

UNHCR Background Note

Working Group on Arbitrary Detention

22 February 2022

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Mandate of the Working Group

The Working Group on Arbitrary Detention has the mandate to investigate cases of deprivation of liberty imposed arbitrarily or inconsistently with the international standards set forth in the Universal Declaration of Human Rights, or the international legal instruments accepted by the States concerned. The WG is composed of five independent experts of balanced geographical representation. Together, they investigate individual cases and produce reports and opinions in order to fulfil the mandate. The mandate of the Working Group on Arbitrary Detention was most recently extended by Human Rights Council resolution [42/22](#) in September 2019 for a further three-year period.

Important Note! UNHCR has also produced detailed guidance on [Engaging with the Working Group on Arbitrary Detention](#). The guidance goes into detail on the meaning of “arbitrary detention”, the mandate of the Working Group, how UNHCR can use the mandate to intervene in individual cases or engage with the Working Group in relation to country visits. This background note should be read as complementary to that guide, providing information on some of the recent activities of the Working Group which have been relevant to UNHCR’s mandate.

In 2018 the Working Group released [Revised Deliberation No. 5 on deprivation of liberty of migrants](#), which provides specific guidance to States on the issue of arbitrary detention when it comes to the detention of migrants and asylum-seekers. The Deliberation was revised in light of the rising prevalence of deprivation of liberty of immigrants and asylum seekers in recent years, recognizing the need to consolidate the developments in its own jurisprudence and important developments in international law.

Recent activities of the Working Group

In the past, the Working Group has addressed the following **issues** of relevance to persons of concern in its reports, among others:

- The conditions of reception/detention centers for asylum-seekers.
- The duration of detention of asylum-seekers.
- Administrative detention regimes applied to asylum-seekers, refugees and migrants in an irregular situation.
- Analysis of national legislation regarding refugees and asylum-seekers, versus how it is implemented in practice.
- Deprivation of liberty on discriminatory grounds.

Statements

The following statements by the Working Group, and joint statements issued together with other mandate holders, have made reference to issues affecting UNHCR's persons of concern in recent years:

- [Joint statement](#) - UN experts deplore rights violations against Burundi refugees (13 April 2021)
- [Joint statement](#) - Malaysia: UN experts appalled by deportation of migrants to Myanmar despite court order (24 February 2021)

Communications

The latest relevant individual communications of the Working Group, from 2020 to the present, include:

- Yemen, 10 May 2021, [AL OTH 192/2021](#)
Concerning a fire at the Immigration, Passports and Naturalisation Authority (IPNA) compound in Sana'a, controlled by Ansar Allah, which has led to the deaths of at least 44 migrants held in the detention facility and injured over 200 others.
- Ethiopia, 19 April 2021, [AL ETH 1/2021](#)
Information received concerning allegations related to violations of human rights and international humanitarian law committed in the context of the conflict in the Tigray region of Ethiopia, including deliberate attacks against civilians and summary executions, indiscriminate attacks, sexual violence, arbitrary detention, destruction and looting of civilian property, and displacement of ethnic Tigrayans
 - o [State reply](#) – 18 June 2021
 - o [Individual Communication \(Eritrea\)](#) AL ERI 2/2021 – Regarding the same matter
 - [State reply](#) – 14 June 2021
- Mozambique, 19 March 2021, [AL MOZ 1/2021](#)
Concerning allegations of human rights violations and mass displacement in Mozambique in the context of attacks and military operations in Cabo Delgado province.
- Tanzania, 25 January 2021, [AL TZA 1/2021](#)
Concerning Burundian refugees in the refugee camps of Nduta, Nyarugusu and Mtendeli in the Kigoma region in Tanzania, who have faced serious human rights violations for several years, including arbitrary detention, torture and enforced disappearances
- Sri Lanka, 27 May 2019, [UA LKA 3/2019](#)
Concerning the increasing communal violence targeting the religious minorities in Sri Lanka, and in particular Muslims, as well as the reported acts of violence and intimidation threatening the living and security conditions of refugees and asylum seekers belonging to persecuted minorities.
 - o [State reply](#) – 29 May 2019
 - o [State reply](#) – 31 July 2019
- India, 27 March 2019, [AL IND 5/2019](#)
Concerning the situation faced by refugees and asylum-seekers from Rohingya ethnicity.
 - o [State reply](#) – 27 May 2019
 - o [Press release](#)
- Thailand, 7 December 2018, [UA THA 5/2018](#)
Concerning Mr. Hakeem Ali Mohamed Alaraibi, a refugee and former member of Bahrain's national football team, who is at imminent risk of being deported from Thailand to Bahrain despite being at great risk of being persecuted and tortured. Alaraibi was detained for two months in Thailand before finally being released in February 2019.

- **UNHCR**, 21 September 2018, [AL OTH 63/2018](#)
Information received concerning allegations of acts of violence, harassment, and discrimination against lesbian, gay, bisexual and transgender (LGBT) refugees living in Kenya and their arbitrary arrests, detention, and ill-treatment. Allegations received also pertain to the lack of access to food and other basic necessities by the refugees while in detention and in Kakuma camp in Kenya, as well as to the lack of appropriate access to HIV/AIDS-related care.
 - o [UNHCR reply](#) – 21 November 2018
 - o [Individual communication \(Kenya\) AL KEN 9/2018](#) – Regarding the same matter

Country Visits

The latest country visits by the Working Group (from 2018 to the present) which addressed issues of relevance to UNHCR are the following:

- **Greece**, December 2019: [End-of-mission Statement](#) | [Press release](#) | [Report: A/HRC/45/16/Add.1](#)
 - o Note: UNHCR submitted a confidential briefing note in advance of the visit.
 - o Report: The WG detailed its findings on the detention of persons in the context of migration, notably regarding the right to seek asylum, the situation of migrant children in protective custody, age and vulnerability assessment procedures, the opportunity to challenge detention and removal decisions and pushbacks at the border between Greece and Turkey. The WG also commented on forthcoming legislative amendments.
- **Hungary**, November 2018 (visit suspended after access denied): [Press release](#) | [A/HRC/42/39](#)
 - o Note: UNHCR submitted a confidential briefing note in advance of the planned visit.
 - o Report: The WG decided to suspend its visit following the denial of access by the authorities to two “transit zones” at Röszke and Tompa, on the border of Hungary with Serbia, which house asylum seekers. The authorities explained that the individuals in those facilities are free to leave for Serbia and are therefore not considered to be deprived of their liberty. Subsequently, the Hungarian authorities also noted that since the visit was a follow-up one and the two facilities did not exist at the time of the Working Group’s previous visit in 2013, they should not have formed part of the visit.

Thematic Reports

The latest thematic reports from the Working Group which are relevant to UNHCR’s mandate are the following:

- Annual report, 2020 ([A/HRC/45/16](#))
- Annual report, 2019 ([A/HRC/42/39](#))
- Annual report, 2018 ([A/HRC/39/45](#))
- Annual report, 2017 ([A/HRC/36/37](#))
- Annual report, 2016 ([A/HRC/33/50](#))
- Annual report, 2015 ([A/HRC/30/36](#))
- Annual report / United Nations Basic Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court, 2015 ([A/HRC/30/37](#))

From the above-mentioned reports, the following elements are particularly relevant to UNHCR’s persons of concerns:

- [Annual report, 2020 \(A/HRC/45/16\)](#): In this report, the WG reviews its annual activities and examines the following thematic issues: women deprived of liberty, the right to legal assistance in preventing arbitrary deprivation of liberty, modern technologies and alternatives to detention.

- “Detention in the context of migration is only permissible as an exceptional measure of last resort which is a particularly high threshold to be satisfied in the context of a pandemic or other public health emergency. The Working Group reminds all States that migrant children and children with their families should not be detained in the context of migration policies, and should therefore be immediately released. Asylum seekers should not be held in places of deprivation of liberty during the course of the procedure for the determination of their status, and refugees should be protected by authorities of the recipient State and not detained.”
- Annual report, 2018 (A/HRC/39/45): In the Annex to this report, the WG revised Deliberation No. 5 on deprivation of liberty of migrants, originally issued by the WG in 1999, which established criteria for determining whether the deprivation of liberty of asylum seekers and immigrants might be arbitrary. The Annex provides legal guidance on the right to seek asylum, the legality and modalities of detention in the course of migration proceedings, the right to challenge the legality of detention, respect for rights during detention, migrants in situations of vulnerability, and the appropriateness of detention facilities.
- Annual Report: United Nations Basic Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court, 2015 (A/HRC/30/37): “Non-nationals, including migrants regardless of their status, asylum seekers, refugees and stateless persons, in any situation of deprivation of liberty shall be informed of the reasons for their detention and their rights in connection with the detention order. The deprivation of liberty of an unaccompanied or separated migrant or of an asylum-seeking, refugee or stateless child is prohibited. Detaining children because of their parents’ migration status will always violate the principle of the best interests of the child and constitutes a violation of the rights of the child.”

Other Activities

In 2018 the Working Group released [Revised Deliberation No. 5 on deprivation of liberty of migrants](#), which provides specific guidance to States on the issue of arbitrary detention when it comes to the detention of migrants and asylum-seekers. The Deliberation was revised in light of the rising prevalence of deprivation of liberty of immigrants and asylum seekers in recent years, recognizing the need to consolidate the developments in its own jurisprudence and important developments in international law.