

International Detention Coalition

Human rights for detained refugees,
asylum seekers and migrants

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Migrants in transit

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Envisioning a world without unnecessary immigration detention

INTRODUCTION

Good afternoon and my thanks to the co-sponsors of today's event for the opportunity to be with you today—the Permanent Representatives of Mexico and Greece to the United Nations, and the Office of the United Nations High Commissioner for Human Rights.

My organization, the International Detention Coalition (IDC), is a global network of over 300 civil society organisations in more than 70 countries, that advocate for the rights of refugees, asylum-seekers and migrants impacted by arbitrary detention. In particular, we seek to promote the right to liberty and freedom of movement of undocumented migrants and we provide technical support to States, UN agencies, intergovernmental bodies, and civil society organisations on the importance and effectiveness of alternatives to detention.

We congratulate OHCHR for this very timely and important report on the situation of migrants in transit and in my remarks today I'd like to draw particular attention to one of the critical challenges identified in the report: the arbitrary detention of migrants in transit.

In the current political climate, sadly many State policies seem more concerned with stopping or limiting onward migration than protecting the fundamental rights of people on the move. As a result, an increasing number of migrants in transit are being arbitrarily detained, often in conditions which are themselves arbitrary because they are unsuited to the particular circumstances, protection needs, and vulnerabilities of the individual. These include the detention of migrants in police stations, in criminal prisons, closed reception facilities, makeshift containers, and increasingly at barbed wire fences and walled borders.

These practices represent a serious human rights challenge for a number of reasons:

LIBERTY IS A FUNDAMENTAL RIGHT

First, it bears reminding that international law forbids the arbitrary, unlawful, or indefinite detention of *all* persons, irrespective of their migration status. The right to liberty is fundamental and must be the starting point. Human beings are presumed to be free absent exceptional circumstances. Yet we've arrived to a point where collective and even mandatory detention practices are being viewed as legitimate tools of routine border enforcement. We must be clear: they are not.

Under international law, the detention of any person must be an exceptional measure of last resort. States may only legally restrict the right to liberty of migrants in exceptional circumstances, following a detailed assessment of the individual concerned. Any detention must be necessary and proportionate to achieve a legitimate State aim. And the failure to consider alternative measures will render the detention arbitrary.

Yet when we speak about the situation of migrants in transit, sadly we cannot escape the fact that arbitrary detention practices are increasingly becoming the norm. Far from being an exceptional measure, we know too well that for many undocumented migrants in particular, it is not a question of if they will be arbitrarily detained, but rather when, for how long, and in what conditions?

CRIMINALISATION OF IRREGULAR MIGRATION

Second, we are increasingly seeing States pass laws which criminalize the act of human migration. Alarming, such laws often appear to track nationalist or xenophobic anti-immigrant rhetoric.

Again, we must be clear. The mere act of irregular entry or presence does not, in itself, constitute a legitimate grounds for detention. These are not crimes per se against persons, property, or national security and they should not be treated as such. The United Nations Working Group on Arbitrary Detention has clarified that criminalizing irregular entry exceeds the legitimate interest of the State to govern migration and is in fact a leading cause of arbitrary detention around the world.

States have been urged for decades by the UN General Assembly, the UN Human Rights Council, and a number of relevant mandate holders to end the use of language which paints migrants as “illegal” and to strike laws which criminalize irregular entry or presence.

It should also be emphasised that there is no statistical correlation between the use of detention and criminalization laws on the one hand, and a decrease in human migration on the other. This is a false narrative that is leading to real harms to real people. So we must disengage from the rhetoric of deterrence, and rather seek to protect people and engage in strategies for the responsible governance of migration, rather than seeking to deter or control it.

DETENTION OF VULNERABLE GROUPS

Third, the use of detention is particularly harmful to some of the most vulnerable of our society. Over half of all those arriving to Europe in the past year, for example, were women and children. In the Americas, the detention of unaccompanied children in transit from Central America to the United States has risen annually from 6,000 in 2012, to over 9,000 in 2013, to nearly 36,000 last year, and the total detention population during that same three-year period more than doubled, from 88,000 to 190,000.

Our position is that persons in situation of particular vulnerability should never be detained in the context of routine border governance. Similarly, UNHCR has found that the detention of refugees and asylum-seekers should as a general rule, be completely avoided.

And regarding children and families in particular, it is now incredibly clear that the detention of children based on their or their parents’ migration status is never in the best interests of the child, exceeds the requirement of necessity, becomes grossly disproportionate and constitutes cruel, inhuman or degrading treatment of migrant children. This is also the view shared by the Inter-American Court of Human Rights, UNICEF, OHCHR, the UN Committee on Migrant Workers, and the UN Committee on the Rights of the Child, among others, who have urged States to “expeditiously and completely” cease the immigration detention of children and their families.

ALTERNATIVES TO DETENTION

Finally, the use of detention in the context of transit migration is alarming because States are failing to utilize available alternatives to detention. The good news is that there are alternatives. My organization has produced the most comprehensive global study of alternatives to detention for refugees,

asylum-seekers, and irregular migrants. Entitled *There are Alternatives*, we have identified more than 250 examples of successful alternatives currently being used by States around the world. I have brought a number of copies with me today, but I'll quickly highlight some of the key findings:

Our research notes that in the context of transit, increased border controls and the use of detention *do not* help States to resolve individual cases. Rather, they only increase the likelihood that migrants will avoid authorities altogether or be forced into the hands of smuggling and trafficking networks.

While secondary movement cannot always be prevented, the research found that a range of strategies are available to help States better understand, respond to and manage complex transit migration. These include innovative strategies such as more robust vulnerability screening, the provision of free interpreters and legal aid, and case management support. Such strategies have not only proven effective, but they are less costly and better protect the fundamental rights of migrants in transit.

More broadly, the research concluded that alternatives which seek regional cooperation and solutions are more effective in the long-term than short-sighted and costly detention policies.

Finally, I'd like to briefly mention and congratulate the governments of Greece and Mexico on the positive steps they've taken to develop alternatives at the national level:

Last year, the Greek Deputy Interior Minister—following a visit to one of Greece's migrant detention centres—immediately ordered the release and referral to appropriate open accommodation facilities of all registered asylum-seekers and other vulnerable groups. This resulted in a decrease in Greece's overall detention capacity from nearly 5,000 individuals in February 2015 to less than 800 by November 2015.

Similarly, in 2014 the Mexican government adopted a new child protection framework entitled the *Sistema Integral para la Protección de NNA*, which has paved the way for developing Mexico's first-ever pilot program for alternatives to the detention of unaccompanied asylum-seeking children.

These examples represent positive proof that *there are alternatives* which States can use to govern complex transit migration without resorting to the use of detention.

CONCLUSION

In conclusion, I want to again say that we welcome this timely and important report from OHCHR and thank the organisers again for the opportunity to be with you today.

Thank you.