



# General Assembly

Distr.: General  
2 April 2012

Original: English

---

## Human Rights Council

Twentieth session

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## **Report of the Special Rapporteur on the human rights of migrants, François Crépeau**

### *Summary*

The present report is submitted in accordance with Human Rights Council resolution 17/12, and is the first to be presented to the Human Rights Council by the newly appointed Special Rapporteur on the human rights of migrants, François Crépeau, who assumed his functions on 1 August 2011. The report provides a summary of activities undertaken by the mandate holder since taking up his functions. The thematic part of the report focuses on the detention of migrants in an irregular situation. The first part of the thematic report sets out the international and regional human rights legal framework, including with regards to groups of migrants with special protection needs, and the second part focuses on alternatives to detention. The report draws on the work of the previous mandate holders in their reports on the human rights of migrants deprived of their liberty (E/CN.4/2003/85) and on the criminalization of irregular migration (A/HRC/7/12 and A/65/222).

## Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Activities of the Special Rapporteur .....	1–4	3
A. Country visits.....	1–2	3
B. Communications with States .....	3	3
C. Other activities.....	4	3
II. Detention of migrants in an irregular situation.....	5–67	3
A. The international and regional human rights legal framework .....	5–47	3
B. Alternatives to administrative detention of migrants .....	48–67	13
III. Conclusions and recommendations .....	68–78	17

## **I. Activities of the Special Rapporteur**

### **A. Country visits**

1. During the period under review, the Special Rapporteur undertook one country visit, to Albania, from 5 to 13 December 2011.
2. In 2012 and 2013, the Special Rapporteur will focus on the European-Mediterranean region and specifically on the management of the external borders of the European Union. During the year, he plans to undertake country visits to Greece, Italy, Tunisia and Turkey.

### **B. Communications with States**

3. Since he took up his mandate on 1 August 2011, the Special Rapporteur has sent 12 communications. He thanks all the Governments that responded to his communications for their collaboration and reminds Governments that have not yet responded to do so and address all the concerns raised in each communication.

### **C. Other activities**

4. During the reporting period, the Special Rapporteur attended various international events. He gave an oral statement to the General Assembly in New York on 21 October 2011. From 8 to 10 November 2011, he participated in an Expert Meeting on Refugees and Asylum-Seekers in Distress at Sea in Djibouti, organized by the Office of the United Nations High Commissioner for Refugees (UNHCR). From 29 November to 2 December 2011, he attended the Global Forum on Migration and Development in Geneva and its side events on its margins. He attended the Tenth Coordination Meeting on International Migration and Development in New York on 9 and 10 February 2012. On 22 and 23 March 2012, he participated in an expert consultation on human rights at international borders, organized in Geneva by the Office of the United Nations High Commissioner for Human Rights (OHCHR).

## **II. Detention of migrants in an irregular situation**

### **A. The international and regional human rights legal framework**

#### **1. The right to liberty and security of person**

5. The Universal Declaration of Human Rights guarantees to “everyone”, including migrants in an irregular situation, the right to life, liberty and the security of person (art. 3) and provides that “no one” shall be subjected to arbitrary arrest, detention or exile (art. 9). Article 9, paragraph 1, of the International Covenant on Civil and Political Rights provides that everyone has the right to liberty and security of person, no one shall be subjected to arbitrary arrest or detention and no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. The Human Rights Committee, which monitors the implementation of the Covenant, in its general comment No. 8 (1982) on right to liberty and security of persons stated that this provision is applicable to all deprivations of liberty, including immigration control. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families also protects the right to liberty and security of person and provides all migrant

workers regardless of their status with the right not be subjected individually or collectively to arbitrary arrest or detention and the right not be deprived of liberty except on such grounds and in accordance with such procedures as are established by law (art. 16, paras. 1 and 4).

6. The fact that a person is irregularly in the territory of a State does not imply that he or she is not protected by international human rights standards. In its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, the Human Rights Committee stated that “the enjoyment of Covenant rights is not limited to citizens of States Parties but must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party.”

7. At the regional level, the right to liberty and security of person is protected by article 6 of the African Charter on Human and Peoples’ Rights, article 7 of the American Convention on Human Rights, article 14 of the Arab Charter on Human Rights and article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

## **2. Exceptional grounds for administrative detention of migrants**

8. The Special Rapporteur has noted that States use a wide range of reasons to justify the detention of migrants and some States see irregular migration as a national security problem or a criminal issue, and neglect the human rights issues at stake. Different categories of migrants may be subjected to detention, including migrants who are undocumented or in an irregular situation, asylum-seekers awaiting the outcome of their asylum application and failed asylum-seekers awaiting removal. The Special Rapporteur would like to emphasize that there is no empirical evidence that detention deters irregular migration or discourages persons from seeking asylum. Despite increasingly tough detention policies being introduced over the past 20 years in countries around the world, the number of irregular arrivals has not decreased. This may be due, *inter alia*, to the fact that migrants possibly see detention as an inevitable part of their journey.

9. In order not to violate the right to liberty and security of person and to protect against arbitrariness, detention of migrants must be prescribed by law and necessary, reasonable and proportional to the objectives to be achieved. Legitimate objectives for detention are the same for migrants as they are for anyone else: when someone presents a risk of absconding from future legal proceedings or administrative processes or when someone presents a danger to their own or public security.

10. Security detention poses particular risks to migrants, who may end up in prolonged or even indefinite detention justified by vague criteria. The Special Rapporteur would like to stress that detention for security purposes may only be imposed after conducting an individual assessment in each case, for the shortest time possible, and in compliance with all procedural safeguards.

11. The International Covenant on Civil and Political Rights does not contain an exhaustive list of accepted grounds for detention, meaning that an assessment must be made on a case-by-case basis. The Human Rights Committee held in communication No. 560/1993, paragraph 9.2, that “the notion of ‘arbitrariness’ must not be equated with ‘against the law’, but be interpreted more broadly to include such elements as inappropriateness and injustice. Furthermore, remand in custody could be considered arbitrary if it is not necessary in all the circumstances of the case, for example to prevent flight or interference with evidence: the element of proportionality becomes relevant in this context”.

12. Unlike the Covenant, the European Convention on Human Rights provides an exhaustive list of the situations in which detention may be permitted. Article 5, paragraph 1 (f), states that detention of migrants is only permitted in two specific situations: “the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition”. In the case *Vasileva v. Denmark*, the European Court of Human Rights noted that the list of exceptions to the right to liberty secured in article 5, paragraph 1, “is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision, namely to ensure that no one is arbitrarily deprived of his liberty”.

### 3. Criminalization of migration

13. The Special Rapporteur notes with concern that irregular entry and stay is considered a criminal offence in some countries. He wishes to stress that irregular entry or stay should never be considered criminal offences: they are not per se crimes against persons, property or national security. It is important to emphasize that irregular migrants are not criminals per se and should not be treated as such. The Working Group on Arbitrary Detention has held that “criminalizing illegal entry into a country exceeds the legitimate interest of States to control and regulate irregular immigration and leads to unnecessary detention” (A/HRC/7/4, para. 53).

14. The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, requires States parties to establish as a criminal offence the smuggling of migrants. However, the criminalization requirement does not apply to the migrants who are being smuggled. The Protocol states that migrants shall not become liable to criminal prosecution under the Protocol for the fact of having been the object of smuggling.

### 4. Procedural guarantees in the context of administrative detention of migrants

15. Migrants who are detained find themselves in an especially vulnerable situation, as they may not speak the language and therefore understand why they are detained, or be aware of ways to challenge the legality of their detention. The Special Rapporteur has been made aware that migrants in detention are frequently denied key procedural safeguards, such as prompt access to a lawyer, interpretation/translation services, necessary medical care, means of contacting family or consular representatives and ways of challenging detention. The Special Rapporteur is also aware that, even if all procedures have been properly followed, detention may still be deemed arbitrary when there has been an element of bad faith on the part of the authorities.<sup>1</sup>

16. Article 9, paragraph 2, of the International Covenant on Civil and Political Rights provides that anyone who is arrested shall be informed, at the time of arrest, of the reasons for his/her arrest. Article 16, paragraph 5, of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provides the same right specifically for migrant workers and members of their families. The Working Group on Arbitrary Detention stated in its deliberation No. 5 on the situation regarding immigrants and asylum-seekers that a notification of the detention must be given in writing, in a language understood by the asylum-seeker or immigrant, stating the grounds for the detention, and set out the conditions to apply for a remedy to a judicial authority.

17. According to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, all persons under any form of detention or

<sup>1</sup> European Court of Human Rights, *Čonka v. Belgium*, 5 February 2002.

imprisonment shall be informed at the time of arrest in a language they understand of their rights and how to avail themselves of those rights. The Body of Principles furthermore provides that all detained persons have the right to assistance, free of charge if necessary, of an interpreter and a legal counsel and a prompt medical examination. They also have the right to communicate with the outside world, in particular with family and counsel.

18. Article 9, paragraph 4, of the International Covenant on Civil and Political Rights provides that anyone who is deprived of his/her liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his/her detention and order his/her release if the detention is not lawful. The Human Rights Committee in its general comment No. 8 stated that this provision is applicable to all deprivations of liberty, including immigration control. Article 16, paragraph 8, of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provides the same guarantees for migrant workers and members of their families who are deprived of their liberty, and also provides the right to have the assistance, if necessary without cost to them, of an interpreter, if they cannot understand or speak the language used. Such guarantees are important in first instance, but also at the appeal level.

19. At the regional level, the right to take proceedings before a court in order to decide on the lawfulness of detention is provided by article 7 of the African Charter on Human and Peoples' Rights, article 7 of the American Convention on Human Rights, article 14 of the Arab Charter on Human Rights and article 5, paragraph 4, of the European Convention on Human Rights. The Special Rapporteur has been made aware of several instances where that right has been restricted, inter alia through long delays between the beginning of detention and the date of the first review procedure.

20. Migrants who have been detained have the right to communicate with the authorities of their home country, through consular or diplomatic authorities. Article 16, paragraph 7, of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provides that when a migrant worker or a member of his or her family is detained, the consular or diplomatic authorities of his or her State of origin or of a State representing the interests of that State shall, if he or she so requests, be informed without delay of his or her arrest or detention and of the reasons therefor; and the person concerned shall have the right to communicate with the said authorities. Article 36, paragraph 1 (b), of the Vienna Convention on Consular Relations states that, if requested, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is detained. However, migrants who are detained need to be made aware of their right to communicate with consular or diplomatic authorities, in order to use it. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that when a foreigner is detained, he or she shall be promptly informed of his right to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he is a national or otherwise entitled to receive such communication. The Special Rapporteur would however like to stress that consular authorities should only be contacted if this is requested by the detained migrant. In particular, asylum-seekers should not be brought to the attention of their consular authorities without their knowledge and consent.

## **5. Duration of administrative detention of migrants**

21. The Special Rapporteur has received information indicating that long-term administrative detention of migrants, sometimes over a year, is frequent. He wishes to emphasize that the duration of administrative detention of a migrant should be as short as possible, and the decision to keep the person detained must be reviewed periodically. The

Human Rights Committee has stated in communication No. 560/1993 that “every decision to keep a person in detention should be open to review periodically so that the grounds justifying the detention can be assessed. In any event, detention should not continue beyond the period for which the State can provide appropriate justification. For example, the fact of illegal entry may indicate a need for investigation and there may be other factors particular to the individuals, such as the likelihood of absconding and lack of cooperation, which may justify detention for a period. Without such factors, detention may be considered arbitrary, even if entry was illegal.”

22. The Special Rapporteur would like to stress that under no circumstances should administrative detention of migrants be indefinite. The Working Group on Arbitrary Detention stated in its deliberation No. 5 that a maximum period of detention should be set by law, and the custody may in no case be unlimited or of excessive length. The Working Group considers as arbitrary deprivation of liberty “when asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without possibility of administrative or judicial review or remedy” (A/HRC/16/47, annex, para. 8 (d)). The Working Group has also stated that upon expiry of the maximum period of detention established by law, the detainee must be automatically released (A/HRC/13/30, para. 61).

23. Migrants who are detained may not always be aware of their right to request review of their detention, sometimes due to language barriers or lack of access to a lawyer. The Special Rapporteur is therefore of the opinion that periodic review of detention should be automatic. The Working Group on Arbitrary Detention has stated that there should be automatic, regular and judicial, not only administrative, review of detention in each individual case, and that review should extend to the lawfulness of detention and not merely to its reasonableness or other lower standards of review (*ibid.*).

24. It may sometimes be impossible to remove an irregular immigrant because, *inter alia*, the migrant lacks documents to be able to return to the country of origin, there may be financial or other practical impediments to removal (for instance no means of transportation available) or where there is a risk of torture in the country of return (thus the non-refoulement principle in article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) prevents the expulsion or return of the person to that country. Furthermore, asylum-seekers whose life or freedom would be threatened on account of his/her race, religion, nationality, membership of a particular social group or political opinion are protected through the non-refoulement principle in article 33 of the Convention relating to the Status of Refugees. When it is impossible to remove a migrant due to reasons which are beyond his or her control, the migrant should not be detained. This has also been stated by the Working Group on Arbitrary Detention, which noted that in cases where “the legal or practical obstacles for the removal of the detained migrants do not lie within their sphere of responsibility, the detainees should be released to avoid potentially indefinite detention from occurring, which would be arbitrary. The principle of proportionality requires that detention has a legitimate aim, which would not exist if there were no longer a real and tangible prospect of removal” (*ibid.*, para. 91).

## **6. Conditions of detention of migrants**

25. Information gathered by the Special Rapporteur indicates that migrants are sometimes detained in unacceptable substandard conditions in overcrowded facilities with poor hygiene, limited or no sanitation and infrequent meals. The Special Rapporteur has also been made aware that mental and physical health of migrant detainees is often neglected. Doctors and nurses are not always available and may not have the authority to properly treat their patients, *inter alia* when they need hospitalization. Furthermore, reproductive health care for women, especially pregnant women, is not available in all places of detention.

26. Substandard detention conditions may potentially amount to inhuman or degrading treatment, and may increase the risk of further violations of economic, social and cultural rights, including the right to health, food, drinking water and sanitation.

27. According to article 10, paragraph 1, of the International Covenant on Civil and Political Rights, all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. In its general comment No. 21 (1992) on humane treatment of persons deprived of their liberty, the Human Rights Committee stated that this right applies to anyone deprived of liberty under the laws and authority of the State in prisons, hospitals – particularly psychiatric hospitals – detention camps or correctional institutions or elsewhere. It further states that treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule and, consequently, the application of this rule cannot be dependent on the material resources available in the State.

28. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provides that migrant workers and members of their families who are deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and for their cultural identity (art. 17, para. 1). Furthermore, migrant workers and members of their families who are subjected to detention shall enjoy the same rights as nationals (*ibid.*, para. 7).

29. The Standard Minimum Rules for the Treatment of Prisoners, which apply to all categories of prisoners, both criminal and those imprisoned under any other non-criminal process, set out minimum standards for, *inter alia*, accommodation, personal hygiene, clothing, bedding, food, exercise, access to newspapers, books and religious advisers, communication with the outside world and medical services.

30. The Special Rapporteur has received reports indicating that migrants in detention, both men, women and children, suffer violence, including sexual violence and abuse. The behaviour of the guards is not always adequately monitored, especially if they are employed by private security companies. Proper instruction and training of the personnel who have authority over migrants in detention is therefore of utmost importance.

31. Detention of migrants on the ground of their irregular status should under no circumstance be of a punitive nature. As migrants in administrative detention have not been charged with or convicted of a crime, they should not be subject to prison-like conditions and environments, such as prison uniforms, highly restricted movement, lack of outdoor recreation and lack of contact visitation. However, the Special Rapporteur has received information indicating that detention conditions in migrant detention centres are often prison-like and, in some countries, the conditions may be worse in migrant detention centres than in prisons. Some migrant detention centres only allow monitored visits, and have dividing screens in the visitation areas, preventing physical contact with visiting family and friends. Detained migrants do not always have access to telephones, which can make communication with their lawyers difficult. The Special Rapporteur has also been made aware of the absence of interpreters in some detention centres, which makes communication with the migrant detainees difficult and subjects them to misinformation.

32. In order to monitor the conditions of detention of migrants, the Special Rapporteur believes that independent visits are crucial. OHCHR, UNHCR, the International Committee of the Red Cross (ICRC), national human rights institutions and non-governmental organizations (NGOs) should be allowed access to all places of detention. In addition to allowing for such visits, the ratification by States of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, allowing for visits by the Subcommittee on Prevention of Torture and the establishment of a national preventive mechanism, is of utmost importance to ensure proper

monitoring of places where migrants are detained. The Special Rapporteur has been made aware of several instances of desperate violence in migration detention centres, such as suicide attempts, self-mutilation, hunger strikes, rioting and arson: such instances could probably be considerably reduced if effective, frequent and independent monitoring of the detention facilities was implemented, including secure and accessible mechanisms for receiving complaints by migrant detainees.

## **7. Places of detention of migrants**

33. The Special Rapporteur wishes to emphasize that migrants in administrative detention should be kept in dedicated detention centres, and should under no circumstances be detained in prisons or other criminal facilities together with persons imprisoned for a criminal offence. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provides that migrant workers and members of their families who are detained for violation of provisions relating to migration shall be held, in so far as practicable, separately from convicted persons or persons detained pending trial (art. 17, para. 3). The Standard Minimum Rules for the Treatment of Prisoners provide that persons imprisoned under a non-criminal process shall be kept separate from persons imprisoned for a criminal offence. Additionally, the Working Group on Arbitrary Detention stated in its deliberation No. 5 that custody must be effected in a public establishment specifically intended for this purpose or, when for practical reasons, this is not the case, the asylum-seeker or immigrant must be placed in premises separate from those for persons imprisoned under criminal law. At the regional level, the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas<sup>2</sup> provide that asylum- or refugee-status-seekers and persons deprived of liberty due to migration issues shall not be deprived of liberty in institutions designed to hold persons deprived of liberty on criminal charges.

34. However, information received by the Special Rapporteur indicates that migrants are detained in a wide range of places, including prisons, police stations, dedicated immigration detention centres, unofficial migration detention centres, military bases, private security company compounds, disused warehouses, airports, ships, etc. These detention facilities are placed under the responsibility of many different public authorities, at local, regional or national level, which makes it difficult to ensure the consistent enforcement of standards of detention. Migrants may also be moved quite quickly from one detention facility to another, which also makes monitoring difficult. Moreover, migrants are often detained in facilities which are located far from urban centres, making access difficult for family, interpreters, lawyers and NGOs, which in turn limits the right of the migrant to effective communication.

35. Privately run migrant detention centres pose particular difficulties in terms of monitoring. They may also pose particular concern if the contracts for managing detention centres are awarded to the company that offers the lowest cost, without giving sufficient attention to the obligation to treat those detained with humanity and with respect for their dignity. The Guiding Principles on Business and Human Rights (A/HRC/17/31, annex) provide that States do not relinquish their international human rights law obligations when they privatize the delivery of services that may impact upon the enjoyment of human rights and the Human Rights Committee has stated in its communication No. 1020/2001 that “the contracting out to the private commercial sector of core State activities which involve the use of force and the detention of persons does not absolve a State party of its obligations under the Covenant” (para. 7.2).

---

<sup>2</sup> Inter-American Commission on Human Rights, resolution 1/08.

## 8. Groups of migrants with particular protection needs

### (a) *Women*

36. Women migrants who are detained are vulnerable to sexual violence, which may be committed by male detainees or guards. They should therefore be separated from men and be guarded by female warders. Pregnant women who are detained have particular needs. Article 12, paragraph 2, of the Convention on the Elimination of All Forms of Discrimination against Women and the Committee's general recommendation No. 26 (2008) on women migrant workers require States parties to ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period. The UNHCR Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers<sup>3</sup> (hereinafter, the UNHCR guidelines) affirm that as a general rule, the detention of pregnant women in their final months and nursing mothers should be avoided.

37. The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), which supplement the Standard Minimum Rules for the Treatment of Prisoners, provide that account shall be taken of the distinctive needs of women prisoners. Inter alia, the accommodation of women prisoners shall have the facilities and materials required to meet women's specific hygiene needs; the health screening of women prisoners shall determine, inter alia, mental health-care needs, including post-traumatic stress disorder and risk of suicide and self-harm; the reproductive health history of the woman, including current or recent pregnancies, childbirth and any related reproductive health issues; and sexual abuse and other forms of violence that may have been suffered prior to admission. The Bangkok Rules furthermore provide for gender-specific health care, individualized, gender-sensitive, trauma-informed and comprehensive mental health care and rehabilitation programmes for women with mental health-care needs.

### (b) *Children*<sup>4</sup>

38. Children in immigration detention will often be traumatized and have difficulty understanding why they are being "punished" despite having committed no crime. According to article 37 (b) of the Convention on the Rights of the Child, no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time. Article 37 (c) states that every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances. Article 37 (d) provides that every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action. Children deprived of their liberty also have a right to appropriate medical treatment (art. 24), education (art. 28) and recreation and play (art. 31).

---

<sup>3</sup> While the Guidelines relate to asylum-seekers specifically, they may by analogy provide useful guidance for the detention of migrants.

<sup>4</sup> A child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier (art. 1 of the Convention on the Rights of the Child).

39. Furthermore, the Convention provides that in any action taken by States concerning children, the best interests of the child shall be a primary consideration (art. 3). It also sets forth the right for children not to be separated from their parents against their will (art. 9); and the obligation of States to take appropriate measures to ensure that minors who are seeking refugee status or who are recognised refugees, whether accompanied or not, receive appropriate protection and assistance (art. 22).

40. Migrant children are sometimes detained together with their parents when the latter are found to be in an irregular situation, justified on the basis of maintaining family unity. Not only may this violate the principle of the best interests of the child and the right of the child to be detained only as a measure of last resort, but it may also violate their right not to be punished for the acts of their parents (art. 2, para. 2). This does not mean that the best interests of the child are served through splitting up the family by detaining the parents and transferring their children to the alternative-care system. The detention of their parents has a detrimental effect on children, and may violate children's right not to be separated from their parents against their will, as well as the right to protection of the family set forward in article 23 of the International Covenant on Civil and Political Rights and article 10 of the International Covenant on Economic, Social and Cultural Rights. A decision to detain migrants who are accompanied by their children should therefore only be taken in very exceptional circumstances. States must carefully evaluate the need for detention in these cases, and rather preserve the family unit by applying alternatives to detention to the entire family.

41. Children can also make migratory journeys on their own, sometimes having been separated from their parents or other adult relatives. These unaccompanied or separated children are vulnerable to becoming victims of human rights violations, such as sexual and economic exploitation and trafficking, and their situation requires special attention. In its general comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin, the Committee on the Rights of the Child stated that unaccompanied and separated children should not, as a general rule, be detained, and detention cannot be justified solely on the basis of their migratory or residence status, or lack thereof, nor should they be criminalized solely for reasons of irregular entry or presence in the country. The Working Group on Arbitrary Detention has stated that, given the availability of alternatives to detention, it is difficult to conceive of a situation in which the detention of an unaccompanied minor would comply with the requirements stipulated in article 37 (b) of the Convention on the Rights of the Child (A/HRC/13/30, para. 60). States should instead appoint a guardian or adviser as soon as the unaccompanied or separated child is identified and maintain such guardianship arrangements until the child has either reached the age of majority or has permanently left the territory and/or jurisdiction of the State.

(c) *Victims of trafficking*

42. Victims of trafficking may violate immigration laws and regulations, inter alia relating to irregular entry or use of false documents. However, the Special Rapporteur would like to stress that victims of trafficking should be recognized as victims, and should not be held responsible for the acts of their traffickers. The fear of being detained, often seen as a prelude to being returned to their country of origin and finding themselves again at the mercy of their traffickers, may prevent victims of trafficking from seeking protection, assistance and justice. The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, urges States to consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases (art. 7, para. 1). The Recommended Principles and Guidelines on Human Rights and Human Trafficking request States to ensure that trafficked persons are not, in any circumstances, held in immigration detention

or other forms of custody; and that they are not detained, charged or prosecuted for the illegality of their entry or residence or for their involvement in unlawful activities which are a direct consequence of their situation as trafficked persons. The Special Rapporteur on trafficking in persons, especially women and children, has also stated that trafficked persons should not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination (see A/64/290).

(d) *Vulnerable categories of migrants*

43. Detention can be particularly damaging to vulnerable categories of migrants, including victims of torture, unaccompanied older persons, persons with a mental or physical disability, and persons living with HIV/AIDS. The UNHCR guidelines provide that, given the very negative effects of detention on the psychological well-being of those detained, active consideration of possible alternatives should precede any order to detain asylum-seekers belonging to vulnerable categories. The Special Rapporteur is of the opinion that the same principle should apply to vulnerable migrants. In the event that individuals falling within these categories are detained, it is advisable that this should only be on the certification of a qualified medical practitioner that detention will not adversely affect their health and well-being. In addition, there must be regular follow up and support by skilled personnel. They must also have access to adequate health services, medication and counselling.

44. Victims of torture are already psychologically vulnerable due to the trauma they have experienced and detention of victims of torture may in itself amount to inhuman and degrading treatment.

45. The Special Rapporteur has received information indicating that the detention of persons who suffer from mental illness is quite frequent in migrant detention centres, which lack resources to provide them with the required medical attention. The Standard Minimum Rules for the Treatment of Prisoners provide that persons who suffer from mental illnesses shall be observed and treated in specialized institutions under medical management.

46. Research shows that immigration detention has widespread and seriously damaging effects on the mental (and sometimes physical) health of detainees. For those with pre-existing mental illness, serious consideration must be given to alternatives to detention or other arrangements that meet their treatment needs, ensuring their protection from cruel, inhuman or degrading treatment or punishment, and the right to humane conditions of detention. Furthermore, mental health issues may sometimes be caused, at least partly, by detention. In communication No. 900/1999, the Human Rights Committee held that the continued detention of a migrant when the State was aware of his mental condition and failed to take the steps necessary to ameliorate his mental deterioration constituted a violation of his rights under article 7 of the Covenant (the prohibition of torture and cruel, inhuman or degrading treatment or punishment) (para. 8.4). It further considered that “deportation of the author to a country where it is unlikely that he would receive the treatment necessary for the illness caused, in whole or in part, because of the State party’s violation of the author’s rights would amount to a violation of article 7 of the Covenant” (para. 8.5).

(e) *Stateless persons*

47. Stateless persons do not benefit from the consular or diplomatic protection of a State, often do not possess identity documents and do not have a country to which to be returned. Stateless persons are especially vulnerable to prolonged detention. Being stateless and therefore not having a country to which automatic claim might be made for the issue of a travel document should not lead to indefinite detention, and statelessness cannot be a bar

to release. The UNHCR guidelines affirm that stateless persons are entitled to benefit from the same standards of treatment as those in detention generally.

## **B. Alternatives to administrative detention of migrants**

48. The Special Rapporteur would like to remind Governments that, in 2009, the General Assembly in its resolution 63/184 called upon all States “to respect the human rights and the inherent dignity of migrants and to put an end to arbitrary arrest and detention and, where necessary, to review detention periods in order to avoid excessive detention of irregular migrants, and to adopt, where applicable, alternative measures to detention”. There are many reasons why detention of migrants should be avoided and alternatives be sought. Immigration detention remains far less regulated and monitored than criminal detention, leaving migrants at risk of, inter alia, prolonged detention, inadequate conditions and mistreatment. Migrants in detention often do not benefit from their right to legal review and due process, sometimes due to the lack of access to legal counsel or interpretation services. Detention systematically deteriorates the physical and mental condition of nearly everyone who experiences it. Symptoms related to depression, anxiety and post-traumatic stress disorder are common. Prolonged detention deepens the severity of these symptoms, which are already noticeable in the first weeks of detention. Research has found that over 90 per cent compliance or cooperation rates can be achieved when persons are released to proper supervision and assistance. The alternatives have also proved to be considerably less expensive than detention, not only in direct costs but also when it comes to longer-term costs associated with detention, such as the impact on health services, integration problems and other social challenges.

50. The right to liberty and security of person, as set out above, obliges States to consider in the first instance less intrusive alternatives to detention of migrants. The Human Rights Committee held in communication No. 900/1999 that States have to demonstrate that “in the light of the author’s particular circumstances, there were not less invasive means of achieving the same ends, that is to say, compliance with the State party’s immigration policies, by, for example, the imposition of reporting obligations, sureties or other conditions which would take account of the author’s deteriorating condition” (para. 8.2). The Working Group on Arbitrary Detention, in order to determine whether or not custody is arbitrary, considers inter alia the possibility for the alien to benefit from alternatives to administrative custody (E/CN.4/1999/63, para. 69, guarantee 13). The Working Group has recommended that “alternative and non-custodial measures, such as reporting requirements, should always be considered before resorting to detention” (E/CN.4/1999/63/Add.3, para. 33).

51. At the regional level, in the case *Vélez Loor v. Panama*, the Inter-American Court stated that “those migratory policies whose central focus is the mandatory detention of irregular migrants, without ordering the competent authorities to verify in each particular case and by means of an individualized evaluation, the possibility of using less restrictive measures of achieving the same ends, are arbitrary”.<sup>5</sup> Furthermore, the Council of Europe Twenty Guidelines on Forced Return<sup>6</sup> provide that States may only resort to detention if “after a careful examination of the necessity of deprivation of liberty in each individual case, the authorities of the host state have concluded that compliance with the removal order cannot be ensured as effectively by resorting to non-custodial measures such as supervision systems, the requirement to report regularly to the authorities, bail or other

<sup>5</sup> Judgment of 23 November 2010.

<sup>6</sup> CM(2005)40, 9 May 2005.

guarantee systems”. The European Union Returns Directive<sup>7</sup> provides that a third-country national who is the subject of return procedures may not be held in detention if other sufficient but less coercive measures can be applied effectively in a specific case.

52. The Special Rapporteur would like to stress that alternatives to detention should not become alternatives to unconditional release. Persons who are eligible for release without conditions should not be diverted into alternatives.

53. In the Special Rapporteur’s view, the obligation to always consider alternatives to detention (non-custodial measures) before resorting to detention should be established by law. Detailed guidelines and proper training should be developed for judges and other State officials, such as police, border and immigration officers, in order to ensure a systematic application of non-custodial measures instead of detention. Non-custodial measures should be subject to legal review, and migrants who are subject to non-custodial measures should have access to legal counsel. When considering alternatives to detention, States must take full account of individual circumstances and those with particular vulnerabilities, including pregnant women, children, victims of trafficking, victims of torture, older persons and persons with disabilities. The least intrusive and restrictive measure possible in the individual case should be applied. Legislation should establish a sliding scale of measures from least to most restrictive, allowing for an analysis of proportionality and necessity for every measure. Some non-custodial measures may be so restrictive, either by themselves or in combination with other measures, that they amount to alternative forms of detention, instead of alternatives to detention. When considering whether the measures applied amount to detention, the cumulative impact of the restrictions as well as the degree and intensity of each of them should also be assessed.

54. Non-custodial measures must conform to relevant principles of international law, including the principles of non-discrimination, necessity and proportionality and should not prevent individuals from exercising their other human rights, including the right to health and education. Alternatives to detention which impose restrictions on the liberty of movement need to be in compliance with article 12 of the International Covenant on Civil and Political Rights, which provides for the right to liberty of movement for everyone lawfully within the territory of a State. The term “lawfully within the territory” has been held to apply to persons who are allowed to remain in a country because the host State is unable to carry out an expulsion or deportation order (Human Rights Committee, communication No. 456/1991). Article 12, paragraph 3, of the Covenant provides that any restrictions on the right to liberty of movement must be provided by law, and be necessary to protect national security, public order, public health or morals or the rights and freedoms of others.

55. The United Nations Standard Minimum Rules for Non-Custodial Measures, although they relate to non-custodial measures in the criminal justice system, may by analogy provide some important guidance on non-custodial measures applied to migrants. The rules provide, inter alia, that the introduction, definition and application of non-custodial measures shall be prescribed by law, decisions on the imposition of non-custodial measures shall be subject to review by a judicial or other competent independent authority, the person subject to non-custodial measures shall be entitled to make a request or complaint to a judicial or other competent independent authority on matters affecting his or her individual rights in the implementation of non-custodial measures, the dignity of the person shall be protected at all times, and the right to privacy shall be respected. Furthermore, the most suitable type of supervision and treatment should be determined for each individual case, and supervision and treatment should be periodically reviewed and

---

<sup>7</sup> Directive 2008/115/EC of 16 December 2008.

adjusted as necessary. At the beginning of the application of a non-custodial measure, the person shall receive an explanation, orally and in writing, of the conditions governing the application of the measure, including his or her obligations and rights, and the failure of a non-custodial measure should not automatically lead to the imposition of a custodial measure.

56. Alternatives to detention may be defined as “any legislation, policy or practice that allows for asylum seekers, refugees and migrants to reside in the community with freedom of movement while their migration status is being resolved or while awaiting deportation or removal from the country”.<sup>8</sup> There is a wide range of possible alternatives to detention, including registration requirements, deposit of documents, bond/bail or surety/guarantor, reporting requirements, case management/supervised release, designated residence, electronic monitoring, home curfew/house arrest and voluntary return.

57. The registration of migrants with relevant authorities and providing them with official registration documents can constitute an effective measure to prevent absconding, and offers a practical alternative to detention of those arriving without documents. A requirement for migrants to present themselves in person to renew these documents may constitute a kind of de facto reporting requirement. In order not to be discriminatory, this measure should also be made available to migrants who do not have a permanent address to provide to relevant authorities for registration purposes.

58. The deposit of documents (passport or other identification documents) with relevant authorities may be used as an alternative to detention, in order to prevent absconding. However, in such cases, the migrants must be provided with alternative identification documents, which they may need in order to rent accommodation, access education, health-care services, etc.

59. Many countries operate systems that permit release on bail, bond, or under surety/guarantor. “Bail” is a deposit of a sum of money to guarantee the individual’s future compliance with immigration procedures. “Bond” is a written agreement with the authorities where the individual promises to fulfil his or her duties, sometimes requiring the deposit of a sum of money by the individual or a third person. A “surety” is the guarantee given by a third person that the individual will comply with the immigration procedures; to this end, the third person, the “guarantor”, agrees to pay a set amount of money if the individual absconds. Requests for surety are frequently included as part of bail or bond conditions. While many legal systems provide for bail, the extent to which immigrants can benefit from these is questionable. Bail can be discriminatory against migrants who lack the financial means to be released on bail. Furthermore, lack of access to legal aid or legal representation and lack of adequate interpretation may also lead to lack of awareness on the part of migrants. It is therefore important to ensure that migrants are aware of their right to request release on bail. Bail, bonds and sureties must be reasonable, and must not create an excessive or unrealistic burden on the individual. The requirement of third parties to act as guarantors may be discriminatory against migrants who do not have relatives or friends in the country who can or are willing to act as guarantors: a network of NGOs could be encouraged to provide bail, bond or surety opportunities to such migrants.

60. Periodic reporting to State officials, in person or by phone, can be used as an alternative measure to detention. The frequency of such reporting can vary from daily to weekly or less frequently. Reporting requirements should not be excessively difficult to comply with or restrictive of liberty or privacy, and should take into account the particular

---

<sup>8</sup> International Detention Coalition, *There are alternatives: A handbook for preventing unnecessary immigration detention* (Melbourne, 2011), glossary.

circumstances of the individual, such as their family situation, residential situation, employment situation and financial means. A requirement to report frequently in person may amount to a limitation on an individual's right to freedom of movement. A requirement to report daily or to travel excessive distances for reporting purposes could interfere with work or other obligations, and therefore not be proportionate to the objectives.

61. Case management/supervised release is a strategy for supporting and managing individuals while their status is being resolved, with a focus on informed decision-making, timely and fair status resolution and improved coping mechanisms and well-being on the part of individuals. Case managers establish personal rapport with migrants and may answer legal questions, explore opportunities for legal stay, provide access to a lawyer if requested, provide up-to-date information on the status of the immigration case, help solve logistical issues, etc. Case management generally comprises three types of alternatives: supervision by community organizations and NGOs; a joint programme between the Government and NGOs; or Government-administered alternatives. Case management may be done in conjunction with other measures, such as reporting requirements or bail. Migrants should be able to report to a competent authority, without fear of reprisal, any discriminatory, arbitrary or otherwise abusive conduct by State or non-State actors in the course of providing supervision of their release.

62. Designated residence usually entails either housing persons in communal houses and apartments, or directing them to live in a certain region or district within the country. Prior approval may be needed to change address or move out of the administrative region. This measure is sometimes used to share the "burden" of receiving immigrants between different regions of a given country. Sometimes a designated residence may be in an isolated area, and it is important to ensure that the location of the designated residence allows the persons involved to access health-care services, education and legal assistance, and employment opportunities where appropriate. Furthermore, the use of designated residence may undermine the freedom of movement of the migrants concerned and should therefore be used with caution.

63. Electronic monitoring usually involves an ankle or wrist bracelet keeping track of a person's movements. This measure can be particularly intrusive, and may violate the right to freedom of movement provided by article 12 of the International Covenant on Civil and Political Rights. Furthermore, the stigmatizing and negative psychological effects of the electronic monitoring are likely to be disproportionate to the benefits of such monitoring. It should therefore only be used after a careful assessment of the extent to which the specific measure will restrict the human rights of the individual, as well as its proportionality and necessity to fulfil a legitimate objective. Another problem with electronic monitoring is that it is difficult, if not impossible, for migrants without a permanent residence to benefit from this alternative to detention. If those who cannot comply with electronic monitoring requirements end up being detained, this measure could be discriminatory. If electronic monitoring is linked to other restrictions, such as a requirement to remain at home for most of the day, such restrictions might amount to house arrest, which could be seen as equivalent to detention.

64. Home curfew/house arrest is a particularly intrusive measure and may amount to an alternative form of detention rather than an alternative to detention. House arrest should therefore only be applied in exceptional cases. House arrest may make it difficult, if not impossible, for the migrant to work and thus maintain an adequate standard of living, unless he or she receives State support. In its deliberation No. 1, the Working Group on Arbitrary Detention stated that house arrest may be compared to deprivation of liberty provided that it is carried out in closed premises which the person is not allowed to leave.

65. Voluntary return programmes may be used as a mechanism to support and facilitate the departure of individuals who have no grounds to remain in the country and who have no protection or humanitarian concerns. Voluntary return programmes can be a solution for migrants who wish to return home but lack the means to do so. It can be a humane alternative to detention and deportation and, in certain circumstances, can allow a prepared, dignified and sustainable return and reintegration. However, care must be taken to ensure that the decision to return is fully voluntary and a result of a genuine, informed choice, particularly if the migrant is in a situation of closed detention when offered the option of an assisted voluntary return programme and that preparations have been made to ensure that his or her return is sustainable for the long term.

66. In order to ensure the success of alternatives to detention, all persons subject to non-custodial measures should receive clear and concise information about their rights and duties in relation to the measures in place, and on the consequences of non-compliance. They should also be treated with dignity, humanity and respect for their human rights throughout the relevant immigration procedure. Migrants subject to non-custodial measures should have access to legal advice, including on regularisation procedures and how to explore regular migration channels. The issuing of identification documents for those who do not have any is also a necessary feature of alternatives to detention, in order to avoid (re-)detention and facilitate the ability to find accommodation and work and to access health care, education and other services. Migrants who are subject to non-custodial measures also have a right, in accordance with the Covenant on Economic, Social and Cultural Rights, to an adequate standard of living (food and water, clothing, housing) (art. 11) and to the enjoyment of the highest attainable standard of physical and mental health (art. 12). Migrants who are not permitted to work should receive the required State support to ensure an adequate standard of living for themselves and their families, and States should consider allowing migrants access to the labour market. Releasing persons from detention to face destitution is not an appropriate response. Policies that restrict access to housing, basic welfare or health care amongst irregular migrants have not been associated with increased rates of independent departure or deterrence outcomes, and should be avoided.

67. Several countries already have a presumption against detention in their national laws, which may serve as good examples. States may also seek guidance from NGOs that have undertaken extensive research on alternatives to detention. For instance, the International Detention Coalition has introduced the Community Assessment and Placement model, which consists of five steps to prevent and reduce the likelihood of unnecessary detention. These steps are: (1) presume detention is not necessary; (2) screen and assess the individual case; (3) assess the community setting; (4) apply conditions in the community if necessary; (5) detain only as a last resort in exceptional cases.

### III. Conclusions and recommendations

**68. Detention for immigration purposes should never be mandatory or automatic. According to international human rights standards, it should be a measure of last resort, only permissible for the shortest period of time and when no less restrictive measure is available. Governments have an obligation to establish a presumption in favour of liberty in national law, first consider alternative non-custodial measures, proceed to an individual assessment and choose the least intrusive or restrictive measure.**

**69. The reasons put forward by States to justify detention should be clearly defined and exhaustively enumerated in legislation. If, as a measure of last resort, a State resorts to detention for immigration-control purposes in an individual case, this**

should be considered only when someone presents a risk of absconding or presents a danger to their own or public security

70. Administrative detention should not be applied as a punitive measure for violations of immigration laws and regulations, as those violations should not be considered criminal offences.

71. The Special Rapporteur calls on States to adopt a human rights-based approach to migration and review their legislation and policies on detention of migrants, ensuring that national laws are harmonized with international human rights norms that prohibit arbitrary detention and inhumane treatment.

72. The Special Rapporteur calls on States to consider progressively abolishing the administrative detention of migrants. In the meantime, Governments should take measures to ensure respect for the human rights of migrants in the context of detention, including by:

(a) Ensuring that procedural safeguards and guarantees established by international human rights law and national law are applied to any form of detention. In particular, grounds for detention of migrants must be established by law. A decision to detain should only be taken under clear legal authority, and all migrants deprived of their liberty should be informed in a language they understand, if possible in writing, of the reasons for the detention and be entitled to bring proceedings before a court, so that the court can decide on the lawfulness of the detention. Migrants in detention shall be assisted, free of charge, by legal counsel and by an interpreter during administrative proceedings;

(b) Ensuring that migrants in detention are accurately informed of the status of their case and of their right to contact a consular or embassy representative and members of their families. Migrants and their lawyers should have full and complete access to the migrants' files;

(c) Ensuring that the law sets a limit on the maximum length of detention pending deportation and that under no circumstance is detention indefinite. There should be automatic, regular and judicial review of detention in each individual case. Administrative detention should end when a deportation order cannot be executed;

(d) Ensuring that migrants under administrative detention are placed in a public establishment specifically intended for that purpose or, when this is not possible, in premises other than those intended for persons imprisoned under criminal law. The use of privately run detention centres should be avoided. Representatives of, inter alia, national human rights institutions, OHCHR, UNHCR, ICRC and NGOs should be allowed access to all places of detention. All migrant detention facilities – whatever their form – should be subject to a common set of standards, policies and practices and should be monitored by an independent central authority that is dedicated to ensuring compliance with the common set of standards, policies and practices;

(e) Ensuring that the Body of Principles for the Protection of All Persons under Any Form of Detention and Imprisonment are applied to all migrants under administrative detention. The principles include the provision of a proper medical examination as promptly as possible and medical treatment and care whenever necessary and free of charge; the right to assistance, free of charge if necessary, of an interpreter and a legal counsel; the right to communicate with the outside world, in particular family and counsel; the right to obtain, within the limits of available public resources, educational, cultural and informational material;

(f) Applying the Standard Minimum Rules for the Treatment of Prisoners to migrants under administrative detention, including providing for the separation of administrative detainees from criminal detainees; ensuring an adequate standard of accommodation, including minimum floor space, lighting, heating and ventilation; providing for adequate sanitary, bathing and shower installations; allowing administrative detainees to wear their own clothing, and provide facilities for their cleaning; a separate bed with clean bedding for each detainee; adequate food and drinking water; at least one hour of outdoor exercise daily; the right to communicate with relatives and friends and to have access to newspapers, books and religious advisers; ensuring the presence of at least one qualified medical officer who should have some knowledge of psychiatry, as well as a qualified dental officer; and ensuring the right to make a request or complaint to the central prison administration, judicial authorities or other proper authorities;

(g) Giving particular attention to the situation of women in detention, ensuring that they are separated from men, and attended and supervised only by women officers, in order to protect them against sexual violence, and avoid the detention of pregnant women and breastfeeding mothers;

(h) Ensuring that legislation does not allow for the detention of unaccompanied children and that detention of children is permitted only as a measure of last resort and only when it has been determined to be in the best interest of the child, for the shortest appropriate period of time and in conditions that ensure the realization of the rights enshrined in the Convention on the Rights of the Child. Children under administrative detention should be separated from adults, unless they can be housed with relatives in separate settings. Children should be provided with adequate food, bedding and medical assistance and granted access to education and to open air recreational activities. When migrant children are detained, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice should be strictly adhered to. The detention of children whose parents are detained should not be justified on the basis of maintaining the family unit: instead, alternatives to detention should be applied to the entire family;

(i) Ensuring that legislation prevents trafficked persons from being prosecuted, detained or punished for illegal entry or residence in the country or for the activities they are involved in as a consequence of their situation as trafficked persons. In this respect, the Special Rapporteur invites States that have not yet done so to consider ratifying the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;

(j) Taking into due consideration the particular vulnerabilities of specific groups of migrants including victims of torture, unaccompanied older migrants, migrants with a mental or physical disability and migrants living with HIV/AIDS. Detention of migrants belonging to vulnerable categories and in need of special assistance should be only allowed as a measure of last resort, and they should be provided with adequate medical and psychological assistance;

(k) Applying stateless status determination procedures to stateless migrants, and provide persons recognized as being stateless with a lawful immigration status.

73. The Special Rapporteur would like to remind Governments that alternatives to detention should not become alternatives to unconditional release, whenever such release is a possibility. Governments should put in place safeguards to ensure that those eligible for release without conditions are not diverted into alternative measures.

Alternatives to detention should have a human rights-based approach, be established by law, be non-discriminatory and be subject to judicial review and independent monitoring and evaluation. In designing alternatives to detention, Governments should pay attention to the specific situation of particular groups of migrants, such as children, pregnant women and persons with disabilities, and use the least intrusive measure possible.

74. The Special Rapporteur encourages States to collect disaggregated data on the number of migrants in administrative detention, the number of migrants who are subject to different types of non-custodial measures and the compliance rate with these measures, in order to evaluate their effectiveness.

75. The Special Rapporteur encourages States to share information with him relating to their experiences in applying alternatives to detention, with a view to identifying best practices.

76. The Special Rapporteur would like to encourage States that have not yet done so, to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

77. The Special Rapporteur would like to encourage States that have not yet done so, to consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and establish a national preventive mechanism mandated to visit all places of deprivation of liberty within their jurisdiction, including places where migrants may be detained.

78. The Special Rapporteur would like to encourage civil society organizations to continue their efforts to document and study the violations and abuses that migrants suffer in the context of detention, continue monitoring good practices of alternatives to detention, develop and continue assistance programmes to migrants deprived of their liberty, including legal aid, translation services and social and psychological assistance and visit regularly migrant holding centres and penitentiaries where irregular migrants are held.

---