

International Detention Coalition

Human rights for detained refugees,
asylum seekers and migrants

The 2nd UN General Assembly High-Level Dialogue on International Migration and Development

IDC BRIEFING

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Envisioning a world without unnecessary immigration detention



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The following IDC Briefing is meant to act as a guide for IDC Members, Partners and other stakeholders both in the lead-up to and in subsequent advocacy around the 2nd UN General Assembly High-Level Dialogue on International Migration and Development (HLD). The IDC views the 2nd UN HLD as an important opportunity to raise awareness of the human rights of migrants affected by immigration detention; to strengthen global practice with regard to alternatives to detention (ATD); and to ensure that the administrative detention of refugees, asylum-seekers and migrants is given increased attention within broader discussions of global migration and development policy.

This document seeks to assist IDC Members, Partners and other stakeholders to engage with the 2nd UN HLD process by:

- providing a historical context for the HLD
- sharing key opportunities for HLD engagement
- explaining the IDC position and key messages with regard to the HLD

If you have any questions or would like to partner with the IDC more closely on our 2nd UN HLD advocacy, please don't hesitate to contact me.

Sincerely,

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Introduction

The IDC views the 2nd UN General Assembly High-Level Dialogue on International Migration and Development (HLD) as an important opportunity to raise awareness of the human rights of migrants affected by immigration detention; to strengthen global practice with regard to alternatives to detention; and to ensure that the administrative detention of refugees, asylum-seekers and migrants is given increased attention within broader discussions of global migration and development policy. Seven years after the 1st UN HLD, it is also a timely opportunity to take stock of gains made and challenges remaining as we approach the post-2015 development marker.

Since 2006, governments around the world have increasingly turned to the use of various forms of detention as a migration management tool. States are detaining refugees, asylum-seekers and migrants in removal centres, offshore processing centres, immigration detention facilities, prisons, police stations, airports, hotels, on ships and in shipping containers, as well as in closed refugee camps.¹ Migrants are being detained upon irregular arrival in a country, pending final immigration decisions, and while awaiting removal. Detention can last for months or, in some cases, years, during which time men, women and children can languish in often overcrowded and unhygienic conditions.² Many human rights violations can and do occur in these circumstances, including arbitrary detention and discriminatory deprivations of fundamental civil, political, economic, social and cultural rights guaranteed by the international human rights charter. In many cases, there is little independent oversight of detention conditions or of the reasons for detention, and many refugees, asylum-seekers and migrants are denied access to legal proceedings to challenge their detention.³

Immigration detention is harmful not only to the social and economic development of migrants themselves, but also to countries of origin and host communities. Immigration detention has been shown to be incredibly costly and unnecessary.⁴ It limits the development potential of migrants even when used for very short periods of time. For these reasons, there is an urgent need for more strategic, collaborative and effective action to end and limit immigration detention and to explore and implement ATD in order for human development to be fully realized. Some governments are already successfully implementing community-based ATD that ensure the rights, dignity and well-being of migrants, and recent global IDC research into ATD has identified a number of models which have already proven useful in a number of national contexts.⁵

The 2nd UN HLD provides an opportunity to reevaluate the use of immigration detention as a migration management tool and to seek more effective, humane, rights-based alternatives.

What is the HLD?

The establishment of the HLD as a forum for discussing international migration and development has been a multi-year process built upon the growing recognition of the global and interconnected nature of human migration, development and human rights. Prior to the 1st UN HLD in 2006, there were a number of UN summits and international conferences in which various aspects of international migration were discussed. These events go back at least as far back as the 1970s, however it was not until the 1990s that the increasing mobility of peoples and global nature of development interdependence

¹ International Detention Coalition, *There are alternatives: A handbook for preventing unnecessary immigration detention*, available at <http://idcoalition.org/cap/handbook/>; see also Report of the Special Rapporteur on the human rights of migrants, François Crépeau, Detention of migrants in an irregular situation, A/HRC/20/24.

² Report of the Special Rapporteur on the human rights of migrants, François Crépeau, Detention of migrants in an irregular situation, A/HRC/20/24.

³ Id.

⁴ For example, a cost saving of 93% was noted in Canada and 69% in Australia on alternatives to detention compared to detention costs. In addition independent returns in the EU and Australia save approximately 70% compared to escorted removals. International Detention Coalition, *There are alternatives: A handbook for preventing unnecessary immigration detention*, available at <http://idcoalition.org/cap/handbook/>.

⁵ Id.

signalled a need for states to cooperate in a more comprehensive and coordinated manner at the UN level.⁶

The 1st UN High-Level Dialogue, was held from 14-15 September 2006 at UN Headquarters in New York. Led by then-UN Secretary General, Kofi Annan, the 1st UN HLD consisted of 4 Roundtable topics focusing on economic and social development; human rights, trafficking and smuggling; remittances; and bilateral and regional partnerships. Following the 1st UN HLD, and with the critical support of Peter Sutherland, Special Representative of the UN Secretary-General for International Migration and Development, States established the Global Forum on Migration and Development (GFMD), an informal, voluntary, non-binding, State-led process to continue to discuss issues related to international migration and development in a systematic and comprehensive way.

The GFMD was intended to promote closer cooperation among States while fostering practical, evidence-based measures to enhance the benefits of international migration and minimise its negative effects. While some proponents of the GFMD have hailed it as helping to re-frame migration in a positive light and for allowing states to work more collaboratively together, others have criticized the GFMD for its voluntary and non-binding nature, and for sitting outside of the human rights framework of the UN system. There have been 6 GFMD held since 2006, with the first GFMD being hosted by the Government of Belgium.

The 2nd UN General Assembly High-Level Dialogue on International Migration and Development was established via General Assembly resolution 63/225 of 19 December 2008 and has the stated purpose, *“To identify concrete measures to strengthen coherence and cooperation at all levels, with a view to enhancing the benefits of international migration for migrants and countries alike and its important links to development, while reducing its negative implications.”*⁷

Similar to the 1st UN HLD of 2006, the 2nd UN HLD is organized around 4 thematic Roundtables:

- Roundtable 1: Assessing the effects of international migration on sustainable development and identifying relevant priorities in view of preparation of the post-2015 development framework
- Roundtable 2: Measures to ensure respect for and protection of the human rights of all migrants with particular reference to women and children, as well as to prevent and combat the smuggling of migrants and trafficking in persons and to ensure orderly, regular and safe migration
- Roundtable 3: Strengthening partnerships and cooperation of international migration into development policies and promoting coherence at all level
- Roundtable 4: International and regional labour mobility and its impact on development

The following sections of this Briefing will set forth a number of Key Messages related to each of the 2013 HLD's 4 thematic Roundtables.

Immigration Detention at the HLD

In the summary document⁸ of the 1st UN HLD there were no explicit references to the criminalisation of migrants or of the increasing state practice of detaining migrants for reasons related to their migration status. However the 1st UN HLD reflected a growing international consensus with regard to a number of security, human rights and detention-related themes. Specifically, two paragraphs in the summary document touched on migrant rights and security.

Paragraph 10 affirmed the central nature of respecting migrant rights, with a special eye to particularly vulnerable groups:

⁶ For an extensive list of these various international migration events, see IOM Background Paper, *From the 1994 Cairo International Conference on Population and Development to the Present, 2013*, available at http://www.eclac.cl/celade/noticias/paginas/0/50320/HLD_2013_Overview_Paper.pdf.

⁷ UN General Assembly Resolution 67/219.

⁸ A/61/515

Participants recognized that international migration, development and human rights were intrinsically interconnected. Respect for the fundamental rights and freedoms of all migrants was considered essential for reaping the full benefits of international migration. Many noted that some vulnerable groups, such as migrant women and children, needed special protection. Governments were called upon to ratify and implement the core human rights conventions and other relevant international instruments.⁹

Meanwhile, paragraph 17—while primarily addressing state concerns of border control and security—also touched on concerns of abuse of migrants in an irregular situation, and noted that restrictive migration policies—including “security and control measures” were not a sufficient response to complex migration management:

Participants expressed concern about the increase in irregular migration and the exploitation and abuse of migrants in an irregular situation. There was general consensus that trafficking in persons and the smuggling of migrants, especially women and children, should be combated with urgency at the national, bilateral, regional and global levels. Some participants noted that restrictive migration policies contributed to an increase in irregular migration and argued for an increase in legal avenues for migration and for the regularization of migrants in an irregular situation. . . . Although effective border control was considered necessary by many participants, there was recognition that security and control measures alone would not eliminate irregular migration. . . . Participants also underscored that measures to control irregular migration should not prevent persons fleeing persecution and other vulnerable populations from seeking international protection.¹⁰

In summary, the focus on border security and measures to “control” migrant populations at the 1st UN HLD came at the detriment of more rights-based language and approaches. The 1st UN HLD also tended to combine and seek similar responses to complex and distinct migration groups and concepts, for example: human trafficking, people smuggling, irregular migration, women, children, refugees and asylum-seekers. These groups have unique protection challenges and rights that require unique and tailored responses. However, by affirming the importance of human rights generally—including the special protection needs of particularly vulnerable migrants—and by acknowledging that security and control measures are unable to meet the complex protection demands of global migration, the 1st UN HLD provided a starting point for states and civil society to advance a more rights-based dialogue and agenda in the future.

To-date, the various HLD Preparatory Events¹¹ have provided mixed results in relation to addressing immigration detention, indicating that there is much additional work to do if the topic is to figure prominently at the 2nd UN HLD.

⁹ A/61/515, para. 10.

¹⁰ A/61/515, para. 10.

¹¹ A number of opportunities for civil society engagement have been built into the preparations for the 2013 HLD process. For more information, please visit the UN HLD website, available at <http://www.un.org/esa/population/meetings/HLD2013/mainhld2013.html?main>

General Messages

As the only international organisation dedicated to the issue of immigration detention, the IDC is taking a lead role in ensuring that ending and limiting unnecessary immigration detention and promoting and expanding the use of alternatives to detention are a part of the HLD conversation. We are doing this by:

- Working with IDC Members, Partners, UN bodies, and governments to ensure that immigration detention and alternatives to detention feature in the HLD conversation. This includes: development of this IDC Briefing, contributing to the OHCHR High-Level Meeting on Migration and Human Rights, and hosting a side-event at the HLD together with key stakeholders on the issue of alternatives to child immigration detention;
- Maintaining close working relationships with IDC Members and Partners to develop global, regional and national strategies to end unnecessary immigration detention and to explore the promotion and implementation of ATD;
- Supporting States and multi-stakeholder cooperation to develop effective, alternative practices to immigration detention.

The following General Messages are applicable to the entire 2nd UN HLD process:

- **Migration is not a crime.** The reasons for migration are varied and complex. But migration—even when irregular—should never be considered a criminal offense. Irregular entry and stay are not per se crimes against persons, property or national security and should not be treated as such. Criminalising the irregular entry of migrants “exceeds the legitimate interest of States to control and regulate irregular immigration,”¹² fuels xenophobia and anti-immigrant sentiment, and leads to unnecessary detention.
- **The use of harmful immigration detention is on the rise.** The use of immigration detention by States has grown since the 1st UN HLD in 2006 both as a migration management and a political tool.¹³ As a result, an estimated millions of migrants are detained around the world each year, although the number of detainees at any one time is unknown. This detention is costly, damaging, an ineffective deterrent, and violates human rights.
- **Detention is not an effective deterrent.** Despite increasingly detention-based immigration policies, the number of irregular arrivals has not reduced in the past 20 years. Several studies have shown that most refugees, asylum seekers and migrants have limited understanding of migration policies in their destination countries, are often reliant upon others to choose their destination, and are primarily motivated by other concerns, such as safety, reuniting with family or friends, historical links between the origin and destination countries, and common language.¹⁴
- **Detention harms health and well-being.** Research shows that detention is associated with poor mental health including high levels of depression, anxiety and PTSD, and that mental health deteriorates the longer someone is detained.¹⁵ The impact on children is particularly disturbing given the consequences for their cognitive and emotional development may be life-long.¹⁶ The physical and mental consequences of detention extend well beyond the periods of confinement.¹⁷

¹² A/HRC/7/4, para. 53.

¹³ International Detention Coalition, *There are alternatives: A handbook for preventing unnecessary immigration detention*, 10, (“IDC, *There are alternatives*”), available at <http://idcoalition.org/cap/handbook/>.

¹⁴ IDC, *There are alternatives*, 11.

¹⁵ IDC, *There are alternatives*, 11; see also International Detention Coalition, *Captured Childhood*, 48, (“IDC, *Captured Childhood*”), available at <http://idcoalition.org/ccap/>.

¹⁶ IDC, *Captured Childhood*, 48.

¹⁷ IDC, *Captured Childhood*, 57.

- **Detention interferes with human rights.** The use of detention for purposes of deterrence or political gain is always inconsistent with international human rights law.¹⁸ Even detention on the basis of national security, health or safety must be shown to be necessary in the individual case, proportionate to the risk or threat posed by the individual, limited to the shortest reasonable time period, reviewable by a neutral authority, and the least restrictive form possible, or may violate the principle of arbitrary detention.¹⁹
- **There are alternatives.** Alternatives to detention are increasingly becoming normalized in law, policy and practice that allow for the non-detention of asylum seekers, refugees and migrants. This is being recognized not only at the UN level, but also in a number of regional and domestic contexts.²⁰
- **Alternatives are effective.** Community based ATD programmes have been shown to maintain high compliance rates with a range of migrant populations, in particular when migrants are able to meet their basic needs, and are able to access the legal and social support necessary to make informed decisions about their migration journey.²¹ In contrast, prolonged or unnecessary detention has been found in some contexts to be counterproductive to government objectives of achieving compliance with immigration outcomes, including returns.²²
- **Alternatives are more cost-effective than custodial detention.** Significant cost benefits (on average 80%) are associated with ATD. If cases can be managed in community settings without a reduction in immigration application processing times, cost savings will be inevitable. Avoiding unnecessary cases of detention, or reducing the length of time someone is detained, is a key strategy in reducing the costs associated with detention.²³
- **Alternatives respect human rights.** Appropriate management in the community is more likely to uphold human rights and support migrant well-being, thereby contributing to migrants being able to contribute fully to society if residency is secured or being better able to face difficult futures, such as return.²⁴

Roundtable 1

Assessing the effects of international migration on sustainable development and identifying relevant priorities in view of the preparation of the post-2015 development framework.

The following Key Messages are specifically applicable to Roundtable 1 of the 2nd UN HLD process:

- **Immigration detention negatively impacts sustainable development.** Immigration detention has been shown to have a number of negative and long-lasting impacts on the functioning and development capacity of both the individual and the family unit.²⁵ This includes migrants' ability to gain, seek and use skills toward available employment opportunities, a key driver of sustainable development.

¹⁸ Report of the Special Rapporteur on the human rights of migrants, François Crépeau, *Detention of migrants in an irregular situation*, A/HRC/20/24, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/125/96/PDF/G1212596.pdf?OpenElement>.

¹⁹ IDC, *Captured Childhood*, 57.

²⁰ IDC, *There are alternatives*. See also, Alice J. Edwards, *Back to Basics: The Right to Liberty and Security of Person and "Alternatives to Detention" of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants*, UNHCR, available at <http://www.unhcr.org/refworld/docid/4dc935fd2.html>.

²¹ IDC, *There are alternatives*, 51-52.

²² IDC, *There are alternatives*, 41-43.

²³ IDC, *There are alternatives*, 52.

²⁴ IDC, *There are alternatives*, 52.

²⁵ IDC, *There are alternatives*, 11.

- **Addressing and reducing harmful detention practices should be a central priority for States concerned with sustainable development.** The use of immigration detention by States has grown since the 1st UN HLD in 2006 both as a migration management and a political tool. As a result, an estimated millions of migrants are detained around the world each year. This practice is costly, damaging, ineffective at deterring migration, and fails to respect the fundamental human rights of migrants.²⁶ If States are serious about leveraging migration for the benefit of sustainable development, they cannot do so without addressing and seeking to limit harmful immigration detention practices.
- **Societies can only develop in a sustainable manner when the fundamental rights of migrants are respected and protected.** Migration is a key driver of sustainable, equitable and inclusive development.²⁷ But development can only be sustainable when the fundamental human rights of migrants are respected, including the right to liberty and security of the person. Instead of viewing migration as a problem to be prevented, controlled or managed through harmful criminalisation and detention policies, States should view respect for the rights to liberty, freedom of movement and other fundamental human rights as necessary to any sustainable development.
- **Migration is instrumental to achieving the Millennium Development Goals (MDGs) and post-2015 development objectives.** It is well documented that migration is associated with a range of social and economic benefits for destination countries as well as for those who migrate.²⁸ Migration has been linked to positive advances in poverty reduction, gender equality, prevention of infectious disease, and environmental sustainability. When states criminalize and detain migrants on the basis of their immigration status, they unnecessarily restrict migrants' rights and ability to contribute to the achievement of the MDGs and post-2015 development objectives.
- **Alternatives to detention can promote and strengthen sustainable development.** Alternatives to detention assist individuals and families to remain functional and better able to contribute not only to their own personal development, but to the development of host countries and countries of origin. These alternatives not only respect human rights, but also enhance cooperation and compliance, and are more cost-effective and beneficial to host governments, communities and individual migrants themselves.²⁹

Roundtable 2

Measures to ensure respect for and protection of the human rights of all migrants, with particular reference to women and children, as well as to prevent and combat the smuggling of migrants and trafficking in persons and to ensure orderly, regular and safe migration.

The following Key Messages are specifically applicable to Roundtable 2 of the 2nd UN HLD process:

- **Migrants are, first and foremost, human beings endowed with fundamental human rights.** States have a sovereign right to determine who enters and remains in their territory, but this right is limited by their obligation to respect and protect the human rights of all migrants under their jurisdiction, regardless of legal status.

²⁶ IDC, *There are alternatives*, 11-13.

²⁷ IDC, *There are alternatives*, 10.

²⁸ See Migration Policy Institute, *Does Respect for Migrant Rights Contribute to Economic Development?*, Sept. 2013, available at <http://www.migrationpolicy.org/pubs/MigrantRights-EconomicDevelopment.pdf>.

²⁹ See generally IDC, *There are alternatives*.

- **All migrants are, without discrimination, entitled to the respect, protection and enjoyment of fundamental human rights, including liberty and security of person.** With few and narrowly defined exceptions—namely the right to vote and be elected, and the right to enter and remain in a country—all migrants are entitled to the full enjoyment of civil, political, economic, social and cultural rights. This includes irregular migrants, asylum-seekers, refugees, labour migrants, victims of trafficking, and smuggled migrants, among others. Even for these narrowly defined rights exceptions, procedural safeguards must be respected, as well as obligations of *non-refoulement*, the right to family unity, and the best interests of the child. Any decisions made by States to restrict migrant rights must be proportionate, reasonable, and serve a legitimate objective.³⁰
- **Any administrative detention of migrants should be applied only as a last resort and in exceptional circumstances.** International human rights laws and standards make clear that immigration detention should be used only as a last resort in exceptional cases after all other options have been shown to be inadequate in the individual case. When used, detention must be necessary and proportionate to the limited legitimate objectives of: when someone presents a risk of absconding from future legal proceedings or administrative processes or when someone presents a danger to their own or public security.³¹
- **Children should never be criminalized or subject to punitive measures because of they or their parents' migration status.** Children in the context of migration—both unaccompanied and accompanied—should never be detained. The detention of a child because of they or their parents' migration status constitutes a child rights violation and always contravenes the principle of the best interests of the child. States should expeditiously and completely cease the detention of children on the basis of they or their parent/guardian's immigration status³², and seek to implement child-sensitive alternatives to detention.³³
- **The detention of particularly vulnerable groups of migrants should be avoided.** While all migrants are vulnerable in the context of immigration detention, certain categories of particularly vulnerable migrants have particular protection needs and should never be detained for immigration-related purposes. These include, among others, women, children, refugees and asylum-seekers, survivors of torture and trauma, victims of human trafficking, stateless persons, the disabled or those with physical or mental health needs.
- **When a migrant is subject to immigration detention, alternatives must first be pursued.** Rather than unnecessarily detaining migrants, states should implement alternatives to detention that ensure the protection of the rights, dignity and wellbeing of individuals. The IDC's Community Assessment and Placement (CAP) model has been designed as a non-prescriptive framework to assist governments in their exploration and development of preventative mechanisms and alternatives

³⁰ Report of the Special Rapporteur on the human rights of migrants, François Crépeau, *Detention of migrants in an irregular situation*, A/HRC/20/24, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/125/96/PDF/G1212596.pdf?OpenElement>.

³¹ *Ibid.*

³² As the Committee on the Rights of the Child has recently clarified, the detention of a child due to they or their parents' migration status constitutes a child rights violation. The associated risks of physical and sexual abuse and lasting psychological damage means that it can never be in the best interests of a child to detain them simply for migration-related purposes. See, Committee on the Rights of the Child, *Report of the 2012 Day of General Discussion: The Rights of All Children in the Context of International Migration*, 78, available at http://www2.ohchr.org/english/bodies/crc/docs/discussion2012/2012CRC_DGDChildrens_Rights_InternationalMigration.pdf.

³³ The IDC has developed a 5-step model, the Child-sensitive Community Assessment and Placement (CCAP) model, which is aimed at outlining the various tools available to States to ensure that child migrants and their families are effectively managed in the community while awaiting a final decision in their case without the need for detention. The CCAP model is explained in detail in IDC's research publication *Captured Childhood*.

to detention in order to ensure detention is only applied as a last resort in exceptional cases.³⁴

Roundtable 3

Strengthening partnerships and cooperation on international migration, mechanisms to effectively integrate migration into development policies and promoting coherence at all levels.

The following Key Messages are specifically applicable to Roundtable 3 of the 2nd UN HLD process:

- **Additional research and reporting are needed on the causes, impacts, and solutions to unnecessary immigration detention:** There is a relative paucity of evidence in the area of immigration-related detention. Specifically, further evidence is needed on the links between migration management policies, migrant compliance, and respect for human rights. Additionally, there is need for more research to identify and describe examples of community-based alternatives to immigration detention, including common characteristics of successful community management programs.
- **Greater tri-partite dialogue should be encouraged at the international, regional and national levels.** While a number of regional, multi-lateral, and bi-lateral dialogues are already taking place which focus on migration, border security, development and human rights, states should better engage relevant inter-governmental and civil society partners in these dialogues to identify shared priorities and to seek to work more collaboratively to end and limit unnecessary immigration detention.
- **Increased cooperation is needed to end and limit unnecessary immigration detention.** The causes and impacts—both human and economic—of migration are complex and will require greater cooperation with relevant inter-governmental and civil society partners. The IDC stands as a good example of partnership and has been publicly recognized by the UN High Commissioner for Refugees for our work in effectively partnering with states to seek solutions to complex immigration detention issues, specifically in strengthening state capacity to identify and develop appropriate alternatives to detention that ensure respect for and protection of the human rights of all migrants.

Roundtable 4

International and regional labour mobility and its impact on development.

The following Key Messages are specifically applicable to Roundtable 4 of the 2nd UN HLD process:

- **Labour mobility and the ability to provide for one's basic needs are keys to sustainable economic and human development.** All individuals, regardless of migration status, have the right to access the means to meet their basic needs. The ability to meet basic needs is fundamental to human life and is protected and reinforced in various human rights instruments. In addition, research shows that migrants are better able to comply with immigration requirements, including processes for regularization and voluntary departure, if they are allowed to work and meet their basic needs while in the community.³⁵

³⁴ IDC, *There are alternatives*.

³⁵ IDC, *There are alternatives*, 34-35.

- **Immigration detention unnecessarily restricts labour mobility and its potential impacts on development.** Unnecessary immigration detention policies that restrict access to work, housing, basic welfare or health care amongst migrants have not been associated with increased rates of independent departure or deterrence outcomes. Instead, these policies have been associated with poorer health outcomes, state dependence, and increased difficulties for authorities working towards case resolution including return.³⁶
- **States should ratify the Migrant Worker's Convention and other core international human rights instruments.** The IDC aims to promote the use of international and regional human rights standards and principles as they relate to the detention of refugees, asylum seekers and migrants. To this end, states should seek to ratify and implement key conventions with regard to respecting and protecting the rights of labour migrant, including among others, the Migrant Workers Convention, and ILO Conventions which specifically relate to the world's estimated over 100 million labour migrants.
- **Opportunities and processes must be pursued for greater regularisation of the legal status of migrants.** Migrants in an irregular status are at heightened risk of numerous rights abuses, including unnecessary immigration detention. Existing international human rights obligations require states to prevent and combat labour exploitation and to ensure access to justice for victims of human rights abuses. However, there is also an urgent need to pursue greater opportunities for the legal migration and regularization of labour migrants, including low and semi-skilled migrant workers, and especially for women and other particularly vulnerable migrants.

³⁶ Ibid.

Based on identified international law, standards and guidelines. For the full position of the IDC please visit: www.idcoalition.org.

1. The detention of refugees, asylum seekers and migrants is inherently undesirable.
2. Vulnerable individuals - including children, pregnant women, nursing mothers, survivors of torture and trauma, trafficking victims, elderly persons, the disabled or those with physical or mental health needs - should not be placed in detention.
3. Children should not be detained for migration-related purposes. Their best interests must be protected in accordance with the Convention on the Rights of the Child. Children should not be separated from their caregivers and if they are unaccompanied, care arrangements must be made.
4. Asylum seekers should not be detained or penalized because they were compelled to enter a country irregularly or without proper documentation. They must not be detained with criminals and must have the opportunity to seek asylum and to access asylum procedures.
5. Detention should only be used as a measure of last resort. When used, it must be necessary and proportionate to the objective of identity and security checks, prevention of absconding or compliance with an expulsion order.
6. Where a person is subject to detention, alternatives must first be pursued. Governments should implement alternatives to detention that ensure the protection of the rights, dignity and wellbeing of individuals.
7. No one should be subject to indefinite detention. Detention should be for the shortest possible time with defined limits on the length of detention, which are strictly adhered to.
8. No one should be subject to arbitrary detention. Decisions to detain must be exercised in accordance with fair policy and procedures and subject to regular independent judicial review. Detainees must have the right to challenge the lawfulness of their detention, which must include the right to legal counsel and the power of the court to release the detained individual.
9. Conditions of detention must comply with basic minimum human rights standards. There must be regular independent monitoring of places of detention to ensure these standards are met. States should ratify the Optional Protocol to the Convention against Torture, which provides a strong legal basis for a regular and independent monitoring of places of detention.
10. The confinement of refugees in closed camps constitutes detention. Governments should consider alternatives that allow refugees freedom of movement.

Background Documents

OHCHR, *Migration and human rights: Improving Human Rights-Based Governance of International Migration*, available at http://www.ohchr.org/Documents/Issues/Migration/MigrationHR_improvingHR_Report.pdf

Report of the Secretary General on the Protection of Migrants, *Promotion and protection of human rights, including ways and means to promote the human rights of migrants*, 9 August 2013, A/68/292, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N13/422/65/PDF/N1342265.pdf?OpenElement>.

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IOM Background Paper, Roundtable 4, *International and Regional Labour Mobility and its Impact on Development*, 2013, available at <http://unobserver.iom.int/index.php/hld-series>

IDC Research

IDC, *There are Alternatives*, available at <http://idcoalition.org/cap/handbook/>

IDC, *Captured Childhood*, available at <http://idcoalition.org/ccap/>

Websites

UN HLD website, <http://www.un.org/esa/population/meetings/HLD2013/mainhld2013.html?main>

Civil Society HLD website, <http://hldcivilsociety.org>

OHCHR HLD website, <http://www.ohchr.org/EN/Issues/Migration/Pages/HLD2013.aspx>

Special Rapporteur on the Human Rights of Migrants HLD website, <http://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/HighLevelDialogueonMigrationandDevelopment.aspx>

IOM HLD website, <http://www.iom.int/cms/hld2013>

Global Forum on Migration and Development (GFMD), <http://www.gfmd.org/en/>

Global Migration Group, <http://www.globalmigrationgroup.org>