



**International  
Detention Coalition**  
Human rights for detained refugees,  
asylum seekers and migrants



## **Statement to the Human Rights Council 12<sup>th</sup> Session, Geneva**

### ***Panel Discussion on Migrants in Detention Centres***

17 September, 2009

We, the undersigned 141 organizations, welcome the resolution of the Human Rights Council to hold this panel discussion in order to explore the issue of detention of migrants, including ways to reduce the use of detention, preventative measures to ensure against human rights violations within places of detention, and also possible solutions to this ongoing problem.

### **Background**

It is with great concern that we, the undersigned, note the increasing use of various forms of detention as a migration management tool by numerous States.

With less and less distinction made as to their different legal statuses under national as well as international law, and with decreasing attention to specific vulnerabilities of age, gender and circumstance, irregular migrants, refugees and asylum seekers are being detained in some or more of the following ways:

- In removal centres, immigration detention facilities, prisons, police stations, airports, hotels, in ships and shipping containers, as well as in closed camps
- On arrival in a country, pending a final immigration decision, or while awaiting removal from the country.

Worldwide, immigration and asylum decisions may take months or years, during which time men, women and children can languish in often overcrowded and unhygienic conditions. Many human rights violations can and do occur in these circumstances. In some cases there is little or no independent oversight of detention conditions or reasons for detention, and many migrants are denied access to bail hearings and to judicial review.

Refugees and asylum-seekers, who need international protection having fled their countries of origin owing to persecution, other serious human rights abuses, or armed conflict, are being denied access to the asylum and protection procedures to which

international law entitles them. Stateless persons and others without documentation who are unable to be removed from the country may face being detained indefinitely. Non-criminal migrants are being mixed with criminal inmates, genders mixed in shared detention quarters, and children mixed with unrelated adults. Women and minors, particularly unaccompanied minors, are especially vulnerable to violence and abuse in such circumstances. The negative impact of even short-term detention on the mental health of individuals is now well documented, particularly for children<sup>1</sup>.

Migration-related detention not only creates incredible hardships on those in detention, it also separates families, disrupts communities and diverts both governmental and non-governmental actors from more humane, reasonable and cost-effective alternatives to detention.

## **Human rights standards for detained migrants**

In considering comprehensive, integrated and balanced responses to the issue of migration-related detention, we would like to outline a number of international and regional human rights standards that States should consider before making a decision to detain a person for migration-related purposes:

- As a general rule, certain classes of individuals should not be placed in migration-related detention, even if they lack proper documentation or are irregular migrants, including:
  - Refugees and asylum seekers
  - Children
  - Pregnant women and nursing mothers
  - Survivors of torture or trauma
  - Victims of human trafficking
  - The elderly and disabled
  - Those in need of urgent physical or mental health care, including victims of violence suffered in transit.<sup>2</sup>
- Refugees and asylum seekers should not be detained or penalized because they were compelled to enter a country irregularly or without proper documentation and must have the opportunity to seek asylum in a fair and effective asylum procedure. Doing so will bring a State into conflict with international human rights and refugee laws<sup>3</sup>.
- Children should not be detained or separated from their caregivers for migration-related purposes. Their best interests, including their right to development, must be protected in accordance with the Convention on the Rights of the Child.<sup>4</sup>
- For all classes of migrants, States should only use detention as a measure of last resort, after having considered whether there are less invasive means of achieving the same objectives, such as open centres, sureties, bail or reporting requirements.<sup>5</sup>
- If used, detention must be necessary and proportionate to the objective of initial identity, security or health checks, or otherwise to prevent absconding or in compliance with an expulsion order.<sup>6</sup>

- No one should be subject to indefinite detention. Indefinite detention is inhumane and contrary to international human rights law. In the case of refugees and asylum-seekers, it amounts to a penalty contrary to international refugee law. Detention should be for the shortest possible time, and specific maximum limits on the length of detention must be set out in law and strictly adhered to.<sup>7</sup>
- No one shall 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. All detainees must be advised of the reasons for their detention and must have the right to challenge the lawfulness of their detention in a court, which must include the right to access legal counsel and the power of the court to release the detained individual.<sup>8</sup>
- Detention must ensure the human rights and dignity of the person and that conditions of detention comply with basic minimum human rights standards, including but not limited to access to legal counsel, healthcare, including in particular for pregnant and nursing women, provision of nutritious food, sanitary conditions, education for children, and other services.<sup>9</sup>
- Generally, different categories of detainees should be kept in separate facilities taking into account their gender, age and need for any special treatment.<sup>10</sup>
- There must be regular independent monitoring of places of detention to ensure that these standards are met. States should consider ratifying the Optional Protocol to the Convention against Torture, which provides a strong legal basis for regular and independent monitoring of places of detention by both national bodies and an international sub-committee.<sup>11</sup>

In conclusion, we encourage all States to consider and implement legislation and policy that ensures the above international human right standards are maintained and upheld.

We note with concern the growing political environment where undocumented migrants are termed as illegal; we reiterate the call from the UN GA resolution 3449 of 9 December 1975 which recommended the use of the term "non-documented or irregular" rather than 'illegal' since the latter tends to criminalize the migrants.

We also note the statement of the Working Group on Arbitrary Detention in its February Report to this Human Rights Council:

*The Working Group has noted with concern, during the period reported upon, a development yet again towards tightening restrictions, including deprivation of liberty, applied to asylum-seekers, refugees and immigrants in an irregular situation even to the extent of making the irregular entry into a State a criminal offence or qualifying the irregular stay in the country as an aggravating circumstance for any criminal offence<sup>12</sup>.*

They continue:

*It was felt that States should be reminded that detention shall be the last resort and permissible only for the shortest period of time and that alternatives to detention should be sought whenever possible<sup>13</sup>.*

## **International good practice**

It is in this regard that we commend the growing international examples of good practice around the world, where States have:

- Introduced legislation to not detain refugees, asylum seekers and irregular migrants in the first instance, including children, and other vulnerable groups<sup>14</sup>;
- Introduced independent, regular monitoring of places of detention<sup>15</sup>; and
- Developed community-based alternatives to detention models, such as public-private partnerships with NGOs that provide specialized assistance, information, legal provision and counseling for refugees, asylum seekers, children, families and victims of torture, human trafficking and trauma, including supports for rehabilitation, return and reintegration.<sup>16</sup>

These models have in many instances led to high levels of compliance by individuals with immigration requirements, with the majority of individuals maintaining contact with the authorities and departing the country if refused the right to remain. They are also vastly cheaper than traditional detention and removal processes. These models have met government expectations, while ensuring the rights, dignity and wellbeing of refugees, asylum seekers and migrants are maintained.<sup>17</sup> They also provide a useful starting point for the exploration of comprehensive, integrated and balanced solutions to the detention of migrants.

This statement was jointly prepared by the International Detention Coalition (IDC), Migrant Forum in Asia (MFA), Migrants' Rights International (MRI) and the National Network for Immigrant and Refugee Rights (NNIRR), and endorsed by the following organizations:

1. A Just Australia (AJA), Australia
2. Act for Peace, National Council of Churches in Australia (NCCA), Australia
3. Action Network for Migrant Workers, Sri Lanka
4. Africa Internally Displaced Persons Voice (Africa IDP Voice), Zambia
5. Africa Roots Movement, The Netherlands
6. American Civil Liberties Union (ACLU) of Georgia, USA
7. American Friends Service Committee (AFSC), USA
8. American Gateways (Formerly PAPA), USA
9. Amnesty International (AI) International Secretariat, UK
10. Anjuman Asiaye Awam, Pakistan
11. Arunodhaya Migrant Initiatives, India
12. Ärzte der Welt e.V., (Doctors of the World), Germany
13. ASEAN Trade Union Council
14. Association for Community Development, Bangladesh
15. Ateneo Human Rights Center, Philippines
16. Australian National Committee on Refugee Women (ANCORW), Australia
17. Bail for Immigration Detainees (BID), UK

18. Bonded Labour Liberation Front, Pakistan
19. British Refugee Council (Refugee Council), UK
20. Canadian Quaker Committee for Refugees, Canada
21. Caritas Lebanon Migrant Center, Lebanon
22. Center for Education and Communication, India
23. Center for Indian Migrants Studies
24. Center for Migrant Advocacy, Philippines
25. Centre for Citizenship, Development & Human Rights, Faculty of Arts & Education, Deakin University, Australia
26. Centre for Human Rights Education, Curtin University, Australia
27. Children Out of Detention (ChilOut), Australia
28. Cobb (County) Immigrant Alliance, USA
29. Committee for Asian Women, Thailand
30. Commission for Filipino Migrant Workers (CFMW), The Netherlands
31. Community Development Services, Sri Lanka
32. Confederation of Voluntary Associations (COVA), India
33. Coordinated Action Research on AIDS and Migration (CARAM) Asia, Malaysia
34. Coordinated Action Research on AIDS and Migration (CARAM), Cambodia
35. Consultative Council of Jewish Organisations (CCJO), UK
36. Creed Alliance, Pakistan
37. Crossing Borders, UK
38. Democracy Today, Armenia
39. Development Action for Women Network, Philippines
40. Egyptian Foundation for Refugee Rights, Egypt
41. Equal Rights Trust, UK
42. Etnica Integral, Republica Dominicana
43. Fahamu Refugee Programme, Fahamu Trust, UK
44. Federation of Trade Unions, Burma
45. Filipino Women's Council, Italy
46. Filipinos for Affirmative Action, USA
47. Florida Immigrant Advocacy Center (FIAC), USA
48. Focus on the Global South- Philippines Programme
49. Frontiers Ruwad Association, Lebanon
50. Global Alliance against Traffic in Women (GAATW), International
51. Health Equity Initiatives (HEI), Malaysia
52. Hebrew Immigrant Aid Society (HIAS), USA
53. Helsinki Citizens' Assembly (hCa), Turkey
54. Hope Workers' Center, Taiwan
55. Hotham Mission Asylum Seeker Project (ASP), Australia
56. Human Rights First (HRF), USA
57. Human Rights Watch (HRW) International
58. Idas y Vueltas, Uruguay
59. IMA Research Foundation, Bangladesh
60. Indonesia Legal Aid Foundation (YLBHI), Indonesia
61. Interfaith Coalition on Immigration (ICOM), USA
62. International Catholic Migration Commission (ICMC), Switzerland
63. International Center of Atlanta, USA
64. International Federation of Business and Professional Women
65. International Institute for Human Rights, Environment and Development

- (INHURED International), Nepal
66. International Presentation Association of the Sisters of the Presentation, USA
  67. International Women's Rights Action Watch (IWRAP), Asia Pacific
  68. Jesuit Migrant Services, Mexico
  69. Jesuit Refugee Service (JRS), Australia
  70. Jesuit Refugee Service (JRS), Belgium
  71. Jesuit Refugee Service (JRS), Canada
  72. Jesuit Refugee Service (JRS)- European Regional Office
  73. Jesuit Refugee Service (JRS), Germany
  74. Jesuit Refugee Service (JRS), Malta
  75. Jubilee South International
  76. Kent Refugee Help, UK
  77. Korean Public Interest Lawyers Group (GONGGAM), South Korea
  78. La Trobe Refugee Research Centre (LaRRC), Australia
  79. Law Offices of Morrie Pour Nourian, USA
  80. Lawyers for Human Rights (LHR), South Africa
  81. Legal Clinic for Refugees and Immigrants (LCRI), Bulgaria
  82. Legal Support for Women and Children, Cambodia
  83. Liberty in North Korea (LiNK), USA/South Korea
  84. London Cross Cultural Learner Centre, UK
  85. London Detainee Support Group (LDSG), UK
  86. Lutheran Immigration and Refugee Service (LIRS), USA
  87. MAP Foundation, UK
  88. MARUAH (Singapore Working Group on ASEAN Human Rights Mechanism)
  89. Maternity Action, UK
  90. Medact, UK
  91. Medical Foundation for the Care of Victims of Torture, UK
  92. Migrant Services Centre- National Workers Congress (MSC/NWC), Sri Lanka
  93. Migrants Rights Council, India
  94. Mindanao Migrants Center for Empowering Actions, Inc., Philippines
  95. Monitoring Sustainability of Globalisation, Malaysia
  96. Muttahida Labour Federation, Pakistan
  97. National Human Rights Society of Malaysia (HAKAM)
  98. National Immigrant Justice Center, USA
  99. National Workers Party, Pakistan
  100. Nepal Institute of Development Studies (NIDS), Nepal
  101. Network of Action for Migrants in Malaysia (NAMM), Malaysia
  102. Pakistan International Human Rights Organization (PIHRO), Pakistan
  103. Pakistan Rural Workers Social Welfare Organization, Pakistan
  104. Pakistan Social Forum, Pakistan
  105. Pax Romana International
  106. Peoples' Watch, India
  107. Physicians for Human Rights, USA
  108. Platform for Filipino Migrant Organisations in Europe
  109. Redfish Bluefish Creative, Australia
  110. Refugee Council of Australia (RCOA), Australia
  111. RenéCassin, UK
  112. RESPECT Network Europe
  113. Service droit des Jeunes, Plate-forme Mineurs en exil- Platform Kinderen op

- de Vlucht (Platform Minors in Exile), Belgium
114. Sin Fronteras, Mexico
  115. Solidaritas Perempuan (Women's Solidarity for Human Rights), Indonesia
  116. Solidarity for Migrants in Japan
  117. Southwest Workers Union, USA
  118. St. Peter's Housing Committee, USA
  119. Suara Rakyat Malaysia (SUARAM), Malaysia
  120. Taiwan Association for Human Rights, Taiwan
  121. Teachers & Employees' Association for Change, Education Reforms and Solidarity (TEACHERS, INC), Philippines
  122. The Advocates for Human Rights, USA
  123. The Arakan Project, Thailand
  124. Transient Workers Count Too, Singapore
  125. Transnational Institute, International
  126. Transnational Migrant Platform, The Netherlands
  127. U.S. Committee for Refugees and Immigrants (USCRI) Thailand
  128. UNANIMA International, USA
  129. UNI-Global Union MLC Kuala Lumpur, Migrant Help Desk, Malaysia
  130. Union International - Asia Pacific Regional Office (UNI APRO)
  131. Union Migrant Indonesia, Indonesia
  132. United Methodist Women, USA
  133. US Committee for Refugees & Immigrants (USCRI), Thailand
  134. Victorian Foundation for Survivors of Torture (VFST), Australia
  135. WARBE Development Foundation, Bangladesh
  136. Women and Media Collective, Sri Lanka
  137. Women's Refugee Commission (WRC), USA
  138. Women's Rehabilitation Center (WOREC), Nepal
  139. Worker Hub for Change (WH4C), Malaysia
  140. World Christian Life Community, International
  141. World Organization for Human Rights, USA

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#### NOTES

<sup>1</sup> International Detention Coalition, Children in Immigration Detention- Position Paper, November 2007

<sup>2</sup> 1951 Geneva Convention Relating to the Status of Refugees, art. 31(1); Convention on the Rights of the Child, articles 3(1), 22(1), 37(c)(1990); OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, E/2002/68/Add.1 (20 May 2002), Guideline 2, 6, Guideline 4, 5, Guideline 6, 1; UNHCR Revised Guidelines on Applicable Standards Relating to the Detention of Asylum Seekers, §§ 6, 7, 8, 9, 22, 37, 7, 8, 10 (Feb. 1999); UN Standard Minimum Rules for the Treatment of Prisoners (1977), Rules 8, 53(1).

<sup>3</sup> 1951 Geneva Convention Relating to the Status of Refugees, art. 31(1); Convention on the Rights of the Child, articles 3(1), 22(1), 37(c)(1990); UNHCR ExCom Conclusion No. 97 (LIV-2003), (a)(vi); UNHCR ExCom Conclusion No. 85 (XLIX-1998) (ee); UNHCR ExCom Conclusion No. 55 (XL-1989) (g); UNHCR ExCom Conclusion No. 44 (XXXVII-1986) (a); UNHCR ExCom Conclusion No. 22 (XXXII-1981), 2; UNHCR Revised Guidelines on Applicable Standards Relating to the Detention of Asylum Seekers, § 1 (Feb. 1999).

<sup>4</sup> Convention on the Rights of the Child, articles 3(1), 9(1), 22(1), 37 (1990).

<sup>5</sup> 1951 Geneva Convention Relating to the Status of Refugees, art. 31(2); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Family (1990), art. 39(1); UNHCR Revised Guidelines on Applicable Standards Relating to the Detention of Asylum Seekers, § 3 (Feb. 1999); UNHCR ExCom Conclusion No. 44 (XXXVII-1986); UNHCR Revised Guidelines on Applicable Standards Relating to the Detention of Asylum Seekers, § 3 (Feb. 1999); UNHCR ExCom Conclusion No. 44 (XXXVII-1986). The principle of proportionality supports the use of detention only as a measure of last resort. Under this principle, any measure taken by a government affecting a basic human right – such as the right to liberty – must be: appropriate in order to achieve the objective desired; necessary in order to achieve that objective; and, reasonable.

<sup>6</sup> 1951 Geneva Convention Relating to the Status of Refugees, art. 31(2); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990), art. 39(2); UNHCR Revised

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Guidelines on Applicable Standards Relating to the Detention of Asylum Seekers, § 3 (Feb. 1999); UNHCR ExCom Conclusion No. 44 (XXXVII-1986).

<sup>7</sup> UNHCR Revised Guidelines on Applicable Standards Relating to the Detention of Asylum Seekers, §§ 3, 9 (Feb. 1999); UNHCR ExCom Conclusion No. 85 (XLIX-1998); Working Group on Arbitrary Detention, Deliberation Number 5, E/CN.4/2000, 4, Annex II, 2000, Principle 7.

<sup>8</sup> International Covenant on Civil and Political Rights (1966), articles 2(3),9(1), 9(2), 9(4); Convention on the Rights of the Child, art. 37(b) (1990); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990), articles 16(4), 16(5), 16((7), 16(8), 18(3)(d); UNHCR Revised Guidelines on Applicable Standards Relating to the Detention of Asylum Seekers, 1, §§ 3, 5, 9 (Feb. 1999); UNHCR ExCom Conclusion No. 44 (XXXVII-1986), § (e).; Report of UN Special Rapporteur on the Human Rights of Migrants, Gabriela Rodriguez Pizarro, E/CN.4/2003/85, Recommendation 75.; Report of Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Theo van Boven, E/CN.4/2003/68, 26(g); UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), Principles 4, 9, 11(1), 11(2), 13, 14, 32; Conclusions and Recommendations of the Working Group on Arbitrary Detention, E/CN.4/2004/3, 85, 86; Report of the Working Group on Arbitrary Detention, E/CN.4/2004/3/Add.3 (2004), Recommendations, 75; Report of the Working Group on Arbitrary Detention, Deliberation Number 5, E/CN.4/4, Annex 11, 2000, Principle 8; UN Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (1988), Principles 11(1), 14, 17(1), 18(1).

<sup>9</sup> International Covenant on Civil and Political Rights (1966), articles 7, 10(1); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (1984), art. 16(1); Convention on the Rights of the Child, articles 3, 22(1), 37(1990); International Convention on the Protection of Human Rights of All Migrants and Their Families (1990), art. 17; UNHCR Revised Guidelines on Applicable Standards Relating to the Detention of Asylum Seekers, §§ 7, 8, 9, 10(Feb. 1999); UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), Principles 1, 3, 6, 28.

<sup>10</sup> UN Standard Minimum Rules for the Treatment of Prisoners, Rule 8 (1977); UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers, § 8 (Feb. 1999).

<sup>11</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), art. 11; Optional Protocol to the UN Convention Against Torture (2006), art. 1; UN Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (1988) Principle 29, art. 1.

See also: Amnesty International: Migration-related detention: A Research Guide on human rights standards relevant to the detention of migrants, asylum-seekers and refugees, November 2007; UNHCR Selected Documents Relating To Detention, Division of International Protection Services, February, 2009.

<sup>12</sup> Report of the Working Group on Arbitrary Detention to the Human Rights Council, February 2009, D.65, page 23

<sup>13</sup> Report of the Working Group on Arbitrary Detention to the Human Rights Council, February 2009, D.67, page 23

<sup>14</sup> <http://idc.rfbf.com.au/wp-content/uploads/2009/05/childrenpositionpage.pdf> (includes references to Hungarian law introduced to prohibit the immigration detention of children; and changes to the Australian Migration Act in 2005 in which a child can only be detained in immigration detention as a matter of last resort); <http://idc.rfbf.com.au/wp-content/uploads/2009/06/asylumseekersinsweden.doc> (includes reference to Swedish law that a child not be detained for longer than 3 days; and the use of detention as a last resort)

<sup>15</sup> <http://www.apr.ch/content/view/40/82/lang.en/> (includes references to States that have ratified OPCAT); <http://www.apr.ch/content/view/138/152/lang.en/> (Includes references to States that have introduced National Preventative Mechanisms)

<sup>16</sup> [http://www.detention-in-europe.org/content/view/12/39/index.php?Itemid=137&id=228&option=com\\_content&task=view](http://www.detention-in-europe.org/content/view/12/39/index.php?Itemid=137&id=228&option=com_content&task=view) (Includes reference to Belgian policy change to pilot alternatives to the detention of children and families); Fields, Ophelia, with assistance of Alice Edwards, *Alternatives to Detention of Asylum Seekers and Refugees*, UNHCR Legal and Protection Policy Research Series, April 2006, available at: <http://www.unhcr.org/4474140a2.pdf>; Mitchell, Grant, Case Management as an alternative to immigration detention- The Australian Experience, International Detention Coalition, June 2009, (Includes reference to the development of community-based alternatives in Australia) available at: <http://idc.rfbf.com.au/idc-report-case-management-as-an-alternative-to-detention-the-australian-experience/>

<sup>17</sup> Mitchell, Grant, Case Management as an alternative to immigration detention-The Australian Experience, International Detention Coalition, June 2009.