

# The Identity Project

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Office of the High Commissioner for Human Rights  
United Nations Office at Geneva  
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## **Re: General Assembly Resolution A/RES/68/179 on the Protection of Migrants**

As an NGO primarily concerned with the right to freedom of movement<sup>1</sup>, the Identity Project (PapersPlease.org) welcomes the invitation and opportunity to provide this information to the Office of the High Commissioner for Human Rights, for your use in preparing your report to the General Assembly concerning the human rights of migrants while in transit, including in ports and airports and at borders and checkpoints.

We are pleased that Resolution A/RES/68/179, as adopted by the General Assembly on 18 December 2013, "Reaffirm[s] that everyone has the right to freedom of movement and residence within the borders of each State and the right to leave any country, including his or her own, and to return to his or her country," in accordance with Article 12 of the International Covenant on Civil and Political Rights (ICCPR).

Unfortunately, that right, and in particular the right to leave any country, is routinely and systematically violated. These violations have especially grave consequences for asylum seekers who are prevented from fleeing countries where they are experiencing, are at risk of, and/or have a well-founded fear of persecution.

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1 See our previous submissions to the UN Human Rights Committee regarding the right to travel at <<http://papersplease.org/wp/2013/01/08/identity-project-tells-un-human-rights-committee-that-us-violates-the-right-to-travel/>> and <<http://papersplease.org/wp/2014/02/12/update-the-us-is-still-violating-travelers-human-rights/>>, and our additional white papers and policy analysis concerning the right to travel at <<http://papersplease.org/wp/policy/>>.

Airlines routinely prevent refugees and asylum seekers from boarding flights on which they seek to depart from countries where they are being persecuted. In many of these cases, these refugees and asylum seekers would be eligible for admission and asylum on arrival in other countries, if they were allowed to travel to places of refuge.

In accordance with numerous multilateral and bilateral agreements, airlines are licensed as common carriers. As such, they are required to provide transportation to all individuals willing to pay the fare and comply with the general conditions in their tariff.

In spite of this legal obligation, airlines claim that they are authorized to deny transportation to any individual who, in their sole discretion, the airline "believes" either (a) will not be admitted to the country of their intended destination, and/or (b) lacks any of the documents the airline believes are "required" for admission to that country.

However, airlines have neither the legal authority nor the competence to determine who will, and who will not, eventually be admitted to, or granted asylum by, any country. Asylum decisions can only be made by competent authorities, and only after the asylum seeker arrives in the country where they seek asylum.

It is impossible for anyone to predict with certainty, in advance, whether a particular person will be granted asylum in any particular country.

If an otherwise-qualified passenger insists, the clear duty of an airline -- under the laws and aviation treaties pursuant to which they are licensed as a common carrier -- is to transport that passenger, at her sole risk that she won't be admitted to her intended destination. If an airline won't transport a person to a country of potential refuge, it doesn't matter what "right" that person theoretically has to seek asylum there.

Countries that allow airlines not to transport would-be asylum seekers who the airlines think won't be admitted prevent legitimate asylum seekers from fleeing persecution or reaching places of potential refuge, and turn unqualified airline check-in staff or contractors into *de facto* asylum judges of first and last resort.

Increasing numbers of countries not only fail to impose sanctions on airlines that fail to fulfill their duties as common carriers, but instead impose fines or other sanctions on airlines that transport arriving refugees or asylum seekers who are denied admission.

Asylum seekers often lack passports or other travel documents for reasons related to the persecution they have experienced in the country they are fleeing. Lack of such documents is part of the evidence of persecution which supports an asylum claim. Asylum seekers cannot be required to have any specific documents, and denial of asylum solely on the basis of a lack of travel documents would be a violation of international humanitarian law. Denial of boarding to an asylum seeker on the basis of a claim that the person lacks documents "required" for admission to any other country is thus *per se* error. No particular documents are necessarily required for admission as an asylum seeker.

Perhaps most importantly, the right to leave any country, as guaranteed by Article 12 of the ICCPR, does not depend on admissibility to any particular other country. The sovereign right to refuse admission to *arriving* foreign nationals – within limits set by international humanitarian and other law – does not imply extra-territorial jurisdiction over the right of foreign nationals to board flights *departing* from foreign airports, especially when those flights are operated by foreign-flag aircraft.

Whether to allow a person to leave any country is an *emigration* decision for that country – subject to the right to leave any country enumerated in Article 12 of the ICCPR – not an *immigration* decision within the jurisdiction of any other country.

Extra-territorial border control schemes and delegations of *de facto* or *de jure* adjudicatory authority over emigration or immigration to airlines or other private parties must incorporate due process of law, including judicial review. They must be designed and operated in such a way as to respect the right to leave any country enumerated in Article 12 of the ICCPR. They must separate decisions and criteria for eligibility for admission at a particular destination from decisions and criteria for boarding at, or departure from, places of origin or intermediate stopping or transfer points.

Common carriers should be required to fulfill their obligations to transport all members of the public complying with their tariffs and conditions. Common carriers should not be subject to sanctions on the basis of the admission or non-admission to destination countries of passengers they have transported. Common carriers should be educated on the lack of any requirement for asylum seekers to possess any particular travel documents. Common carriers should not be allowed to deny transportation except on the basis of government orders issued in accordance with Article 12 of the ICCPR.

We authorize publication of this submission on the OHCHR website.

Sincerely,

Edward Hasbrouck  
Consultant on travel-related civil liberties and human rights issues  
The Identity Project