

Introduction to the Global Detention Project's Webinar on the Non-Punishment Principle and Immigration Detention

Michael Flynn

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It is a pleasure to welcome you all here today to this Global Detention Project webinar focusing on two extremely harmful yet seemingly intractable issues impacting the health and well-being of migrants, refugees, asylum seekers, and victims of trafficking in nearly every corner of the globe today: detention and human trafficking. This webinar is the fourth in the GDP's webinar series aimed at sensitizing migrant rights advocates to tools at the international and regional levels that can be used to push back against harmful migration-related detention—as well as to ensure that human rights bodies take into account the views of advocates and victims, and are aware of the applicability of their mandates to the issue of immigration detention.

Our previous webinars in this series have all been animated by human rights norms and principles that undergird the work of specific human rights mechanisms: the prevention of arbitrary detention, the protection of the rights of migrant workers and their families, and the prevention of torture.

Today's webinar also revolves around a critical norm: the non-punishment principle, which is fundamentally important to the protection of victims of human trafficking. As the Special Rapporteur on trafficking has written, **“At its core, the non-punishment principle is aimed at ensuring that a victim of trafficking is not punished for unlawful acts committed as a consequence of trafficking.”** (end quote)

The non-punishment principle has important relevance to the issue of immigration detention, which is the unique focus of our work at the Global Detention Project. In its guidelines concerning the human rights of victims of trafficking, the Office of the High Commissioner for Human Rights states that **“Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination.”** (end quote)

For more than a decade the GDP has worked to document immigration detention policies and practices in every country on the globe, with the goal of developing data and analyses that can be used to protect the human rights of all non-citizens who are subject to arrest, detention, and deportation. We have documented more than 2,000 detention centres detailing conditions faced by detainees, developed statistical and analytical data on dozens of countries revealing the evolution and legal justifications of their immigration detention systems, and employed this information in joint initiatives with local migrant rights advocates in every region of the world in an effort to relentlessly insist that states abide by their human rights commitments in their treatment of non-citizens.

Despite the tireless work that we and many others have done to pushback against harmful immigration detention practices, what we are witnessing today is an explosion of detention,

interdiction, incarceration, and often times disappearances of migrants and refugees everywhere. A week does not pass without reading about another, often-nameless migrant or asylum seeker dying in a detention centre because they were not given medical treatment or because they merely had given up hope in the face of their endless detention.

Although there is no standard or universally accepted definition of migration-related detention, the GDP broadly defines it as the ***deprivation of liberty of non-citizens for reasons related to their migration status***. Typically, such detention measures are imposed to ensure that a person is deported; to verify their identity; to prevent absconding; or as part of an asylum procedure. Although in some countries immigration violations can lead to criminal prosecution, immigration detention in its most common manifestation involves detaining people without charging them with a crime. This often results in immigration detainees having limited access to due process guarantees or judicial remedies. In contrast to criminal prisons, which are at least nominally intended to lead to the re-introduction of people back into society, immigration detention has no reform agenda; rather, it generally is intended to permanently disappear people from society by ensuring their removal.

It is at this crucial juncture between criminal and non-criminal forms of detention where the non-punishment principle has particular relevance to the issue of immigration detention. This is because, while it is relatively easy to observe and witness a criminal procedure and the legal process driving it forward, when it comes to immigration detention, the process and rationale for the detention can become deeply blurred and even invisible. In fact, in many countries where migrants, including victims of trafficking, are detained officials do not even recognise the confinement of these people as detention or deprivation of liberty, let alone a form of punishment. And yet, there can be no doubt that when you place a trafficking victim behind bars or in a locked room or in a secure border camp because they do not have the appropriate papers to be in the country, you are punishing that person, likely in ways that are indelible, causing a harm that will never go away.

It is impossible to imagine the depths of despair that a victim of trafficking must feel when they are locked up without a criminal charge, afraid to even acknowledge their victimhood for fear of reprisals by their traffickers, forsaken in a country they do not know. But this is precisely what we need to try to imagine today. **How we can we harness the power and rationale of the non-punishment principle to prevent harmful immigration detention?** This is the key question that we seek to address.

I am deeply excited to hear from our esteemed guests, whose work and expertise covers much of the globe, about how they envision employing the principle of non-punishment to pushback against arbitrary immigration detention practices. I am equally excited to hear from many of you in the audience about your own thoughts and experiences. One of the riches of today's event is its intersectional nature: we have in attendance today a diverse range of specialists, advocates and practitioners who may have different areas of expertise, but who nevertheless share a common goal: protecting victims from punishment and harm.

Thank you.