

International Detention Coalition

Human rights for detained refugees,
asylum seekers and migrants

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Global Compact for safe, orderly and regular migration
First informal thematic session on:

“Human rights of all migrants, social inclusion, cohesion, and all forms of
discrimination, including racism, xenophobia and intolerance”

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Envisioning a world without unnecessary immigration detention

INTRODUCTION

Dear Excellencies and distinguished colleagues. It's a pleasure to be with you today. My organization, the International Detention Coalition (IDC), is a global network of over 300 civil society organisations that advocate for the fundamental civil and political rights of refugees and migrants

As has been noted by the UN Secretary General, the Director General of IOM, and the High Commissioner for Human Rights, the success of the Global Compact will ultimately be measured by the extent to which it operationalizes the protection of the human rights of migrants. We must not lose sight of this. Human rights are not an abstract concept, but the tangible and practical implementation of rights. In the context of international migration, it is important to recall that the overwhelming number of human rights apply to all people at all times, with only very limited exceptions. This is the same for nearly everyone in this room today, most of us are migrants too. And the protection of our fundamental rights allows us to do our jobs, raise our families, and secure a better future for our children.

But when it comes to undocumented or irregular migrants there is often a double standard. The same rights that you and I hold so dear, we portray as optional when it comes to those who are undocumented--there is a prevailing belief, borne out in practice, that irregular migrants exist largely in a rights-free zone of exclusion. In the current political climate, many States seem more concerned with stopping or limiting irregular migration than protecting the fundamental rights of people on the move.

THE PROBLEM IS NOT IRREGULAR MOVEMENT

The problem was not, and is not today, the fact of irregular movement. Throughout human history the overwhelming majority of migration has been irregular. This is the way that my great grandparents, for example, migrated out of poverty in Europe to create a better life for me in the United States. Instead, it is the failure to provide opportunities for people to regularize their status upon arrival—whether through work, study, or international protection--and the protection of the fundamental rights throughout the migration journey.

The New York Declaration recognizes this fact, and States have re-committed themselves to respecting and upholding fundamental rights for all people throughout the migration journey--irrespective of their migration or residency status or lack thereof.

I want to touch on a few of the commitments made in the NY Declaration that are particularly important to my organization and our over 300 members:

THE RIGHT TO LIBERTY AND SECURITY OF PERSON

First, I want to highlight the fundamental rights to liberty and security of person. The rights to liberty and security of person are among the fundamental human rights protections, and are found in every major international and regional human rights framework. These rights forbid the arbitrary, unlawful, or indefinite detention of *all* persons, irrespective of their migration status, including for the purposes of migration or border control. The rights to liberty and security of person are fundamental human rights. 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 today, 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 “dangerous fiction” 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 since 2012, and the total detention population from 2012 to 2014 more than doubled, from 88,000 to 190,000.

Migrants in situations of particular vulnerability should *never* be detained in the context of routine border governance.

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 may constitute 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 many others, who have urged States to “expeditiously and completely” cease the immigration detention of children and their families.

ALTERNATIVES TO DETENTION

The use of detention in the context of migration is alarming because States are failing to utilize available alternatives to immigration detention. Global research conducted by my organization has found that increased border controls and the use of detention *do not* help States to effectively manage migration or to protect the human rights of migrants. Rather, they only increase the likelihood that migrants will be forced undertake more dangerous journey or land in the hands of criminal smuggling and trafficking networks.

OPERATIONALISING HUMAN RIGHTS IN THE GLOBAL COMPACT

So how can we ensure the global compact honors these fundamental rights and that the consultations and later negotiations operate from a human rights based approach?

First, it will be important to mainstream human rights across the Global Compact discussions so that these existing fundamental human rights commitments are reflected throughout the substantive thematic and regional consultations. Upholding and protecting the rights of migrants must be an essential consideration to the entire compacts process, not merely this first thematic consultation on human rights.

Second, we should rely on the expertise and guidance provided by the United Nation’s designated human rights experts. This meant, among other things, promoting the role of OHCHR, the human rights treaty bodies, and special procedures throughout the Compact discussions, and particularly when attempting to identify what the existing human rights obligations of Member States are and are not.

Finally, we must not be content with mere declaratory statements, but insist on the operationalization and practical implementation of our existing human rights commitments. Let’s rid ourselves of the viewpoint that human rights principles are “impractical”. Rights are practical—they only need to be put into practice. One concrete example of how this can be achieved is the Global Migration Group’s work to provide Principles and Practical Guidance on the human rights protection of migrants in vulnerable situations within large and/or mixed movements, which I urge Member States to explicitly adopt as part of the Global Compact.

CONCLUSION

In conclusion, I want to again say that we welcome this timely and important thematic consultation and thank the Co-facilitators for the opportunity to be with you today.

Thank you.