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**Committee on the Protection of the Rights of All  
Migrant Workers and Members of Their Families****General comment No. 5 (2021) on migrants' rights to liberty,  
freedom from arbitrary detention and their connection with  
other human rights****I. Introduction**

1. The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families is deeply concerned by the trend towards the criminalization of migration. The trend is visible in the increasingly frequent use of detention of migrants across several regions of the world.

2. The present general comment is the result of the Committee's growing concern for the rights of migrant workers and members of their families who are deprived of their liberty. The Committee has consistently made recommendations in its concluding observations to States parties on issues affecting the rights of migrant workers and their families who are deprived of their liberty.

3. In the context of international migration, immigration control measures implemented by some States, such as automatic and mandatory detention, punishment during detention, detention of children with their families and on their own, including with unrelated adults, and also the detention of pregnant women, victims of trafficking, asylum seekers, refugees, stateless persons and other migrants in vulnerable situations, separation of families in the context of detention, prolonged or indefinite detention, barriers to access to legal remedies and international protection, and inhumane and overcrowded conditions in detention centres may amount to violation of the rights of migrant workers and their families.

4. States parties to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families have an obligation not to criminalize migration. The Committee notes that the criminalization of migration has involved the manipulation of criminal law to punish or seek to prevent irregular migration in a manner that is overwhelmingly disproportionate and inconsistent with Convention obligations. Often, this is based on political strategies seeking to deter irregular migration rather than a commitment to uphold the rights of migrants and their families.

5. Immigration detention is not a recent phenomenon; since the 1990s, there has been a significant increase in its use. It has become in many cases a mechanism for the mass arbitrary imprisonment of migrants and their families. The Committee has witnessed with concern over the last decades a rising involvement and influence of private prison corporations in immigration enforcement, alongside the expansion of the immigration detention system. Immigration detention has become an industry, reporting sizeable annual profits to private prison contractors, and in some cases States. Profits are drawn from detaining migrants and asylum seekers, including those awaiting a decision on their applications as well as migrants in the process of being deported. The Committee notes with extreme concern that immigration detention disproportionately affects poor migrants and people of colour, who at

the same time have the greatest difficulties in defending themselves or obtaining legal assistance in immigration, asylum or international protection procedures.

6. Detention has numerous effects on the health and personal integrity of migrants. Detention aggravates existing health conditions and causes new ones to arise, including the onset of anxiety, depression, exclusion and post-traumatic stress disorder, suicidal ideation, worsening their condition of vulnerability, and in some cases including suicide. Those negative effects are the result of various factors, including the indeterminate duration of detention, the arbitrariness and uncertainty surrounding it, family separation, overcrowding, a lack of access to food, safe water and medical care, deliberate physical and psychological abuse by State officials, private guards or other detainees, prolonged detention in solitary confinement, and lack of access to nationality or the enjoyment of nationality rights. Such abuse includes torture, cruel, inhuman and degrading treatment and punishment, sexual violence, disappearances, extortion and human trafficking for the purpose of exploitation, including, at a minimum, exploitation of prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery or servitude, or the removal of organs.

7. Those factors have been aggravated in the context of the coronavirus disease (COVID-19) pandemic, which has posed unprecedented challenges for States, migrants and their families. The Committee is concerned that in the context of immigration detention, many of the detention facilities where migrants, asylum seekers, refugees, and stateless persons are detained do not meet minimum sanitary requirements. People are held in overcrowded and unsanitary conditions, with limited or no access to health services. The Committee notes with concern that there is a high risk that diseases such as COVID-19 are spreading among detainees. The situation has raised questions about the need to release people deprived of liberty on the basis of their migration status and to implement alternative measures to reduce the risk of infection of COVID-19 and the potential spread of other diseases<sup>1</sup>.

8. The main objective of the present general comment is to provide guidance to States on fulfilling their obligations under the Convention in relation to the right to liberty and protection against arbitrary detention of migrant workers and their families, and other human rights obligations arising from the intersection of those rights with other human rights. The present general comment also seeks to provide guidance to States on implementing the Global Compact for Safe, Orderly and Regular Migration, and to other stakeholders on implementing initiatives to promote and protect human rights and to monitor compliance thereof.

9. The present general comment therefore addresses the content and scope of the right to liberty and security of person of migrant workers and their families; the main aspects of the right to liberty and protection against arbitrary detention of migrants in the context of criminal and administrative proceedings, particularly those related to their migration status; the content and scope of custodial measures in the context of migration; and the disproportionate impact of detention on groups in vulnerable situations. The obligation to take alternative measures to immigration detention is also addressed.

## **II. Regulatory framework on protection of the right to liberty of migrant workers and members of their families**

### **A. Right to liberty and security in the Convention (articles 16 and 17)**

10. The right to liberty applies to all forms of detention and must be guaranteed to all persons without discrimination, including all migrant workers, regardless of their migration status. Article 16 of the Convention provides for the protection of the right to liberty and security of person of all migrant workers and their families, while establishing other related

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<sup>1</sup> Cfr. Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and UN Special Rapporteur on the human rights of migrants, “Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants”, 26 May 2020.

rights and guarantees, including the right to effective protection by the State against violence committed by public officials or private individuals, groups or institutions; assurances of lawfulness and non-arbitrariness of verification procedures of the identity of migrant workers; prohibition of arbitrary and unlawful arrest and detention; and the guarantee of a number of specific procedural safeguards in the event of administrative or criminal detentions, including the right to consular assistance, the right to access to judicial remedies to challenge the legality of detention, and the right to compensation in the event of unlawful arrest or detention.

11. Article 17 of the Convention also recognizes the right of all migrant workers and their families who have been deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person and for their cultural identity. States parties should therefore guarantee adequate conditions in detention centres, taking into consideration the individual circumstances and necessities of each detainee and ensuring that conditions in detention adhere to all relevant international standards and do not amount to torture and ill-treatment. In addition to those rights, there are other rights interrelated to the liberty and security of person of migrant workers and their families, including the prohibition of torture or cruel, inhuman or degrading treatment or punishment (article 10), due process guarantees (article 18), the principles of legality and humanitarian considerations related to the status of the individual (article 19) and the prohibition of imprisonment merely on the ground of failure to fulfil a contractual obligation (article 20).

## **B. Other international and regional legal instruments**

12. The right to liberty and security of person is recognized in the main international and regional human rights instruments, including article 3 of the Universal Declaration of Human Rights, article 9 of the International Covenant on Civil and Political Rights, article 37 (b)–(d) of the Convention on the Rights of the Child, article 14 of the Convention on the Rights of Persons with Disabilities, article 6 of the African Charter on Human and Peoples' Rights, article 7 of the American Convention on Human Rights, article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), article 14 of the Arab Charter on Human Rights, and article 12 of the Association of Southeast Asian Nations (ASEAN) Human Rights Declaration.

## **C. Definition of deprivation of liberty**

13. Migrants and their families may face different challenges to their right to liberty and security, one of which is the deprivation of liberty as a result of having violated immigration laws in the State of transit or destination or for purposes such as screening, identification, registration, reception, immigration procedures, implementing a return decision, protection and alternative care of children, etc. The information gathered by the Committee indicates that at the global level, States have adopted different terminology for regulating immigration detention in both administrative and criminal laws. The Committee notes with concern that in different regions of the world, countries use different terms to refer to deprivation of liberty for immigration reasons or immigration detention, such as “filing and accommodation”, “processing”, “reception”, “retention” and “placement”. The expression “detention” is rarely used, and its renaming is usually intended to prevent those measures from scrutiny, thus avoiding procedural safeguards that should be applied before and during any deprivation of liberty.

14. The Committee therefore considers it necessary to clarify the concept of deprivation of liberty. Article 4 (2) of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines deprivation of liberty as any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority. Such deprivation of liberty begins at the time of arrest and extends until the person is released. Irrespective of how that measure is defined in the national policy, law or practice or the reasons giving rise to it, if the measure results in a deprivation of liberty in which migrants or their families are unable to leave at will, the Committee

understands the measure to be a form of detention to which articles 16 and 17 of the Convention apply.

15. In addition, the Committee considers that detention for “reasons related to migration status” or “immigration detention” refers to any situation in which a person is deprived of liberty on grounds related to his or her migration status, regardless of the name or reason given for carrying out the deprivation of liberty, or the name of the facility or place where the person is being held while deprived of liberty. Accordingly, immigration detention includes, at a minimum, the detention of migrants in prisons, police stations, immigration detention centres, closed reception facilities, healthcare facilities and any other enclosed spaces, such as international or transit areas at air, land and maritime ports. “Reasons related to migration status” is understood by the Committee to be a person’s migratory or residence status, or the lack thereof, whether relating to irregular entry, stay or exit<sup>2</sup>.

#### **D. Types of deprivation of liberty to which migrant workers and their families might be exposed**

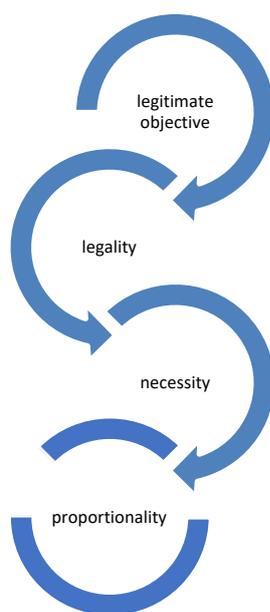
16. The Committee notes that the grounds for deprivation of liberty of migrant workers and their families are diverse, and the type of deprivation of liberty imposed on migrants will depend on those grounds. Some examples include criminal detention in prisons, immigration detention, involuntary institutionalization, and confinement in restricted areas of air, land and maritime ports. However, for the purposes of the present general comment, the relevant reasons for deprivation of liberty are solely those related to an immigration situation, and whether or not detention is a result of the migrant’s irregular entry or stay in the State of destination, transit or return.

#### **E. Prohibition of arbitrary detention**

17. The prohibition of arbitrary detention is absolute, which means that it is a non-derogable rule of customary international law, or a *jus cogens* norm. The prohibition of arbitrary deprivation of liberty also protects migrants, in accordance with article 16 (4) of the Convention. Thus, any use of detention in the context of migration must be based on a legitimate State objective; provided for in national law; always be an exceptional measure of last resort compatible with the criteria of necessity and proportionality; of limited scope and duration; imposed only where less restrictive alternatives have been considered and found inadequate to meet legitimate purposes; and subject to periodic re-evaluation and judicial review. Additionally, the conditions of detention must be proportionate to the legitimate aim sought and must always uphold minimum international standards. The arbitrariness test is illustrated in the figure below.

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<sup>2</sup> Committee on Migrant Workers/Committee on the Rights of the Child, joint general comment Nos. 4/23 (2017), para. 6.



### **Detention as an exceptional measure of last resort**

18. The Committee considers immigration detention to be an undesirable measure. There should always be a presumption in law against detention and therefore in favour of freedom. Hence, deprivation of liberty in the immigration context should be an exceptional measure of last resort. The relevant authorities must carry out a context-specific and individualized assessment of the situation, which must consider relevant factors case-by-case and not be based on a mandatory rule for a broad category and ensure that the period of detention is as short as possible. Any compulsory, automatic, systematic or widespread detention of migrant workers and their families is arbitrary. In addition, the Committee considers that the prohibition of arbitrary detention also extends to the use of detention as a deterrent or as a general migration management tool to contain immigration.

19. In a context such as the COVID-19 pandemic, the Committee urges States to review cases of migrants in immigration detention with a view to releasing them. In cases where legitimate immigration policy goals, such as deportation or removal, remain viable despite COVID-19 related border closures and other emergency measures, States should expand the use of alternatives to detention so that the detainee population is reduced to the lowest possible level in order to prevent the spread of the virus in detention facilities. However, if emergency measures nullify the objective of an individual's detention order, States must promptly release the person into the community, providing any necessary care and assistance to ensure their well-being outside detention.

### **Legitimate objective**

20. Any deprivation of liberty in a migration context must be based on a legitimate objective of the State. Although the Convention does not list the legitimate purposes that make immigration detention permissible, immigration detention can be justified only if there is a risk that the migrant will avoid immigration proceedings or to guarantee the implementation of a deportation order. In any event, the threat posed by those two scenarios must be substantiated by proven facts and be based on an individualized assessment.

21. The Committee has pointed out, in its general comments Nos. 2 and 4, that the mere fact of entering or remaining in an irregular situation in a State is not sufficient reason to mandate the immigration detention of migrant workers and their families, since that exceeds the legitimate purpose or interest of States to control and regulate migration. The Committee agrees with the Special Rapporteur on torture and other cruel, inhuman or degrading

treatment or punishment that “detention based solely on migration-status, as such, can also amount to torture, most notably where it is being intentionally imposed or perpetuated for purposes such as deterring, intimidating, or punishing irregular migrants or their families, coercing them into withdrawing their requests for asylum, subsidiary protection or other stay, agreeing to voluntary repatriation, providing information or fingerprints, or with a view to extorting money or sexual acts, or for reasons based on discrimination of any kind, including discrimination based on migration status”<sup>3</sup>.

### **Non-arbitrariness**

22. The principle of non-arbitrariness of detention is a rule of *jus cogens*. The Convention prohibits arbitrary detention, understanding arbitrary detention to be any deprivation of liberty that exceeds the limits of reasonableness. That means that it is not sufficient for the detention to pursue a legitimate purpose and be permitted by law. Rather, it must meet the criteria of necessity and proportionality and be based on an individualized assessment and be reassessed over time to ensure it continues to meet these criteria.

#### *Legality*

23. It is an obligation recognized by States that their acts must comply with national legal rules. Immigration detention can be legal only when it is previously authorized by law and is in line with the procedures established by law. Deprivation of liberty must be clearly and exhaustively provided for in national law. It is prohibited for the law to leave ample discretion to the authorities in the decision and enforcement of immigration detention.

24. To guarantee the right to liberty, States should establish in their laws a presumption in favour of freedom, which is consistent with the right to liberty, immigration detention as an exceptional measure of last resort, and the duty of States to assess whether any less coercive measures are available before resorting to detention in immigration procedures involving migrant workers and their families.

#### *Necessity*

25. In application of the principle of necessity, immigration detention can be used only where it is strictly essential to achieve the established legitimate end. Before imposing deprivation of liberty on migrant workers and their families, the decision-making authority must start from the fact that deprivation of liberty will always be the most harmful measure for the person concerned. Therefore, it must evaluate and apply all available alternatives to detention, such as non-custodial measures or less coercive measures, that are less harmful to the individual.

#### *Proportionality*

26. The proportionality test should take into consideration the potential impacts of detention on the physical and mental health of the migrant and the State has a heightened duty of care to provide effective protection of migrants in vulnerable situations<sup>4</sup>. If deprivation of liberty meets the requirements of legitimate objective, legality, necessity and proportionality, it is the duty of the authorities to carry out an assessment by contrasting the gravity of the measure implemented with the importance of satisfying the established legitimate purpose.

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<sup>3</sup> A/HRC/37/50, para. 29.

<sup>4</sup> See also Revised deliberation No. 5, A/HRC/39/45, para. 24.

### **III. General measures for the implementation of the provisions of the Convention concerning protection of the right to liberty**

#### **A. Jurisdiction**

27. States parties have an obligation to respect and guarantee the rights enshrined in the Convention to all migrant workers and their families within their territory or subject to their jurisdiction, pursuant to article 7. With regard to the right to liberty, the responsibility of States parties encompasses not only human rights violations against migrants in places of detention under their jurisdiction and within their territory, but extends to places of detention outside their territory, if the State has effective *de jure* or *de facto* control over that territory.

28. That implies that, through the design, financing, administration or supply of places of detention abroad, State authorities participate in acts that violate human rights. Similarly, if a State party decides to move migrant workers to detention centres outside its territory, the State is obliged to ensure that the rights recognized in the Convention and other international and regional human rights instruments are respected and guaranteed in those centres.

29. If migrant workers seek asylum in a State and are then transferred to places of detention outside the State's territory, the Committee considers that their cases should generally be processed in the territory of the State where they arrived, or the State that otherwise has jurisdiction over them. Nevertheless, if States reach agreements to transfer asylum seekers for the processing of their cases, they should take into account when signing such agreements that States cannot dismiss their obligations under international human rights law, international refugee law, and international criminal law.

#### **B. Personnel carrying out detentions**

30. The Committee notes that some States resort to private personnel or private security companies to guard migrant workers and their families who are deprived of their liberty. The Committee recalls that States have an increased duty of care for persons deprived of their liberty and should act with due diligence to avoid violations of their personal integrity. It agrees with the Working Group on Arbitrary Detention and the Working Group on Mercenaries that if a State subcontracts the management, safety or security of immigration detention centres to private enterprises, it remains responsible for the manner and conditions in which the subcontractors hold individuals in detention. As the State has an obligation to care for detainees, it has an obligation to actively prevent acts of torture and ill-treatment by its agents and to act with due diligence to prevent abuse by private agents in particular.

31. In principle, security personnel in detention facilities must be from the public sector. However, States parties may use private security services provided that a correct monitoring scheme is put in place, and that the private security service personnel receive adequate training on human rights norms and standards for the treatment of detainees, in accordance with international instruments on persons deprived of liberty. States must take appropriate steps to prevent, investigate, punish and redress human rights abuse committed by them. Specific mechanisms should be established to ensure their accountability and guarantee that migrants who are victims of human rights abuses have access to judicial remedy. In addition, their actions must be governed in a coordinated manner with public personnel in detention centres.

#### **C. Legal obligation of States parties to take measures to implement the provisions of the Convention (article 84)**

32. Article 84 of the Convention establishes the obligation of States parties to adopt the legislative and other measures necessary to implement the provisions of the Convention. The Committee notes that, for the standards and guidelines set out in the present general comment to be effectively implemented, it is necessary for States to develop and strengthen their human rights capacity. That includes allocating sufficient resources for the implementation

of alternatives to detention, such as non-custodial measures or less coercive measures; ensuring that, in exceptional cases where deprivation of liberty is permitted, detention centres have the necessary equipment and conditions to carry out such a measure; supervising security personnel, whether public or private; and providing adequate training on international human rights law and the specific rights of groups in vulnerable situations, including training in the identification of victims of trafficking, stateless persons, unaccompanied children, older persons and pregnant women, for all officials who have contact with migrants.

#### **IV. Fundamental principles of the Convention regarding the right to liberty of migrant workers and members of their families**

##### **A. Principle of non-discrimination (articles 1 and 7)**

33. The principle of non-discrimination is fundamental in international human rights instruments, being regarded as a *jus cogens* norm. Article 7 of the Convention underpins all of its provisions by establishing a duty for States parties to respect and ensure the rights provided for in the Convention to all migrant workers and their families within their territory or subject to their jurisdiction without discrimination.

34. States are not only obliged to ensure that their legal provisions and practices do not discriminate against migrant workers and their families but must also put in place the positive measures necessary to prevent, reduce and eliminate the conditions and attitudes that perpetuate or cause *de facto* or *de jure* discrimination against migrant workers and their families.

35. The Committee recognizes that States enjoy the sovereign power to establish their immigration policies and laws. In doing so, they must nonetheless ensure full respect for their international human rights obligations, in particular respect for the human dignity of migrant workers and their families, and the principle of non-discrimination. The Committee calls on States to adopt a human rights-based approach to migration and review their legislation, policies, and practices on the detention of migrants, ensuring that national laws are harmonized with international human rights norms that prohibit arbitrary detention and inhumane treatment.

##### **B. Principle of non-criminalization of migration**

36. The Committee reiterates that irregular entry, stay or exit may constitute at most administrative offences and should never be considered criminal offenses as they do not infringe fundamental legally protected values, and as such are not crimes per se against persons, property or national security. In accordance with that, migrants should never be classified or treated as criminals on the basis of their irregular migration status<sup>5</sup>. The Committee opposes the treatment of migration by States that frame it as a threat to local communities and the consequent adoption of national laws, policies or practices that designate migrants as “dangerous” or “harmful” persons or even “criminals”. Such practices only aggravate migrants’ vulnerability and make them more likely to become victims of discrimination, xenophobia, violence, trafficking and other human rights violations. The Committee notes with concern that one of the consequences of the criminalization of migration is the increasing association, both in legal documents and in public opinion, of migrants in an irregular situation with criminals.

37. The most obvious manifestation of such treatment is the regulation of migration within criminal law and the consequent criminalization of irregular entry or stay of migrant workers and their families. Migration irregularity is not the result of a decision of the migrant,

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<sup>5</sup> See also, Working Group on Arbitrary Detention, Revised Deliberation No. 5, A/HRC/39/45, para. 10.

but of restrictive policies of the State that prevent the exercise of the right to freedom of movement. Criminalizing irregular entry into a country exceeds the legitimate interest of States to control and regulate irregular migration and leads to unnecessary detention. States should refrain from using armed forces or any similar security forces to detain migrants as a means of implementing an immigration policy.

38. Other examples of sanctioning migration include the encouragement of local populations to inform authorities about the migration status of migrant workers and their families or the obligation imposed on service providers and other relevant individuals to provide information and exchange data when migrant workers and their families attend schools, health centres or workplaces. Such obligations produce the same negative and often disproportionate effect on the human rights of migrants who are in an irregular situation, as does direct criminalization of migration. The Committee notes that the indiscriminate use of immigration detention as a mechanism to deter migration or to combat irregular migration is ineffective in achieving those ends. It is economically more onerous than the regular migration pathway and violates multiple rights of migrants.

### **C. Principle of exceptionality of immigration detention**

39. Immigration policy should be based on a presumption of freedom and not of detention. Although the right to liberty is not unlimited, the Committee has reiterated that, since any deprivation of liberty is highly burdensome and restrictive of the human rights of individuals, detention or any other form of deprivation of liberty on grounds relating to an individual's migration status must be governed by the principle of exceptionality, that is, deprivation of liberty should serve as the last possible measure only, once all the less harmful alternatives have been analysed and ruled out.

### **D. Principle of non-detention of migrant children**

40. Several international and regional bodies and special procedure mandate holders have argued that the detention of children on grounds related to their migration status or that of their parents is not governed by the principle of exceptionality. The Committee reiterates, as established in its joint general comment No. 4 (2017) and No. 23 (2017) of the Committee on the Rights of the Child,<sup>6</sup> that as a general principle, migrant children, whether accompanied by their families, unaccompanied or separated from their families, should never be detained and should not be deprived of liberty for migration-related reasons. Detention of children is thus always prohibited under international human rights law because it is unnecessary and disproportionate. It constitutes a child rights violation and contravenes the principles of non-discrimination, best interests of the child, right to life, survival and development, and participation, as well as every child's right to liberty and family life.

41. The Committee takes note of the Global study on children deprived of liberty (A/74/136), which indicated that, around the world, at least 330,000 children are deprived of their liberty for migration-related reasons per year by at least 77 States, while at least 21 States do not resort to such measures or claim not to do so. Detention puts children at increased risk of developing physical and mental health issues and of becoming victims of abuse. Children in detention, particularly unaccompanied and separated children, are also at risk of experiencing other forms of harm, such as sexual and gender-based violence, child trafficking, neglect, abuse and exploitation.

42. The Committee considers that even a short period of detention is a violation of child rights and can constitute cruel, inhuman or degrading treatment. States must hence seek the eradication of deprivation of liberty of children for reasons related to migration status. Any kind of child immigration detention should be forbidden by law and such prohibition should be fully implemented in practice<sup>7</sup>.

<sup>6</sup> CMW/C/GC/4-CRC/C/GC/23.

<sup>7</sup> CMW/C/GC/4-CRC/C/GC/23, para. 5.

43. It is not permissible for children to be deprived of their liberty in detention centres with their parents, under the pretext of preserving family unity in detention. In any event, States should take measures to ensure the freedom of the family group. The child's best interests require keeping the family together – unless there is a danger for the child in staying with parents/caretakers – , and the imperative requirement not to deprive the child of liberty extends to the child's family and to implementing measures for the care and reception of the child and his or her family.

44. States must always ensure that the places intended for their care and protection do not in reality result in material deprivation of liberty, especially those places that are not formally detention centres but fit the above definition of deprivation of liberty. Unaccompanied migrant children should be surrendered to the care of their family members or adequately trained social workers. Children born into detention should be released and provided with the nationality of the detaining State.

45. In order to ensure that migrant and asylum-seeking children are not placed in immigration detention or in closed alternative care facilities for children, child protection and welfare actors should take primary responsibility for children in the context of international migration. When a migrant child is first detected by immigration authorities, child protection or welfare officials should immediately be informed and be in charge of screening the child for protection, shelter and other needs.

## **E. Principle of non-detention of persons in vulnerable situations**

46. In the case of migrant workers and their families who are in vulnerable situations, States' duty of due diligence to effectively protect is greater than in other cases; they should, in particular, take reasonable measures to prevent the deprivation of liberty of those persons<sup>8</sup>. States should avoid detaining migrants who have specific needs or who are particularly at risk of exploitation, abuse, gender-based violence, including sexual violence, or other human rights violations in the context of detention. That includes pregnant and breastfeeding women, older persons, persons with disabilities, survivors of torture or trauma, persons who are victims of crimes such as trafficking, migrants with special physical or mental health needs, lesbian, gay, bisexual, transgender and intersex persons, refugees, asylum seekers and stateless persons. Statelessness determination procedures are essential, given that the lack of a country of nationality to be returned to leaves stateless persons at higher risk of arbitrary and indefinite detention. The Committee agrees with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment that the threshold for ill-treatment can be reached very quickly, if not immediately, for the detention of migrants in vulnerable situations<sup>9</sup>.

## **V. Legal obligations of States parties to the Convention to protect the right to liberty of migrant workers and members of their families**

### **A. Obligation to consider alternatives to detention before imposing detention in each individual case**

47. The Committee considers that States should take measures to abolish immigration detention. It emphasizes that, through the Global Compact for Safe, Orderly and Regular Migration, States have committed to prioritize non-custodial alternatives in accordance with international law, and to take a human rights-based approach to any detention of migrants, using detention as a measure of last resort only. The Committee considers that States have an

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<sup>8</sup> See the OHCHR and Global Migration Group Principles and Guidelines on Migrants in Vulnerable Situations.

<sup>9</sup> A/HRC/37/50, para. 19.

obligation to review and implement all available alternative measures before resorting to detention, in accordance with the principles of necessity and proportionality.

48. The Committee also notes that, while terms such as “alternative measures to detention”, “non-custodial measures”, “less restrictive measures”, “less onerous measures” and “less invasive measures” are often used interchangeably in different contexts, they fundamentally address the same legal concept. The Committee understands as alternatives to detention all community-based care measures or non-custodial accommodation solutions – in law, policy or practice – that are less restrictive than detention and which must be considered in the context of lawful detention decision procedures to ensure that detention is necessary and proportionate in all cases, with the aim of respecting the human rights and avoiding arbitrary detention of migrants, asylum seekers, refugees and stateless persons. Alternatives to detention must respect the right to personal freedom and thus not create onerous restrictions or conditions, but rather generate other legitimate mechanisms and measures that are in line with human rights standards. In cases where detention no longer has a legal basis – for example when deportation, expulsion or removal is no longer a viable objective – alternatives to detention are no longer applicable.

49. However, the Committee notes that many of the alternative measures employed by States appear to emulate those measures existing in the field of criminal justice, such as bail, home-based detention or other restrictions on movement, such as electronic surveillance or periodic reporting to the authorities. Those measures are often excessively restrictive and are not appropriate in the context of migration. In some cases, they can exacerbate the stigmatization of migrants, unnecessarily interfere with their personal freedom, generate excessively onerous requirements, and may even amount to *de facto* detention.

50. The Committee wishes to highlight that alternatives to detention are intended to be more humane, to have less harmful physical and psychological impacts on individuals – particularly individuals in a vulnerable situation – and to be designed to protect people’s health, well-being and human rights. Evidence suggests that when properly implemented, these measures can be more effective than detention in assisting people to cope better with immigration procedures, including in cases where migrants’ cases are rejected and they are asked to return voluntarily and independently. Alternative measures to detention can also be significantly less costly than detention given their lower operating costs. The Committee considers that, owing to the risk of the spread of COVID-19 and other diseases, there is an even greater need for States to improve systematic consideration of alternative measures to immigration detention before imposing custodial measures.

51. The Committee recommends emphasizing community-based non-custodial measures that include case management and other forms of support, are adapted to the specific needs and vulnerabilities of each person or family, and which allow people to live freely in their communities. Legal assistance, psychosocial support and the guarantee of the protection of the rights to education, housing and health care for them and their families are guaranteed. If such alternatives to imposing restrictions on the rights of migrants are used, the safeguards surrounding them should be as stringent as those applied to detention situations. Such safeguards include ensuring that the alternative measure is established by law, limited in duration, not discriminatory in its purpose and effect, not arbitrary, subject to procedural safeguards, including regular judicial review and independent supervision, and that they protect the rights and dignity of the individual. Officials should review the effects of the alternative measures on the rights of migrants and verify that no unnecessary restrictions are imposed on migrants, in order to identify the least invasive alternative measure to detention.

## **B. Duration of detention**

52. Detention should never be excessive or indefinite during the course of immigration proceedings, since it would then become arbitrary. States should therefore establish in their legislation the maximum period of detention during the course of immigration proceedings. Moreover, detention should be permitted only for the shortest possible period, and it should also be under frequent review to assess whether it remains necessary and is still the only option. Once the period of detention established by law has elapsed, the detainee must

automatically be released. Released persons should be provided with a document protecting them against renewed detention. Renewed detention contravenes the legally defined maximum detention period.

53. If there are obstacles to identifying or deporting migrants who are in an irregular situation from the territory, or the return is not legally possible due to the application of the principle of *non-refoulement* or other international or domestic obligations, thus making deportation or expulsion impossible, the detained person must be immediately released in order to avoid indefinite detention, which would be arbitrary. Similarly, the exercise of rights by migrants deprived of their liberty cannot be grounds for prolonging detention. Any deprivation of liberty implemented on the grounds that detainees are exercising their rights to access to justice or due process guarantees or to apply for asylum or international protection would therefore be arbitrary. Finally, detaining stateless persons when there is not a real prospect of removal will potentially render the detention arbitrary and the detained stateless person must be immediately released.

### **C. Right to access to justice (articles 16, 17 and 18 of the Convention)**

54. The Committee has stated that the right of access to justice is dual. On the one hand, it constitutes a human right in itself, inherent in all persons, and on the other hand, it is a principle and precondition that imposes obligations on States to ensure that all persons can stand before the law to claim their rights. The Convention recognizes that respect for the rule of law, due process and access to justice are fundamental to all aspects of migration governance. That implies that States must guarantee that all persons within their territory or subject to their jurisdiction, regardless of their nationality, migration status, have access to justice.

55. The Committee recalls that migrants may face multiple obstacles to accessing justice, such as language barriers, lack of information or knowledge about applicable laws, absence of support networks, and lack of firewalls to take away migrants' fear of being detected by the authorities or of being detained or deported if they seek access to justice. Therefore, in order to ensure that migrants enjoy the right of access to justice and due process on an equal footing with others, States should adopt procedural or compensatory measures that help reduce or eliminate obstacles and shortcomings that prevent or hinder the effective defence of migrants' interests. The Committee recommends that States parties take all necessary measures to ensure that migrant workers and their families who are deprived of their liberty have access to justice in transit and destination States, and to information on their rights as migrants before, during and after their entry and stay in transit and destination countries in a language and format they understand, regardless of whether they are no longer present in those countries.

56. In order to guarantee access to justice for all migrant workers and their families, the Committee urges States parties to intensify efforts to ensure that migrant workers are aware of their rights before travelling, and to facilitate their access to legal recourse and redress for any violations of their rights that occur while in transit and upon arrival in destination countries. Even after their return to their country of origin or to a third State, those guarantees should always be upheld for migrant workers and their families through consular services and judicial cooperation. The Committee highlights that the reparation of the harm caused by the violation of a human right to a migrant requires integral reparation. The State should implement measures to ensure the enjoyment of the rights that have been violated and to redress the consequences of those violations. In doing so, the State should implement different measures of reparation in order to redress the harm integrally, such as measures of restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.

### **D. Judicial guarantees**

57. The Committee is acutely aware that migrant workers and their families are often severely impeded in accessing national courts and monitoring and complaint mechanisms owing to a lack of adequate safeguards during their detention. That includes: a lack of legal

representation and legal aid services; lack of child-friendly processes and safeguards; insufficient consular protection; the limited availability of the services of interpreters and translators or other accessible formats or methods of information and communication; the lack of effective remedies to challenge the legality of detention; and the lack of concrete rules on the obligations of the courts to apply sanctions or award compensation for violations of the human rights of migrants.

58. The Committee recalls that, under the Convention, States parties must ensure that laws, policies and practices are in full respect of procedural safeguards for migrant workers and their families in all administrative and judicial proceedings relating to their immigration or international protection statuses. That includes asylum or determination procedures for refugee status, all forms of additional protection, statelessness determination procedures and other special protection regimes and policies that may apply to them.

59. The due process guarantees detailed below should be ensured by States parties to respect access to justice for migrant workers and their families who are in detention.

#### **Right to be informed of the reasons for detention (article 16 (5) of the Convention)**

60. The right to information is essential for the exercise of other rights, such as access to justice. The authorities responsible for the detention must inform the migrant worker about the reasons for detention immediately preceding or at the latest at the commencement of the detention. This should be done in a language and format that the person understands, and taking into consideration factors such as age, disability and educational level.

61. The Committee reiterates that States should prepare model notification forms containing, *inter alia*, information on resources available in the languages and other accessible formats, means or methods of communication most frequently used or understood by migrant workers who are in an irregular situation in the countries concerned. Migrants should be given adequate time and support to read or access them and should also have a copy of the form. The forms should always be accompanied by a detention order containing concrete information on the facts of and the legal basis for the detention, and the place of detention and information on and an explanation of their rights and how to avail themselves of such rights.

#### **Judicial review of detention (article 16 (6) and (8) of the Convention)**

62. The Committee reaffirms that all migrant workers and their families who are deprived of their liberty have the right to bring proceedings before a court so that the court can rule without delay on the lawfulness or arbitrariness, including the legality, necessity, proportionality, and the legitimate objective of their detention. That guarantee seeks to prevent deprivation of liberty from becoming arbitrary detention (art. 16 (8)). If they are detained within the criminal law context, migrant workers and their families must be brought promptly before a judge or court to assess the legality and non-arbitrariness of their detention. The authority deciding on the above-mentioned elements of detention must be independent from the entity that ruled on or carried out the detention, in order to prevent an assessment of the detention from becoming a mere formality that prevents an impartial analysis. The assessment must also be carried out by an official authorized by law to exercise judicial functions and with the power to order the release of the migrant worker.

63. In light of the impacts that the deprivation of liberty has on the human rights of migrants, the Committee considers that, as a general rule, the procedure and the decision ordering the detention of a migrant must be carried out and dictated by a judge or court. In addition, States must guarantee to migrants their right to appeal before a higher court. This right should be guaranteed at the moment of the deprivation of liberty as well as periodically throughout the duration of the detention. Indeed, the necessity for the continuation of any detention should be automatically reviewed at reasonable periods of time by a court. Importantly, the scope of judicial review should not be confined to a formal assessment of the individual's migration status as it requires an individual assessment of the elements pertaining to the arbitrariness of the measure.

64. The Committee stresses that legal remedies must be in place to allow migrant workers and their families to challenge the arbitrariness of detention or the legality of a deportation

or expulsion order. States must ensure that judicial remedies include the power to suspend any detention, deportation or expulsion decision in order to effectively protect the rights of migrant workers. The principle of non-refoulement must be strictly respected.

#### **Consular assistance and protection (articles 16 (7) and 23 of the Convention)**

65. Under articles 16 (7) (b) and 23, migrant workers and their families have the right to communicate with the consular or diplomatic authorities of their home State or those of another State representing their interests. Conversely, States of destination or transit have an obligation under article 16 (7) to: (a) inform the migrant worker of that right without delay and of the rights derived from other relevant treaties in a language and format they understand; (b) inform the consular or diplomatic authorities of the detention of the migrant worker upon his or her request; (c) facilitate communication between the migrant worker and those authorities; and (d) communicate and meet with the legal representatives of those authorities and make arrangements with them for the migrant worker's legal representation.

66. The Committee is aware of the particular situation of refugees or asylum seekers who fear or have been subjected to persecution, or who have other reasons to avoid contact with the consular authorities of their State of origin or residence. In such cases, the State under whose jurisdiction the person is living must respect the decision not to exercise his or her right to consular assistance and protection if the person wishes to apply for asylum. States should also be aware that stateless persons find themselves in a vulnerable situation as the consular assistance and protection is unavailable due to their status.

67. The Committee emphasizes that the right to consular assistance and protection is essential for enforcing access to justice for migrant workers, and is particularly pressing when it comes to persons deprived of their liberty, regardless of whether they are detained on criminal or immigration-related grounds. The Committee therefore considers that States of origin should ensure access to effective consular assistance and protection, including by providing sufficient human, technical and financial resources.

#### **Free legal and interpretation assistance**

68. In the context of immigration detention, migrant workers and their families have the right to legal advice and legal representation, provided by the State free of charge for persons who cannot afford it, making the rights to due process and access to justice truly operational. In the case of migrant workers who cannot understand or speak the language used during the proceedings, States should make qualified interpreters available to them. Even for migrant workers who understand the language of the country in which they currently reside, it is important to have an interpreter and that the information is provided in understandable terms and formats free of technicalities and adapted to their age, ethnic and cultural background, and any other circumstance that may impact their level of understanding.

69. The Committee recognizes the fundamental work of non-governmental organizations, university legal clinics and pro bono lawyers, among others, in the legal representation of migrants. However, the Committee recalls that their efforts do not relieve States from their responsibility to provide migrants with free legal assistance and representation. Moreover, States should always allow non-governmental organizations, university legal clinics and pro bono lawyers to carry out their work unhindered.

#### **Right to be notified of the decision on immigration proceedings**

70. The Committee recognizes that, in order to fully access justice, migrants must obtain a well-founded and reasoned decision on their immigration or international protection proceedings so that they can appeal that decision and defend their rights adequately. Notification of that decision must be made in a personal and written manner to the migrant and, where appropriate, to his or her legal representatives, allowing sufficient time for appeal.

## **E. Prohibition of torture and cruel, inhuman or degrading treatment or punishment (article 10 of the Convention)**

71. The Committee has received information about various acts of violence, particularly sexual violence, child and forced labour and trafficking for the purpose of sexual exploitation, perpetrated against migrants who have been deprived of their liberty. Women, children, persons with disabilities and members of the LGBTI+ community are highly vulnerable to abuse in immigration detention centres. In some cases, the abuse amounts to torture. The Committee notes that migrants are at an increased risk of human rights violations while in detention, and States have an ex-officio obligation to prevent, investigate, prosecute and punish any acts of torture, cruel, inhuman or degrading treatment or punishment or other human rights violations by detention facility personnel, detainees or any other person.

72. The information received by the Committee also indicates that some States place migrants in solitary confinement. That practice has severely negative health effects and in some cases, has led to suicide or irreparable psychological damage. The Committee recalls that solitary confinement is not appropriate to manage or ensure the protection of migrants, asylum seekers, refugees, persons in need of complementary or subsidiary protection, stateless persons, victims of trauma, torture or cruel, inhuman or degrading treatment and persons with disabilities. The Committee agrees with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, that prolonged solitary confinement constitutes an act of torture.

73. The Committee has received reports of migrants who have been returned to detention centres where they were at risk of torture or cruel, inhuman or degrading treatment. The Committee has maintained that the principle of non-refoulement – the prohibition of the transfer of persons by force, in any form, to countries where they may become victims of persecution or serious human rights violations – includes the prohibition of the return of persons to locations where they are subjected to inhuman and degrading conditions of detention, the absence of necessary medical treatment, especially in times of a pandemic or any other serious public emergencies, or threats to the enjoyment of the rights to life and to health (articles 9, 10 and 28 of the Convention). Furthermore, the Committee recalls that the rejection and return at national borders of persons who might require international protection without analysing individual rights and claims to protection violate the prohibition of collective expulsion and the principle of non-refoulement.

## **F. Prohibition of slavery, servitude and forced or compulsory labour (article 11 of the Convention)**

74. Article 11 of the Convention requires all States parties to take effective measures against all forms of forced and compulsory labour imposed on migrant workers. The Committee expresses its concern at the presence of human trafficking networks within immigration detention centres. The Committee has also received reports of detained migrants who are subjected, under threat of punishment, to prolonged forced and/or underpaid or unpaid labour.

75. The Committee highlights that in current times the prohibition of slavery, servitude, forced or compulsory labour and trafficking in persons is absolute under international law and is a norm of *jus cogens*. States have an obligation to ensure that migrants who are deprived of their liberty are protected from all forms of slavery, servitude, forced or compulsory labour and trafficking. States should establish mechanisms to identify victims of trafficking and abuse by traffickers, and provide victims with protection and assistance. Furthermore, States should conduct prompt, effective and impartial investigations into all cases of trafficking and abuse by traffickers and prosecute and punish the perpetrators of such acts and their accomplices, including in the case of public officials. The obligation to investigate, prosecute and punish any act of international human trafficking requires judicial cooperation from all States involved.

### **G. Right to privacy and family life (article 14 of the Convention)**

76. Migrant workers and their families have the right to privacy and to family life without interference. Those rights are closely linked to the principle of non-detention of children and the principle of the best interests of the child as a primary consideration, since the Committee considers that it is the right of migrant children with families not to be deprived of their liberty, and hence be granted measures for the care and reception of the child and his or her family.

### **H. Right to health (article 28 of the Convention)**

77. The information received by the Committee indicates that migrants who are deprived of their liberty often face serious difficulties in accessing health services and medical care in detention centres. Reproductive health care for women held in detention, particularly pregnant women, is reportedly often inadequate.

78. The Committee therefore considers that States should ensure that detained migrants have access to physical and mental health services, including sexual and reproductive health services, and psychological care. In the absence of adequate conditions in detention centres, detained migrants in need of medical care should be transferred to adequate facilities. Moreover, taking into account the psychological and physical effects of detention on migrants, States should assess detained migrants' physical and mental health on a regular basis. States should take all necessary measures to ensure that all migrant workers and their families who are deprived of their liberty, regardless of their migration status, enjoy – both in law and in practice – access to health services under the same conditions as nationals of the State party<sup>10</sup>.

79. In a context such as the COVID-19 pandemic, the Committee agrees with the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (see CAT/OP/10) and the Committee on the Elimination of Racial Discrimination (see CERD/C/GRC/CO/20-22, para. 23, CERD/C/ESP/CO/21-23, para. 22, and CERD/C/NOR/CO/21-22, para. 36) that States should take the necessary precautionary measures to prevent the spread of the virus, and implement emergency measures to ensure that detained migrants have access to appropriate levels of medical care and prevention and maintain contact with their families and the outside world. The Committee recalls its joint guidance note on the impacts of the COVID-19 pandemic on the human rights of migrants and the joint guidance note on equitable access to COVID-19 vaccines for all migrants and urges States to fully implement their recommendations, paying special attention to integrate migrant workers into national COVID-19 prevention and response plans and policies, which are gender, age and diversity responsive, and respect their right to health, including by ensuring that the provision of tests, essential medicines, prevention measures, treatment and vaccines are provided in a non-discriminatory manner, and provide equitable access to COVID-19 vaccination for all migrants and their families on a non-discriminatory basis, regardless of their nationality, migration status, or situation of statelessness.

### **I. Right to property and obligation to protect identity and personal documents (articles 15 and 21 of the Convention)**

80. Migrant workers and their families have the right not to be arbitrarily deprived of their property. Similarly, State authorities are obliged to protect the identity and personal documents of migrant workers and their families. Nevertheless, it is common practice for State authorities to retain people's belongings during immigration detention, including cell phones, cash, bank cards and identity and personal documents. In some cases, the property is never returned to the owner.

81. The Committee considers that, while States have a legitimate interest in, and legal and ethical responsibility for, ensuring the safety of migrant workers in detention and may take

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<sup>10</sup> Committee on Migrant Workers, general comment No. 2 (2013), para. 72.

measures to that end, such as temporarily withholding the belongings of detainees, it is not within the interest of migrants and their families to have their belongings withheld for longer than the detention period. It is therefore important that States set clear criteria and establish an inventory of retained belongings. It is also necessary to ensure access to their belongings whenever necessary, that indispensable belongings are not withheld and that belongings that are withheld do not include essential items, such as medicines, devices needed by persons with complex communication or mobility requirements, telephone numbers of close relations and identity documents. For all other belongings, custody must be supervised, and it must be ensured that they are returned to the migrant at the end of detention. Migrants should be provided with a receipt or similar document with an inventory of retained belongings and the reason for their retention.

82. The Committee recalls that the right to identity, including the right to a name, birth registration and a nationality, is central to the enjoyment of all other rights recognized in the Convention and other international treaties. Withholding migrants' identity documents is never appropriate; it violates the right not only to property but also to identity and leaves migrant workers and their families more vulnerable to violations of their other rights. Also, the Committee recalls that each child of a migrant worker shall have the right to birth registration and nationality pursuant to article 29 of the Convention.

## **J. Conditions of detention**

83. The Committee considers that poor conditions of detention may constitute torture or cruel, inhuman or degrading treatment and may increase the risk of other rights violations, including the right to health, food, adequate housing, safe water and sanitation. In addition, torture or cruel, inhuman or degrading treatment may occur if inadequate detention conditions are intentionally imposed, encouraged or tolerated by the State on the basis of discrimination of any kind, including migration status, or in order to deter migrant workers and their families from continuing their immigration or international protection proceedings, or to intimidate or punish them for doing so.

84. Immigration detention facilities must therefore meet the highest standards to ensure the dignity and well-being of detainees. The Committee stresses that detention should never take place in facilities with punitive characteristics. Any detention of migrants must "take place in appropriate, sanitary, non-punitive facilities and should not take place in prisons"<sup>11</sup>.

85. In order to guarantee that immigration detention takes place in non-punitive facilities, the States must ensure, among others, that: (a) migrant workers are not detained with persons prosecuted for or convicted of crimes; (b) men and women remain separated, taking into consideration the particular needs of LGBTI+ people; (c) sufficient space is provided and overcrowding is avoided at all costs; (d) facilities have open spaces for coexistence and recreation; (e) adequate cleaning and lighting is provided; and (f) other measures are taken that enable detainees to have an adequate standard of living, which includes appropriate clothing and bedding, heating, sufficient food in line with the physical and health conditions of the migrants and their religious beliefs, and the rights to access to safe water and sanitation and to health care, including health care professionals, independent from detaining authorities. In addition to physical conditions, States should ensure that there are sufficient staff, both men and women, who must be adequately trained in human rights and gender issues and qualified to work with groups of persons who are in vulnerable situations.

## **K. Monitoring human rights in places of detention**

86. It is essential that States effectively and credibly monitor the conditions in immigration detention centres, which includes privately run immigration detention facilities. States are obliged to take the necessary legislative and other measures to ensure the constant monitoring of detention centres, with no restricted areas. It is important for the Committee that the authority responsible for monitoring places of detention be independent and impartial.

<sup>11</sup> Human Rights Committee, general comment No. 35 (2014), para. 18.

It is not permissible for the same authority responsible for implementing the immigration policy or in charge of detention centres to carry out that task. It is necessary to strengthen the system of mental health management of migrants on the basis of various cooperation strategies, by the institutions involved, in order to avoid behaviours that could endanger their integrity or their lives, or, when necessary, provide them with the appropriate treatment to respond to the traumatic situation they may be experiencing, ensuring that staff in contact with them have the ability to warn them of these situations as well as maintain the appropriate level of emotional stability themselves.

87. Even if there is an authority or body responsible for the supervision of places of detention, the participation of national human rights institutions and civil society organizations – which do not replace the obligations of States – is essential and relevant for the defence of the rights of migrants and their families. The Committee recalls that national human rights institutions play a crucial role in promoting and monitoring the effective implementation of international human rights standards at the national level, therefore, their work must be fully guaranteed. States should hence authorize access to detention facilities, including privately run immigration detention facilities, for national human rights institutions, civil society organizations, academia and international and regional bodies, such as the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the OHCHR, UNHCR, UNICEF and the International Committee of the Red Cross, to ensure independent and autonomous monitoring. Information and documentation relating to the facility and persons held there and the possibility of conducting private and confidential interviews with detainees and staff must be available for independent monitoring entities.

88. In order to enable independent monitoring of immigration detention facilities, States should take measures to allow the monitoring entities, among others, to: (a) visit any place where immigration detention might occur, and do so unannounced; (b) choose the places they want to visit and the persons they want to interview; (c) obtain any information they need, request reports before, during, and after their monitoring visits, and receive a prompt response; (d) make public the results of their inspections and recommendations – while preventing the disclosure of information that might put a migrant at risk –; and (e) ensure that migrants or staff who were interviewed by the monitoring entities are not subjected to reprisals.

89. The Committee recalls that the objective of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as provided for in its preamble and article 1, is to establish a system of regular visits undertaken by independent international and national bodies to places where persons are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment, which is a non-derogable obligation under international law. States parties to that Optional Protocol should ensure that detention facilities are monitored by such bodies, particularly by their national mechanisms for the prevention of torture.

90. In a context of public emergencies such as the COVID-19 pandemic, States should take steps to ensure that monitoring is carried out in a way that allows international and national bodies to carry out their mandate in detention facilities in line with the principle of “do no harm”, minimizing the need for physical contact, but offering opportunities for preventive involvement.

## **VI. Supervision and accountability**

91. States should establish independent monitoring and accountability mechanisms in immigration detention centres, and generate systematic reporting mechanisms. That can be achieved through cooperation between detention authorities and other stakeholders, such as national human rights institutions, parliamentarians, civil society, academia and international organizations. States should also support all interested parties that file complaints on behalf of victims of crime, abuse or human rights violations in immigration detention centres. Furthermore, States should establish official mechanisms and procedures to provide effective remedies for human rights violations in detention centres, provide comprehensive redress to victims, and hold State and private authorities accountable for such violations.

## **VII. Access to information and data collection and indicators**

92. The Committee notes that States do not usually provide accessible public information and disaggregated data on the number, age, gender and nationality of migrants detained or on the conditions of their detention. The Committee recommends that States adopt mechanisms to allow access to public information on the rights and conditions of migrant workers deprived of their liberty. The Committee also recommends that States collect and process such information for the development of evidence-based public policies. States should implement information systems to establish whether and where a migrant is detained, which is also conducive to strengthened efforts to search for missing migrants. Such systems should safeguard the rights to privacy and data protection that protects asylum seekers, refugees, stateless persons and other groups in vulnerable situations in need of additional protection, and in the field of data protection.

## **VIII. Dissemination and use of the present general comment and reporting**

93. States parties should broadly disseminate the present general comment to all stakeholders, including State authorities, national human rights institutions, the private sector, including private detention facilities, civil society, the media and all migrants, regardless of their status.

94. The relevant parts of the present general comment should be incorporated into the official pre-employment training and other official training of all employees, particularly technical staff, and the authorities and staff responsible for the administration of immigration detention and law enforcement.

95. States parties should include in their reports submitted under article 73 of the Convention information on the measures taken in the implementation of the present general comment, and the results achieved.

## **IX. Ratification or accession and reservations to the Convention**

96. The Committee encourages States that have not yet done so to ratify or accede to the Convention, including the formulation of binding declarations under articles 76 and 77.

97. States parties are encouraged to review, amend or withdraw reservations made during ratification or accession with a view to ensuring that migrant workers and their families who are deprived of their liberty fully enjoy their rights under the Convention.

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