GCM Objective 13

Use migration detention only as a measure of last resort and work towards alternatives

Issues

The GCM refers to detention only as a measure of last resort and states that non-custodial alternatives should be provided. Women in detention are at increased risk of discrimination and sexual and gender-based violence (SGBV) and should always be detained separately from men who do not form part of the same family unit. Detention facilities should also be open to independent monitoring by national and international human rights institutions/organizations.

In any detention or detention-like facility, women's specific needs must be met, including access to gender-responsive safe and private water, sanitation and hygiene (WASH) facilities. The COVID-19 pandemic has shone a light on the unsanitary conditions faced by migrant women in many detention facilities, which are often overcrowded, with insufficient WASH facilities and limited or no access to cleaning products (such as soap and hand sanitizers). For migrant women trapped in overcrowded rooms, physical distancing measures are virtually impossible to implement or maintain.

Access to gender-responsive health care, including sexual and reproductive health services and mental health services, is critical. Migrants should only be detained in spaces that correspond to their self-identified gender, and any detention should be legal, time limited and never arbitrary. Transgender migrants are too often detained in spaces that do not correspond to their self-identified gender and face a higher likelihood of abuse, including sexual assault.

Women or adolescent girls who are pregnant or the main caregiver of infant children, as well as those who are survivors of SGBV, must never be detained. Family units must always be kept together to mitigate as much as possible the negative and traumatic impact of

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immigration detention, and in line with the joint General Comment on State obligations regarding the human rights of children in the context of international migration, immigration detention is a child rights violation, and as such children should never be detained. The implementation of non-custodial alternatives to detention must be a priority for all migrants.

Measures

- Laws, policies and procedures that safeguard family life, including recognition of the various forms of families that exist, keeping families together and prioritizing non-custodial alternatives to detention
- Laws and policies that guarantee migrants are only detained in facilities that correspond to their self-identified gender
- Laws and policies that prohibit detention of migrant children
- Alternatives to detention for all migrants, particularly those with special protection needs, including but not limited to pregnant women, children and adolescents, elderly migrants, people who are lesbian, gay, bisexual, transgender, intersex, queer or other identities (LGBTIQ+), migrants with disabilities, survivors of torture or trauma, migrants with physical or mental health needs, trafficked persons, survivors of sexual and gender-based violence (SGBV), stateless persons and refugees
- Oversight and care by women staff in situations where women are detained, noting that situations of detention must be a measure of last resort, reviewable and time limited
- Gender-responsive safe, accessible and private water, sanitation and hygiene (WASH) facilities, menstrual hygiene materials and access to health care, including sexual and reproductive health services and mental health services
- Access to due process and independent judicial review of detention procedures without undue delay
- Access to periodic independent inquiry and monitoring of detention facilities by national and international human rights institutions/organizations
- Facilitation of access to consular assistance and legal representation and notification of next of kin

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- COVID-19: Adherence of detention facilities to hygiene and social distancing measures and adoption of special measures to protect groups at higher risk, such as older migrants and those with pre-existing medical conditions

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Checklist

Question	Yes	Not yet
Does your State ensure that families are kept together at all stages of immigration processing?	○	○
• If yes, is this applicable to undocumented migrants?	○	○
Do immigration officials conduct a needs assessment of all migrants before placing them in detention or equivalent? If yes, does the needs assessment take into account the following special protection needs before making any determinations?	○	○
• Pregnancy	○	○
• Age	○	○
• Disability	○	○
• Physical or mental health needs	○	○
• Sexual orientation and gender identity	○	○
• Survivors of sexual and gender-violence (SGBV)	○	○

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Question	Yes	Not yet
• Survivors of trafficking	○	○
Is immigration detention regulated by law and with time limits, due process and periodic judicial review?	○	○
Does your State provide and prioritize non-custodial alternatives to detention for migrant women?	○	○
In cases of detention, does your State ensure that it is a measure of last resort, time limited and reviewable?	○	○
Does your State have policies that ensure migrants are only detained in facilities that correspond to their self-identified gender?	○	○
Do detention facilities provide access to health-care services?	○	○
• If yes, does this include sexual and reproductive health services?	○	○
• If yes, does this include mental health services?	○	○
Are all detention facilities equipped with adequate gender-responsive water, hygiene and sanitation (WASH) facilities?	○	○
• If yes, are menstrual hygiene products made available to all migrant women in detention free of charge?	○	○

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Question	Yes	Not yet
Does your State always provide alternatives to detention for migrant children?	○	○
Do independent monitoring bodies have access to immigration detention facilities?	○	○
Does your State provide recourses that enable migrant women to safely and confidentially report abuse by detention facility staff?	○	○
Does your State facilitate and provide access to consular assistance and legal representation for migrants?	○	○
COVID-19: Do detention facilities adhere to hygiene and social distancing measures and have they adopted special measures to protect groups at higher risk, such as older migrants and those with pre-existing medical conditions?	○	○
COVID-19: Does your State consider the removal of people from detention facilities as a result of the pandemic?	○	○

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