



ORGANIZATION OF AMERICAN STATES

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

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RESOLUTION 03/08 HUMAN RIGHTS OF MIGRANTS, INTERNATIONAL STANDARDS AND THE RETURN DIRECTIVE OF THE EU

The rights of migrants and their families are a subject of special attention and concern for the Inter-American Commission on Human Rights, and as a consequence, in 1997 the Commission established its Special Rapporteurship on the Rights of Migrant Workers and their Families.

The Commission's initiatives in this area have received strong support from the Member States of the Organization of American States (OAS). During the OAS General Assembly in June 2008, the Member states emphasized that migration is a phenomenon linked to the processes of integration and globalization; the countries of the region are points of origin, transit, and destination for migrants; and migration has tremendous social and economic importance in the region.

Both the Inter-American Commission and the Inter-American Court of Human Rights have emphasized the need for migratory policies to be adopted and implemented in accordance with international human rights obligations. Through its Rapporteurship, as well as through resolutions adopted in a series of individual cases, the Commission has issued specific recommendations to the Member states of the OAS designed to enhance compliance with their international obligations, including in the areas of nondiscrimination; basic due process and procedural safeguards; conditions of detention in immigration facilities; and the obligation to ensure that persons at risk of persecution not be returned.

Considering that migration has an impact on all nations, it must be analyzed from a multilateral and multidimensional perspective. Countries of destination, transit and origin face growing challenges from migration and must share in the responsibility for resolving them. Unilateral approaches do not offer the kind of constructive solutions necessary to resolve this shared challenge and responsibility.

In this context, the Inter-American Commission on Human Rights has taken note of the "Directive of the European Parliament and of the Council on common standards and procedures in Member states for returning illegally staying third-country nationals" ("Return Directive") approved by the European Parliament on June 18, 2008. As set forth in the Directive, its objective is to set common standards and procedures for the states of the European Union to return persons illegally in the country. The Inter-American Commission considers that the Directive raises serious concerns specifically with respect to the absence of sufficient safeguards for integral respect for the rights of asylum-seekers and migrants.

In accordance with international human rights law, states must respect and ensure the human rights of all persons subject to their jurisdiction, without discrimination.

The Commission considers it timely and necessary to reaffirm that international law requires that effective substantive and procedural safeguards be in place to identify and safeguard the rights of individuals eligible for asylum. The obligation of *non-refoulement* requires that states not return persons at risk of persecution in their home countries; it is a basic and well-recognized principle of international law. In accordance with this obligation, states must ensure that their policies and practices provide sufficient mechanisms to identify such claims and make the corresponding administrative and judicial determinations with the corresponding due process guarantees. The Commission has emphasized the obligations of international human rights and refugee law that require that asylum-seekers receive a hearing, and rejected asylum seekers must have access to information and procedural guarantees to obtain judicial review.

As the Inter-American Court of Human Rights established in its Advisory Opinion on the Juridical Condition and Rights of Undocumented Migrants, "the right to due process of law must be recognized as one of the minimum guarantees that should be offered to any migrant, irrespective of his migratory status. The broad scope of the preservation of due process encompasses all matters and all persons, without any discrimination."

Further, international standards establish that detention must be applied only as an exceptional measure and after having analyzed the necessity in each case. In all cases, states must avoid prolongation of detention, and must ensure that it is as brief as possible.

As international law establishes, migrants may not be held in prison facilities. The holding of asylum seekers and persons charged with civil immigration violations in a prison environment is incompatible with basic human rights guarantees.

States are required to provide special protections or guarantees to migrants in especially vulnerable conditions. For example, in decisions concerning children and adolescents, primary regard must be given to their best interest. Further, international standards may also require that special measures be taken in the case of persons who have been trafficked or other vulnerable groups.

International law provides that states have both the right and the duty to establish mechanisms to control foreigners' entry into and departure from their territory. At the same time, international law provides that these actions must be taken with due respect for the rights of those affected, and that the observance of such fundamental principles as nondiscrimination and humane treatment may not be subordinated to the implementation of public policy goals.

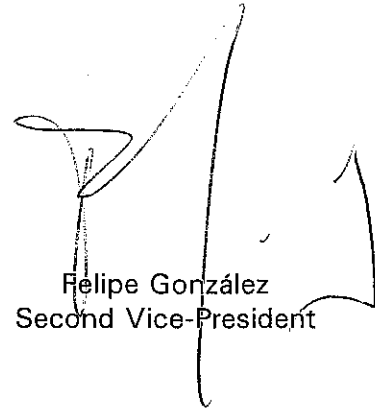
International standards, including those applied by regional bodies, must be respected by all States. In this sense, the Commission exhorts the Parliament and Council of the EU to modify the Directive to bring it into conformity with international human rights standards for the protection of migrants.



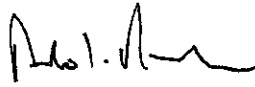
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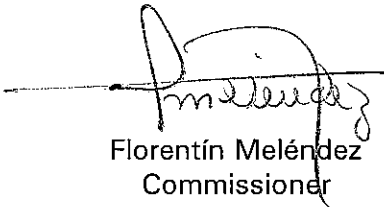


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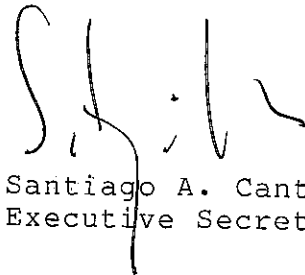
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