Periodic Review: Fourth Cycle, 43rd Session: Commonwealth of the Bahamas. October 2022, p. 4. Available at: https://www.upr-info.org/sites/default/files/country-document/2023-04/UNHCR_UPR43_BHS_E_Main.pdf

¹⁸ The Nassau Guardian, “Pinder says detention center reforms saving taxpayers millions,” April 11, 2023, available at: <https://thenassauguardian.com/pinder-says-detention-center-reforms-saving-taxpayers-millions/>

¹⁹ IACHR, Report No. 124/19, Case 12.071, Report on Merits (Final), Cuban and Haitian Nationals detained at and deported from the Carmichael Road Detention Center, Commonwealth of the Bahamas, 2019. ¶ 91 (3)(c).

²⁰ U.S. Department of State 2022 Human Rights Report, p. 4, available at: https://www.state.gov/wp-content/uploads/2023/02/415610_BAHAMAS-2022-HUMAN-RIGHTS-REPORT.pdf.

seekers and refugees.”²¹ Bahamian authorities reportedly do not systematically involve UNHCR in asylum proceedings, but allow it to interview detained asylum seekers.²² After refugee status determination is concluded, a decision is made,²³ and the Department of Immigration must forward any positive adjudications of asylum to the Government Cabinet for a final decision.²⁴ Asylum is thus granted on a discretionary basis and no mandatory relief to protect against *refoulement* currently exists under Bahamian law.

The Bahamas must prioritise adopting legislation that defines refugee status and eligibility, and governs detention procedures and ensuring due process in asylum cases. ***We urge the Working Group to recommend these reforms in line with paragraphs 9 and 11 of the Revised Deliberation 5 which state that “Seeking asylum is a universal human right, the exercise of which must not be criminalized” and “The deprivation of liberty of an asylum-seeking, refugee, stateless or migrant child, including unaccompanied or separated children, is prohibited.”***

The IACHR also recommended that the Bahamas end expedited removal agreements, which make asylum seekers particularly vulnerable to *refoulement*, and repeal related legislation or policy.²⁵ However, expedited removal and information-sharing agreements with Cuba and Haiti remain in place, in direct contravention of the Bahamas’ obligations under the ICCPR, American Declaration, and the 1951 Refugee Convention.

Provisions of the bilateral agreements signed with each of those countries call for information-sharing about the individuals to be repatriated with their countries of origin, sometimes within 72 hours of their identification in the Bahamas, as a pre-condition for their accelerated removal and return. Implementation of these agreements in the context of an *ad hoc* approach to asylum raises deep concerns about adequate guarantees against *refoulement*. Provisions of these agreements also contradict the Bahamas’ international obligations under the 1951 Convention, which require that asylum-seekers have access to a refugee status determination procedure with associated guarantees of minimum procedural safeguards, including the right to appeal a denial of asylum prior to their removal from the territory. In early September 2022, the Royal Bahamas Defence Force announced that just under 2,400 migrants had been apprehended in Bahamian waters between January-August and 1,823 Haitians were repatriated between January and 7 September. UNHCR believes that among them may be persons in need of international protection.²⁶

²¹ Office of the United Nations High Commissioner for Human Rights’ submission to the Universal Periodic Review for The Bahamas, May 12, 2023, p. 32, available at: <https://www.ohchr.org/en/hr-bodies/upr/bs-index2>

²² U.S. Department of State 2022 Human Rights Report, p. 8, available at: https://www.state.gov/wp-content/uploads/2023/02/415610_BAHAMAS-2022-HUMAN-RIGHTS-REPORT.pdf

²³ Eugene Dupuch Distinguished Lecture by Sir Ian Winder, March 23, 2023, p. 31, available at: <https://www.courts.bs/wp-content/uploads/2023/03/Status-rights-and-obligations.pdf>

²⁴ U.S. Department of State 2022 Human Rights Report, p. 8, available at: https://www.state.gov/wp-content/uploads/2023/02/415610_BAHAMAS-2022-HUMAN-RIGHTS-REPORT.pdf

²⁵ IACHR, Report No. 124/19, Case 12.071, Report on Merits (Final), Cuban and Haitian Nationals detained at and deported from the Carmichael Road Detention Center, Commonwealth of the Bahamas, 2019, ¶ 91(3)(d).

²⁶ UNHCR, Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights’ Compilation Report Universal Periodic Review: Fourth Cycle, 43rd Session: Commonwealth of the Bahamas. October 2022, p. 3. Available at: https://www.upr-info.org/sites/default/files/country-document/2023-04/UNHCR_UPR43_BHS_E_Main.pdf

The IACHR's merits report highlighted that these expedited removal agreements do not permit individual evaluation, access to asylum, or due process protections²⁷, further engaging the prohibition on collective expulsions. These concerns are echoed by UNHCR,²⁸ the US State Department,²⁹ and others.

We urge the Working Group to press the Bahamian government to take all necessary measures to prevent refoulement, in line with paragraph 43 of Revised Deliberation 5: "The principle of non-refoulement must always be respected, and the expulsion of non-nationals in need of international protection, including migrants regardless of their status, asylum seekers, refugees and stateless persons, is prohibited by international law."

Another important arbitrary feature of immigration detention in the Bahamas is the length of detention, which in some cases can last for years. In June 2023, Ghanaian citizen Joseph Amihere was awarded substantial damages by the Supreme Court for false imprisonment, battery, and assault for nearly seven years' arbitrary detention and repeated abuse and neglect.³⁰ In another 2023 case, the Privy Council awarded damages to Douglas Ngumi, a Kenyan migrant, who was arbitrarily detained for nearly seven years at Carmichael Detention Centre, for his extended arbitrary detention.³¹ The ruling makes clear that migrants may be detained no more than 48 hours before appearance before a judge to evaluate their continuing detention, deportation, or release. Subsequent detention beyond 48 hours was ruled unlawful and arbitrary.³²

We urge the Working Group to recommend that the Bahamas adopt and adhere to strict minimum detention provisions and ensure that no one remains stranded in limitless detention, in line with paragraph 26 of the Revised Deliberation 5: "Indefinite detention of individuals in the course of migration proceedings cannot be justified and is arbitrary."

Among the key at-risk groups who are vulnerable to arbitrary detention in the Bahamas are stateless persons; the IACHR recognised this vulnerability in a 2015 precautionary measures decision against the Bahamas concerning the Haitian detainees at the Carmichael Detention Centre.³³ Although people of Haitian descent born in the country are not treated as foreigners,

²⁷ IACHR, Report No. 459/21, Merits (Publication), Carmichael Road Detention Center (Bahamas), 2021, page 27

²⁸ Submission by UN High Commissioner for Compilation Report, UNHCR Universal Periodic Review: Fourth Cycle, 43rd Session, 2023, p. 3, available at: <https://www.refworld.org/docid/4ffd33042.html>

²⁹ US State Department 2023 Trafficking in Persons Report, available at: <https://www.state.gov/reports/2023-trafficking-in-persons-report/bahamas>

³⁰ Eyewitness News, Ghanaian man awarded \$751,000 after nearly seven years of unlawful imprisonment, June 21, 2023, available at: <https://ewnews.com/ghanian-man-awarded-751000-after-nearly-seven-years-of-unlawful-imprisonment>

³¹ *Id.*; The Nassau Guardian, "Pinder says detention center reforms saving taxpayers millions," April 11, 2023, available at: <https://thenassauguardian.com/pinder-says-detention-center-reforms-saving-taxpayers-millions/>

³² The Tribune, "Unlawful to detain for over 48 hours: AG says govt abiding by law - so no immigration change after ruling by Privy Council," April 6, 2023, available at: <http://www.tribune242.com/news/2023/apr/06/unlawful-detain-over-48-hours-ag-says-govt-abiding/>

³³ See IACHR Resolution 4/2015, Precautionary Measure No. 535/ 14, *Matter of Persons in Immigration Detention at Carmichael Road Detention Center*, Commonwealth of the Bahamas, 13 February 2015, where the IACHR granted precautionary measures against the Bahamian authorities due to various allegations including para. 7 k) "I. Given that detainees held at Carmichael Road Detention Center are not interviewed or screened to determine their citizenship status "but rather rounded up and detained based on presumptions as to their status because of place of residence (predominantly Haitian neighborhoods), last names (Haitian-sounding), and physical characteristics (Haitian-looking), the Petitioners are gravely concerned that persons eligible to apply for Bahamian citizenship will be summarily deported." II. The government of The Bahamas is treating all those detained at Carmichael Road Detention Center as "illegal immigrants," despite the fact that some have pending applications for Bahamian citizenship."

they are also not treated as citizens. They generally seem to have the right of abode in the Bahamas, which means that they are not detained or deported on the ground that they are in violation of immigration law. There is no offence of being born in the Bahamas to non-citizens. Although this is generally observed by the authorities, it is far from secure as these persons have an uncertain legal status under the law. These persons are also not routinely issued identity documents that can prove their legal status in the Bahamas. Lack of legal status means the continual threat of arrest and deportation. However, these incidents are less likely to occur if they have been residing or working in the country for some time, as there is a constant demand for cheap labor.³⁴

The high-profile case of *Jean-Rony Jean Charles v The Attorney-General* highlighted the uncertain status such persons hold in the country.³⁵ In September 2017, Jean-Rony was apprehended in the streets during a routine immigration patrol in Nassau. He was unable to provide officials with identification concerning his lawful presence in the country, although there is no law that requires anyone to carry identity documents to prove they are a citizen of The Bahamas. After being detained for more than two months, he was deported to Haiti despite being born and having lived all his life in the Bahamas. He was not charged with any offense or taken to any court prior to his expulsion, nor was any detention order made against him.

A habeas corpus application was filed at the Supreme Court, followed by an application for constitutional relief pursuant to Article 28 of the Constitution. Although Hilton J. dismissed the habeas corpus application, the judge found that his detention and expulsion had been unlawful and that his constitutional rights had been breached. The judge further ordered the government to issue a travel document for his return from Haiti and be granted such status that would permit him to remain in the Bahamas and to legally seek gainful employment.

However, the Court of Appeal reversed the Supreme Court decision on the basis that it was not open to the judge to determine the constitutional motion after having dismissed the habeas corpus application.³⁶ The case was further appealed to the Privy Council³⁷ which heard the matter on 18 December 2022 but reserved its decision.³⁸

We urge the Working Group to address the vulnerabilities that stateless persons and persons at risk of statelessness in the Bahamas face, in particular insofar as this situation leads to their arbitrary detention.

In its merits report, the Inter-American Commission found that detention conditions at Carmichael Road Detention Centre—including overcrowding, lack of light and potable water, spoiled food, unhygienic conditions, lack of sanitation, and restrictions on communication with family members³⁹—violated the right to personal integrity and constituted cruel, inhuman and degrading treatment. Subsequently, the Commission recommended that the State:

³⁴ Criminal Division, 2017/CRI/HCS/0068.

³⁵ Based on discussions with Louby Georges, independent expert based in the Bahamas, who assisted in the production of this submission.

³⁶ *Carl Bethel (in his capacity as AG of The Bahamas) v Jean-Rony Jean Charles*, SC Civ App No. 26 of 2018.

³⁷ *Jean-Rony Jean Charles v Carl Bethel (in his capacity as AG of the Bahamas)*, (Bahamas), Case ID: JCPC 2019/0100.

³⁸ “UK Privy Council hears Jean Rony Jean-Charles case”, *Eyewitness News*, 6 July 2022.

³⁹ Inter-American Commission on Human Rights, Report No. 459/21, Case 12.071, Merits (Publication), Cuban and Haitian Nationals detained at and deported from the Carmichael Road Detention Center, Commonwealth of the Bahamas, December 31, 2021 (¶¶ 65-68).

“Adopt urgent measures in order to improve detention conditions in Carmichael Road Detention Center such that they are consistent with minimum Inter-American standards set forth in this report. The State must create a judicial or administrative mechanism to ensure accessible and effective means to facilitate the submission and processing of complaints in this regard, including criminal complaints at the disposition of the detainees.”⁴⁰

Public information from press reports and international bodies indicates that detention conditions at Carmichael continue to be poor. ***We encourage the Working Group to investigate migration detention conditions during its visit to the Bahamas.***

In the past year, the Bahamas has indicated plans to improve conditions at Carmichael,⁴¹ although we have no evidence that these improvements have been implemented. According to the State, a new medical clinic and new beds are expected to be installed this year, and the detention centre continues to receive assistance from the Bahamas Red Cross with donations of clothing, blankets, and toiletries.⁴² However, reports continue to indicate overcrowding, poor nutrition, and inadequate medical care.⁴³ In its 2022 Human Rights Report, the U.S. Department of State noted that the detention centre continues to be “consistently overcrowded and [suffers] from inadequate sanitation and medical care.”⁴⁴ The report also pointed to credible reports of corruption inside the prison, where officials demanded bribes in exchange for better treatment, such as access to telephones and necessities like sanitary napkins.⁴⁵ Likewise, the UN Special Rapporteur on violence against women has expressed concern that conditions at the detention centre do not comply with international standards such as the UN Rules for the Treatment of Women Prisoners.⁴⁶

Recent media attention regarding the conditions of Fox Hill Prison following the detention of a U.S. businessman has highlighted continuing “harsh” and “squalid” conditions there.⁴⁷ These complaints are longstanding. In 2020, a detainee protest was followed by a hunger strike and attempted escapes.⁴⁸

⁴⁰ Inter-American Commission on Human Rights, Report No. 459/21, Case 12.071, Merits (Publication), Cuban and Haitian Nationals detained at and deported from the Carmichael Road Detention Center, Commonwealth of the Bahamas, December 31, 2021 (¶¶ 91(2)).

⁴¹ National Report to the United Nations for The Bahamas’ Universal Periodic Review, May 12, 2023, p. 18, available at: <https://www.ohchr.org/en/hr-bodies/upr/bs-index>

⁴² National Report to the United Nations for The Bahamas’ Universal Periodic Review, May 12, 2023, paras. 116-118, available at: <https://www.ohchr.org/en/hr-bodies/upr/bs-index>

⁴³ Summary of Stakeholders’ Submissions to the United Nations for the Universal Periodic Review of The Bahamas, January 26, 2023, para. 16, available at: <https://www.ohchr.org/en/hr-bodies/upr/bs-index>

⁴⁴ U.S. Department of State 2022 Human Rights Report, p. 3, available at: https://www.state.gov/wp-content/uploads/2023/02/415610_BAHAMAS-2022-HUMAN-RIGHTS-REPORT.pdf

⁴⁵ *Id.*; Eugene Dupuch Distinguished Lecture by Sir Ian Winder, March 23, 2023, p. 28, available at: <https://www.courts.bs/wp-content/uploads/2023/03/Status-rights-and-obligations.pdf>

⁴⁶ UNHCR submission to the Universal Periodic Review for The Bahamas, page 3, May 12, 2023, available at: <https://www.ohchr.org/en/hr-bodies/upr/bs-index>

⁴⁷ Insider, “Photos show squalid conditions at the Bahamas prison where Sam Bankman-Fried will spend his holidays,” December 24, 2022, available at: <https://www.businessinsider.com/photos-sam-bankman-fried-faces-squalid-conditions-at-bahamian-prison-2022-12>

⁴⁸ Global Detention Project, August 23, 2020, available at: <https://www.globaldetentionproject.org/23-august-2020-bahamas>

In a December 2022 interview, a Bahamian government minister indicated that between 200 to 325 migrants and asylum-seekers were detained at Carmichael Road Detention Centre.⁴⁹ In March 2023, he reported a total of 202 detained migrants.⁵⁰ In the December 2022 interview, the minister mentioned that the Government was “looking to possibly move towards the construction of a detention center in Inagua”⁵¹ that is reportedly designed to house more than 800 people.⁵² The construction of a second detention center at Inagua follows reports from late July 2020 that Haitians being intercepted at sea were being detained on a military base on Ragged Island.⁵³

We encourage the WGAD to inquire during its visit about current detention capacity and conditions at Inagua and future plans to conduct detentions there. The Working Group should also stress in its communications with officials the relation between conditions of detention and arbitrariness. As per paragraph 38 of Revised Deliberation 5: “All detained migrants must be treated humanely and with respect for their inherent dignity. The conditions of their detention must be humane, appropriate and respectful, noting the non-punitive character of the detention in the course of migration proceedings.”

3. KEY RECOMMENDATIONS

We urge the WGAD to assess the Bahamas’ immigration detention policies and practices during its upcoming visit and to issue recommendations in line with the WGAD’s mandate, in particular with respect to the WGAD’s Revised Deliberation No. 5 on deprivation of liberty of migrants. CEJIL, the GDP, and OBMICA encourage the Working Group to make the following recommendations:

- **Urge the Bahamas to immediately stop the mandatory detention of all apprehended migrants** and to implement legal and policy reforms that ensure that immigration detention is always a measure of last resort, based on an individual assessment of each case to establish the necessity and proportionality of each detention decision, including developing legal procedures that ensure that “alternatives to detention” measures are always assessed before issuing detention orders.
 - *According to Revised Deliberation No. 5 on the deprivation of liberty of migrants:*
 - *Paragraph 13:* “Any form of detention, including detention in the course of migration proceedings, must be ordered and approved by a judge or other judicial authority. Anyone detained in the course of migration proceedings must be brought promptly before a judicial authority.”
 - *Paragraph 16:* “Alternatives to detention must be sought to ensure that the detention is resorted to as an exceptional measure.”

⁴⁹ Our News, “Bell: detention center upgrades to amount to seven figures,” Dec 12, 2022, available at: <https://ournews.bs/bell-detention-center-upgrades-to-amount-to-seven-figures/>

⁵⁰ The Tribune, “Immigration repatriated 1,100 in the last two months and numbers could exceed last year,” March 23, 2023, available at: <http://www.tribune242.com/news/2023/mar/23/immigration-repatriated-1100-last-two-months-and-n/>

⁵¹ Tribune 242, “Detention Centre upgrades to cost at minimum seven figures,” December 13, 2022, available at: <http://www.tribune242.com/news/2022/dec/13/detention-centre-upgrades-cost-minimum-seven-figur/>

⁵² Eyewitness News, “Nearly 400 Haitian migrants intercepted near Cay Sal,” January 23, 2023, available at: <https://ewnews.com/nearly-400-haitian-migrants-intercepted-near-cay-sal>

⁵³ Global Detention Project, August 23, 2020, available at: <https://www.globaldetentionproject.org/23-august-2020-bahamas>

- *Paragraph 19*: “Detention must comply with the principle of proportionality and as such, automatic and/or mandatory detention in the context of migration is arbitrary.”
- **Stop the arbitrary criminalisation of immigration infractions** by amending the law to remove punitive measures like prison sentences for irregular entry and stay in the country.
 - *Revised Deliberation No. 5, paragraph 10*: “The irregular entry and stay in a country by migrants should not be treated as a criminal offence, and the criminalization of irregular migration will therefore always exceed the legitimate interests of States in protecting their territories and regulating irregular migration flows. Migrants must not be qualified or treated as criminals or viewed only from the perspective of national or public security and/or health.”
- **Ensure that detainees are able to challenge the grounds of their detention before a court or other competent, independent, and impartial authority.** As part of this, detainees should be provided with access to legal aid.
 - *Revised Deliberation No. 5, paragraph 30*: “Any detention in the course of migration proceedings that makes it impossible to mount an effective challenge to the continued detention is arbitrary.”
- **Immediately take steps to prevent the endemic violence and abuse that migrants face in detention centres.** Ensure that detention centre personnel are trained to respect detainees’ rights and are sensitised to their needs. Where individuals have committed abuses against detainees, perpetrators must be investigated and face criminal prosecution, and all necessary efforts must be made to allow victims access to mechanisms of justice and to prompt redress.
 - *Revised Deliberation No. 5, paragraph 38*: “All detained migrants must be treated humanely and with respect for their inherent dignity.”
- **Ensure that all detention sites meet international standards,** ensuring that detainees are guaranteed the right and ability to communicate with the outside world; information is provided in alternative languages to ensure understanding; material conditions guarantee access to security, health, food, and other rights; and detainees are able to access legal representatives.
 - *Revised Deliberation No. 5, paragraph 38*: “The conditions of their detention must be humane, appropriate and respectful, noting the non-punitive character of the detention in the course of migration proceedings. Detention conditions and treatment must not be such as to impede the ability to challenge the lawfulness of detention, and detention should not be used as a tool to discourage asylum applications.”
- **Ensure that vulnerable groups are never placed in immigration detention,** including asylum seekers, LGBTIQ+ persons, children, and people with mental illnesses are not placed in detention settings.
 - *Revised Deliberation No. 5, paragraph 41*: “Detention of migrants in other situations of vulnerability or at risk, such as pregnant women, breastfeeding mothers, elderly persons, persons with disabilities, lesbian, gay, bisexual,

transgender and intersex persons, or survivors of trafficking, torture and/or other serious violent crimes, must not take place.”

- **Ensure that detention time limits are kept to a minimum and never become indefinite.** In particular, the Bahamas should ensure that migrants are never held for more than 48 hours without presentation before a judge; establish in law and respect a maximum period of migration detention; and ensure access to alternatives to detention during the pendency of asylum applications, appeals, and other legal proceedings.
 - *Revised Deliberation No. 5, paragraph 25:* “A maximum detention period in the course of migration proceedings must be set by legislation, and such detention shall be permissible only for the shortest period of time. Excessive detention in the course of migration proceedings is arbitrary. Upon the expiry of the detention period set by law, the detained person must automatically be released.”

- **Ensure the eradication of racial profiling and other potential discriminatory practices in migration control activities,** which may be prevalent, based on how certain ethnic groups or nationalities are targeted for enforcement actions, including in particular Haitians, as well as the discriminatory documentation practices to which people of Haitian descent are subjected, which increase their vulnerability to detention.
 - *Revised Deliberation No. 5, paragraph 21:* “Migration detention policies and procedures must not be discriminatory or make distinctions based on the legal conditions of the person. Detaining someone solely on the basis of a distinction such as race, color, sex, language, religion, political or other opinion, national or social origin, economic position, birth, nationality or any other status will always be arbitrary.”