

**Speaking notes**  
**Conference of International Association of Refugee Law Judges**  
**Tunis, 22 to 24 October 2014**

**Contemporary challenges in emergent and established asylum systems**

**Humanitarian issues faced by vulnerable migrants along the migratory route**

Many thanks for inviting me to represent the ICRC in the IARLJ congress. It's a great honour to be here, and an opportunity for us to talk directly to the authorities responsible to implement international and national refugee law, and to engage directly with them.

First of all, you may wonder why the ICRC is intervening in here, as the protection of refugees is the UNHCR's mandate, and we fully recognize that. Our interest is actually broader, and you will allow me to refer here to "migrants" instead of just "refugees" or "asylum seekers". In many countries where we work, affected by armed conflicts and other situations of violence, we come across migrants of all sorts, refugees, economic migrants, or even internally displaced persons who subsequently crossed a border.... We also encounter the families who stayed behind, anxious for news of their relatives who took the road to a supposedly better life. So our approach is not based on the particular status of each person, or lack thereof, but on their needs and vulnerabilities.

While many migrants succeed in safely reaching their country of destination and integrating in their new community, others find themselves stranded with limited protection or means to continue. They can become vulnerable at many stages of the migration journey as they travel from their home country, often through third countries, to their final destination.

Many pass through areas affected by armed conflict or other situations of violence, which may make them more vulnerable to many types of abuse. They endure terrible ordeals that affect their physical and psychological integrity and that of their families. They may be detained, legally or not, tortured, lose contact with their families, or go missing. Upon reaching their destination, they require not just to regularize their situation, but also support to address the consequences of this violence, otherwise they will never recover and integrate.

A number of evolving factors, including armed conflicts, generalized violence, organized crime, tightened borders and so on are exacerbating the vulnerability of migrants around the globe, during the whole migratory process.

### **Specific focus on immigration detention (considering the audience)**

The growing recourse to detention, administrative or criminal, in relation to migration is an important concern, considering its serious negative impact on detained migrants' mental health, which in some cases might leave life-long scars. This is due in part to the indefinite nature of administrative detention and to the feeling that migrants are punished although they have committed no crime, which makes it more difficult to accept their situation. In many cases, substandard conditions of detention or the use of ill-treatment add to the damage.

Deprivation of liberty of migrants is an extremely serious act which should be used as a last resort. Alternatives to detention must always be considered first and detention should only ever be considered these are not possible.

The ICRC, in line with most human rights mechanisms and organisations, considers that detention should be used in relation to migrants only based on an individual assessment indicates that it is necessary, reasonable, and proportional to its goal. It should never be used for punishment or deterrence. When detention is ordered, it should be for the shortest possible time and the conditions of detention should be non-punitive. Immigration detention centres should not resemble criminal detention facilities nor should they be run in the same way.

There are certain categories of migrants, however, for which detention will never be appropriate. The ICRC believes that there are no situations where the detention of a child for immigration-related reasons is compatible with the state's obligations under the Convention on the Rights of the Child: The negative mental health impact of detention is multiplied in the case of children as detention affects their mental development and interferes with their education. An age assessment should therefore be carried out early in the process, and any doubt should benefit the child.

In the case of accompanied children, the preservation of the family unit should be sought through alternatives to detention for the parents rather than through the detention of the children.

In addition to children, victims of trauma should also benefit from alternative measures as a detention environment is inappropriate for any type of mental health treatment and could even further damage their already fragile mental health.

Moreover, throughout the process, migrants should benefit from procedural safeguards and in particular the right to information in a language they understand, the right to have their detention reviewed regularly by an independent authority, the right to be represented and to benefit from legal counsel, and the right to communicate with the outside world. It also includes the right to have access to fair and efficient asylum procedures.

Finally, I will also stress our growing concern regarding compliance with the principle of non-refoulement. We see migrants sent back in a state of great vulnerability to countries affected by violence, without sufficient consideration for this essential principle of international law.

#### ICRC overall approach to migration

The International Red Cross and Red Crescent Movement has pledged to address the humanitarian needs of the most vulnerable migrants and their families, **regardless of their legal status** this includes stateless persons, migrants deemed irregular by public authorities but also **refugees and asylum seekers -notwithstanding the fact that they constitute a special category under international law and enjoy extended protection**).

The ICRC's work focuses on addressing the needs of vulnerable migrants and their families affected by conflicts and other situations of violence, along various migratory routes. The ICRC does not try to prevent or encourage migration. The ICRC also advises and supports National Societies working on behalf of migrants in those fields in which it has a specific expertise, notably in restoring family links, missing, and detention.

### Action in the field of immigration detention

- The ICRC monitors conditions of detention, treatment of migrants and respect for procedural safeguards. When appropriate, ICRC makes representations to the authorities to improve the situation.
- The ICRC may notify consular authorities of the situation of their citizen (only with the migrant's consent and consideration of the migrant's vulnerabilities)
- Provides Restoring Family Links services.
- Issues travel documents when necessary and appropriate.
- Where relevant and appropriate, the ICRC refers individual cases to other agencies (e.g. refugees to UNHCR).

When necessary the ICRC addresses **non-refoulement issues** with authorities. In some contexts, the ICRC aims to address the negative consequences of return practices in confidential dialogue with the authorities concerned.

With regard to non refoulement, the ICRC strives to ensure that the authorities know their obligations under International Law and respect the principle of *non-refoulement*. They take into consideration the fears expressed by detainees in case of deportation, and take appropriate action as foreseen by relevant international law defining the principle of non-refoulement.