



**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 136 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 Friends Service Committee (AFSC), USA
7. American Gateways (Formerly PAPA), USA
8. Amnesty International (AI) International Secretariat, UK
9. Anjuman Asiaye Awam, Pakistan
10. Arunodhaya Migrant Initiatives, India
11. Ärzte der Welt e.V., (Doctors of the World), Germany
12. ASEAN Trade Union Council
13. Association for Community Development, Bangladesh
14. Ateneo Human Rights Center, Philippines
15. Australian National Committee on Refugee Women (ANCORW), Australia
16. Bail for Immigration Detainees (BID), UK
17. Bonded Labour Liberation Front, Pakistan

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

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

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

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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 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.