

Borders and Detention

WIMN believes that migrant women's rights are human rights, and that no international border can be a zone of exclusion or exception to these human rights. The *Recommended Principles and Guidelines on Human Rights at International Borders* affirms this principle and reminds states that the exercise of jurisdiction at their international borders must be done in light of their human rights obligations.¹ Migrants, first and foremost are human beings and as such are entitled to the full range of human rights under the International Bill of Rights.

Migrants cross borders seeking a safer and more secure future. However, borders are fraught with rights violations against migrants, including women migrants—where they may be arrested, criminally prosecuted, thrown into detention centers and/or summarily deported. Those seeking asylum may also face the same treatment and receive no particular consideration as an asylum seeker.

International borders are not simply a line on a map. Border zones that are included in border enforcement policies and practices can include broad stretches of territory inland from the actual border. Border communities can also be affected by border enforcement policies and practices and can have their rights violated in the course of enforcement, such as racial profiling and arbitrary arrests. Inspection at entry, points of verification and checkpoints can all be sites for discriminatory practices and other rights violations, and where migrants have no access to justice.

The increasing militarization and securitization of international borders, as well as overarching “immigration prevention through deterrence” frameworks and border enforcement policies have not only heightened the risk of human rights abuses of migrants, but have contributed to dangerous transits and border crossings for irregular migrants. Harsh border control policies and physical barriers, coupled with a lack of access to visas and other means of safe passage have shifted migrant land and sea routes to more remote and dangerous areas, or to riskier sea voyages.

Women and men experience migration and borders differently, and migrant women may be at particular risk at international borders, with a higher rate of mortality than men.

The militarization of borders serves to highlight the socio-economic inequalities between those the country lets in and those it wants to keep out.

Border restrictions and the lack of visas that provide for safe and regular border crossing motivate migrants to pay smugglers to guide and facilitate their journeys, further subjecting the migrants to potential dangers; it is especially challenging for women and girl migrants who

¹ Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights at International Borders*, October 2014, Principle A-1

may face physical, sexual assaults and abuse, including rape in transit and at borders. Restrictive and militarized international borders also contribute to the separation of families.

The increased use of immigration detention reported by many countries is a deeply concerning trend. The Special Rapporteur for the Human Rights of Migrants, Francois Crepeau, has said, "Immigration detention can be in contravention of international human rights law: freedom should be the default position and detention must be reasonable, necessary, proportionate, and decided on a case-by-case basis. Irregular migration not being a criminal act, detention simply based on the lack of administrative status is illegal."²

The loss of liberty is compounded by the conditions of detention: prolonged, indefinite and/or mandatory detention; unsanitary and over-crowded conditions, lack of access to physical and mental health care, and to justice; discriminatory treatment, physical abusive and other trauma. Women migrants in detention have persistently reported alleged harassment and sexual assaults by detention personnel; mothers have been separated from their children in cases where families are detained. These conditions of detention have exacerbated the trauma and violence already experienced in homelands, in transit and in crossing borders.

The Global Compact should:

- Reaffirm that international border are not zones of exception to migrant women and men's universal and inalienable human rights.
- Implement the measures outlined in the OHCHR *Recommended Principles and Guidelines on the Human Rights of Migrants at International Borders*, particularly for women.
- Establish a presumption against immigration detention in law. Instead of being treated as a criminal offence, crossing borders without authorisation should be an administrative offence.
- Recommend that all forms of immigration detention be strictly limited and that states should work progressively to end such detentions, and to respect, protect, and fulfill their international human rights law obligations.
- In the meantime, ensure that States vigorously uphold the highest standards of treatment of migrants in detention, providing for the health, safety and access to justice of detainees.

² CMW General Comment No. 2, para 2, Inter-American Court of Human Rights, case Velez Looz c. Panama, para 171; case Pacheco Tineo c. Bolivia, para 131 and recent Court of Justice of the European Union case Case C-47/15, Sélina Affum v Préfet du Pas-de-Calais in Report of the Special Rapporteur on Human Rights to UN General Assembly, A/71/407/67, 20 July 2016