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CASE 12.071

REPORT ON MERITS (PUBLICATION)

CUBAN AND HAITIAN NATIONALS DETAINED AT AND
DEPORTED FROM THE CARMICHAEL ROAD DETENTION
CENTER
THE COMMONWEALTH OF THE BAHAMAS

Approved electronically by the Commission on December 31, 2021.

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I. SUMMARY

1. On August 13, 1998, the Inter-American Commission on Human Rights (the “Inter-American Commission” or “IACHR”) received a petition presented by the Center for Justice and International Law (CEJIL) and the Open Society Institute (the “petitioners”) that alleges the international responsibility of the Commonwealth of The Bahamas (the “State” or “The Bahamas”) for violations of the rights of 120 Cuban nationals and 8 Haitian nationals detained at the Carmichael Road Detention Center (“Carmichael Center”).
2. The Commission held an admissibility hearing on the case on October 1, 1999. Following the hearing, the petitioners filed a second petition on May 15, 2000 based on similar facts regarding additional alleged victims, consisting of 76 Cuban nationals and 119 Haitian nationals.¹ Another hearing was held on October 12, 2000 in relation to both petitions. The Commission adopted its Admissibility Report No. 6/02 on February 27, 2002,² and on April 12, 2002, it notified this report to the parties and placed itself at their disposition to reach a friendly settlement. On July 12, 2005 the Commission joined the two petitions under the same case and deferred its treatment of the admissibility of the second petition for the present merits report,³ and informed the State⁴. The parties enjoyed the time periods provided for in the IACHR’s Rules of Procedure to present additional observations on the merits. All the information received by the Commission was duly transmitted between the parties.⁵
3. The petitioners argued that the practice of forcibly repatriating Cuban and Haitian migrants without providing them with a meaningful opportunity to present a claim to refugee status under the State’s *ad hoc* asylum determination system denies them the right of asylum, the right to a fair trial, and the right to life, liberty and personal security. In addition, they claimed that the differential treatment received by Cuban and Haitian migrants in accessing the system violates the right to equality before the law. Finally, the petitioners asserted that the State’s immediate and arbitrary detention of migrants and the inadequate conditions in which they are detained violates the right of protection from arbitrary arrest and to humane treatment during detention.
4. The State alleged that its refugee determination system is fair, consistent with its international obligations, and incorporates due process guarantees. It claimed that asylum seekers are given an opportunity to present their case and provide authorities with pertinent documents, and that the Cuban and Haitian migrants were given access to this system. Although it recognized that the conditions in the Carmichael Center need improvement, it alleged that the detainees were treated humanely whilst in custody through the provision of essential goods and services.
5. On the basis of determinations of fact and law, the Inter-American Commission concluded that the State is responsible for the violation of 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 of asylum) of the American Declaration on the Rights and Duties of Man (the “American Declaration”). The Commission formulated the corresponding recommendations to the State.

II. POSITIONS OF THE PARTIES

A. Petitioners

6. The petitioners alleged that the State forcibly repatriated Cuban and Haitian asylum seekers without providing them a meaningful opportunity to present a claim to refugee status under its *ad hoc* asylum

¹ Second petition of May 15, 2000. The IACHR, transmitted this second petition to the State on May 16, 2000.

² IACHR. Report No. 6/02. Case 12.071. Admissibility. 120 Cuban nationals and 8 Haitian nationals detained at the Carmichael Road Detention Center. February 27, 2002. Alleged violations admissible: Articles I, II, V, VI, VII, XVII, XVIII, XXV, and XXVII of the American Declaration.

³ In accordance with Article 37(3) of the Rules of Procedure applicable at the time.

⁴ IACHR. Letter from the Commission to State of July 12, 2005.

⁵ A request for precautionary measures was received on August 13, 1998, and these were granted on August 14, 1998. Under these measures the State was requested to stay the deportation of Cuban nationals from The Bahamas to Cuba until the Commission has had the opportunity to investigate the claims raised by the petitioners. The precautionary measures were lifted on July 30, 2013 owing to the fact that the actual deportation of these individuals removed the relevant risk of irreparable harm identified in the petitioners’ request.

determination system, thereby violating their right to seek and receive asylum. Furthermore, they argued that the system does not provide the due process guarantees associated with the right to a fair trial, by denying several procedural guarantees and by virtue of its *ad hoc* nature. Accordingly, they contended that the absence of laws or regulations regarding the determination of refugee status under this system undermines its transparency and fairness.

7. In addition, the petitioners challenged the State's account of its asylum determination system –including its accessibility, confidentiality, reliance on questionnaires, provision of interviews, transparency, and the quality of its determinations– by asserting that asylum seekers are not informed of their right to apply for asylum and that determinations are made using inadequate mechanisms. Accordingly, they contended that as the Cabinet's decision is final, the system does not provide for judicial review of the process or the determinations made, or the right to consider new evidence. In addition, the petitioners claimed that asylum seekers are not provided with legal assistance or aid owing to the fact that only Bahamian lawyers can practice in the State, none of which practice immigration law. In this way, the petitioners argued that the system does not provide a meaningful opportunity to present a claim to refugee status.

8. The petitioners claimed that the State violated the right to **equality before the law**. They alleged that Haitian asylum seekers are regularly denied access to the asylum determination system because they are presumed to be economic migrants and that differential standards are applied to Haitian and Cuban detainees.

9. The petitioners asserted that the State violated the asylum seekers' right to **life, liberty and personal security** in the absence of a viable refugee determination system coupled with the summary deportation of detainees with strong claims to a well-founded fear of persecution upon return in accordance with the bilateral agreements requiring repatriation signed between the Bahamas, Cuba, and Haiti. They highlighted that the forced and arbitrary return of asylum seekers from the State was ongoing despite the existence of precautionary measures issued by the Commission staying their deportation.

10. The petitioners asserted that the State violated the right of **protection from arbitrary arrest** through its mandatory detention of asylum seekers without judicial review because asylum seekers arriving in The Bahamas are immediately placed in a detention center and do not have access to judicial review of the legality or necessity of their detention. The petitioners asserted that even in cases of prolonged detention asylum seekers do not have access to periodic reviews at reasonable intervals.

11. In addition, the petitioners alleged that the State violated the detainees' right to **humane treatment** during their time in custody because asylum seekers in The Bahamas are detained, often for periods of several months, in conditions that fail to meet internationally recognized minimum standards. They claimed that the facilities at the Carmichael Center are wholly inadequate and detainees –including unaccompanied children– are not provided with shaded areas, filtered drinking water, sheets or mattresses, soap, toothpaste, lavatory paper or sanitary products, and families are frequently separated.

B. State

12. The State claimed that its refugee determination system consists of a UNHCR-endorsed administrative procedure that is consistent with its international obligations and that was applied in relation to the alleged victims. Accordingly, it recognized that refugee status determination laws are not yet in place.

13. The State contended that asylum applicants are given an opportunity to present their individual cases and any pertinent documents. It asserted that the answers provided in questionnaires determine whether a more thorough investigation and questioning should take place, leading to a well-founded final decision. However, the State did not present information regarding the individual situation of the alleged victims.

14. The State recognized that the conditions at the Carmichael Center need improvement. In 1999, it indicated its commitment to refurbish and upgrade the Center and its dedication of economic resources to this end. No further and updated information was provided by the State on this regard. Despite the need for improvement,

the State highlighted the humane treatment received by detainees in custody, which includes access to drinking water, three meals per day, and medical care, among other essential goods and services.

15. In relation to the alleged arbitrary detention of children, the State asserted that it ensures that children traveling with family members are not separated from them and are provided with recreational activities and that unaccompanied children are placed in Bahamian Care Facilities where they can be properly supervised. Finally, the State recognized that the detention of children among adults is not desirable and asserted that in an effort to address this concern, the Government decided that in new facilities under construction a dormitory specifically for children will be constructed.

III. ADMISSIBILITY ANALYSIS

16. The Commission considers that the analysis of its competence expressed in Admissibility Report No. 6/02 in case 12.071 is fully applicable to the second petition encompassing the new group of alleged victims. Likewise, the Commission's assessment of the other grounds of admissibility, namely the duplication of procedures and the existence of a colorable claim, are also applicable to the second petition. In this sense, the pending admissibility analysis in relation to the second petition is circumscribed to the exhaustion of domestic remedies and the timeliness of the petition.

17. In Admissibility Report No. 6/02 the Commission decided to join the issue of exhaustion of domestic remedies and the timeliness of the petition to the merits of the case. The Commission finds that the center of the controversy is the alleged victims' access to refugee status determination procedures in The Bahamas, which closely relates to the analysis of the exhaustion of domestic remedies in both the first and second petitions. Owing to this and the similarity of the facts to be considered in the second admissibility analysis, the Commission will address this matter in the analysis of law section following the reasoning in the aforementioned admissibility report.

18. Accordingly, the Commission declares that the second petition is admissible with respect to the alleged violations of Articles I, II, V, VI, VII, XVII, XVIII, XXV, and XXVII of the American Declaration, and shall proceed to its merits analysis including the 120 Cuban nationals and the 8 Haitian nationals initially identified, and the 76 Cuban nationals and 119 Haitian nationals incorporated by the petitioners.

IV. FINDINGS OF FACT

A. Context

19. The Commission takes note that other human rights treaty bodies have addressed the long-standing and structural problems associated with The Bahamas's approach to its international obligations flowing from the right to seek and receive asylum over the past three decades, and the consistency of the available legislative tools governing asylum-seekers' access to international protection in The Bahamas. In this sense, the Commission notes the absence of domestic legislation regulating refugee status determination in the State and the existence of bilateral agreements between the State, Cuba, and Haiti facilitating the expedited removal of irregular migrants from these countries since the 1990s. It also recognizes that this situation has raised concerns amongst human rights treaty bodies, which have highlighted the importance of and encouraged the State to adopt national refugee legislation to fill gaps in the identification and protection of refugees and provide a sufficient guarantee against *refoulement* as explained below.

20. The UNHCR has observed that despite its accession to the 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol in 1993, The Bahamas has "no refugee legislation and no regulatory framework to implement its obligations under the 1951 Convention".⁶ Thus, "the Government treats asylum seekers and refugees on an *ad hoc* basis, with no access to judicial remedies".⁷ Furthermore, "applications for political

⁶ UNHCR. Submission by the United Nations High Commissioner for Refugees or the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodic Review: Commonwealth of the Bahamas, June 2012, p.1.

⁷ UNHCR. Submission by the United Nations High Commissioner for Refugees or the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodic Review: Commonwealth of the Bahamas, June 2012, p.1.

asylum are supposed to be adjudicated on a case-by-case basis at the cabinet level”⁸ of government. The “lack of legislation or regulations governing asylum (...) results in significant gaps in the identification and protection of refugees, and insufficient guarantees against *refoulement*”.⁹

21. The UNHCR has identified the presence of “complex mixed migration flows”¹⁰ and “the sheer volume of irregular migration through the extensive maritime territory of The Bahamas, [as making] protection-sensitive screening and referral mechanisms...crucial to systematically identify persons in need of international protection and protect these against *refoulement* in the routine course of repatriating individuals intercepted at sea”.¹¹ Accordingly, the Committee on the Elimination of Racial Discrimination (“CERD”) has “encourage[d] the State party to adopt the necessary measures to implement the Convention and Protocol into domestic law, in particular as regards the *non-refoulement* clause”¹² and UNHCR has “encourage[d] the Bahamas to adopt national refugee legislation”.¹³

22. Despite the limited rules regulating human mobility in The Bahamas, the UNHCR has identified that “while there is currently no written framework governing asylum in The Bahamas, there are written agreements for the expedited removal of irregular migrants from Cuba and Haiti, respectively”.¹⁴ The State signed the Memorandum of Understanding Between the Government of the Commonwealth of the Bahamas and the Government of the Republic of Cuba of January 12, 1996 and its Protocol, in 1996 and 1998, respectively.¹⁵ In the case of Haiti, the IACHR understands that “although the repatriation agreement between the Bahamas and Haiti expired at the end of 1995, the Government continued to repatriate ... Haitian immigrants based on the terms of that agreement”.¹⁶

23. Accordingly, the UNHCR stated in 2012 that “systematic deportations from Carmichael are conducted under [these] bilateral [agreements]”.¹⁷ In addition, “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”.¹⁸ It is also notable that the Cuban agreements “included no provision for determining whether Cuban asylum seekers qualified for refugee status, nor any assurances the Cuban government would not punish the returnees”.¹⁹

24. Additionally, the Commission observes that since Carmichael Center began its operations, conditions at the Center have been an object of concern amongst human rights treaty bodies. By way of background, “the Government in 1995 completed the Carmichael Road Detention Centre capable of housing over 500 illegal (sic) immigrants”, who “prior to that...were housed at the Government’s Fox Hill Prison”.²⁰ The CERD observed in 2003 that detention in the Carmichael Center “can be prolonged, and [the] conditions are poor”.²¹ In 2012, the

⁸ United States Department of State, U.S. Department of State Country Report on Human Rights Practices 1999 - Bahamas , 25 February 2000, section 2.d.

⁹ UNHCR. Submission on the Bahamas: 29th UPR session, January 2018, p. 2.

¹⁰ UNHCR. Submission on the Bahamas: 29th UPR session, January 2018, p. 1.

¹¹ UNHCR. Submission on the Bahamas: 29th UPR session, January 2018, p. 2.

¹² CERD. UN Committee on the Elimination of Racial Discrimination: Concluding Observations, Bahamas, 28 April 2004, CERD/C/64/CO/1, para. 19.

¹³ UNHCR. Submission by the United Nations High Commissioner for Refugees or the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodic Review: Commonwealth of the Bahamas, June 2012, p.3.

¹⁴ UNHCR Submission on the Bahamas: 29th UPR session, January 2018, p. 2.

¹⁵ Annex 1. Memorandum of Understanding Between the Government of the Commonwealth of the Bahamas and the Government of the Republic of Cuba of January 12, 1996 and Protocol to the Memorandum of Understanding of January 12, 1996 Between the Government of the Republic of Cuba and the Government of the Commonwealth of the Bahamas, annexed to State reply 23 October 1998.

¹⁶ United States Department of State, U.S. Department of State Country Report on Human Rights Practices 1999 - Bahamas , 25 February 2000, section 2.d.

¹⁷ UNHCR. Submission by the United Nations High Commissioner for Refugees or the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodic Review: Commonwealth of the Bahamas, June 2012, p.2.

¹⁸ UNHCR. Submission on the Bahamas: 29th UPR session, January 2018, p. 3.

¹⁹ United States Committee for Refugees and Immigrants, U.S. Committee for Refugees World Refugee Survey 1998 - Bahamas, 1 January 1998.

²⁰ CERD. UN Committee on the Elimination of Racial Discrimination: State Party Report, Bahamas (Add.1), 16 September 2003, CERD/C/428/Add.1, para. 172.

²¹ UNHCR Country Profiles - The Bahamas, September 1999, annexed to revised petition 12.282 of May 15, 2000.

UNHCR continued to describe conditions there as “substandard”,²² noting that “human rights organizations have extensively documented serious concerns relating to the inhumane treatment and physical and psychological abuse of detainees”.²³ In this way, CERD asserted in 2004 that it is “very concerned at reports that conditions in detention there are unsatisfactory, especially as regards access to food and drinking water, hygiene and access to medical care.”²⁴ Serious concerns about the conditions of detention in the Carmichael Center have also been raised by the Special Rapporteur on the question of torture and the Special Rapporteur on the independence of judges and lawyers, in relation to alleged beatings and subjection to mock executions.²⁵ Similarly, the Special Rapporteur on trafficking in persons, especially women and children also observed that “the Centre was obviously overcrowded”.²⁶ In addition, the UNHCR “repeat[ed] its recommendation that the Government not only contemplate improving detention conditions but, more importantly, also consider alternatives to detention, especially for asylum-seekers, refugees, stateless persons and other vulnerable individuals”.²⁷ Finally, the UNHCR and CEDAW were both especially “concerned about...the inadequate detention conditions, particularly for women and children”.²⁸

25. The IACHR notes that “although the Carmichael Centre is designed to be a temporary holding center pending deportation, in reality, some migrants are held there for prolonged periods of time – weeks, even months”.²⁹ Accordingly, CERD was “disturbed at reports emphasizing that such detention sometimes extends to a year and more, depending on migrants’ nationalities”.³⁰ These concerns were also shared by the Special Rapporteur on trafficking in persons, especially women and children who “expressed concern with regard to the poor conditions and the length of detention, which do not meet international standards”.³¹

26. Regarding the detention conditions, the Commission granted precautionary measures on February 13, 2015 in favor of the persons in immigration detention at Carmichael Center. The Commission found inhumane conditions, with extreme overcrowding and lack of appropriate medical attention. Therefore, the Commission requested the State to adopt the necessary measures to ensure the life and physical integrity of persons taken into custody at the said Center, namely, to provide hygienic conditions and adequate medical treatment to the persons in the facility, according to their respective medical conditions. The IACHR also requested the State to adopt the necessary measures to address the special situation of unaccompanied children, according to international standards; to implement measures to ensure that legal assistance is available to all of the beneficiaries; and to take immediate action to substantially reduce overcrowding at the Carmichael Center. Also, the Commission requested to initiate proceedings regarding the facts that gave rise to the adoption of these precautionary measures in order to avoid their repetition; and to ensure that civil society organizations and relevant international organizations gain access to the said facilities to monitoring the detention conditions³². Additionally, in a hearing before the Commission, representatives of civil society organizations alleged that detainees are kept in unsafe and unsanitary conditions and that children have been kept with unrelated adults for days at a time. Likewise, they mentioned the lack of legal aid, language barriers, limitations to access to justice and the absence of domestic remedies to challenge decisions regarding their status³³. Lastly, on January 7, 2015, the IACHR requested information to the Bahamas regarding its immigration policies,

²² UNHCR. Submission by the United Nations High Commissioner for Refugees or the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodic Review: Commonwealth of the Bahamas, June 2012, p.4.

²³ UNHCR. Submission by the United Nations High Commissioner for Refugees or the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodic Review: Commonwealth of the Bahamas, June 2012, p.4.

²⁴ CERD. UN Committee on the Elimination of Racial Discrimination: Concluding Observations, Bahamas, 28 April 2004, CERD/C/64/CO/1, para. 20.

²⁵ UN Human Rights Council, Compilation Prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(b) of the Annex to Human Rights Council Resolution 5/1 - Bahamas, 29 September 2008, A/HRC/WG.6/3/BHS/2, para. 23.

²⁶ UNHCR. Submission on the Bahamas: 29th UPR session, January 2018, p.14.

²⁷ UNHCR. Submission by the United Nations High Commissioner for Refugees or the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodic Review: Commonwealth of the Bahamas, June 2012, p.4.

²⁸ UN Human Rights Council, Compilation: [Universal Periodic Review]: Bahamas / prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, 9 November 2012, A/HRC/WG.6/15/BHS/2, para. 37.

²⁹ UNHCR. Submission by the United Nations High Commissioner for Refugees or the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodic Review: Commonwealth of the Bahamas, June 2012, p.3-4.

³⁰ CERD. UN Committee on the Elimination of Racial Discrimination: Concluding Observations, Bahamas, 28 April 2004, CERD/C/64/CO/1, para. 17.

³¹ UNHCR. Submission on the Bahamas: 29th UPR session, January 2018, p.14.

³² IACHR. PM 535/14 – Persons in Immigration Detention at Carmichael Road Detention Center, The Bahamas, 13 February 2015.

³³ IACHR. 154 Period of Sessions, Human Rights Situation of Migrant Persons in the Bahamas, March, 20, 2015.

including the detention conditions at the Carmichael Center³⁴; nevertheless the State requested more time to address the matter adequately³⁵, but submitting no further additional information.

27. Finally, the IACHR takes note of reports of the automatic detention of all migrants arriving in The Bahamas without the necessary documentation regardless of their reasons or motives for entering the State. Accordingly, “people entering [The Bahamas] without proper papers are automatically detained without such detention being subjected to judicial review”³⁶ and with rare access to legal representation.³⁷

28. The Commission notes that many of the serious problems alleged at the time of the petitions at issue in this case, in 1998 and 2000, have persisted until the present day, according to the sources discussed in this section, which date from 1998 to 2018. In this regard, the Commission recalls that in the processing of this case, the State expressed its will to pass refugee legislation and improve detention conditions in Carmichael Center; notwithstanding, nearly two decades later, neither of these have come to pass. The Commission expresses its deep concern for the persistence of these conditions which, as will be discussed in this report, constitute or give rise to serious violations of human rights for the migrants and asylum seekers negatively affected by them.

B. Facts of the case

1. The detention and repatriation of Cuban nationals and Haitian nationals

29. The Commission notes that the information regarding how the alleged victims entered The Bahamas and the subsequent events leading to their detention and deportation is fragmented and not individualized in relation to the majority of the alleged victims. The Commission will summarize the specific information provided regarding Nieves Marlene Escuela, Jorge Rochela Escuela and Mildrey Martin Escuela, nationals of Cuba, and will refer to the remaining alleged victims in general terms and taking into account that the State failed to provide individual information regarding persons that were under custody and subject to deportation by its own authorities.

30. The Commission notes that the specific dates of entry into The Bahamas and of entry into Carmichael Center have not been specified. The information provided by the petitioners suggests that one of the victims left Cuba shortly after June 23, 1998,³⁸ and another was detained for 43 days.³⁹ However, it is uncontroverted that in accordance with the Memorandum of Understanding between The Bahamas and Cuba of January 12, 1996, and its Protocol,⁴⁰ the State repatriated Cuban nationals on three occasions.⁴¹

31. On August 11, 1998, 66 Cuban nationals were repatriated to Cuba.⁴² Among these individuals were four alleged victims who were highlighted in the petition and the request and grant of precautionary measures, namely Alexis Pérez Ricardo, Hector Jurto Sánchez, Manuel Ramón Reyes Lamela and Lázaro de la Riva Suárez. On August 18, 1998, a further 49 Cuban nationals were repatriated,⁴³ and on October 20, 1998, another 67 Cuban nationals were repatriated.⁴⁴ Lastly, the Commission notes the inclusion of Pastor Jorge Aguiar Perez

³⁴ IACHR. Request for follow-up information on new immigration policy in The Bahamas, January 7, 2015.

³⁵ Permanent Mission of the Commonwealth of the Bahamas to the Organization of American States, Re: Request for follow-up information on new immigration policy in the Bahamas, January 22, 2015.

³⁶ CERD. UN Committee on the Elimination of Racial Discrimination: Concluding Observations, Bahamas, 28 April 2004, CERD/C/64/CO/1, para. 17.

³⁷ UNHCR Submission on the Bahamas: 29th UPR session, January 2018, p. 3.

³⁸ Annex 2. List of CEJIL interviews, p. 1-2, annexed to the communication of the petitioners dated December 10, 1998.

³⁹ Annex 3. Manuel Ramon Reyes interview, List of CEJIL interviews, p. 1-2, annexed to the communication of the petitioners dated December 10, 1998.

⁴⁰ Annex 1. Memorandum of Understanding Between the Government of the Commonwealth of the Bahamas and the Government of the Republic of Cuba of January 12, 1996 and Protocol to the Memorandum of Understanding of January 12, 1996 Between the Government of the Republic of Cuba and the Government of the Commonwealth of the Bahamas, annexed to State reply 23 October 1998.

⁴¹ The names of the Cuban nationals are as they appear in the repatriation lists of the Bahamas Immigration Department.

⁴² Annex 4. Bahamas Immigration Department, Approved Cuban nationals for repatriation 11th August 1998 annexed to State reply October 23, 1998.

⁴³ Annex 5. Bahamas Immigration Department, Approved Cuban nationals for repatriation 18th August 1998 annexed to State reply October 23, 1998.

⁴⁴ Annex 6. Bahamas Immigration Department, Approved Cuban nationals for repatriation 20th October 1998 annexed to State reply October 23, 1998.

and Damian Rigoberto Cabrera Perez as alleged victims who were transported to and detained at the Carmichael Center on November 8, 1998 and subsequently repatriated to Cuba.⁴⁵

32. Accordingly, a total of 184 Cuban nationals were repatriated following their detention at the Carmichael Road Detention Center. In addition, the repatriations that took place on August 18 and October 20, 1998 were in contravention of the precautionary measures granted on August 14, 1998 by the IACHR staying such deportations.⁴⁶ The Commission also notes that a list of the names of the deported Haitian nationals was not provided by the petitioners or the State; however, the petitioners provided information regarding eight Haitian nationals who were interviewed by the petitioners prior to the presentation of the first petition. The names of said individuals are: Jean, Eli; Girard, Jean-Jacques; Joseph, Timothé; Walner, Florestal; Serandieu, Massillon; Abadu, George, Natusha, Joseph; and San Voir, Jean-Baptiste.

2. Specific information regarding Nieves Escuela and her family

33. Ms. Nieves Marlene Escuela Gonzalez and her children, Jorge Rochela Escuela and Mildrey Martin Escuela, were among the 67 Cuban nationals repatriated on October 20, 1998.⁴⁷ Ms. Escuela Gonzalez and her children left Cuba for the U.S. in a raft because she feared being sentenced to three years in jail after she was charged for having a party on July 4 and having more than four non-immediate family members in her house at one time without a permit.⁴⁸ After being picked up by a tourist boat and brought to the U.S. Coast Guard they were later sent to the Carmichael Road Detention Center.⁴⁹ At the Center, Ms. Escuela Gonzalez was given a written questionnaire by Michelle Stewart, an immigration official, who Ms. Escuela indicated refused to accept or look at her documentation or answer questions about the procedure, and did not return to the Center despite promising to do so.⁵⁰

34. Meanwhile, Ms. Escuela's husband, Jorge Juan Rochela, was granted asylum in the United States as of July 14, 1998, giving him the option to request derivative asylum status for any spouse or children;⁵¹ he presented his request on August 28, 1998.⁵² After failing to communicate with the Department of Immigration in The Bahamas and the Centre,⁵³ Mr. Rochela's legal representatives sent a letter to the Deputy Permanent Secretary of the Ministry of Labour and Immigration of The Bahamas informing them of the grant of asylum and that Mr. Rochela was in the process of filling out the appropriate documentation to enable his family to reunite with him, and requesting that Nieves, Jorge and Mildrey be released from detention while the family reunification process was completed by the U.S. government.⁵⁴ Despite this, they were repatriated to Cuba on October 20, 1998.⁵⁵ Upon their return to Cuba, Nieves was interviewed twice by State security agents, labelled an "*amotinamiento*", barred from working, her mail was intercepted, her telephone tapped and she was constantly

⁴⁵ Annex 7. Memo identifying new potential victims from St. Thomas University Human Rights Institute to CEJIL of December 2, 1998 annexed to the communication of the petitioners dated December 10, 1998.

⁴⁶ Precautionary measures were granted on August 14, 1998 under which the State was requested to stay the deportation of Cuban nationals from The Bahamas to Cuba until the Commission has had the opportunity to investigate the claims raised by the petitioners.

⁴⁷ Annex 6. Bahamas Immigration Department, Approved Cuban nationals for repatriation 20th October 1998 annexed to State reply October 23, 1998, no. 10 to 12.

⁴⁸ Annex 8. Interviews with persons in Miami, formerly in Bahamas at the Little Nutritional Center and St. Thomas University, Miami, Florida on 17-18 November 1998, annexed to the communication of the petitioners dated December 10, 1998.

⁴⁹ Annex 8. Interviews with persons in Miami, formerly in Bahamas at the Little Nutritional Center and St. Thomas University, Miami, Florida on 17-18 November 1998, annexed to the communication of the petitioners dated December 10, 1998.

⁵⁰ Annex 8. Interviews with persons in Miami, formerly in Bahamas at the Little Nutritional Center and St. Thomas University, Miami, Florida on 17-18 November 1998, annexed to the communication of the petitioners dated December 10, 1998.

⁵¹ Annex 9. Letter from U.S. Department of Justice to Mr. Rochela dated August 24, 1998 annexed to the communication of the petitioners dated December 10, 1998.

⁵² Annex 10. Refugee/Asylee Relative Petition completed by Jorge Juan Rochela dated August 28, 1998 annexed to the communication of the petitioners dated December 10, 1998; *see also* Annex 11. Letter from St. Thomas University Human Rights Institute to Deputy Permanent Secretary of the Bahamian Ministry of Labour, Immigration, Secretary dated August 28, 1998 annexed to the communication of the petitioners dated December 10, 1998. The request was received by the U.S. Immigration and Naturalization Service on September 3, 1998. Annex 12. Notice of Action, the United States of America, Beneficiary Mildrey Martin, Jorge Rochela, Nieves Marlen Escuela, dated September 3, 1998 annexed to the communication of the petitioners dated December 10, 1998.

⁵³ Annex 8. Interviews with persons in Miami, formerly in Bahamas at the Little Nutritional Center and St. Thomas University, Miami, Florida on 17-18 November 1998, annexed to the communication of the petitioners dated December 10, 1998.

⁵⁴ Annex 11. Letter from St. Thomas University Human Rights Institute to Deputy Permanent Secretary of the Bahamian Ministry of Labour, Immigration, Secretary dated August 28, 1998 annexed to the communication of the petitioners dated December 10, 1998.

⁵⁵ Annex 6. Bahamas Immigration Department, Approved Cuban nationals for repatriation 20th October 1998 annexed to State reply October 23, 1998, no. 10 to 12.

watched.⁵⁶ In addition, Mildrey was suspended from school and Jorge was only allowed to return to school if he passed a special exam.⁵⁷

3. Specific information regarding Pastor Jose Aguiar Perez and Damian Rigoberto Cabrera Perez

35. Mr. Pastor Jose Aguiar Perez, a forensic pathologist, and Mr. Damian Rigoberto Cabrera Perez, a lieutenant in the army, left Cuba on November 6, 1998 in a plastic boat with six other individuals.⁵⁸ When the boat's propeller and motor broke down, they were sighted by a helicopter and intercepted by the U.S. Coast Guard at approximately 3 p.m. on the same day.⁵⁹ On November 8, 1998 they were taken to a detention center for immigrants in Nassau, The Bahamas, presumably the Carmichael Road Detention Center.⁶⁰ Once at the detention center, they were only permitted to use a public telephone two weeks after their arrival, namely on November 22, 1998 when they spoke to their families and mentioned a fellow 62 Cuban nationals that were waiting to be repatriated.⁶¹

4. Conditions of detention at the Carmichael Road Detention Center

36. The Commission notes that detention conditions have been described as overcrowded, such that detainees often slept five to a bed,⁶² and up to 18 people would sleep on the floor.⁶³ In addition, the alleged victims assert that there was not enough light and no potable water at the Center.⁶⁴ Former detainees indicated that they were given a morning meal at 11:00 a.m. which consisted of a spicy cereal and another meal at 4:00 p.m. that usually consisted of rice or wheat, eggs, sometimes chicken or a meat which the detainees could not identify.⁶⁵ They stated that this food had maggots in it,⁶⁶ such that the detainees had to wash it before they ate it, and there were no special meals provided for children.⁶⁷ In addition, the detainees were unable to speak on the phone for more than five minutes and could not hug their family members when they visited.⁶⁸ Finally, the alleged victims referred to the behavior of the camp officials, asserting that they would steal aid or assistance that arrived for detainees, the remainder of which was given to Cuban detainees and sold to Haitian detainees, and

⁵⁶ Annex 8. Interviews with persons in Miami, formerly in Bahamas at the Little Nutritional Center and St. Thomas University, Miami, Florida on 17-18 November 1998, annexed to the communication of the petitioners dated December 10, 1998.

⁵⁷ Annex 8. Interviews with persons in Miami, formerly in Bahamas at the Little Nutritional Center and St. Thomas University, Miami, Florida on 17-18 November 1998, annexed to the communication of the petitioners dated December 10, 1998.

⁵⁸ Annex 13. Memo from St. Thomas University Human Rights Institute to CEJIL dated December 1, 1998, annexed to the communication of the petitioners dated December 10, 1998.

⁵⁹ Annex 13. Memo from St. Thomas University Human Rights Institute to CEJIL dated December 1, 1998, annexed to the communication of the petitioners dated December 10, 1998.

⁶⁰ Annex 13. Memo from St. Thomas University Human Rights Institute to CEJIL dated December 1, 1998, annexed to the communication of the petitioners dated December 10, 1998.

⁶¹ Annex 13. Memo from St. Thomas University Human Rights Institute to CEJIL dated December 1, 1998, annexed to the communication of the petitioners dated December 10, 1998.

⁶² Annex 8. Interviews with persons in Miami, formerly in Bahamas at the Little Nutritional Center and St. Thomas University, Miami, Florida on 17-18 November 1998 – Magalis Montero and Angel Gonzalez, annexed to the communication of the petitioners dated December 10, 1998.

⁶³ Annex 14. Open Society Institute Interviewer Sheet – Alberto Medina Fuentes, April 28, 1998, annexed to revised petition of May 15, 1998.

⁶⁴ Annex 15. Open Society Institute Interviewer Sheet – Jose Raol Gonzalez Gomez, April 28, 1998, annexed to revised petition of May 15, 1998.

⁶⁵ Annex 8. Interviews with persons in Miami, formerly in Bahamas at the Little Nutritional Center and St. Thomas University, Miami, Florida on 17-18 November 1998 – Magalis Montero and Angel Gonzalez, annexed to the communication of the petitioners dated December 10, 1998.

⁶⁶ Annex 8. Interviews with persons in Miami, formerly in Bahamas at the Little Nutritional Center and St. Thomas University, Miami, Florida on 17-18 November 1998 – Magalis Montero and Angel Gonzalez, and Yuri Delgado, annexed to the communication of the petitioners dated December 10, 1998.

⁶⁷ Annex 8. Interviews with persons in Miami, formerly in Bahamas at the Little Nutritional Center and St. Thomas University, Miami, Florida on 17-18 November 1998 – Magalis Montero and Angel Gonzalez, annexed to the communication of the petitioners dated December 10, 1998.

⁶⁸ Annex 16. Open Society Institute Interviewer Sheet – Tania Varona Donet, April 28, 1998, annexed to revised petition of May 15, 1998.

that the officials would beat detainees.⁶⁹ Accordingly, the conditions at the Center were described as terrible and inhuman.⁷⁰

37. The State refutes the conditions above described and alleges that detainees “are served three (3) times daily and the Authorities try to accommodate the detainees by serving cultural dishes with which they are familiar.” The State added that “water supplied at the Detention Centre is purified city water which is also consumed daily by thousands of Bahamians living on the island of New Providence.”⁷¹ The Commission notes that the State did not provide documentary proof of these assertions.

5. Information regarding procedures for accessing asylum in The Bahamas

38. The Commission notes that there is no dispute among the parties regarding the lack of domestic legislation regulating refugee status determination. The State referenced a Draft Act [or Regulation] on Refugee Status and Asylum drafted in relation to Barbados, which is a third, unrelated state, without explaining its relevance to the instant case.⁷² The Commission also notes that the Bahamian Immigration Act considers any individual who arrives in its territory without a proper visa to be an “illegal immigrant” (sic).

39. Regarding the administrative procedures to determine the status of asylum-seekers, various forms and questionnaires have been included in the case file. The most basic form is the Cuban Profile Form in English and Spanish, which requires the applicant to provide the State’s Immigration Department with basic personal information, such as their name, marital status and date of birth, and a photograph.⁷³ There was no equivalent Haitian Profile Form. Second, the Personal History Form requires basic personal information, solicits information about the applicant’s country of previous residence, reasons for leaving their home country or country of last residence, whether the applicant was afraid or worried about being returned to their country of origin or being expelled from The Bahamas, whether they had any travel or identity documents, and whether they had any family or friends in The Bahamas. This form is available in English, Spanish, French and Creole.⁷⁴ Additional generic forms were provided by the State, namely Questions for the refugees and Detention questions in English, Spanish and Creole,⁷⁵ and two forms titled Questionnaire for the determination of refugee status with varying questions, one in English and Spanish, and another in Creole and French.⁷⁶ The State asserts that if needed, Spanish- and Creole-speaking Immigration Officers assist in the completion of these forms.⁷⁷

40. The Commission found no evidence demonstrating that these forms and questionnaires were provided the alleged victims or subsequently completed and considered by the relevant authorities, and found only limited evidence of interviews. For example, alleged victim Mr. Osvaldo Raimundo de Leon Alpizar, who was deported

⁶⁹ Annex 8. Interviews with persons in Miami, formerly in Bahamas at the Little Nutritional Center and St. Thomas University, Miami, Florida on 17-18 November 1998 – Magalis Montero and Angel Gonzalez, and Yuri Delgado, annexed to the communication of the petitioners dated December 10, 1998.

⁷⁰ Annex 17. Open Society Institute Interviewer Sheet – Zoraya Ferral Toledano, April 28, 1998, annexed to revised petition of May 15, 1998; Annex 18. Open Society Institute Interviewer Sheet – Tania Varona Donet, April 28, 1998, annexed to revised petition of May 15, 1998 ; Annex 19. Open Society Institute Interviewer Sheet – Alberto Medina Fuentes, April 28, 1998, annexed to revised petition of May 15, 1998.

⁷¹ State reply dated September 19, 2000.

⁷² Annex 20. Draft Act [or Regulation] on Refugee Status and Asylum, annexed to State reply September 19, 2000. This Act establishes a Refugee and Asylum Committee, outlines the determination of refugee status and granting of asylum criteria and procedures and the processing of applications, and identifies the rights and duties of asylum-seekers and asylees, the termination of asylum criteria and administrative and judicial recourses.

⁷³ Annex 21. Bahamas Immigration Department, Cuban Profile Form (Spanish), annexed to State reply September 19, 2000.

⁷⁴ Annex 22. Prescreening Form (English) – Personal History Form, annexed to State reply dated September 19, 2000; Annex 23. Prescreening Form (Spanish) – Formulario de Información Personal, annexed to State reply dated September 19, 2000; Annex 24. Prescreening Form (French) – Formulaire de Renseignements Personnels, annexed to State reply dated September 19, 2000; Annex 25. Prescreening Form (Creole) – Fomile Enfomasyon Personel, annexed to State reply dated September 19, 2000.

⁷⁵ Annex 26. Questions for the refugees, annexed to State reply dated September 19, 2000; Annex 27. Preguntas para los refugiados, annexed to State reply dated September 19, 2000; Annex 28. Keksyon pou refijye yo, annexed to State reply dated September 19, 2000.

⁷⁶ Annex 29. Questionnaire for the determination of refugee status, annexed to State reply dated September 19, 2000; Annex 30. Cuestionario para la determinación de la condición de refugiado, annexed to State reply dated September 19, 2000; Annex 31. Kesyon pou determine kondisyon refijye yon moun, annexed to State reply dated September 19, 2000; Annex 32. Questionnaire pour la détermination du statut de réfugié, annexed to State reply dated September 19, 2000.

⁷⁷ State reply dated September 19, 2000.

on August 18, 1998,⁷⁸ told an officer that he was a refugee and was told that there was nothing that they could do.⁷⁹

41. The Commission observes that the testimonies of other deported individuals –not alleged victims in the instant case– were included in the case file. These statements highlight the existence of some interaction with Bahamian immigration officers, the substandard detention conditions and the consequences of repatriation.⁸⁰

V. ANALYSIS OF LAW

A. Preliminary considerations regarding the individualization of victims and the application of the American Declaration and other relevant international legal instruments

42. According to its practice and Rules of Procedure, the Commission considers that it is well established within the Inter-American System that the names of victims should be provided by the petitioners. Notwithstanding, the Commission recognizes that it has considered cases presented on behalf of groups of victims where the group was specific and defined and the individuals who comprise it could be determined, such as a case involving members of a specific community.⁸¹ In this case, the chapter on findings of fact demonstrates that not all of the alleged victims have been individualized and that no specific information to facilitate the identification of the remaining has been provided by the parties.

43. The Commission recalls that when an individual is taken into custody and placed under the exclusive control of a State, it holds the burden of proof as the guarantor of the individual's safety and rights. This is because the State has exclusive control over information and evidence regarding the fate of the detained individual.⁸² The Commission also notes that human rights violations committed against migrants often go unpunished, *inter alia*, due to cultural factors that justify them, a lack of access to power structures in a given society and the legal and practical obstacles that make effective access to justice illusory.⁸³

44. The Commission observes, more specifically, that in this case there are a number of complex circumstances that make it difficult to identify the alleged victims. In this sense, the Commission observes from the facts of the case, in general terms, that the alleged victims were subjected to mass detentions, placed under custody, and subsequently repatriated by the State. In addition, the case file demonstrates that the alleged victims no longer reside in The Bahamas, and that the State has failed to provide relevant information, including records of the individuals detained at the Carmichael Center and complete repatriation lists, despite the Commission's requests.

45. Accordingly, the Commission understands that the lack of information allowing the identification of the alleged victims, which is attributable to State, impacted not only the possibility of identifying the totality of the

⁷⁸Annexes 5 & 6. Bahamas Immigration Department, Approved Cuban nationals for repatriation 18th August 1998 and 20th October 1998 annexed to State reply October 23, 1998.

⁷⁹ Annex 33. List of CEJIL questionnaires, annexed to the communication of the petitioners dated December 10, 1998.

⁸⁰ Annex 8. Interviews with persons in Miami, formerly in Bahamas at the Little Nutritional Center and St. Thomas University, Miami, Florida on 17-18 November 1998 – Yuri Delgado, annexed to the communication of the petitioners dated December 10, 1998; Annex 8. Interviews with persons in Miami, formerly in Bahamas at the Little Nutritional Center and St. Thomas University, Miami, Florida on 17-18 November 1998 – Magalis Montero and Angel Gonzalez, annexed to the communication of the petitioners dated December 10, 1998; Annex 34. Letter from Dr. Eduardo Villasuso Morales to Claudia Hernandez of the Open Society Institute, July 13, 1998, annexed to the communication of the petitioners dated December 10, 1998; Annex 35. Open Society Institute Interviewer Sheet – Jose Eduardo Villasuso Morales, April 28, 1998, annexed to revised petition of May 15, 1998; Annex 17. Open Society Institute Interviewer Sheet – Zoraya Ferral Toledano, April 28, 1998, annexed to revised petition of May 15, 1998; Communication of the petitioners, namely Claudia Hernandez, Open Society Institute, dated October 1, 1999; Annex 36. Letter from Pedro A. Beckford M.D. to the American Consul, American Embassy, Nassau, Bahamas, January 10, 1998, annexed to the communication of the petitioners dated October 15, 1999; and Annex 37. Letter from Cynthia Zemel, Teacher, Harding School, Kenilworth, NJ, January 12, 1998, annexed to the communication of the petitioners dated October 15, 1999.

⁸¹ See IACHR, Case 12.250, Report N° 34/01, Massacre of Mapiripan (Colombia), Annual Report of the IACHR, 2000, paragraph 27.

⁸² IACHR. Report N° 44/00, Case 10.820. Américo Zavala Martinez. Peru, April 13, 2000, par. 19.

⁸³ United Nations, Economic and Social Council, "Specific Groups and Individuals: Migrant Workers. Human Rights of Migrants," Report of the Special Rapporteur, Mrs. Gabriela Rodriguez Pizarro, submitted in accordance with Order 1999/44 of the Commission on Human Rights, E/CN.4/2000/82, of January 6, 2000, para. 73; Juridical Condition and Rights of Undocumented Immigrants. I/A Court H.R., Advisory Opinion OC-18/03 of September 17, 2003, Series A N.18, para. 112; I/A Court H.R., Case of Vélez Looor v. Panama. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2010 Series C No. 218, para. 98

names of the alleged victims, but also prevented the Commission from understanding why the alleged victims left their home country, and the length and conditions of their detention. Under these circumstances, and the surrounding context regarding human mobility in The Bahamas addressed in this report, the Commission finds that requiring the petitioners to present individualized information regarding the Cuban and Haitian nationals would place an undue and unreasonable burden upon the alleged victims, taking into special consideration the control of the State over said information.

46. Based on the factors identified above, including the lack of information, attributable to the State, Inter-American standards regarding the individualization of victims in complex circumstances, the burden of proof in cases related to persons under State custody, and the migration context in The Bahamas, the Commission understands that all of the alleged victims were taken into custody at the Carmichael Center and subsequently repatriated. In this way, the IACHR will analyze the alleged violations of human rights to the detriment of the individualized group of alleged victims, and also in relation to the indeterminate group of alleged victims, in whose cases the Commission will request their full identification as part of its recommendations to The Bahamas.

47. Regarding the American Declaration as a source of legal obligations, this instrument may be applied by the Inter-American Commission to The Bahamas on the basis of the State's commitment to uphold respect for human rights as provided for and defined in the Charter of the Organization of American States (OAS).⁸⁴ The Bahamas deposited its instrument of ratification of the OAS Charter on March 3, 1982. Article 20 of the Commission's Statute, as well as Article 23 of its Rules of Procedure, authorize the IACHR to examine the alleged violations of the Declaration raised by the petitioners against the State, relating to acts or omissions that occurred after The Bahamas joined the OAS.

48. The Commission has long held that it is necessary to consider the provisions of the American Declaration in the broader context of both the Inter-American and international human rights systems, in light of developments in international human rights law since the Declaration was adopted and having regard to other relevant rules of international law applicable to member states against which complaints of violations of the Declaration are properly lodged.⁸⁵ Developments in the corpus of international human rights law relevant to interpreting and applying the American Declaration may additionally be drawn from the provisions of other prevailing international and regional human rights instruments: in particular, the American Convention on Human Rights, which, in many instances, may be considered to represent an authoritative expression of the fundamental principles set forth in the American Declaration. While the Commission clearly does not apply the American Convention in relation to Member States who are not parties to the instrument, its consideration of legal standards relating to the rights of migrants in the application of the Convention's provisions may well be relevant in informing an interpretation of the Declaration.⁸⁶

⁸⁴ I/A Ct. H.R. *Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights*. Advisory Opinion OC-10/89 of July 14, 1989. [hereinafter "*Interpretation of the American Declaration*"], para. 47 ("[T]he member states of the [OAS] have signaled their agreement that the Declaration contains and defines the fundamental human rights referred to in the Charter. Thus the Charter of the [OAS] cannot be interpreted and applied as far as human rights are concerned without relating its norms, consistent with the practice of the organs of the OAS, to the corresponding provisions of the Declaration.")

⁸⁵ IACHR, Report No. 50/16, Case 12.834, Merits (Publication), Undocumented Workers, United States, Nov. 30, 2016, para. 68. See I/A Ct. H.R., *Interpretation of the American Declaration*. Advisory Opinion OC-10/89 of July 14, 1989, para. 37. See also ICJ, Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 16 ad 31 ("an international instrument must be interpreted and applied within the overall framework of the juridical system in force at the time of the interpretation").

⁸⁶ See IACHR, *Report of the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System* (2000), para. 38; IACHR, *Garza v. United States*, Case No. 12.275, Annual Report of the IACHR 2000, paras. 88-89.

B. Right to protection from arbitrary detention and the right to humane treatment in detention (Articles I and XXV of the American Declaration)⁸⁷

1. Inter-American standards regarding migrants in detention

49. The Commission has clearly established that irregular migrants are not criminals, and that a violation of immigration law can never be equated to a violation of criminal laws that warrants the use of the State's punitive authority.⁸⁸ Moreover, in line with the Inter-American Commission's and Court's jurisprudence on arbitrary detention, any decision to restrict an individual's personal liberty by detaining them must be individualized and duly motivated; for this reason, policies that require the automatic detention of migrants are arbitrary and contrary the State's human rights obligations⁸⁹.

50. The Inter-American Court has asserted that for the deprivation of liberty of migrants not to be considered arbitrary, in each individual case, their detention must be prescribed by law, have a legitimate purpose, be suitable, necessary, and proportionate, and for the shortest time possible.⁹⁰ The standard for the exceptionality of pre-trial detention is even higher in relation to the detention of migrants because violations of immigration law should not to be construed as criminal offenses, as stated above.⁹¹ In addition, the Court, in considering the American Declaration, found that "the deprivation of liberty of children based exclusively on migratory reasons exceeds the requirement of necessity"⁹² and is therefore arbitrary; in that sense, States may not resort to the deprivation of liberty of children as a precautionary measure to protect the objectives of immigration proceedings; nor may States base this measure on failure to comply with the requirements to enter and to remain in the country, on the fact that the child is alone or separated from her or his family, or on the objective of ensuring family unity, because States can and should have other less harmful alternatives and, at the same time, protect the rights of the child integrally and as priority⁹³.

51. In effect, to comply with the guarantees protected in Articles I and XXV of the American Declaration, member States must enact immigration laws and establish immigration policies that are premised on a presumption of liberty—the right of the immigrant to remain at liberty while his or her immigration proceedings are pending—and not on a presumption of detention.⁹⁴ Detention is only permissible when a case-specific evaluation concludes that the measure is essential in order to serve a legitimate interest of the State and to ensure that the subject reports for the proceeding to determine their immigration status and possible removal.⁹⁵ The argument that the person in question poses a threat to public safety is only acceptable in exceptional circumstances in which there are certain indicia of the risk that the person represents. The existence of a criminal record is not sufficient to justify the detention of an immigrant once they have served

⁸⁷ Art. I states, "Every human being has the right to life, liberty, and the security of his person."

Art. XXV states, in relevant part: "No person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law. [...] Every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court, and the right to be tried without undue delay or, otherwise, to be released. [...]" "[...] Every individual who has been deprived of his liberty [...] has the right to humane treatment during the time he is in custody."

⁸⁸ IACHR, Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System. OEA/Ser.L/V/II.Doc. 46/15, para. 381 – 384.

⁸⁹ See I/A Court H.R., Case of Vélez Loo v. Panama. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2010 Series C No. 218, para. 116.

⁹⁰ I/A Court H.R., Case of Vélez Loo v. Panama. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218, para. 166.

⁹¹ IACHR, Report on Immigration in the United States: Detention and Due Process, OEA/Ser.L/V/II, December 30, 2010, para. 38

⁹² I/A Court H.R., Advisory Opinion OC21/14 Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, August 19, 2014, para. 154.

⁹³ I/A Court H.R., Advisory Opinion OC21/14 Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, August 19, 2014, para. 283.6.

⁹⁴ IACHR, Rafael Ferrer-Mazorra et al. (United States), Report No. 51/01 (Merits), Case No. 9903, para. 219 (April 4, 2001). See also IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas ("Inter-American Principles on Detention"), Principle III(2) (2008). Principle III of the Inter-American Principles on Detention provides the following as the underlying premise: "The law shall ensure that personal liberty is the general rule in judicial and administrative procedures, and that preventive deprivation of liberty is applied as an exception, in accordance with international human rights instrument. . . ."

⁹⁵ IACHR, Rafael Ferrer-Mazorra et al. (United States), Report No. 51/01 (Merits), Case No. 9903, para. 242 (April 4, 2001); See also IACHR, Inter-American Principles on Detention, Principle III, Principle III which states that "preventive deprivation of liberty is a precautionary measure, not a punitive one, which shall additionally comply with the principles of legality, the presumption of innocence, need, and proportionality, to the extent strictly necessary in a democratic society."

their criminal sentence. Whatever the case, the particular reasons why the immigrant is considered to pose a risk must be explained. The arguments in support of the appropriateness of detention must be set out clearly in the corresponding decision.⁹⁶

52. In relation to the duration of detention, the Working Group on Arbitrary Detention established that “a maximum period should be set by law and the custody may in no case be unlimited or of excessive length.”⁹⁷ In this way, the absence of clear limits to the powers of an administrative authority favors undue prolongation of the detention of immigrants, turning these into a punitive measure.⁹⁸

53. The Commission has considered that the U.N. Standard Minimum Rules for the Treatment of Prisoners prescribe basic benchmarks against which to evaluate whether the treatment of detainees satisfies the standards of humanity under the Inter-American instruments in such areas as accommodation, hygiene, clothing and bedding, food, recreation, exercise and medical treatment, discipline, punishment and use of instruments of restraint.⁹⁹ The IACHR has considered that these rules apply regardless of the type of behavior for which the person has been detained.¹⁰⁰

54. The IACHR recalls that these standards derive directly from the State’s special position as guarantor of the rights of persons deprived of liberty, given the extreme power and imbalance between the State and the detained individual, and the nature of confinement itself, which prevents the detainee from satisfying on his or her own basic needs—in particular related to economic, social and cultural rights—that are essential to permit a dignified life, to the extent possible under such circumstances. In this regard, the principal element that defines deprivation of liberty is the individual’s dependence on the decisions made by the personnel of the establishment where he or she is being held;¹⁰¹ and “the act of imprisonment carries with it a specific and material commitment to protect the prisoner’s human dignity so long as that individual is in the custody of the State, which includes protecting him from possible circumstances that could imperil his life, health and personal integrity, among other rights,”¹⁰² including obligations to guarantee the right to health, the right to food, and the right to clean water, among others. Accordingly, persons detained exclusively for immigration issues should be accommodated in centers specifically designed for the purpose of guaranteeing “material conditions and a system appropriate to their legal status and staffed by appropriately qualified personnel (...)”.¹⁰³

55. Also, the Commission¹⁰⁴ and the Court¹⁰⁵ have found it necessary to consider the cumulative effect or impact of the conditions of detention to which a person is subjected, in order to determine whether such conditions as a whole constitute a form of a cruel, inhuman or degrading Treatment (CIDT) or torture.¹⁰⁶ In this regard, the jurisprudence of the Inter-American system has found that the following conditions of detention, among others, may reach the threshold of CIDT: lack of adequate infrastructure; lack of adequate ventilation

⁹⁶ IACHR, Rafael Ferrer-Mazorra et al. (United States), Report No. 51/01 (Merits), Case No. 9903, para. 221 (April 4, 2001).

⁹⁷ United Nations, Working Group on Arbitrary Detention, Group Report, Annex II, Deliberation No. 5: Situation regarding immigrants and asylum-seekers, 1999, E/CN.4/2000/4, Principle 7; I/A Court H.R., Case of Vélez Loor v. Panama. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2010 Series C No. 218, para. 117.

⁹⁸ I/A Court H.R., Case of Vélez Loor v. Panama. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2010 Series C No. 218, para. 117.

⁹⁹ IACHR, *Report on Terrorism and Human Rights*, para. 167 (citing UN Standard Minimum Rules for the Treatment of Prisoners, Rules 8-34; see also IACHR, *Report on Persons Deprived of Liberty* (2011), para. 432).

¹⁰⁰ IACHR, *Report on Persons Deprived of Liberty* (2011), para. 432 (citing IACHR, Report No. 28/09, Case 12.269, Merits, Dexter Lendore, Trinidad y Tobago, Mar. 20, 2009, paras. 30-31; Report No. 78/07, Case 12.265, Merits, Chad Roger Goodman, Bahamas, Oct. 15, 2007, paras. 86-87; Report No. 67/06, Case 12.476, Merits, Oscar Elías Bicet et al., Cuba, Oct. 21, 2006, para. 152; Report No. 76/02, Case 12.347, Merits, Dave Sewell, Jamaica, Dec. 27, 2002, paras. 114- 115).

¹⁰¹ Report of the Working Group on Arbitrary Detention, UN Doc. A/HRC/10/21, Feb. 16, 2009. Ch. III: Thematic considerations, para. 46.

¹⁰² IACHR, Special Report on the Human Rights Situation at the Challapalca prison in Peru, para. 113; IACHR, Report No. 41/99, Merits, Minors in Detention, Honduras, March 10 1999, para. 135.

¹⁰³ I/A Court H.R., Case of Vélez Loor v. Panama. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2010 Series C No. 218, para. 209.

¹⁰⁴ IACHR, Report No. 28/09, Case 12.269, Merits, Dexter Lendore, Trinidad y Tobago, Mar. 20, 2009, para. 34; Report No. 76/02, Case 12.347, Merits, Dave Sewell, Jamaica, Dec. 27, 2002, para. 116; Report No. 56/02, Case 12.158, Merits, Benedict Jacob, Grenada, Oct. 21, 2002, para. 94; Report No. 41/04, Case 12.417, Merits, Whitley Myrie, Jamaica, Oct. 12, 2004, para. 46.

¹⁰⁵ See, e.g., I/A Ct. H.R., *Case of Vélez Loor V. Panama*. Judgment of Nov. 23, 2010, para. 227; *Boyce et al. V. Barbados*. Judgment of Nov. 20, 2007, para. 94.

¹⁰⁶ IACHR, *Report on Persons Deprived of Liberty* (2011), para. 434.

and natural light; unsanitary cells; lack of beds; lack of adequate medical care or drinking water; lack of adequate sanitation (having to urinate or defecate in receptacles or plastic bags); lack of minimum privacy in sleeping quarters; very little and poor quality food; few chances to exercise; lack of education or sports programs, or few chances to engage in such activities; periodic use of forms of collective punishment and other abuses; solitary confinement and incommunicado detention; and imprisonment in locations that are extremely far away from the family residence and in severe geographic conditions.¹⁰⁷

56. Moreover, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has established that ill-treatment or grossly inadequate detention conditions can even amount to torture if they are intentionally imposed, encouraged or tolerated by States for reasons based on discrimination of any kind,¹⁰⁸ including based on immigration status,¹⁰⁹ or for the purpose of deterring, intimidating, or punishing migrants or their families, coercing them into withdrawing their requests for asylum, subsidiary protection or other stay, agreeing to "voluntary" return, providing information or fingerprints, or with a view to extorting money or sexual acts from them¹¹⁰.

57. Lastly, arbitrary detention of migrants by itself can constitute torture and ill-treatment¹¹¹. The Special Rapporteur on torture and other cruel, inhuman and ill-treatment considered that the experience of being subjected to detention that is neither necessary nor proportionate to serve any legitimate purpose, particularly in conjunction with its prolonged and potentially indefinite duration, and with the absence of any effective legal remedy has been shown to add significant mental and emotional stress to the already extremely vulnerable situation of irregular migrants, with many cases reported of self-harm, post-traumatic stress disorder, anxiety and depression. Thus, even factors that may not necessarily amount to ill-treatment when applied as an isolated measure and for a very limited period of time - such as unjustified detention, delayed access to procedural rights, or moderate physical discomfort - can cross the relevant threshold if applied cumulatively and/or for a prolonged or open-ended period of time¹¹². The Commission observes that the threshold of torture and ill-treatment can be reached very quickly, if not immediately, for migrants in situation of vulnerability and those who have experienced traumatic events, such as children, women, older people, persons with disabilities, medical conditions, or torture trauma LGBTI persons, asylum seekers, and refugees¹¹³.

2. Arbitrary detention of the alleged victims at the Carmichael Road Detention Center

58. The Commission will consider and analyze the legal basis upon which the State detained the alleged victims, the use of individualized and case-by-case detention decisions, indicia of criminality associated with the alleged victims, and the application of the exceptionality criteria in relation to the detention of the alleged victims at the Carmichael Center.

59. First, the Commission recalls that restrictions of the right to liberty through detention must meet the minimum guarantees identified in the legal standards, namely that the detention be prescribed by law, have a legitimate purpose, and be suitable, necessary, and proportionate, in order to not violate obligations under the American Declaration. In relation to the prescription by law requirement, the Commission notes that the Bahamian Immigration Act considers any individual who arrives in its territory without a proper visa to be an

¹⁰⁷ IACHR, *Report on Persons Deprived of Liberty* (2011), para. 434 (citing, *inter alia*, I/A Ct. H.R., *Loayza Tamayo V. Peru*, para. 89; *Cantoral Benavides V. Peru*, para. 85; *Hilaire, et al. V. Trinidad and Tobago*, para. 76.b; *Caesar V. Trinidad and Tobago*, para. 99; *Tibi V. Ecuador*, para. 151; *Suárez Rosero V. Ecuador*, para. 91; "Juvenile Reeducation Institute" *V. Paraguay*, paras. 165-171; *Fermin Ramírez V. Guatemala*, paras. 54.55-57; *Raxcacó Reyes V. Guatemala*, para. 43.23; *García Asto and Ramírez Rojas V. Peru*, paras. 97.55-57; *López Álvarez V. Honduras*, paras. 54.48 y 108; *Miguel Castro-Castro Prison V. Peru*, paras. 296 y 297; *Montero Aranguren et al. V. Venezuela*, paras. 90-99 y 104; *Boyce et al. V. Barbados*, paras. 94-102).

¹⁰⁸ Art.1 UNCAT.

¹⁰⁹ ECtHR, *Hode and Abdi v. UK* (No.22341/09), 06.11.2012, §56.

¹¹⁰ Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 26 February- 23 March 2018, par. 20.

¹¹¹ Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 26 February- 23 March 2018, par. 26.

¹¹² Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 26 February- 23 March 2018, par. 20.

¹¹³ Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 26 February- 23 March 2018, par. 20.

“illegal immigrant” (sic).¹¹⁴ However, the Act neither enables the authorities to detain individuals without a proper visa, nor prescribes a maximum duration of custody.¹¹⁵ Accordingly, the Commission finds that the mass detention of the alleged victims was carried out by the State without a legal basis, causing them uncertainty regarding the acceptable reasons to be detained, the length of detention and the subsequent legal procedure for the determination of their status. Further, it finds that the State failed to provide information in order to put the alleged victims in contact with their consular office or diplomatic mission for assistance.

60. Second, and closely related, the Commission recalls that undocumented immigrants cannot be considered criminals, and that their detention must be exceptional and justified. The Commission notes as a threshold issue that these detentions took place without any type of legal limitation and for a period that was unknown to the alleged victims, making this detention a punitive measure, with the sole purpose and effect of punishing the alleged victims for not holding a visa.

61. Third, the Commission notes the limited information provided by the State in this case and the subsequent absence of indications that it carried out case-specific evaluations in relation to the need to detain each alleged victim. Rather, the material facts suggest that when it was determined that the alleged victims did not have the necessary documentation to enter the State, they were automatically transported to Carmichael Center and detained for indeterminate periods of time, while awaiting a reasonably expeditious repatriation to their country of origin, according to the international bilateral agreements governing these matters in The Bahamas. Accordingly, the Commission finds that the State failed to carry out the necessary case-specific evaluations to determine the necessity of detention in relation to the alleged victims.

62. Fourth, upon consideration of the information provided by the parties, the Commission finds no indicia that the alleged victims were treated premised on a presumption of liberty rather than a presumption of detention. In particular, taking into consideration the context established in this report, and information in reports prepared by international organizations and provided at public hearings that the detention of the alleged victims was solely owing to their irregular migratory status, the Commission finds no information suggesting that an analysis was made at any point throughout the detention regarding whether this measure was strictly necessary to protect the results of the proceedings aimed to determine the immigration status of the alleged victims. Accordingly, the Commission finds no basis consistent with international standards that justifies the detention of the alleged victims at the Carmichael Center.

63. Fifth, the Commission highlights the exceptional nature of detention of irregular migrants and finds that the State has not demonstrated the existence of exceptional circumstances justifying its implementation on a mass scale in relation to the alleged victims. Given the inclusion of children amongst the alleged victims, the Commission finds, in the absence of information to the contrary, that their detention was based exclusively on migratory reasons and thereby exceeded the limits set forth in American Declaration.

64. The Commission concludes that the detention of the alleged victims in this case was manifestly arbitrary, as it responded to an evident policy of automatic detention without ensuring an individualized determination in each case that considered objective elements to rebut the presumption against detention and reach a duly founded decision to detain the individual. Moreover, the detention of children disregards the principle of the best interest of the child.

3. Inhumane treatment of detainees at the Carmichael Road Detention Center

65. In this case, the petitioners alleged that the detention conditions at the Center fail to meet internationally recognized minimum standards, including with regard to the provision of food and medical care and separation of families. The Commission additionally took into account numerous reports by international bodies over the past two decades indicating that conditions in the Center are not compatible with international minimum standards. The State, for its part, rejected these allegations—though it provided no evidence in this regard—, but recognized the need for improvement of the Center and expressed its intention to invest funds to this end.

¹¹⁴ Annex X. Immigration Act, Chapter 179 of the Revised statute law of The Bahamas 1987 annexed to State reply September 19, 2000.

¹¹⁵ Annex X. Immigration Act, Chapter 179 of the Revised statute law of The Bahamas 1987 annexed to State reply September 19, 2000.

66. Taking into consideration the information of the context of the case, the reports prepared by international organizations, the hearings held before the IACHR, the fact that the State has not presented documentary or other evidence to support its affirmations and the fact that the petitioners have no other means to prove their allegations, the Commission finds consistency in their version regarding the detention conditions and concludes that all the alleged victims experienced these conditions during their time at the Carmichael Road Detention Center. In light of all this, the Commission will use the information provided by the alleged victims to evaluate compliance with minimum international standards related to accommodation, hygiene, clothing and bedding, food, recreation, exercise and medical treatment, discipline and punishment.

67. The Commission highlights the inadequate facilities at the Center given the consistent reports of overcrowding and lack of sufficient beds and bathroom facilities, which suggests that the hygienic conditions at the Center are incompatible with the American Declaration. In relation to food, the case file indicates the unavailability of potable water and spoiled food being served to detainees, such that some had to wash the food before consuming it. Taking into consideration the standards of detention set above under the American Declaration, the Commission finds that the conditions at the Carmichael Center were deficient and created a precarious living situation for the alleged victims during their time in detention.

68. Accordingly given the gravity of the detention conditions at the Carmichael Center, the Commission considers it necessary to determine the level of suffering experienced by the alleged victims. Following consideration of the relevant standards, the Commission recognizes that many of the thresholds were met in relation to the Center. Overcrowding meant that detainees had to share beds and sleep on the floor, such that they lacked sufficient living space, had minimum privacy in sleeping quarters and were detained in unsanitary cells. This also meant that there was inadequate sanitation, given the limited number of toilet and shower facilities shared amongst the male and female detainee population. In addition, the alleged victims highlighted the poor quality of food by asserting that it was spoiled and had to be washed before being consumed. They also highlighted the absence of potable water at the Center. In this sense and in accordance with the Inter-American standards and international law, the Commission considers that the treatment experienced by the alleged victims constituted a cruel, inhuman and degrading treatment.

4. Conclusion

69. The Commission finds that the mass detention of Cuban and Haitian nationals at the Carmichael Center by the State without a legal basis and in the absence case-specific evaluations in relation to each individual that considered the necessity of their detention, given the exceptional nature of this measure, constituted illegal and arbitrary detention in violation of Articles I and XXV of the American Declaration. It also finds that the detention conditions experienced by the alleged victims at the Carmichael Center constituted cruel, inhumane and degrading treatment and are incompatible with human dignity under the American Declaration, in violation of the Articles I and XXV of the American Declaration.

C. The right to seek and receive asylum¹¹⁶, in connection with the rights of due process¹¹⁷, and to equality under the law¹¹⁸, and the obligation of *non-refoulement*, of the American Declaration

1. The Inter-American standards regarding human mobility, and equality under the law

70. The preamble of the American Declaration state that “the international protection of the rights of [persons] should be the principal guide of an evolving American law”. In addition, based on the developments of international law the right to seek and receive asylum (Article XXVII)¹¹⁹ involves that the request for

¹¹⁶ Article XVII establishes: Article XXVII. Every person has the right, in case of pursuit not resulting from ordinary crimes, to seek and receive asylum in foreign territory, in accordance with the laws of each country and with international agreements.

¹¹⁷ Article XVI establishes: Article XXVI. Every accused person is presumed to be innocent until proved guilty. Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment.

¹¹⁸ Article II of the American Declaration establishes: All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.

establishes, [in relevant part]: CITAR EL ARTICULO

¹¹⁹ IACHR, Report No. 51/96, Case 10.675, Merits, Haitian Interdiction – Haitian Boat People (United States), March 13, 1997, para. 155.

international protection must be substantiated in accordance with the rules of due process in order to determine whether applicants met the criteria recognized by the international instruments to be granted with the international protection¹²⁰. The IACHR considers that to comply with these obligations the States must adopt adequate legislation not only formally recognizing the right to seek and receive asylum but also enabling the necessary administrative and judiciary procedures to fully ensure the effectiveness of the right, which includes in turn to derogate domestic legislation and/or international agreements that may endanger the realization of the mobility rights.

71. Accordingly, the organs of the Inter-American system, which are in accordance with the UNHCR guidelines and criteria, hold that the proceedings to determine refugee status must include the following key procedural guarantees:¹²¹

- a) the right to prior notification in detail of the procedure for determining their legal status and, in the case of anyone who is detained, to be informed of the reasons for their detention and to be promptly notified of the charge or charges against them;
- b) the right to receive the necessary guidance concerning the procedure to be followed, in words and in a way they can understand and, if appropriate, with the opportunity to contact UNHCR;
- c) the right of any person detained to be brought promptly before a judge or other officer authorized by law to exercise judicial power and to a trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. Their release may be subject to guarantees to assure his appearance for trial;
- d) the right to a hearing without delay, to adequate time and means for the preparation of their defense, and to meet freely and privately with their counsel;
- e) the right that the request is examined, objectively, within the framework of the relevant procedure, by a competent and clearly identified authority, and requires a personal interview;
- f) the right to be assisted without charge by a translator or interpreter;
- g) the right to be assisted by legal counsel;
- h) the respect to the protection of the applicant's personal information and the asylum application, and the principle of confidentiality;
- i) the right that the decision adopted is duly reasoned;
- j) the right to be notified of the decision adopted in the proceeding;
- k) the right to appeal the decision before a higher court, with suspensive effect and the right to remain in the country until the competent authority has adopted the required decision;
- l) the right to information and the prohibition of communication with authorities of his, her country, unless there is evidence of the person express consent;

72. In addition, the Commission has previously found that summary interdiction and repatriation of applicants without making an adequate determination of their status, and without granting them a hearing to ascertain whether they qualify as "refugees" constitutes a breach of Article XXVII of the American Declaration¹²². The obligation to make an adequate status determination is of particular importance in mixed migration contexts. Indeed, the Commission has asserted that in order to respond appropriately to migratory movements involving individuals fleeing their home countries, for example due to violence or in search of better living conditions, States must establish better measures to identify persons who may be in need of international protection or who, due to their vulnerable condition, may have special protection needs.¹²³

73. In relation to the principle of *non-refoulement*, the Commission and the Court have affirmed that this principle is the cornerstone of the right of asylum and international law relating to refugees, and is also a customary norm of international law which also shows a *jus cogens* character originated on the prohibition against torture.¹²⁴ This principle also includes the prohibition against indirect return, namely that a person

¹²⁰ Cfr. IACHR. The human rights of migrants, refugees, stateless people, human trafficking victims and internally displaced people: Norms and Standards of the Inter-American System of Human Rights. OEA/Ser.L/V/II. Doc. 46/15, December 31, 2015, para. 179 - 183.

¹²¹ IACHR. The human rights of migrants, refugees, stateless people, human trafficking victims and internally displaced people: Norms and Standards of the Inter-American System of Human Rights. OEA/Ser.L/V/II. Doc. 46/15, December 31, 2015, para. 300-334.

¹²² IACHR. Report No. 51/96. *Decision of the Commission as to the Merits of Case 10.675 v. United States* ["Interdiction of Haitians on the High Seas"]. Mar. 13, 1997, para. 163.

¹²³ IACHR. Human Rights Situation of Refugee and Migrant Families and Unaccompanied Children in the United States of America. OEA/Ser.L/V/II.155 Doc. 16, para 220.

¹²⁴ IACHR. The human rights of migrants, refugees, stateless people, human trafficking victims and internally displaced people: Norms and Standards of the Inter-American System of Human Rights. OEA/Ser.L/V/II. Doc. 46/15, December 31, 2015, paragraph 438; I/A Court H.R. [continúa...]

applying for asylum in a State from which they can be returned to the country in which they felt the fear that motivated their exit cannot be returned or expelled¹²⁵. In addition, the principle of *non-refoulement* provides protection in the face of expulsion or deportation decisions made in the absence of proper safeguards, which place individuals in a situation where their fate or future are uncertain, and put their life, security, liberty or integrity at risk¹²⁶.

74. In this regard, the Commission has previously held that this guarantee is reflected in article XXVI of the American Declaration (non-imposition of cruel, infamous, or unusual punishment),¹²⁷ as well as article I where the individual's right to life or personal integrity is violated upon return, and article XVIII where the right to due process is not respected in the process of return.¹²⁸ As the Inter-American Court has recognized, the determination of a *non-refoulement* claim, like the determination of refugee status, "entails an assessment and decision on the possible risk of affecting [a person's] most basic rights, such as life, and personal integrity and liberty. In this way, even if States may determine the proceedings and authorities to implement that right, in application of the principles of non-discrimination and due process they must ensure predictable proceedings, as well as coherence and objectivity in decision-making at each stage of the proceedings to avoid arbitrary decisions."¹²⁹ In particular, compliance with the *non-refoulement* obligation "necessarily means that such persons cannot be [...] expelled without an adequate and individualized analysis" of their case, which includes the right to review of any decision.¹³⁰

75. The Commission recalls that a State's compliance with the procedural rights comprised in the right to seek and receive asylum is essential to demonstrate that an analysis of whether a decision to effect the return of a person to another country or territory is compatible with the principle of *non-refoulement*. That is, these procedural guarantees apply and may be sufficient to find a violation of the principle of *non-refoulement*, independent of any later finding that an act of torture, persecution, or violation of the right to life actually occurred.¹³¹ Moreover, the Commission reiterates that where a likelihood of persecution, torture, or other CIDT exists, the sufficiency, clarity, and reliability of diplomatic or other assurances that an individual will not be subject to torture or CIDT must be fully assessed, taking into account the past behavior of the State in question.¹³²

76. Lastly, both the Commission and the Court have observed that the right to equal protection and non-discrimination is the "central, basic axis of the Inter-American human rights system".¹³³ The right to equality before the law and the obligation not to discriminate against any person constitute the basic foundation of the Inter-American system of human rights. The American Declaration states in its preamble "all men are born free and equal in dignity and rights are endowed by nature with reason and conscience and should behave towards one another" and also provides in Article II that "all persons are equal before the law and have the rights and

Advisory Opinion OC-25/18 of May 20, 2018. The institution of asylum, and its recognition as a human right under the Inter-American system of protection (interpretation and scope of Articles 5, 22(7) and 22(8) in relation to Article 1(1) of the American Convention on Human Rights), paragraph 179. See also: UNHCR Executive Committee. 42nd Period of Sessions. No. 65 (XVLL). General conclusions, paragraph c. The Committee indicated that the principle of non-refoulement has been characterized as a "cardinal principal" of the protection of refugees, which "encourages the States to redouble their efforts to protect the rights of refugees"; Declaration of States Parties to the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees in its paragraph 4 indicates that: "Acknowledging the continuing relevance and resilience of this international regime of rights and principles, including at its core the principle of non-refoulement, whose applicability is embedded in customary international law".

¹²⁵ I/A Court H.R. *Case of Pacheco Family v. Bolivia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 25, 2013. Series C. No. 272, paragraph 153; I/A Court H.R. Advisory Opinion OC-25/18 of May 30, 2018. The institution of asylum, and its recognition as a human right under the Inter-American system of protection (interpretation and scope of Articles 5, 22(7) and 22(8) in relation to Article 1(1) of the American Convention on Human Rights), paragraph 190.

¹²⁶ IACHR. Report on the Situation of Human Rights of Asylum Seekers Within the Canadian Refugee Determination System, OEA/Ser.L/V/II.106, of February 28, 2000, paragraph 154.

¹²⁷ IACHR. Report N° 63/08. Case 12.534. Admissibility and Merits (Publication). Andrea Mortlock. United States. July 25, 2008, para. 83.

¹²⁸ IACHR. Report No. 51/96. *Decision of the Commission as to the Merits of Case 10.675 v. United States* ["Interdiction of Haitians on the High Seas"]. Mar. 13, 1997, paras. 167-171, 180.

¹²⁹ I/A Ct. H.R. *Pacheco Tineo Family v. Bolivia*. Judgment of Nov. 25, 2013, para. 157.

¹³⁰ I/A Ct. H.R. *Pacheco Tineo Family v. Bolivia*. Judgment of Nov. 25, 2013, para. 153, 159 (citing IACHR. *Report on the situation of the human rights of applicants for asylum under the Canadian system for the determination of refugee status* (2000), para. 111).

¹³¹ See IACHR. Report No. 136/11. Case 12.474. Merits. Members of the Pacheco Tineo Family. Bolivia. Oct. 31, 2011, para. 152.

¹³² See IACHR. Report No. 78/13. Case 12.794. Merits. Wong Ho Wing. Peru. July 18, 2013, para. 251.

¹³³ See, inter alia, IACHR, Report No. 64/12, Case 12.271, Benito Tide Méndez et al. v. Dominican Republic, Report on the Merits, March 29, 2012, para. 226 (Citing, IACHR, Application before the Inter-American Court of Human Rights, Case of Karen Atala and Daughters against the State of Chile, September 17, 2010, para. 74).

duties in this Declaration, without distinction of race, sex, language, creed or any other condition." Furthermore, Article 3 of the OAS Charter includes among the principles reaffirmed by the American States the proclamation of "the fundamental rights of the human person without distinction of race, nationality, creed or sex".¹³⁴

77. Accordingly, Article II of the American Declaration does require that any permissible distinctions be based on an objective and reasonable justification, that they further a legitimate objective, "regard being had to the principles which normally prevail in democratic societies, and that the means are reasonable and proportionate to the end sought."¹³⁵ Further, distinctions based on grounds explicitly enumerated under pertinent articles of international human rights instruments are subject to a particularly strict level of scrutiny whereby States must provide an especially weighty interest and compelling justification for the distinction.¹³⁶ In this sense, the mere allegation and/or existence of a legitimate purpose are not sufficient to justify a distinction based on a suspect category, hence the right of access to and equality before the courts or special procedures for expedite repatriations, cannot be automatically limited based on nationality or migratory status, which are subject of a strict scrutiny to guarantee that the distinction is not based on the prejudices and/or stereotypes that generally surround suspect categories of distinction.

2. Analysis of the case

78. In the present case, the State described its internal policy in relation to the determination of the status of undocumented immigrants. In brief, upon detention, all new arrivals at Carmichael Center are subject to a profile for the purpose of providing personal data. Afterward, individuals are provided with the forms described in the facts of the case in which they provide details as to why they left their home country, and other substantive information. Finally, at the suggestion of the Minister of Foreign Affairs the Cabinet of the Commonwealth of The Bahamas makes the final determination, in a case by case basis, of whether asylum will be granted or not. Notwithstanding, the State does not yet have a law regarding the determination of refugee status. In this regard, the Commission will address the process of granting asylum in The Bahamas in respect to the Inter-American standards on the right to seek and receive asylum.

79. First, the Commission notes that the current procedure for the determination of refugee status is based on customary practice, as no enacted legislation regulating the matter is currently in place. In this sense, even though the Inter-American standards do not establish an exclusive or unique way to regulate the determination of the refugee status, the Commission considers that the State has not demonstrated that the system described comports with international standards. In particular, the Commission has no evidence indicating the deliberative process by which the State decides to grant or deny international protection, including the procedural protections in place to ensure adequate information about the right to seek asylum, interpretation and legal assistance, the factors it weighs in determining whether or not an individual meets the refugee definition, burdens of proof and evidentiary considerations, and guarantees that decisions are duly motivated, in line with the guarantees of due process enshrined by the American Declaration. The procedure described only explains the chain of decision-making in order to apply for asylum but does not demonstrate the realization of the guarantees as to which the applicants are entitled.

80. Second, the Commission finds that the alleged victims were treated collectively, disregarding the specific situations leading them to flee their home countries. In this way, the lack of information regarding the individualization of the alleged victims, which was the burden of the State to provide in the specific circumstances of the case, leads the IACHR to conclude that the State was not prepared to face the influx of groups of migrants, and consequently, no adequate effort was carried out in order to screen detainees for possible international protection needs. This initial flaw prompted a collective decision to repatriate all

¹³⁴ IACHR, Report No. 56/10, Case 12.469, Merits, Margarita Cecilia Barbería Miranda (Chile), March 18th, 2010, para. 28.

¹³⁵ IACHR, Report No. 50/16, Case 12.834, Merits (Publication), Undocumented Workers, United States, Nov. 30, 2016, para. 74; IACHR, Report No. 51/01, Case 9903, *Rafael Ferrer-Mazorra et al.*, United States, Apr. 4, 2001, para. 238 (citing as support of its position Eur. Ct. H.R., *Belgian Linguistics Case*, July 23, 1968, Series A N° 6, 1 E.H.R.R. 252, p. 35, para. 10).

¹³⁶ IACHR, *Report on Terrorism and Human Rights* (2002), para. 338 (citing, *inter alia*, Repetto, Inés, Supreme Court of Justice (Argentina), November 8, 1988, Judges Petracchi and Bacqué, para. 6; *Loving v. Virginia*, 388 US 1, 87 (1967) Eur. Court H.R., *Abdulaziz v. United Kingdom*, Judgment of 28 May 1985, Ser. A N° 94, para. 79).

detainees, denying them access to a fair determination process, and in doing so, preventing the Commission from understanding the extent of the implication of their repatriations.

81. Third, the IACHR observes that the State presented no information regarding how the decision to repatriate the alleged victims could be subject to further judicial review in order to challenge any particular violation of the fair trial guarantees or regarding the substantive basis of the decision itself.

82. Fourth, the Commission finds a lack of evidence regarding a duly founded decision to repatriate the alleged victims of the case. Moreover, the State that a refugee status determination process exists; however, no part of the case file indicates in which cases individuals' asylum applications were denied and therefore the applicant was lawfully repatriated. Given the information provided by the parties, the Commission understands that the repatriation of the alleged victims is the result of an automatic exercise based on international bilateral agreements engaging The Bahamas, with Cuba and Haiti respectively.

83. Fifth, given the lack of information as to whom amongst the alleged victims needed international protection, the Commission cannot analyze in which cases the alleged victims were *refouled* against the rules of international law. However, the IACHR understands that the observance of due process guarantees in an adequate process for the determination of international protection needs necessarily implies an appropriate guarantee against *refoulement*. In this sense, given the characteristics of the repatriation already addressed, and the lack of records of such decisions, the Commission finds that the State failed to conduct a thorough case by case examination in order to rule out possible grounds of persecution as required by the obligation of *non-refoulement*.

84. Sixth, the Commission finds a lack of judiciary standing of the alleged victims to access remedies in order to challenge the decision of repatriation because of their migratory status. Also, observes that the alleged victims were subject to expedite repatriations introduced by the bilateral international agreements integrating the case file only applicable to Cuban and Haitian nationals. The State affirmed that its migratory policies in place respond to the need of protection of national interests, and its real possibility to provide with the material means every individual who wishes to stay in The Bahamas. Taking into consideration the State's position, the Commission considers that it has not met its burden of demonstrating its compelling interest in making these distinctions, the lack of less restrictive alternatives, and strict proportionality of the measure.

85. In light of the foregoing, the Commission finds that the absence of identification of applicants for international protection; the lack of guarantees of due process in the repatriation determinations, namely a duly motivated decision, the provision of interpreters, an examination of the guarantee of *non-refoulement*, among others; the lack of effective judicial review of the decision of repatriations and the restriction of access based on grounds of their immigration status and/or nationality constituted a violation to the right to seek and receive asylum, in connection with the rights of due process, and to equality under the law, and the obligation of *non-refoulement*, of the American Declaration against the alleged victims.

D. Right to protection of honor, personal reputation, and private and family life¹³⁷, to a family and to protection thereof¹³⁸ and to protection for mothers and children¹³⁹ of the American Declaration in connection with the obligation of *non-refoulement* regarding the Escuela Family

86. The Commission has asserted that while the state undoubtedly has the right and duty to maintain public order through the control of entry, residence and expulsion of foreigners, that right must be balanced against the harm that may result to the rights of the individuals concerned in the particular case. In this regard, the Commission has considered situations in which the right to family life is not sufficiently taken into account in removal proceedings. Given the nature of Articles V, VI and VII of the American Declaration, interpreted in relation to the *corpus iuris* of the rights of the child, where decision-making involves the potential separation

¹³⁷ Article V of the American Declaration establishes: Every person has the right to the protection of the law against abusive attacks upon his honor, his reputation, and his private and family life.

¹³⁸ Article VI of the American Declaration establishes: Every person has the right to establish a family, the basic element of society, and to receive protection therefore.

¹³⁹ Article VII of the American Declaration establishes: Article VII. All women, during pregnancy and the nursing period, and all children have the right to special protection, care and aid.

of a family, the resulting interference with family life may only be justified where necessary to meet a pressing need to protect public order, and where the means are proportional to that end. The application of these criteria by various human rights supervisory bodies indicate that this balancing must be made on a case by case basis, and that the reasons justifying interference with family life must be very serious indeed¹⁴⁰.

87. In addition, the IACHR notes that as a component of the special protection afforded children under Article VII of the American Declaration, in the context of legal proceedings that may impact a child's right to family life, "special protection" requires that the proceedings duly consider the best interests of the child¹⁴¹.

88. In the instant case, the Commission observes that the Escuela Family found itself in a very uncertain situation, as Mrs. Escuela's partner had been granted refugee status in a third country and was awaiting the proper documentation to bring along his family while his family members were detained in The Bahamas. Despite a request to the State to refrain from deporting the Escuela family while Mrs. Escuela's husband's family reunification request was processed, Bahamas proceeded to deport the family to Cuba, further disregarding Mrs. Escuela's claim that the family would be persecuted there. The Commission has already established the absence of an adequate refugee status determination procedure with due process guarantees in this case; here, it finds that the Escuela Family was prevented from presenting before a competent authority the elements indicating the actual existence of a substantial risk of persecution that a reasonable decisionmaker should have evaluated and could have formed the basis for a decision, at least to not *refouled* them.

89. In addition, the Commission highlights that the decision to repatriate the family, despite the evident risks for their integrity, must be considered as well in light of the special protection of the children. In this way, the Commission finds an absence of a formal proceeding to present these claims before Bahamian authorities and receive a duly founded decision as to whether they should have been deported to Cuba, taking into account both the grounds alleged by Mrs. Escuela regarding persecution in her home country as well as their family's particular situation as they awaited family reunification in a third country.

90. Accordingly, the IACHR finds that the State violated the Escuela Family's rights under Articles V, VI, and VII and the obligation of *non-refoulement*, along with article I of the American Declaration by failing to duly consider their right to family and the best interest of the children on an individualized basis in their removal proceedings against the Escuela Family, and to protect them against the alleged persecution which was actually confirmed shortly after their repatriation by their testimonies.

VI. ACTIONS SUBSEQUENT TO REPORT No. 9/19

91. On February 12, 2019, the Commission approved Report No. 9/19 on the merits of the instant case, which encompasses paragraphs 1 to 90 *supra*, and issued the following recommendations to the State:

1. Individualize the unidentified repatriated Cuban and Haitian nationals referred to in this report, consolidating a final list of victims. Arrange and deploy all the diplomatic efforts required to establish contact with all the victims in order to make adequate reparations, both material and moral, for the human rights violations recognized in this report, including both economic compensation and measures of satisfaction.
2. 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.

¹⁴⁰ IACHR. *Report on the Situation of Human Rights of Asylum Seekers Within the Canadian Refugee Determination System*. OEA/Ser.L/V/II.106, Doc. 40 rev. February 28, 2000, para 166.

¹⁴¹ IACHR. Report No. 81/10. Case 12.562. Publication Wayne Smith et al. United States. July 12, 2010, para 56.

3. Implement mechanisms of non-repetition, including:

a. Adopt adequate legislation that will ensure non-repetition of the facts described in the present report, including the regulation of the determination of refugee status and/or other recognized complementary measures of international protection suitable for mixed migration contexts. This law must ensure the effectiveness of the obligation of *non-refoulement* and the principle of the best interest of the child, as well as ensuring due process guarantees in immigration proceedings. The legislation adopted shall enshrine the following procedural guarantees, as stated in paragraph 71 of the present report: a) the right to prior notification in detail of the procedure for determining their legal status and, in the case of anyone who is detained, to be informed of the reasons for their detention and to be promptly notified of the charge or charges against them; b) the right to receive the necessary guidance concerning the procedure to be followed, in words and in a way they can understand and, if appropriate, with the opportunity to contact UNHCR; c) the right of any person detained to be brought promptly before a judge or other officer authorized by law to exercise judicial power and to a trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. Their release may be subject to guarantees to assure his appearance for trial; d) the right to a hearing without delay, to adequate time and means for the preparation of their defense, and to meet freely and privately with their counsel; e) the right that the request is examined, objectively, within the framework of the relevant procedure, by a competent and clearly identified authority, and requires a personal interview; f) the right to be assisted without charge by a translator or interpreter; g) the right to be assisted by legal counsel; h) the respect to the protection of the applicant's personal information and the asylum application, and the principle of confidentiality; i) the right that the decision adopted is duly reasoned; j) the right to be notified of the decision adopted in the proceeding; k) the right to appeal the decision before a higher court, with suspensive effect and the right to remain in the country until the competent authority has adopted the required decision; l) the right to information and the prohibition of communication with authorities of his, her country, unless there is evidence of the person express consent;

b. Ensure access to information about applying for asylum in Bahamas and about the right to information regarding consular assistance, as well as access to interpreters and legal assistance.

c. Ensure undocumented immigrants and/or asylum seekers adequate and effective access to tribunals to challenge administrative decisions regarding the determination of their status.

d. Refrain to implement and/or derogate any legal disposition, from a domestic or international source of law that implies the expedited removal of migrants. Attend closely the bilateral Agreements entered with Cuba and Haiti, or practices derived from previous agreements, to the extent that they limit or prevent Cuban and Haitian nationals from presenting claims for international protection or receiving due process in the consideration of those claims.

e. Provide training for all migration officers in standards regarding asylum and international protection, as well as in the identification of possible international protection needs.

f. 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.

92. On March 13, 2019, the Commission transmitted the report to the State with a time period of two months to inform the Inter-American Commission on the measures taken to comply with its recommendations. On March 20, 2019 the IACHR notified the petitioners about the adoption of the report. To date, the IACHR has not received any response from The Commonwealth of The Bahamas regarding Report No. 9/19.

93. During the discussion of the present Report, the Commission noted that paragraphs 31 and 32 of the Merits Report 9/19 referenced the correspondent documents submitted by the State in which the names of the identified victims were listed. However, given the lack of response of the State, the Commission found necessary to annex to this Report a compiled list of the identified victims.

VII. ACTIONS SUBSEQUENT TO REPORT No. 124/19

94. On August 6, 2019, the Commission approved Final Merits Report No. 124/19, which encompasses paragraphs 1 to 93 *supra*, and issued its final conclusions and recommendations to the State. On May 7, 2020, the Commission transmitted the report to the State and the petitioners with a time period of two months to inform the Inter-American Commission on the measures taken to comply with its recommendations. The State requested three extensions which were granted by the Commission, nonetheless the IACHR has not received any substantive response from the State regarding Report No. 124/19.

95. The petitioner party submitted its observations on compliance on July 20, 2020. **Regarding the first recommendation** it indicated to have no information on any efforts taken by the State to comply with it.

96. **Regarding the second recommendation** the petitioner party indicated that migrants and refugees continue to face arbitrary and indefinite detention at the Carmichael Road Detention Center. It informed that according to testimonies, detainees have been held for extended periods of time, some for a couple of weeks, months and up to several years.¹⁴² Among other situations it informed about the case of Matthew Sewell, a Jamaican national, who was shuffled between a regular prison and the Carmichael Road Detention Centre for over nine years without facing a hearing for the crimes he was accused of.¹⁴³ Similarly, it informed that a stateless person accused of a crime was detained at a prison and later transferred to the Carmichael Road Detention Center.¹⁴⁴ Regarding the conditions at the Carmichael Detention Center, it informed that former detainees have reported overcrowding, unsanitary bathroom conditions, and contracting contagious diseases. Also it reported receiving information on allegations of blood samples and fingerprints being taken from detained migrants without their consent.¹⁴⁵ Therefore, it considers the State has failed to comply with the Commission's recommendation regarding the creation of a mechanisms to file complaints by detainees and improving the conditions at the Carmichael Road Detention and continues to fail to comply with minimum international standards regarding migratory detention.

97. **Regarding the third recommendation**, with respect to adopting adequate legislation, the petitioner party informed that The Bahamas has not enacted any asylum procedures, refugee legislation, or any other complementary measures of international protection suitable for mixed migration contexts; that the path to accessing refugee status in the country is unregulated; and that the Government responds on an ad-hoc basis. Petitioners stated that they are aware of the proposed bill, "The Nationality, Immigration and Asylum Act," but have been unable to verify in what procedural stage the bill is currently in. While they consider a positive step that The Bahamas is making progress in adopting legislation to regulate asylum and migration procedures, they consider essential that such law addresses this particular recommendation made by the IACHR and that such law complies with applicable Inter-American standards. The petitioner party is of the opinion that the State has failed to comply with said recommendation.

98. With respect to ensuring access to information about applying for asylum in Bahamas and about the right to information regarding consular assistance, as well as access to interpreters and legal assistance the petitioner party informed that, Civil society organizations have confirmed that access to this type of information for migrants and refugees is lacking in the country.¹⁴⁶ It expressed its concern about Government initiatives which actively discourage immigration. The petitioners informed they found on a Government webpage a hotline for any "concerned citizens" to telephone any immigration concerns directly to the authorities.¹⁴⁷ Also they informed of a testimony from 2019 reported after his release that detainees were

¹⁴² Telephone Interview by Caribbean Institute for Human Rights and Robert F. Kennedy Human Rights with Joey Cinque (Sept. 5, 2019). Petitioners' brief July 20, 2020.

¹⁴³ Tanya Smith-Cartwright, Jamaican Man Wins New \$60k Payout Over Detention, THE TRIBUNE, (June 8, 2020), <http://www.tribune242.com/news/2020/jun/08/jamaican-man-wins-new-60k-payout-over-detention/>. Petitioners' brief July 20, 2020.

¹⁴⁴ Sloan Smith, Stateless Man Sues Over Long Term Detention, EYEWITNESS NEWS (Feb. 27, 2020), <https://ewnews.com/stateless-man-sues-over-long-term-detention>. Petitioners' brief July 20, 2020.

¹⁴⁵ *IOM Calls for Govt. to Investigate Migrant Abuse Claims*, EYEWITNESS NEWS (Nov. 18, 2019), <https://ewnews.com/iom-calls-for-govt-to-investigate-migrant-abuse-claims>. Petitioners' brief July 20, 2020.

¹⁴⁶ Telephone Interview with Rights Bahamas (June 16, 2020). Petitioners' brief July 20, 2020.

¹⁴⁷ Contact Form for Immigration Complaints, THE GOV'T OF THE BAH., DEPT OF IMMIGR., <https://www.immigration.gov.bs/contact-us/>; Information Brochure for Bahamas Immigration Department Public Hotline/Tipsters, THE GOV'T OF THE BAH., DEPT OF IMMIGR., [continúa...]

being denied adequate access to information and communication with their families, preventing them from receiving funds for their release.¹⁴⁸

99. **Regarding the fourth recommendation**, the petitioner party informed that according to testimonies gather by the International Organization for Migration (OIM), migrants who have been deported from The Bahamas have reported they were mostly apprehended in the streets, in their places of employment, or while in their homes during raids usually carried out in the middle of the night by immigration officials.¹⁴⁹ The returning migrants indicated that they remained in detention for 10 to 30 days. They stated that Public information shows that the policy of mass deportations intensified in the aftermath of hurricane Dorian in 2019.¹⁵⁰ They added that reflecting statistics provided by the government, media sources state that a “total of 2,662 people were repatriated to their respective countries during the last fiscal year. And “[b]etween January an1, 2020 and May 2020, 489 people were repatriated”.¹⁵¹ Therefore, they consider that the State has failed to comply with this recommendation.

100. **Regarding the fifth recommendation**, the petitioner party informed that there is limited information to suggest that The Bahamas has adequately fulfilled its obligation to provide migration officers with specific and comprehensive training. They indicated that according to The Bahamas’ government webpage on immigration, there has been one session of officer training,¹⁵² but no further information about the kind of training the officers would undergo was offered. One released statement stated that it would “better equip officers in the execution of their daily duties as borders officers,” but offered no additional information explaining the specifics of the training.¹⁵³

101. **Regarding the sixth recommendation**, the petitioner party informed that the automatic detention of migrants has not ended and that it does not have any information about the policy of automatic detention being reduced to any extend. The petitioners informed about testimonies from former detainees that continue to show the practice of automatic detention, were migrants and refugees are not brought promptly before a judge and who are detained without a warrant for their arrest.¹⁵⁴ They stated that the policy of automatic detention is particularly worrying in the context of the COVID-19 pandemic, considering the guidelines issued by the IACHR,¹⁵⁵ and U.N. Agencies.¹⁵⁶

<http://www.bahamas.gov.bs/wps/wcm/connect/3aeba1b8-49f6-49a1-9ba2-1d9e63dff340/Hotline+Brochure.pdf?MOD=AJPERES>. Petitioners’ brief July 20, 2020.

¹⁴⁸ Brief from Robert F. Kennedy Human Rights and The Caribbean Institute for Human Rights to The Inter-American Commission on Human Rights, Updates on PM 535-14, Persons in immigration detention at Carmichael Road Detention Center, The Bahamas, (unpublished manuscript) (Sept. 24, 2019). Petitioners’ brief July 20, 2020.

¹⁴⁹ Press Release, IOM U.N. Migration, IOM Tracks Repatriations of Haitian Migrants from The Bahamas, <https://www.iom.int/news/iom-tracks-repatriations-haitian-migrants-bahamas>. Petitioners’ brief July 20, 2020.

¹⁵⁰ Bert Wilkinson, *Bahamas to Continue Deporting Illegals*, AMSTERDAM NEWS (Oct. 24, 2019), <http://amsterdamnews.com/news/2019/oct/24/bahamas-continue-deporting-illegals/>; Bertin M. Loouis, Jr., *Haitian Migrants Face Deportation and Stigma in Hurricane-Ravaged Bahamas*, THE CONVERSATION (Dec. 3, 2019), <https://theconversation.com/haitian-migrants-face-deportation-and-stigma-in-hurricane-ravaged-bahamas-127008>. Petitioners’ brief July 20, 2020.

¹⁵¹ Royston Jones Jr., *Despite Cuts, Promotions and New Hires Planned for Immigration Dept.*, EYEWITNESS NEWS (June 16, 2020), <https://ewnews.com/despite-cuts-promotions-and-new-hires-planned-for-immigration-dept>. Petitioners’ brief July 20, 2020.

¹⁵² *Continued Training & Education for Immigration Officers at the Border Program*, THE GOV’T OF THE BAH. DEPT OF IMMIGR., <https://www.immigration.gov.bs/continued-training-education-for-immigration-officers-at-the-border-program/> (last visited June 8, 2020). Petitioners’ brief July 20, 2020.

¹⁵³ *Continued Training & Education for Immigration Officers at the Border Program*, THE GOV’T OF THE BAH. DEPT OF IMMIGR., <https://www.immigration.gov.bs/continued-training-education-for-immigration-officers-at-the-border-program/> (last visited June 8, 2020). Petitioners’ brief July 20, 2020.

¹⁵⁴ Sloan Smith, *Stateless Man Sues Over Long Term Detention*, EYEWITNESS NEWS (FEB. 27, 2020), <https://ewnews.com/stateless-man-sues-over-long-term-detention>. Petitioners’ brief July 20, 2020.

¹⁵⁵ IACHR, Press release, The IACHR urges States to protect the human rights of migrants, refugees and displaced persons in the face of the COVID-19 pandemic (Apr. 17, 2020) and Pandemic and Human Rights in the Americas, Res. No. 1/2020, ¶ 58 (Apr. 10, 2020), <https://www.oas.org/en/iachr/decisions/pdf/Resolution-1-20-en.pdf>. Petitioners’ brief July 20, 2020.

¹⁵⁶ U.N. Human Rights, Office of the High Comm’r, Urgent action needed to prevent COVID-19 “rampaging though places of detention” – Bachelet, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745&LangID=E>; U.N. Human Rights, Office of the High Comm’r, Newsletter, COVID-19 and the Human Rights of Migrants: Guidance (Apr. 7, 2020), https://www.ohchr.org/Documents/Issues/Migration/OHCHRGuidance_COVID19_Migrants.pdf; U.N. High Comm’r for Refugees (UNHCR), *Key Legal Considerations on access to territory for persons in need of international protection in the context of the COVID-19 response*, ¶ 7, (Mar. 16, 2020), <https://www.refworld.org/docid/5e7132834.html>; Petitioners’ brief July 20, 2020.

102. The petitioners also informed that, as a result of the fear and desperation of detainees at the Carmichael Road Detention Center during the COVID-19 pandemic, hunger strikes¹⁵⁷ and protests¹⁵⁸ took place inside the Detention Center. This came after detainees demanded to be set free and returned to their country. On June 3, 2020, some detainees were able to escape the Detention Center.¹⁵⁹

103. They informed that according to the Government “there were 58 migrants at the detention center, though their nationalities were not provided.” And “as of June 1, there were 133 migrants detained at the Carmichael Road Detention Centre.”¹⁶⁰ Petitioners have been unable to verify the real number of detainees at the Detention Center.¹⁶¹ They added that since the start of the pandemic, it has been increasingly difficult to gain access to the detainees, leaving them unprotected at the Detention Center. Similarly, the inability to monitor detention conditions at the Carmichael Road Detention Center continued during the pandemic. Representatives do not have information on any measures taken within the detention facility to prevent the spread of COVID-19 or if State authorities have adopted any protocols to care for people carrying the virus or to reduce its spread. Consequently, they consider that the State of The Bahamas has failed to comply in its obligation to refrain from automatically detaining migrants and refugees.

104. After evaluating the available information and taking into account that to date the State has not presented its response, the Commission calls for the necessary steps to be taken by the State to achieve full compliance with the recommendations.

VIII. FINAL CONCLUSIONS AND RECOMMENDATIONS

105. On the basis of determinations of fact and law, the Inter-American Commission concluded that the State is responsible for the violation of 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 of asylum) of the American Declaration on the Rights and Duties of Man. In consequence,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, REITERATES THAT THE COMMONWEALTH OF THE BAHAMAS,

1. Individualize the unidentified repatriated Cuban and Haitian nationals referred to in this report, consolidating a final list of victims. Arrange and deploy all the diplomatic efforts required to establish contact with all the victims in order to make adequate reparations, both material and moral, for the human rights violations recognized in this report, including both economic compensation and measures of satisfaction.
2. 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.
3. Implement mechanisms of non-repetition, including:
 - a. Adopt adequate legislation that will ensure non-repetition of the facts described in the present report, including the regulation of the determination of refugee status and/or other recognized complementary

¹⁵⁷ Rashad Rolle, *Activists Call For Better Treatment Of Migrants At Detention Centre*, THE TRIBUNE (June 4, 2020), <https://www.tribune242.com/news/2020/jun/04/activists-call-better-treatment-migrants-detention/>; Petitioners’ brief July 20, 2020.

¹⁵⁸ *Bahamas: Haitian Detainees Protest, Want to go Home*, THE ST. KITTS & NEVIS OBSERVER (June 4, 2020), <https://www.thestkittsnevisobserver.com/bahamas-haitian-detainees-protest-want-to-go-home/>; Petitioners’ brief July 20, 2020.

¹⁵⁹ *Detainees escape dorms, destroy fences at Carmichael Road Detention Center*, EYEWITNESS NEWS (June 3, 2020), <https://ewnews.com/detainees-escape-dorms-destroy-fences-at-carmichael-road-detention-center>; Petitioners’ brief July 20, 2020.

¹⁶⁰ Royston James Jr., *Despite Cuts, Promotions and New Hires Planned for Immigration Dept.*, EYEWITNESS NEWS (June 16, 2020), <https://ewnews.com/despite-cuts-promotions-and-new-hires-planned-for-immigration-dept>; Petitioners’ brief July 20, 2020.

¹⁶¹ Royston James Jr., *Despite Cuts, Promotions and New Hires Planned for Immigration Dept.*, EYEWITNESS NEWS (June 16, 2020), <https://ewnews.com/despite-cuts-promotions-and-new-hires-planned-for-immigration-dept>; Petitioners’ brief July 20, 2020.

measures of international protection suitable for mixed migration contexts. This law must ensure the effectiveness of the obligation of *non-refoulement* and the principle of the best interest of the child, as well as ensuring due process guarantees in immigration proceedings. The legislation adopted shall enshrine the following procedural guarantees, as stated in paragraph 71 of the present report: a) the right to prior notification in detail of the procedure for determining their legal status and, in the case of anyone who is detained, to be informed of the reasons for their detention and to be promptly notified of the charge or charges against them; b) the right to receive the necessary guidance concerning the procedure to be followed, in words and in a way they can understand and, if appropriate, with the opportunity to contact UNHCR; c) the right of any person detained to be brought promptly before a judge or other officer authorized by law to exercise judicial power and to a trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. Their release may be subject to guarantees to assure his appearance for trial; d) the right to a hearing without delay, to adequate time and means for the preparation of their defense, and to meet freely and privately with their counsel; e) the right that the request is examined, objectively, within the framework of the relevant procedure, by a competent and clearly identified authority, and requires a personal interview; f) the right to be assisted without charge by a translator or interpreter; g) the right to be assisted by legal counsel; h) the respect to the protection of the applicant's personal information and the asylum application, and the principle of confidentiality; i) the right that the decision adopted is duly reasoned; j) the right to be notified of the decision adopted in the proceeding; k) the right to appeal the decision before a higher court, with suspensive effect and the right to remain in the country until the competent authority has adopted the required decision; l) the right to information and the prohibition of communication with authorities of his, her country, unless there is evidence of the person express consent;

b. Ensure access to information about applying for asylum in Bahamas and about the right to information regarding consular assistance, as well as access to interpreters and legal assistance.

c. Ensure undocumented immigrants and/or asylum seekers adequate and effective access to tribunals to challenge administrative decisions regarding the determination of their status.

d. Refrain to implement and/or derogate any legal disposition, from a domestic or international source of law that implies the expedited removal of migrants. Attend closely the bilateral Agreements entered with Cuba and Haiti, or practices derived from previous agreements, to the extent that they limit or prevent Cuban and Haitian nationals from presenting claims for international protection or receiving due process in the consideration of those claims.

e. Provide training for all migration officers in standards regarding asylum and international protection, as well as in the identification of possible international protection needs.

f. 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.

IX. PUBLICATION

106. In light of the above and in accordance with Article 47.3 of its Rules of Procedure, the IACHR decides to make this report public, and to include it in its Annual Report to the General Assembly of the Organization of American States. The Inter-American Commission, according to the norms contained in the instruments which govern its mandate, will continue evaluating the measures adopted by the United States with respect to the above recommendations until it determines there has been full compliance.

Approved by the Inter-American Commission on Human Rights on the 31st day of December 2021. (Signed): Antonia Urrejola Noguera, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Joel Hernández García and Edgar Stuardo Ralón Orellana, Commissioners.