



## COMMENT ON THE DRAFT GENERAL COMMENT NO.5 ON MIGRANTS' RIGHTS TO LIBERTY AND FREEDOM FROM ARBITRARY DETENTION

21 October 2020

### INTRODUCTION

The [International Movement Against All Forms of Discrimination and Racism \(IMADR\)](#) is an international non-profit, non-governmental human rights organisation devoted to eliminating discrimination and racism, forging international solidarity among discriminated groups and advancing the international human rights system. IMADR is grateful to the UN Committee on Migrant Workers (hereafter, the Committee) for providing stakeholders the opportunity to comment on the draft General Comment No.5 on migrants' rights to liberty and freedom from arbitrary detention (hereafter, the draft GC). Our submission provides paragraph-by-paragraph inputs to the draft GC based on the international human rights standards clarified by the Committee on the Elimination of Racial Discrimination (CERD) and other UN human rights bodies in relation to the deprivation of liberty of migrants.

### OTHER INTERNATIONAL INSTRUMENTS

Paragraph 12 should include **Article 5 (b) of International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)** which provides the State obligations to prohibit racial discrimination in the enjoyment of "*[t]he right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution*".

### PRINCIPLE OF NON-DISCRIMINATION (ARTICLES 1 AND 7)

Paragraph 36 should clearly recall the grounds of discrimination laid out in Article 7 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereafter, the Convention) such as **sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status**.

In the paragraph 37, the **collection of disaggregated data on immigration detention** such as **by ethnicity, nationality/place of origin, age, sex**,<sup>1</sup> as well as **the reasons for and length of detention**,<sup>2</sup> should be added. Such disaggregated data allows States to ensure that immigration detention is not carried out in a manner that treats certain migrants less favourably on the basis of those characteristics. The UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance analysed that the State obligations on the right to equality and non-discrimination includes the duty to collect and analyse disaggregated data.<sup>3</sup> The right to be free from discrimination includes the right of access to information with disaggregated

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<sup>1</sup> CMW/C/DZA/CO/2, paragraph 40 (c); CMW/C/MDG/CO/1, paragraph 36 (d); CAT/C/FIN/CO/7, paragraph 13 (f).

<sup>2</sup> CERD/C/CAN/CO/21-23, paragraph 34 (c)

<sup>3</sup> A/70/335, paragraph 18



data in order to assess discrimination.<sup>4</sup> Disaggregated data on immigration detention would also allow the Committee to assess whether States parties are compliant with the principle of non-discrimination.

### **HUMAN RIGHTS-COMPLIANT ALTERNATIVES TO DETENTION**

Paragraph 61 should distinguish accommodations provided by **private actors on a for-profit basis**, in particular those **without proper regulation or accountability mechanisms**, from alternatives to detention under the international human rights standards.<sup>5</sup> In 2019, the CERD expressed a concern on the use of Direct Provision centres for asylum-seekers in Ireland which are housings provided by the private sector contracted by the government.<sup>6</sup> The CERD raised a concern on inadequate living conditions of the centres where asylum-seekers are placed for a prolonged period, and the significant impact on their mental health and family life.<sup>7</sup> While it may be understandable that the Committee wishes to highlight lower costs of alternatives measures to detention, the Committee should stress that States are required to take human rights-based approaches to alternatives to detention.

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<sup>4</sup> A/70/335, paragraph 18

<sup>5</sup> CERD/C/IRL/CO/5-9, paragraph 37 (b)

<sup>6</sup> Ibid, paragraph 37

<sup>7</sup> Ibid