

Submission of the International Commission of Jurists

First informal thematic session “Human rights of all migrants” in the process for a Global Compact for safe, orderly and regular migration

THE RIGHT OF MIGRANTS TO REMEDY AND ACCESS TO JUSTICE

9 May 2017

The International Commission of Jurists very much welcomes these two days of discussion of human rights of migrants and the opportunities that you have provided for civil society to participate.

One key element that distinguishes something as a right (as opposed to a voluntary gesture of generosity) is the ability of any person who holds the right to enforce it when it is not being respected, protected or fulfilled.

Perhaps this is so obvious that it has not been seen as very necessary to say it explicitly during these two days, but we would suggest it is indeed crucial in this context to say it explicitly and repeatedly.

In very basic and practical terms, for human rights to be implemented as “rights”, victims of alleged violations must have unhindered access to institutional machinery for enforcement at the national level.

As ICJ emphasised yesterday, the legal system, including equal and effective access to courts and lawyers, has an essential role to play in enforcement of rights, including human rights of migrants, at the national level.

The ICJ very much appreciates the comments from Special Rapporteur on human rights of migrants, Professor Francois Crépeau, suggesting that this is an aspect that deserves more attention in these discussions.

As member States, you have already adopted, by consensus, UN Basic Principles on right to remedy and reparation for human rights violations, and UN Basic Principles on Justice for victims of crime and abuse of power – so we already have a consensus (if somewhat minimal) foundation to take as starting point.

Building on this basic foundation, the ICJ has offered the detail, the specificity and the very practical approach of a set of Principles on the role of judges and lawyers in relation to refugees and migrants, developed with practitioners, as further raw material for your consideration and we hope all participants will find them useful.

We emphasise that including in the Compact some concrete content about machinery for enforcement of human rights, and in particular the role of access to an impartial legal system and independent legal assistance in this regard, will be absolutely essential for the Compact to have real practical impact in terms of upholding and implementing the human rights of migrants as durable rights in the true sense of the word, and not simply as a matter of rhetoric or of welcome but not necessarily permanent generosity.

Thank you again for the opportunity to participate in these discussions.

Additional information is available on the ICJ website at: <https://www.icj.org/rmprinciples/> or by contacting ICJ Senior Legal Adviser, Matt Pollard (matt.pollard@icj.org).