



General Assembly

Distr.
GENERAL

A/HRC/10/NGO/46
25 February 2009

ENGLISH ONLY

HUMAN RIGHTS COUNCIL
Tenth session
Agenda item 3

PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT

**Written statement^{*} submitted by Human Rights Advocates, Inc. (HRA),
a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[13 February 2009]

^{*} This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

The Arbitrary Detention of Migrants

1. Human Rights Advocates submits this statement to address the urgent issues related to migrant detention, particularly the impact on children, access to health care in detention facilities, and mandatory detention policies.
2. With an estimated 200 million migrants worldwide, 20 to 30 million of whom lack documentation, there is a pressing need for Member States and the Human Rights Council to monitor and ameliorate the situation of migrants in detention and to examine the far-reaching consequences of detention policies generally.

Immigration Raids and Detentions

3. Article 9(1) of the ICCPR states that “everyone has the right to liberty and security of the person. No one shall be subjected to arbitrary arrest or detention.”
4. The European Parliament passed a directive in June 2008 that lays down a maximum period of detention for immigrants of six months, which can be extended by a further 12 months in certain cases.¹ The length of time is problematic especially because it sets far greater maximum limits than those currently in place in many individual European countries.²
5. Immigration and Customs Enforcement (ICE) is the federal immigration agency in the United States created in 2003. Their strategic plan, “Operation Endgame,” calls for the removal of all deportable persons by the year 2012. This plan involves aggressive enforcement coupled with heavy reliance on detention, resulting in record numbers of deportations, 349,041 persons in 2008 alone. To keep up with the increased numbers of arrests, ICE has created a network of approximately 400 jails and detention facilities around the country where it now holds over 30,000 persons on any given day.³ The dramatic influx of migrants in detention and ICE’s inadequate measures effectuated in response, have resulted in a multitude of violations of the rights of migrant detainees.
6. Detainees are frequently “forgotten” and left to languish in detention without knowing when they will be released or removed. Under the U.S.’s unofficial policy of “detention first,” there is no independent review for arriving aliens, including asylum seekers. The lack of independent review results in arbitrary detention.
7. Current U.S. immigration policy has resulted in a shortage of detention facilities with the capacity to adequately detain migrants. In a sinking economy, immigration detention is a rare growth industry. Congress has doubled annual spending on it in the last four years, to \$2.4 billion approved in October 2008 as part of \$5.9 billion allotted for immigration enforcement

¹ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals

² Pre-removal detention maximums are less than 6 months in France, Cyprus, Italy, Spain, Ireland, Portugal, Luxembourg and Greece

³ American Civil Liberties Union, *Detention and Deportation in the Age of ICE: Immigrants and Human Rights in Massachusetts*, (December 2008), available at <http://www.aclum.org/ice/>

through September 2009. In order to deal with rising rates of detention, the government has increasingly contracted with private companies to create and manage detention centers. Quality control is difficult to achieve and many detainees have been “lost” in the system as they are shuffled across the country from one center to another, away from their families and support networks.⁴

8. The company building a massive detention facility in Farmville, Virginia has contracted with ICE at the rate of almost \$63 per detainee per day. If the company “houses” the estimated 322,000 detainees each year, they could gross \$20 million in federal tax dollars annually. After salaries and expenses, the group could make millions in profit.⁵ Turning over the operation of detention centers to companies whose purpose is to generate profits inevitably produces pressure for increases in detention. Profit depends on bodies to fill the detention center, encouraging the commodification of individuals and the incentive exists to cut costs at the expense of the rights of detainees.

Access to Healthcare

9. Article 10(1) of the ICCPR states that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

10. ICE officials recently ordered an end to their contract with a detention facility in Rhode Island following the tragic death of Hiu Lui Ng. Hiu Lui Ng’s extensive cancer and fractured spine had gone undiagnosed, despite his pleas for help. It wasn’t until the federal judge hearing his habeas corpus petition ordered the facility to provide him the care he clearly needed was he taken to a hospital for the MRI that revealed his terminal diagnosis. He died five days later.⁶

11. People living with HIV/AIDS have received substandard care while in detention facilities in the U.S. There has been a systemic failure to ensure timely HIV prevention and treatment services, putting many at risk of infection, resistance to treatment, and even death.⁷ In a July 2007 case, Victoria Arellano, a 23-year-old transgender immigrant from Mexico, died of AIDS-related meningitis in a federal detention center in California. Detainees in her unit repeatedly alerted the guards to the fact that she was seriously ill and needed medical care, to which there was no response.⁸

12. HRA commends the U.S. for including medical care and staff training in ICE’s most recent operations manual, an important step towards providing access to healthcare in a timely and consistent manner in all detention facilities.⁹ HRA hopes that the U.S. will continue to improve conditions for detainees by implementing the important changes outlined in the manual.

⁴ Nina Bernstein, *City of Immigrants Fills Jail Cells With Their Own*, The New York Times (28 December, 2008)

⁵ Josh White and Nick Miroff, *The Profit of Detention*, The Washington Post (5 October, 2008)

⁶ Nina Bernstein, *U.S. Issues Scathing Report on Immigrant Who Died in Detention*, The New York Times (15 January, 2008)

⁷ Human Rights Watch, *US: Migrant Detainees Suffer From Inadequate Medical Care*, (4 August, 2008) available at <http://www.hrw.org/en/news/2008/08/04/us-migrant-detainees-suffer-inadequate-medical-care>

⁸ *Id.*

⁹ U.S. Department of Homeland Security, *Operations Manual ICE Performance Based National Detention Standards*, (December 2008)

Impact of Detention on Children

13. Article 37(b) of the Convention on the Rights of the Child states that “no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.”

14. Article 17 of the Migrant Workers Convention states that “whenever a migrant worker is deprived of his or her liberty, the competent authorities of the State concerned shall pay attention to the problems that may be posed for members of his or her family, in particular for spouses and minor children.”

15. Approximately 1,000 unaccompanied migrant children from conflict regions have entered Greece in 2008 without parents or caregivers.¹⁰ Greek law does not prohibit or regulate the administrative detention of children who enter Greece without valid papers and the authorities have detained unaccompanied children for anything from a few hours to several days or months. The reasons for keeping children for longer or shorter periods appear to be arbitrary. Children may be subject to repeated detention for even minor violations of immigration law. Additionally, in some centers children have been placed with the adult population, putting them at increased risk of abuse.

16. There are nearly 5 million children in the U.S. with at least one parent who is undocumented. For every two adults arrested in workplace raids, one child is left without proper care or psychological support, often in the care of relatives who are fearful of contacting the authorities to determine the whereabouts of their parents. In a series of 3 raids, 900 adults were arrested affecting 500 children, most of whom were U.S. citizens 10 years or younger. Many parents were held in detention for days or weeks after the raids, despite alerting ICE to the fact that they had a minor child who needed their care.¹¹

Mandatory Detention

17. In its 2007 report, the Working Group on Arbitrary Detention recommended that States use detention of illegal immigrants and asylum-seekers only as a last resort.

Undocumented migrants placed in administrative detention are not criminals or suspects. Therefore, detention should be the exception, not the rule.

18. HRA commends Australia for its decision to end its policy of automatic detention for asylum seekers who arrive in the country without visas.¹² While this is an important step for Australia, it appears that the government remains committed to their policy of mandatory detention outside the one exception.

¹⁰ Human Rights Watch, *Left to Survive*, (22 December, 2008) available at <http://www.hrw.org/en/reports/2008/12/22/left-survive>

¹¹ Miriam Calderon, *Paying the Price: The Impact of the Immigration Raids on America's Children*, National Council of La Raza, (2007) available at <http://www.nclr.org/content/publications/detail/49166/>

¹² Tim Johnston, *Australia Announces Changes on Asylum Seekers*, The New York Times, (30 July, 2008).

19. The U.S. employs a policy of mandatory detention for individuals during the removal period.¹³ Additionally, there is a policy of mandatory detention for all persons who come by sea (except Cubans) and if asylum seekers they will be held throughout the credible fear and asylum process without right to request a bond hearing.¹⁴

Alternatives to Detention

20. Based on the language in the ICCPR, the true alternative to detention for non-criminal detainees should simply be liberty.

21. Governments invoke detention policies for non-criminal detainees in order to prevent individuals from ignoring deportation orders or absconding while immigration proceedings are pending. There is also a perceived usefulness of using detention as a deterrent. However, alternatives exist that will satisfy the needs of authorities and not deprive these individuals of their right to liberty. These alternatives include appearance bonds, electronic monitoring devices, or monitored supervision programs.

Recommendations

22. In order to promote and protect the human rights of migrants in detention worldwide, Human Rights Advocates urges the Human Rights Council to address:

- Whether the use of detention of non-criminal immigrants is acceptable under international standards
- The appropriate maximum length of detention
- Alternatives to migrant detention

23. Human Rights Advocates recommends that Member States:

- Ratify the Convention on the Protection of the Rights of All Migrant Workers and Their Families
- Abolish policies of mandatory detention
- Adopt transparent, independent review mechanisms of all individuals' detention status

¹³ INA § 241(a)(2), 8 U.S.C. § 1231(a)(2)

¹⁴ 67 Fed. Reg. 68924-26 (Nov. 13, 2002)