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The detention of asylum seekers and irregular migrants in Europe

Report
Committee on Migration, Refugees and Population
Rapporteur: Ms Ana Catarina MENDONÇA, Portugal, Socialist Group

Summary

The detention of asylum seekers and irregular migrants in Council of Europe member states has increased substantially in recent years.

The legal framework governing detention is frequently misunderstood. Furthermore, the automatic use of detention gives rise to a long list of serious problems including that, too frequently, detention is used as the option of first resort and not last resort. Alternatives to detention are too infrequently used. It is also the case that conditions and safeguards afforded to immigration detainees, who have committed no crime, are often worse than those in respect of prisoners in criminal custody.

The report seeks to clarify 10 guiding principles on the legality of detention of asylum seekers and irregular migrants.

The report puts forward, as a starting point, 15 European rules governing minimum standards of conditions in detention centres for migrants and asylum seekerswhich should be guaranteed by member states and adopted by the Committee of Ministers as European rules.

Finally, the report examines which alternatives to detention are currently being used and whether or not they are effective and encourages member states to use alternatives to detention in preference to detention.

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A. Draft resolution

1. The detention of asylum seekers and irregular migrants in Council of Europe member states has increased substantially in recent years. Whilst the cause of this increase is in part due to the growing number of arrivals of irregular migrants and asylum seekers in certain parts of Europe, it is also to a large extent due to policy and political decisions resulting from a hardening attitude towards irregular migrants and asylum seekers.

2. Overcrowding in detention centres is a serious problem. As population pushes up against capacity, states are building more and bigger centres. However if they build more, they fill more, often to justify the expenditure. Yet this does not necessarily translate into better conditions for the persons detained. Furthermore, alternative facilities, which are inappropriate for detaining asylum seekers and irregular migrants belonging to this group, such as police stations, prisons, disused army barracks, hotels, mobile containers, etc. are also being used in order to detain growing numbers of persons.

3. Whilst it is universally accepted that detention must be used only as a last resort, it is increasingly used as a first response and also as a deterrent. This results in mass and needless detention. The Parliamentary Assembly is concerned by this excessive use of detention and the long list of serious problems which arise as a result and which are regularly highlighted, not only by Council of Europe human rights monitoring bodies such as the European Court of Human Rights, the European Committee for the Prevention of Torture, the Human Rights Commissioner and the Assembly's Committee on Migration, Refugees and Population, but also by other international and national organisations.

4. Conditions and safeguards afforded to immigration detainees who have committed no crime are often worse than those of criminal detainees. Conditions can be appalling (dirty, unsanitary, lack of beds, clothing and food, lack of sufficient health care, etc.) and the regime is often inappropriate or almost entirely absent (activities, education, access to the outside and fresh air). Furthermore, provision for the needs of vulnerable persons is often insufficient and allegations of ill-treatment, violence and abuse by officials persist. This all has a negative impact on the mental and physical well-being of persons detained both during and after detention.

5. Detention has a high cost in financial terms for the states which often resort to detention and which detain persons for lengthy periods of time. The European Union's Return Directive, which has a fixed duration for detaining an irregular migrant to a maximum of 18 months, can be criticised for adopting the lowest common standard in regard to detention length by allowing European Union member states to practice long-term detention, and increasing the possibility that states increase their minimum duration of detention.

6. The Assembly is particularly concerned about the detention of asylum seekers who should be distinguished from irregular migrants. Under the 1951 Convention Relating to the Status of Refugees there are only specific and narrow exceptions to the right to freedom of movement. According to the convention, asylum seekers should not be detained solely on the basis of lodging a claim for asylum, nor for their illegal entry or presence in the country where they lodge a claim for asylum.

7. It is not just conditions of detention that are of concern. The lack of clarity over when detention may be legally justified preoccupies the Assembly. There is a clear lack of a precise, accessible legal framework governing the use of detention under international human rights law and refugee law. Furthermore, national laws and regulations are often insufficient (leaving too much discretion to immigration officials), detention policies non-transparent (leaving individuals open to abuse or arbitrariness), detainees' access to lawyers limited and empirical data concerning detention lacking. In addition, there must be a clear, accessible framework, governing the operation of centres and the conditions afforded, which must also be subject to judicial review.

8. The Assembly reiterates that the grounds for immigration detention are limited by Article 5.1.*f* of the European Convention on Human Rights. Detention should be used only if less intrusive measures have been tried and found insufficient. Consequently, priority should be given to alternatives to detention for the individuals in question (although they may also have human rights implications). Alternatives to detention are financially more attractive for the states concerned and have found to be effective. Unfortunately, in some states, alternatives to detention are rarely used or they do not even find expression in national law, notwithstanding all obligations to consider these.

9. In view of the above-mentioned considerations, the Assembly calls on member states of the Council of Europe in which asylum seekers and irregular migrants are detained to comply fully with their obligations under international human rights and refugee law, and encourages them to:

9.1. follow 10 guiding principles governing the circumstances in which the detention of asylum seekers and irregular migrants may be legally permissible. These principles aim to ensure that:

9.1.1. detention of asylum seekers and irregular migrants shall be exceptional and only used after first reviewing all other alternatives and finding that there is no effective alternative;

9.1.2. detention shall distinguish between asylum seekers and irregular migrants;

9.1.3. detention shall be carried out by a procedure prescribed by law, authorised by a judicial authority and be subject to a periodic judicial review;

9.1.4. detention shall be ordered only for the specific purpose of preventing an unauthorised entry or with a view to deportation or extradition;

9.1.5. detention shall not be arbitrary;

9.1.6. detention shall only be used when necessary;

9.1.7. detention shall be proportionate to the objective to be achieved;

9.1.8. the place, conditions and regime of detention shall be appropriate;

9.1.9. vulnerable people should not, as a rule, be placed in detention and specifically, unaccompanied minors should never be detained;

9.1.10. detention must be for the shortest time possible.

9.2. put into law and practice 15 European rulesgoverningminimum standards of conditions of detention for migrants and asylum seekers to ensure that:

9.2.1. persons deprived of their liberty shall be treated with dignity and respect for their rights;

9.2.2. detainees shall be accommodated in centres specifically designed for the purpose of immigration detention and not in prisons;

9.2.3. all detainees must be informed promptly, in simple non-technical language that they can understand, the essential legal and factual grounds for detention, their rights and the rules and complaints procedure in detention;

9.2.4. legal and factual admission criteria shall be complied with, including carrying out appropriate screening and medical checks to identify special needs. Proper records concerning admissions, stay and departure of detainees must be kept;

9.2.5. the material conditions shall be appropriate to the individual’s legal and factual situation;

9.2.6. the detention regime must be appropriate to the individual’s legal and factual situation;

9.2.7. the detention authorities shall safeguard the health and well-being of all detainees in their care;

9.2.8. detainees shall be guaranteed effective access to the outside world (including access to lawyers, family, friends, the Office of the United Nations High Commissioner for Refugees (UNHCR), civil society, religious/spiritual representatives) and the right to receive frequent visits from the outside world;

9.2.9. detainees shall be guaranteed effective access to legal advice, assistance and representation of a sufficient quality, and legal aid shall be provided free of charge;

9.2.10. detainees must be able periodically to effectively challenge their detention before a court and decisions regarding detention should be reviewed automatically at regular intervals;

9.2.11. the safety, security and discipline of detainees shall be taken into account in order to maintain the good order of detention centres;

9.2.12. detention centre staff and immigration officers shall not use force against detainees except in self-defence or in cases of attempted escape or active physical resistance to a lawful order and always as a last resort and proportionate to the situation;

9.2.13. detention centre management and staff shall be carefully recruited, provided with appropriate training and operate to the highest professional, ethical and personal standards;

9.2.14. detainees shall have ample opportunity to make requests or complaints to any competent authority and be guaranteed confidentiality when doing so;

9.2.15. independent inspection and monitoring of detention centres and of conditions of detention shall take place.

9.3. consider alternatives to detention and:

9.3.1. provide for a presumption in favour of liberty under national law;

9.3.2. clarify the framework for the implementation of alternatives to detention and incorporate into national law and practice a proper legal institutional framework to ensure that alternatives are considered first, if release or temporary admission is not granted;

9.3.3. ensure that their application is non-discriminatory, proportionate and necessary and that the individual circumstances and vulnerabilities of those to whom they are applied are taken into account and that the possibility of a review by an independent judicial body or other competent authority is provided for;

9.3.4. commission and carry out empirical research and analysis on alternatives to detention, their use and effectiveness, and best practice, distinguishing between community- based alternatives that allow for freedom of movement and those which curtail freedom of movement. In this respect, the following alternatives can, inter alia, be taken into account:

9.3.4.1. placement in special establishments (open or semi-open)

9.3.4.2. registration and reporting

9.3.4.3. release on bail/ surety

9.3.4.4. controlled release to individuals, family members, NGOs, religious organisations, or others

9.3.4.5. handover of travel and other documents, release combined with appointment of a special worker

9.3.4.6. electronic documents or electronic monitoring.

10. The Assembly invites the Council of Europe’s Commissioner for Human Rights and the European Committee for the Prevention of Torture to continue to monitor closely the situation of the detention of asylum seekers and irregular migrants and to support the guiding principles laid out above in relation to legally permissible detention and minimum standards of conditions of detention. Furthermore, they are invited to encourage member states to examine and use to a much greater extent alternatives to detention.

B. Draft recommendation

1. The Parliamentary Assembly refers to its Resolution … (2010) on the detention of asylum seekers and irregular migrants in Europe.

2. The detention of asylum seekers and irregular migrants in Council of Europe member states has increased substantially in recent years.

3. The Council of Europe has an important role to ensure that any deprivation of liberty is carefully monitored and that less restrictive alternatives to detention are considered and used first, only resorting to detention if it is established that no alternative will be effective in achieving the legitimate objective. The Council of Europe also has an important role to ensure that alternatives to detention are available and accessible in domestic law and in practice, and applied without discrimination.

4. The Council of Europe must ensure that clear principles are applied in assessing the legality of detention of irregular migrants and asylum seekers and that minimum standards are applied in respect of the standards of conditions of detention of these persons. The Council of Europe has a role to play in urging member states to implement such principles through national law and policy in a way which is clear, accessible and precise, to ensure that individuals are not detained in any way which can be described as arbitrary.

5. Therefore, the Assembly recommends that the Committee of Ministers:

5.1. instruct the relevant expert committee within the Council of Europe to prepare for the Committee of Ministers European rules on minimum standards of conditions of detention of irregular migrants and asylum seekers. The aim of such minimum standards would be to provide, in the context of immigration detention, a parallel framework to the European Prison Rules which apply only to prisons for criminals and not to detention centres for irregular migrants and asylum seekers. The minimum standards should draw inspiration from the European Prison Rules but recognise that they are applicable to persons not detained on the basis of having committed any criminal offence.

5.2. instruct the relevant expert committee within the Council of Europe to set up a consultation body to examine further the 10 guiding principles on the circumstances in which the detention of asylum seekers and irregular migrants is legally permissible. This consultation body should be comprised of government experts, members of civil society, representatives of UNHCR and other international organisations, the International Committee of the Red Cross, representatives of the European Court of Human Rights, the European Committee for the Prevention of Torture and the Office of the Council of Europe Commissioner for Human Rights and the European Commission. This consultation body should not only examine the principles but also make recommendations on whether the Committee of Ministers should be encouraged to prepare a recommendation, principles or rules on the issue.

5.3. instruct the relevant expert committee within the Council of Europe to examine further the issue of alternatives to detention of migrants and asylum seekers and identify best practice on this issue with a view to preparation of a recommendation to member states by the Committee of Ministers on the subject.

6. The Assembly reiterates its recommendation to the Committee of Ministers to establish a new permanent committee within the Council of Europe with a mandate to examine issues concerning asylum and internally displaced persons to replace the Ad hoc Committee of experts on the legal aspects of territorial asylum, refugees and stateless persons (CAHAR).

C. Explanatory memorandum by Mrs Mendonça, rapporteur

1. Introduction

1. Council of Europe member states have significantly expanded their use of detention as a response to the arrival of asylum seekers and irregular migrants. In the United Kingdom, for example, capacity has risen ten-fold since the early 1990s.[1] France's aggregate detention capacity has increased considerably, from 739 in 2003 to 1 724 in 2007.[2] The Lampedusa detention centre in Italy has a capacity of just 800 but in March 2009 it housed 1 800 detainees.[3] Whilst the lack of accurate statistics tracking the number of migrants and asylum seekers in detention in all Council of Europe member states has often been criticised, in 2008, the French NGO Cimade documented 235 camps in the European Union, with a total capacity of more than 30 000 people.[4]

2. Building detention centres and running them is at huge cost to the taxpayer. Building more detention centres means filling more. As funds are soaked up in the construction work, consequentially, there is a danger of insufficient provision being made for the people held inside.

3. The rapporteur accepts that detention may be an appropriate response to the influx of mixed flows of asylum seekers and irregular migrants in certain circumstances. The main justification provided by states for detention is that it is necessary to avoid a person absconding or to effect removal. However, more broad-brush justifications, including that detention speeds up the rate at which asylum claims are processed, are in the opinion of the rapporteur of dubious legality. The same applies for short-term, emergency policies and the creation of criminal offences associated with migration.[5]

4. At the same time, individuals are suffering. The human cost of detention is staggering. Prolonged detention, often in wholly inappropriate conditions, can amount to inhuman or degrading treatment and result in the deterioration of an individual's mental and physical health.

5. The automatic use of detention gives rise to a long list of serious problems including the fact that, too frequently, detention is used as the option of first resort not last resort, it penalises asylum seekers, it is not applied on a case-by-case basis, it is often applied in a way which is unlawful or arbitrary (for instance, invoking a power which does not exist or failing to apply an existing power correctly), it can be prolonged, particularly where there is no practical and imminent possibility of removal, conditions are often appalling, and the regime is often inappropriate. Furthermore the special needs of vulnerable persons are often disregarded,[6] allegations of ill-treatment, violence and abuse are not uncommon, and detainees are not always afforded sufficient contact with the outside world and have difficulty challenging the legality of their detention. Finally, alternatives to detention are too infrequently used. It is also the case that conditions and safeguards afforded to immigration detainees, who have committed no crime, are often worse than those in respect of prisoners in criminal custody.[7]

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1. See www.globaldetentionproject.org.
2. See "Rapport Cimade 2008", www.scribd.com/doc/2662304/Rapport-Cimade-2008; see also, "Memorandum by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, following his visit to France from 21 to 23 May 2008", CommDH(2008)34, Strasbourg, 20 November 2008, paragraph 93.
3. The centre has since been emptied.
4. Itano N., "Greece plans to lock up illegal migrants. A new Greek law increases the amount of time illegal immigrants can be detained", *Global Post*, 13 July 2009; See for more information UN High Commissioner for Refugees, *Measuring protection by numbers (2005)*, November 2006.
5. Ibid. For example, in Greece, "The government says it is overwhelmed by illegal immigration and plans to build new detention centres to lock up undocumented migrants. New legislation rushed through parliament at the end of June increases the length of time illegal migrants can be held to six months from three. Under certain circumstances, this can be extended for an additional twelve months." An emergency law criminalising immigration-related activities was also rushed through in 2009 and has received substantial criticism, See report of the UN Working Group on Arbitrary Detention: Italy.
6. See, for example, the July 2009 report of Bail for Immigration Detainees (BID), "Out of sight, out of mind: experiences of immigration detention in the United Kingdom."
7. "Report by the Commissioner for Human Rights, Thomas Hammarberg, on his visit to the Netherlands from 21 to 25 September 2008", 11 March 2009, CommDH(2009)2, paragraph 52.

6. The rapporteur notes that the lack of available statistics on detention of irregular migrants and asylum seekers[8] also hinders effective public monitoring. It becomes difficult to ascertain objectively whether or not a stated detention policy is working. However, the significant number of reported problems associated with detention would suggest that current policies are not working and fail to comply with international legal standards.

7. Examining the legal framework governing the use of detention, conditions and alternatives at national level exposes large disparities in the provision made within states and between states. In many instances, detention rests primarily on policy rather than on a legal basis. In many cases, states even fail to comply with their own stated policies or have acted pursuant to a policy which has not been published. In such circumstances, it is often questionable as to whether or not detention is in accordance with the law or in conformity with the principle of legal certainty at all.

8. Prior to the adoption of the European Union Return Directive,[9] there was no common fixed maximum length of detention. Whilst the return directive now provides such a maximum, it is fixed so high (reaching an 18-month maximum) that it is pulling states towards providing lower standards of protection and increasing the length of detention. There are no European rules on the detention of irregular migrants and asylum seekers akin to the European Prison Rules.[10] It is, in the opinion of the rapporteur, essential for such rules to be drawn up in order to regulate the situation pertaining in immigration detention.

9. In the light of these introductory comments, the rapporteur has chosen to highlight three ways forward to ensure that a fair balance is struck between immigration control and the protection of fundamental rights of the individual. These are summarised in the following section of the report.

2. Approach to the report

10. The rapporteur has chosen to divide her report into three parts. The first part of the report sets out the circumstances in which detention is legally permissible. Based on a comparative survey of international human rights law, the rapporteur has sought to clarify 10 guiding principles on the legality of detention of asylum seekers and irregular migrants.

11. The second part of the report looks at the need to develop minimum standards on conditions of immigration detention to ensure that appropriate provision is made for detained persons. In this respect, the rapporteur puts forward, as a starting point, 15 European rules for detention centres for migrants and asylum seekerswhich should be guaranteed.

12. The third part of the report examines the issue of alternatives to detention. It describes which alternatives to detention are currently being used by member states and whether or not they are effective.

13. The preparation of this report included a hearing on the detention of irregular migrants and asylum seekers in Paris on 14 December 2007.[11] The rapporteur followed this up by visiting the United Kingdom between 30 June and 1 July 2008 where she had meetings with representatives of the United Kingdom Border Agency (Home Office), Her Majesty's Chief Inspector of Prisons (Ms Anne Owers), the United Nations High Commissioner for Refugees (UNHCR) and non-governmental organisations (NGOs). The rapporteur also visited Colnbrook Immigration Removal Centre (a closed centre for males only).

14. The rapporteur would like to thank the different persons she met during the hearing and her visit who are working in a dedicated fashion to address the very difficult situation of the detention of asylum seekers and irregular migrants. She would like to thank them for the time they took to brief her and for their professionalism and commitment.

15. The rapporteur considers it important to highlight from the outset that in this report she has examined detention as a deprivation of liberty within a confined space. This is significant as there has been some discussion of what situations amount to detention. Some states refer to detention facilities as "guest houses", "hostels", or "shelters", in order to distinguish the situation from custody in prisons or police cells. Other states

8. See, for example, www.globaldetentionproject.org.
9. Directive 2008/115/EC of 16 December 2008 on common standards and procedures in member states for returning illegally staying third-country nationals ("The Return Directive").
10. Committee of Ministers, Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, 11 January 2006.
11. Committee on Migration, Refugees and Population, hearing on detention of irregular migrants and asylum seekers, Rapporteur: Mrs Mendonça, SOC, Paris, 14 December 2007. AS/Mig/Inf (2008) 02, 4 February 2008.

have argued that people in transit and "international" zones at airports are not "deprived of their liberty" as they are free to leave the zone at any moment by taking an international flight of their choice.[12] In the view of the rapporteur these are all *prima facie* detention facilities.

16. In assessing whether or not there has been a deprivation of liberty or a restriction on free movement,[13] the concrete factual situation must be looked at, including several aspects of the situation itself, namely: the type, duration, effects and manner of implementation of the measures restricting the individual's liberty. Furthermore, the rapporteur stresses that where the member state "outsources" the running of immigration detention centres (open or closed) to private contractors, it nonetheless retains its human rights responsibilities.

3. Part 1: 10 guiding principles on the legality of detention of asylum seekers and irregular migrants

17. The rapporteur highlights that this part of the report focuses on the circumstances in which detention of asylum seekers and irregular migrants may be legally permissible. This area of law and policy is frequently misunderstood and the rules regarding who can be detained, when, where and for how long are too frequently unwritten, unpublished and unclear. Consequently, this perpetuates mass but needless detention, cost and suffering.

18. The rapporteur recognises that detention may be considered an adjunct of the sovereign right of states to control the entry and exit of aliens on their territory. However, the power to detain is limited and must comply with international human rights standards, including Article 5 of the European Convention on Human Rights and with the principles of the 1951 Geneva Convention and its 1967 Protocol (the 1951 Convention).[14]

19. It is important to remember that international standards do exist on the issue of immigration detention. However, in the view of the rapporteur these are not always understood or not applied accurately. In many cases, shortcomings in reception conditions result from member states' interpretation and implementation of minimum standards. Consequently, it is essential to detangle some clear principles concerning detention which may be used in practice. Accordingly, the rapporteur has conducted a comparative analysis of the applicable human rights and refugee law to establish a coherent set of principles. On one hand, the rapporteur has collated principles on which the international human rights community speaks with one voice. On the other, the rapporteur has tried to find a common ground where there is a difference or approach (providing explanations and justifications for this). The rapporteur has taken into account that whilst minimum standards have been elaborated for persons imprisoned on criminal grounds, these are not always appropriate or adapted for immigration detainees.

20. On the basis of the rapporteur's analysis, she has distilled 10 guiding principles governing the circumstances in which the detention of asylum seekers and irregular migrants may be legally permissible. It is important to recognise that these principles apply during all stages and all types of procedures concerning detention of irregular migrants and asylum seekers. These may be linked, for example, to transfers under the Dublin II Regulation (in European Union states), admissibility procedures, border procedures, or any other distinct procedure.

21. The 10 guiding principles together with explanations on each of the principles are provided in full in Appendix 1 to this report. The principles are as follows:

21.1. detention of asylum seekers and irregular migrants shall be exceptional and only used after first reviewing all other alternatives and finding that there is no effective alternative;

21.2. detention shall distinguish between asylum seekers and irregular migrants;

21.3. detention shall be carried out by a procedure prescribed by law and authorised by a judicial authority and subject to a judicial periodic review;

21.4. detention shall be ordered only for the specific purpose of preventing an unauthorised entry or with a view to deportation or extradition;

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12. *Amuur v. France*, Application No. 19776/92, judgment of 25 June 1996, paragraph 49; European Committee for the Prevention of Torture, "The CPT standards. 'Substantive' sections of the CPT's general reports", 1 January 2004, CPT/Inf/E(2002)1, Rev. 2006 ("The CPT General Standards").

13. That is, whether the safeguards of Article 5 (right to liberty) or those of Article 2 of Protocol No. 4 (freedom of movement) apply in a particular case.

14. States must comply with all of their international legal obligations, including also those under Article 9 of the UN International Covenant on Civil and Political Rights (ICCPR).

21.5. detention shall not be arbitrary;

21.6. detention shall only be used when necessary;

21.7. detention shall be proportionate to the objective to be achieved;

21.8. the place, conditions and regime of detention shall be appropriate;

21.9. vulnerable people should not as a rule be placed in detention and specifically, unaccompanied minors should never be detained;

21.10. detention must be for the shortest time possible.

4. Part 2: Minimum standards for conditions of detention of migrants and asylum seekers

22. The literature on standards of detention of migrants and asylum seekers in Europe is enormous. The singular message from this literature is that Europe cannot be complacent about conditions in detention. In most, if not all member states, there have been serious criticisms by different national and international human rights monitoring bodies concerning conditions of detention of migrants and asylum seekers.

23. Reference in this respect can be made to the numerous reports of the European Committee for the Prevention of Torture (CPT),[15] the Council of Europe Commissioner for Human Rights,[16] the jurisprudence of the European Court of Human Rights, reports of the Parliamentary Assembly,[17] reports of the European Parliament[18], reports of the United Nations[19] and UNHCR[20] and numerous reports of international organisations ranging from the main international NGOs such as Amnesty International[21] and Human Rights Watch,[22] the Global Detention Project[23], the Jesuit Refugee Service,[24] and a range of regional or national NGOs including London Detainee Support,[25] Cimade,[26] CARITAS and Bail for Immigration Detainees.[27]

24. It is not uncommon in these reports to read about the “intolerable”, “inhumane”, “sub-human” conditions in detention and that the accommodation is unsuitable for basic human needs, overcrowded and lacking proper sanitation.

25. While monitoring bodies such as the European Committee for the Prevention of Torture and the Council of Europe Commissioner for Human Rights have provided in-depth recommendations to member states on individual steps that countries should take to improve the conditions of detention of irregular migrants and asylum seekers, there is no overall framework at European level (or international level) outlining minimum standards for conditions in detention.

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15. Note in particular that the CPT has recently set out its position on safeguards relating to the detention of irregular migrants in a substantive section included in its 19th General Report, see “Safeguards for irregular migrants deprived of their liberty” in the 19th General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT/Inf(2009)27), paragraphs 75-100, www.cpt.coe.int/en/annual/rep-19.pdf.

16. See www.coe.int/t/commissioner/default_en.asp.

17. For example, “Europe’s ‘boat-people’: mixed migration flows by sea into southern Europe”, Mr Morten Østergaard, Doc. 11688, 11 July 2008.

18. For example, The European Parliament Committee on Civil Liberties, Justice and Home Affairs, “The conditions in centres for third country nationals (detention camps, open centres as well as transit centres and transit zones) with a particular focus on provisions and facilities for persons with special needs in the 25 EU member states”, IP/C/LIBE/IC/2006-181. See also the 2009 report by Martine Roure (PES, FR), which draws on findings by the Civil Liberties Committee during visits to detention centres for asylum seekers and refugees.

19. For example, the UN Working Group on Arbitrary Detention, www2.ohchr.org/english/issues/detention/index.htm.

20. See “UNHCR revised guidelines on applicable criteria and standards relating to the detention of asylum seekers”, 26 February 1999; UNHCR, “Detention of refugees and asylum-seekers”, 13 October 1986, No. 44 (XXXVII) – 1986; UNHCR, *Selected documents relating to detention*, February 2009. These documents and other relevant sources of information by other actors are listed on REFWORLD

21. See for example, Amnesty International, “Seeking asylum is not a crime: detention of people who have sought asylum”, 20 June 2005, AI Index: EUR 45/015/2005; and Amnesty International, “Migration-related detention: a research guide on human rights standards relevant to the detention of migrants, asylum-seekers and refugees”, November 2007, POL 33/005/2007.

22. See for example, www.hrw.org/en/category/topic/refugees.

23. See www.globaldetentionproject.org.

24. See www.jrseurope.org and also the project led by JRS-Malta on “Detention in the 10 member States that acceded to the EU in 2004”

25. See London Detainee Support Group, “Detained lives”, and the project at www.detainedlives.org.

26. See www.cimade.org.

27. See, for example, “Out of sight, out of mind: experiences of immigration detention in the United Kingdom”, July 2009.

26. There are European Prison Rules which require prisoners to be treated with dignity, safety and respect, and which highlight the need to provide purposeful activities for detainees and which require that detention conditions do not infringe human dignity.[28] These rules, as well as those pertaining to domestic prison inspectorates, do not, however, apply to the non-penitentiary environment of detention of irregular migrants and asylum seekers. Whilst the European Union reception conditions directive lays down a number of minimum standards in the context of detention, these are in no way as comprehensive or as detailed as the prison rules.[29] In the view of the rapporteur, it is unacceptable that immigration detainees are often not afforded even the same rights as criminal detainees and are unable to point to their own minimum standards or rules pertaining to detention.

27. The rapporteur is of the opinion that the time has now come to consolidate the work carried out by the CPT and others[30]by putting together a series of minimum standards for conditions in detention, perhaps in the form of rules. This call has been made by the Assembly in the past in Recommendation 1850 (2008) on Europe's boat people: mixed migration flows into southern Europe.[31] It is now necessary for the issue to be taken up as a matter of urgency by the Committee of Ministers.

28. To assist the Committee of Ministers in this task, the rapporteur has distilled 15 European rulesgoverning minimum standards of conditions of detentionwhich could be transformed into rules. These are based on previous recommendations of the Assembly, the CPT, the Commissioner for Human Rights, the standards set out in the European Prison Rules and the jurisprudence of the European Court of Human Rights.

29. The rapporteur notes that these 15 European rules represent a mere starting point. The rapporteur highlights that more comprehensive and specific rules relating to the treatment of immigration detainees need to be drawn up. The Assembly would need to prepare such rules if the Committee of Ministers felt it was unable to carry out this work as a matter of priority.

30. The 15 European rules are provided in full in Appendix 2 to this report and aim to ensure that:

30.1. persons deprived of their liberty shall be treated with dignity and respect for their rights;

30.2. detainees shall be accommodated in centres specifically designed for the purpose of immigration detention and not in prisons;

30.3. all detainees must be informed promptly in simple, non-technical language that he or she can understand, the essential legal and factual grounds for detention, their rights and the rules and complaints procedure in detention;

30.4. legal and factual admission criteria shall be complied with, including carrying out appropriate screening and medical checks to identify special needs. Proper records concerning admissions, stay and departure of detainees must be kept;

30.5. the material conditions shall be appropriate to the individual's legal and factual situation;

30.6. the detention regime must be appropriate to the individual's legal and factual situation;

30.7. the detention authorities shall safeguard the health and well-being of all detainees in their care;

30.8. detainees shall be guaranteed effective access to the outside world (including access to lawyers, family, friends, UNHCR, civil society, religious/spiritual representatives) and the right to receive frequent visits from the outside world;

30.9. detainees shall be guaranteed effective access to legal advice, assistance and representation of a sufficient quality and legal aid shall be provided free of charge;

30.10. detainees must be able periodically to effectively challenge their detention before a court and decisions regarding detention should be reviewed automatically at regular intervals;

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28. Committee of Ministers, Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, 11 January 2006.
29. Ibid.
30. See also the work carried out by the International Detention Coalition (IDC) and its 10 points on detention of refugees, asylum seekers and migrants.
31. Recommendation 1850 (2008) on Europe's boat people: mixed migration flows into southern Europe": "5. Therefore, the Assembly recommends that the Committee of Ministers: 5.1. prepare, with the assistance of the CPT, guidelines for minimum standards to be applied to the detention of irregular migrants and asylum seekers. The European Prison Rules exist, but they do not apply to the detention of irregular migrants and asylum seekers, and they are based on carceral rather than non-carceral detention;".

30.11. the safety, security and discipline of detainees shall be taken into account in order to maintain the good order of detention centres;

30.12. detention centre staff and immigration officers shall not use force against detainees except in self-defence or in cases of attempted escape or active physical resistance to a lawful order and always as a last resort and proportionate to the situation;

30.13. detention centre management and staff shall be carefully recruited, provided with appropriate training and operate to the highest professional, ethical and personal standards;

30.14. detainees shall have ample opportunity to make requests or complaints to any competent authority and be guaranteed confidentiality when doing so;

30.15. independent inspection and monitoring of detention centres and of conditions of detention shall take place.

31. The rapporteur encourages domestic authorities to already take into account these 15 principles, to undertake a thorough critical review of the conditions prevailing in detention centres and to humanise them in consultation with any existing domestic inspectorates of custodial facilities. Furthermore, the rapporteur urges the domestic authorities to ensure that there is proper oversight over complaints and conduct matters (including incidents where a death or serious injury has taken place) that arise from immigration officers and officials in the exercise of their functions. These should mirror the arrangements for oversight of other officials, such as the police or prison officers.

5. Part 3: Alternatives to detention

32. In the final part of this report, the rapporteur has chosen to examine some of the alternatives to detention and, on the basis of the limited information available, highlight the impact of these alternatives. The rapporteur also stresses that there are important legal, practical, humanitarian and economic reasons driving the need for alternatives to detention.

33. As a starting point, the rapporteur returns to the first principle of the 10 guiding principles on the legality of detention of irregular migrants and asylum seekers: “detention of asylum seekers and irregular migrants shall be exceptional and only if there is no effective alternative”. This is further supported by other principles set out above including, *inter alia,* that there should be a careful and specific examination of the necessity to detain. The rapporteur also recalls the “non-penalisation” clause of the 1951 Convention. Thus, there should be a presumption in favour of release and, where appropriate, alternatives to detention. Unconditional release does not constitute an “alternative to detention” in the strict sense, since it should be the norm.

34. The rapporteur is expressly concerned about overcrowding and that the number of persons in centres is well above capacity. States are detaining persons to deal with the actual or perceived “mass influx” of migrants and asylum seekers into their territory.

35. Various studies have concluded that immigration detention is both ineffective as a means of immigration control and extremely detrimental to those who are detained. Governments have been criticised for regarding detention as a “panacea to the challenges of immigration control”. Whilst the large part of immigration detention is concerned with the purpose of removal – reports have found that only a minority of those detained are actually removed.[32]

36. At the same time, states are building more detention centres. However, the danger is that if states build more centres, they fill more. Furthermore, more detention centres often means worse centres. There is the added danger that building the centres soaks up resources leaving the public purse short to run the centres and make provision for the people living there. The clear solution to these somewhat circular problems is to provide proper alternatives to detention.

37. Despite these concerns, every document which can be read on the issue of immigration detention, including those prepared by the domestic authorities themselves, expresses the principle that detention should be used as a last resort and that alternatives to detention should be considered first. Despite universal acceptance of this principle, non-implementation in practice is puzzling, to say the least. The situation is not helped by the lack of statistics and up-to-date and precise research in this area.[33]

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32. See in relation to the London Detainee Support Group, “Detained lives”; McIntyre H., Report exposes "indefinite immigration detention” J.I.A.N.L. 2009, 23(2), pp. 117-118.

38. Furthermore, states have taken a piecemeal approach to the issue of alternatives to detention and real commitment is lacking. Whilst many Council of Europe (non-European Union) member states provide for alternatives to detention of asylum seekers and irregular migrants under their relevant national legislation, others do not. Where statutory alternatives are found, they are drafted in vague terns or require a high threshold to be crossed by the individual in question, before they can be applied.[34] Furthermore, a high level of discretion is often associated with their use and there are often few clear and consistent guidelines.[35]

39. The rapporteur considers it important to also note that alternatives to detention are not without human rights concerns and should in themselves not amount to an unjustified restriction on free movement.[36] The application of alternative measures must respect the individual's dignity and must comply with the principles of legality, necessity, proportionality and non-discrimination. States must take into account the particular situation of migrants and asylum seekers, as well as the particular vulnerabilities of certain groups, to ensure that the application of alternative measures does not result in discrimination against particular groups of non-nationals, whether on the basis of their nationality, religion, economic situation, immigration or other status. There must be the possibility of a review by an independent judicial or other competent authority.[37]

40. From existing studies on alternatives,[38] the rapporteur has collated examples of some of those most commonly used by states. This may be used as a mere starting point for further work at national and international level to ensure that the statement that "detention always be a matter of last resort" is not left in the realms of theory alone.

41. The rapporteur is aware that amongst the alternatives listed, some may be categorised as community-based alternatives[39] that allow freedom of movement (such as release on registration, bonding, etc.) and others are alternative forms of detention (in special open establishments, monitoring, tagging, etc.) which curtail freedom of movement.

5.1. The alternatives

42. Comparative studies on alternatives to detention[40] have identified that the most common alternative to detention is the placement of asylum seekers in special establishments, which are usually open or in some cases semi-open (the asylum seeker must live in the centre but is allowed to leave the premises during the day and returns there at night). There is a spectrum of semi- or half-open facilities – some more open than others and these are usually funded by the state (but run by private contractors). These establishments are not without human rights concerns and must respect fully the rights of those persons placed in their confines and take into account the right to liberty and freedom of movement of persons under international law.

43. Release with registration and reportingrequirements are some of the most common alternatives to detention. Registration requirements would entail the release from detention being conditional on fulfilling the obligation to register the individual's place of residence with the responsible authorities. Permission is required for all changes of address and, in addition, it may also be important to register with the authorities at the new address. Registration schemes and documentation requirements allow migrants and asylum seekers to be provided with official registration documents.[41] However, registration has also been provided without an identity card or other documents.

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33. Some interesting work is under way at the moment, including a guidebook on alternatives to detention and good practice by the International Detention Coalition (IDC).
34. Regional Coalition Report 2006, p. 5.
35. See Amnesty International, "Irregular migrants and asylum-seekers: alternatives to immigration detention", p. 10.
36. Article 2 of Protocol No. 4 to the European Convention on Human Rights states that: "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence". This has been considered in the immigration context, concerning the requirement to reside within a designated area in *Omwenyeke v. Germany*, Application No. 44294/04, decision of 20 November 2007.
37. For further information see Amnesty International, "Irregular migrants and asylum-seekers: alternatives to immigration detention", April 2009.
38. The rapporteur is grateful for the input of Ms Alice Edwards, lecturer in British human rights Law, University of Nottingham, during the hearing in Paris and found the following reports very useful in preparing this section of the report: UNHCR, "Alternatives to detention of asylum seekers and refugees", April 2006, POLAS/2006/03; the Regional Coalition 2006, "Survey on alternatives to detention of asylum seekers in EU member states" (hereinafter "Regional Coalition Report 2006"), www.alternatives-to-detention.org; see also the May 2009 report by Bail for Immigration Detainees, "An evaluative report on the Millbank Alternative to Detention Pilot".
39. For an interesting account of the use of community-based alternatives, see International Detention Coalition, "Case management as an alternative to immigration detention. The Australian experience", June 2009.
40. Ibid.

44. Reporting requirements typically entail the duty to report regularly, either in person, over the telephone or in writing at the police, immigration office or other special agency. In the alternative, reporting and/or registration duty can be applied simultaneously, which multiplies the alternatives to detention.[42] Nearly all European Union countries allow for the use of reporting and/or registration as an alternative.

45. Care must be taken when these alternatives are used to ensure that registration and reporting requirements are not excessive and do not in themselves amount to an undue restriction on free movement or otherwise obstruct persons carrying out their lives (for example, having to spend large amounts of time and money travelling to register and report). It is also necessary to have regard to the effect of such schemes on the family and private life of those who live with the released person.[43]

46. Release with duty to reside in a specific administrative area or municipality. Detainees may be released with a duty to reside in a specific administrative area or address. Alternatively, they may be prohibited from residing in certain places. In some countries, this alternative is also used as a dispersal tool to distribute asylum seekers and migrants equally over the country and ensure burden-sharing by all regions.

47. Release on bail/signing an agreement/provision of a guarantor or surety is an alternative, for example, available in the United Kingdom, Slovenia, Finland and Denmark. The decision maker must be satisfied that the surety or guarantor will provide necessary accommodation and can provide a sum of money (forfeited where the applicant fails to comply with the conditions set for bail). The applicant must also comply with conditions set including reporting requirements, and attending interviews with the authorities, which may be formalised in a written agreement. Where guarantees/sureties are used and the applicant defaults on any of the requirements, the guarantor/surety will have to forfeit the sum promised. In many cases, the threat of forfeit will incentivise compliance.[44] The rapporteur notes that when these alternatives are used, they need to take reasonably into account the family ties available and the economic situation of those concerned.

48. Controlled release to individuals/family members/NGOs/religious organisations.[45] An individual may be released with mentorship, for example, under a social worker or an active support network. Alternatively, there could be release under the supervision of other individuals, family members, relatives, or members of non-governmental, religious, or community organisations. The relevant person/group must provide a guarantor's assurance that the individual will attend meetings and appointments as required. Similar to release on bail, the guarantor must pay a financial penalty if the asylum seeker breaches his or her obligations on release. This alternative appears to work better in conjunction with other alternatives, including monitoring measures of varying and appropriate intensity, or reporting requirements. In Canada, almost 92% of releases under the supervision of an NGO have met with success.[46]

49. Release combined with appointment of a special worker. Whilst this alternative is not often used in practice, it could provide an effective means of releasing an individual. The special worker may assist in monitoring the fulfilment of obligations but may also offer counselling and advice to the individual to help overcome difficult situations. Appointments with the special worker could replace reporting requirements and also assist in the monitoring of the removal process. Furthermore, in the case of children, release could be accompanied by court guardianship and/or the supervision of welfare and social services. This could be particularly effective given that numbers of children have disappeared from local authority care.

50. Release with the obligation to hand over travel and/or other documents. Impoundment of documents is a requirement which has been used[47] in order to prevent prospective secondary movement within Europe, for example, following the submission of an asylum claim (or application for residence). The requirement to hand over papers may work periodically – for example, as a weekly requirement – or it may be a surrender of such documentation for a temporary period, insofar as this is necessary in order to implement the safeguard measures. It is also used often in combination with other alternatives.

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41. Amnesty International, "Migration-related detention. A global concern", Index: POL 33/004/2008, December 2008; See also Amnesty International, "Jailed without justice: immigration detention in the USA", March 2009.
42. Regional Coalition Report 2006.
43. See *A and Others v. the United Kingdom*, Application No. 3455/05, Judgment (GC) of 19 February 2009 and the regime of control orders which replaces that of the detention of foreign nationals suspected of having committed terrorist offences.
44. For example, France, Regional Coalition Report 2006, p. 20.
45. For example, Slovenia and the Czech Republic, Regional Coalition Report 2006, p. 10.
46. Ms Alice Edwards, lecturer in British human rights law, University of Nottingham, Committee on Migration, Refugees and Population hearing on detention of irregular migrants and asylum seekers, Paris, 14 December 1997, AS/Mig/ Inf(2008)02, 4 February 2008.
47. For example, France and Finland, Regional Coalition Report 2006.

51. Control measures on release could be implemented (for example, the issuance of a temporary work permit or visa extension could be conditional on compliance with reporting requirements or attending meetings).[48]

52. Registration using special (electronic) documents or electronic monitoring is a familiar aspect of those released on bail from criminal custody. However in the administrative context, it could also provide a means of monitoring a person's movement. Commonly, electronic surveillance methods are used or other suitable means of monitoring movement, including satellite. Movements outside a specified permitted area alert the police and the individual may be detained again, including that it would be noted that they attempted to abscond.[49] In deciding to use such registration measures, careful consideration needs to be given to the human rights implications, including the proportionality and necessity of the measure and the need for review by an independent judicial or other competent authority – either to discharge or vary the conditions.

5.2. Impact of alternatives

53. There are well-established grounds for preferring alternative non-custodial measures as the solution to the reception of asylum seekers and migrants. UNHCR makes it clear that alternatives to detention are not only desirable in practice but should be the norm, rather than a deviation from the norm (it being accepted that detention is exceptional). The same position has not only been taken up, but repeated time and again, by the Commissioner for Human Rights, the CPT and other monitoring and reporting bodies and NGOs.

5.2.1. factors influencing effectiveness of alternative detention

54. There are a whole host of factors influencing the effectiveness of alternatives to detention in terms of meeting immigration goals of the state, for example preventing absconding or improving compliance with asylum procedures.[50] UNHCR has concluded that much depends on the reception country itself and the conditions put in place, including the provision of legal advice and legal aid; whether or not individuals are not only informed of their rights and duties but understand them, including all conditions of their release and the consequences of failing to appear for a hearing; whether or not appropriate material support is offered, including whether accommodation and assistance are provided whilst the asylum claim or application for regular residence is being determined; and the use of initial screening to establish whether or not the person has either family or community ties, or considering the use of community groups to "create" or provide guarantors/sponsors so as to assure compliance with any set conditions.[51]

55. Age, nationality and gender are not found to be factors by which the risk of absconding can be predicted, whereas the desire to transit to another country for family reunion appears to be a factor in decisions to abscond. Where the country in question is a destination, as opposed to a transit county, the highest success rates of alternatives to detention have been recorded. Some countries, however, use a system of penalties as a threat of more severe restrictions, such as detention to encourage compliance with asylum procedures. However, this approach is not recommended as effective alternatives should be used instead.[52]

56. There are a number of interesting country experiences worthy of further examination. For example, in Australia, the authorities have adopted an individual "risk-based" approach rather than a "one size fits all" approach. This is centred around a community-based case management model that includes early intervention and individual assessment on the need to detain on a case-by-case basis.

5.2.2. Raising human rights compliance by reducing suffering

57. Clearly the least restrictive alternatives also reduce the human cost and suffering of those involved and represent a more proportionate response in managing migration. This in turn raises state compliance with their international human rights obligations.

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48. For example, in the Czech Republic and Spain, Regional Coalition Report 2006, p. 11.
49. This is under discussion in Belgium, Regional Coalition Report 2006, p. 11.
50. Regional Coalition Report 2006.
51. UNHCR, "Alternatives to detention of asylum seekers and refugees", April 2006, POLAS/2006/03, paragraph 155 ("UNHCR Study on Alternatives to Detention").
52. UNHCR Study on Alternatives to Detention.

5.2.3. Cost effectiveness

58. The UNHCR study further found that, where comparative costs of detention vis-à-vis alternatives to detention are available, alternatives are universally more cost-effective than detention.[53] There are difficulties in calculating the precise financial costs of alternatives to detention as compared with the costs of detention – not least because most states do not make such information public. This is especially true of European states, whereas it is known that in Canada the bail programme costs 12-15 Canadian dollars (CAD) per day compared with detention in a provincial prison which costs CAD 175 per day. The length of an asylum procedure makes a difference to the overall costs; however, there are a number of variables within the local system, including the length of the initial detention to establish the identity of the person concerned and the costs involved in locating and re-detaining persons subject to forcible removal. Nevertheless, the UNHCR states that, in some countries, conditions in detention are so deplorable that a cost argument is almost irrelevant. As another example, in Australia, a local-based NGO, the International Detention Coalition, calculated that alternatives to detention pilot programmes cost one third of detention costs.

5.2.4. Compliance rates

59. In the United Kingdom, South Bank University research found that 73 of 98 people released on bail, thanks to the intervention of a London-based NGO (Bail for Immigration Detainees, BID), complied with the conditions of their bail. Save for the intervention of this London-based NGO, the research put the estimated cost of detention for those persons for the period studied at £430 000. Intensive supervision and other restrictions placed on community release, in some cases raises the rate of compliance. It should not be neglected, however, that these other forms of restriction also have a human cost.[54]

60. In another research project in Australia, an Australian-based NGO (International Detention Coalition),[55] found a 94% compliance rate for a community-based alternative to detention project with only 5% of persons absconding. Furthermore, in this study it was found that 67% of individuals who were ultimately refused the right to remain departed voluntarily.

5.3. Conclusions on alternatives to detention

61. Studies on alternatives to detention, including by the UNHCR, have been very useful, but even they advocate the need for more empirical research to be done. Urgent action must therefore be taken to conduct further empirical research into alternatives to detention – including the explanatory reasons for the circumstances in which alternatives work and when they do not. The rules on alternatives should be clarified at national level to ensure greater transparency in the system. There should also be greater public education on these issues at the national and international level in relation to all these issues.

62. Furthermore, where alternatives to detention do exist, it is questionable as to whether they are made effectively available in practice. Alternatives to detention must not only be placed in national law but be accompanied by detailed guidelines, investment in training and infrastructure so that the law can be made practically effective. Even states which have national legislation and guidelines on the issue of detention often fail to apply (rigorously or otherwise) the requirements of their own legislation.[56] All alternatives to immigration detention will, to some degree, restrict or interfere with an individual's human rights. It is therefore important to keep this in mind during the examination of alternatives to detention and ensure that alternatives chosen are the least invasive in terms of human rights, taking into account the circumstances of each case. Alternatives must be provided for in law, used only when necessary, be proportionate, non-discriminatory and non-arbitrary. Furthermore, they must take fully into account the individual circumstances and vulnerabilities of those to whom they are applied and there must be the possibility of review by an independent judicial body or other competent authority

53. UNHCR Study on Alternatives to Detention, Regional Coalition Report 2006, London Detainee Support Group, "Detained lives".
54. UNHCR Study on Alternatives to Detention
55. International Detention Coalition (IDC), "Case management as an alternative to detention. The Australian experience", see www.idcoalition.org.
56. Ibid. See also United Kingdom Border Agency Enforcement Instructions and Guidance, Chapter 55.

6. Rapporteur's general conclusions

63. Detention of migrants and asylums seekers is a vast issue, a major challenge for member states of the Council of Europe and a priority concern for the many human rights monitoring bodies at national and international levels. The rapporteur in this report has tried to focus on three of the most pressing areas where further work needs to be carried out.

64. In the first place there needs to be clarity on when it may be legal and legitimate to detain irregular migrants and asylum seekers (10 guiding principles on the legality of detention of irregular migrants and asylum seekers).

65. Secondly, Europe needs minimum rules on the detention of irregular migrants and asylum seekers. In this context the rapporteur has put forward 15 guiding principles which could go towards establishing minimum standards for conditions of detention of migrants and asylum seekers (15 European rules governing minimum standards of conditions of detention centres for migrants and asylum seekers).

66. Finally, the rapporteur has examined some of the alternatives to detention which should be used. She takes the view that alternatives to detention should be used to a far greater extent by member states, not only because they are legally bound under international law to favour these over detention if meaning is to be given to "detention should be used as a last resort", but also because, *inter alia*, alternatives are cheaper and much more humane.

Appendix 1 – 10 guiding principles governing the circumstances in which the detention of asylum seekers and irregular migrants may be legally permissible

Principle I: Detention of asylum seekers and irregular migrants shall be exceptional and only used after first reviewing all other alternatives and finding that there is no effective alternative

1. Detention of asylum seekers and irregular migrants shall be exceptional. This principle is found in Article 5.1 ECHR, since there are is an exhaustive list of six exceptions to the right to liberty. One exception concerns immigration detention, that is listed under Article 5.1.*f*. The exceptions must be interpreted narrowly to ensure that no one is arbitrarily deprived of his or her liberty.[57]

2. The Committee of Ministers of the Council of Europe unanimously and expressly agreed that the detention of asylum seekers subject to accelerated asylum procedures should be the exception.[58] The position is the same under the 1951 Convention: asylum seekers should not be detained unless it is necessary in exceptional cases.[59] The Office of the United Nations High Commissioner for Refugees (UNHCR) has stated that the prevention of detention is a priority because it is often a precursor to *refoulement.*[60]

3. The widespread, systematic or routine use of detention is clearly incompatible with this principle.[61] The same is true of national laws which make detention mandatory, for example following a breach of immigration laws by entering the country illegally without travel documents or because all those at border zones must be detained.[62] Asylum seekers should not be detained simply because they have applied for asylum.[63] Other groups of persons commonly found detained by the Commissioner for Human Rights and the European Committee for the Prevention of Torture (CPT) include people entering the country (or will be transferred) under the "Dublin system", families with children, irregular migrants and, of course, many others.[64]

4. Therefore, detention should only be imposed following a careful, specific examination of the facts and the necessity to detain in each individual case.[65] Member states must review alternative options before opting for detention. There should be a presumption in favour of release and alternatives to detention should always be applied in preference over detention.

Principle II: Detention shall distinguish between asylum seekers and irregular migrants

1. Asylum seekers and irregular migrants must be distinguished as separate categories of persons. Asylum seekers and refugees have been forced to leave their country due to persecution. Irregular migrants have crossed international borders, inevitably in very risky conditions, but for other (economic, social, political, cultural, environmental) reasons. Asylum seekers, unlike other migrants, may not be in a position to comply with the legal formalities for entry (they cannot wait at embassies to get passports issued when they are

57. *Quinn v. France*, Application No. 18580/91, judgment of 22 March 1995, paragraph 42, reaffirmed in *Kaya v. Romania*, Application No. 33970/05, judgment of 12 October 2006, paragraph 16.
58. Council of Europe: Committee of Ministers, "Guidelines on human rights protection in the context of accelerated asylum procedures", 1 July 2009, Guideline XI.
59. UNHCR, "UNHCR revised guidelines on applicable criteria and standards relating to the detention of asylum seekers", 26 February 1999, Guideline 3.
60. UNHCR, *Measuring protection by numbers (2005)*, November 2006.
61. See, for example, "Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Greece from 8 to 10 December 2008 – Issues reviewed: human rights of asylum seekers", 4 February 2009, CommDH(2009)6, paragraph 13. CPT General Standards.
62. This has been specifically criticised in the report of the UN Working Group on Arbitrary Detention: Italy. It is logically incongruous to make arrest mandatory for failure to comply with immigration requirements: the existence of the offence would depend on complex factual questions to ascertain whether the third country national had a justified cause for non-compliance. Furthermore, mandatory arrest is usually reserved for violent offences under the Criminal Code.
63. Article 31 of the 1951 Convention; Council of the European Union, Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in member states for granting and withdrawing refugee status, 2 January 2006, 2005/85/EC ("Procedures Directive"), Article 18.
64. "Report by the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, on his visit to Belgium from 15 to 19 December 2008, for the attention of the Committee of Ministers and the Parliamentary Assembly", 17 June 2009, CommDH(2009)14, paragraphs 74-81; CPT General Standards, 2006.
65. See Recommendation Rec(2003)5 of the Committee of Ministers to member states on measures of detention of asylum seekers, paragraph 4; Committee of Ministers, "Twenty guidelines on forced return", September 2005, Guideline 6(1) (hereinafter, "Twenty Guidelines on Forced Return"); CPT General Standards, 2006.

fleeing for their lives) and they are often traumatised by their experience. Ultimately, their backgrounds and personal histories are fundamentally different and this must be taken into account by decision makers when considering the need to detain an individual.[66]

2. Asylum seekers cannot be detained solely on the basis of their lodging a claim for international protection. Article 31 of the 1951 Convention (the so called “non-penalisation clause”) provides that states shall not impose penalties on refugees on account of their illegal entry or presence in the country without authorisation.

3. Irregular migrants do not fall within the scope of the 1951 Convention and the “non-penalisation clause”. However, human rights law is applicable to “everyone” without distinction and the exceptional nature of detention means that individuals should not be detained purely on the basis of their illegal status in national law. Human rights law also requires an individual, specific assessment of the necessity to detain be carried out in each case. Such an assessment would necessarily entail taking the distinct situation of asylum seekers and irregular migrants, and their respective needs, into account.[67]

Principle III: Detention shall be carried out by a procedure prescribed by law, authorised by a judicial authority and be subject to a periodic judicial review

1. Article 5.1 ECHR requires that any deprivation of liberty must be in accordance with a procedure prescribed by law. However, “in accordance with the law” does not merely refer back to domestic law; it also relates to the “quality of the law”. “Quality of law” in this sense implies that where a national law authorises deprivation of liberty it must be sufficiently accessible, precise and foreseeable in its application, in order to avoid all risk of arbitrariness.[68] In other words, the law setting out the procedure to detain must be clear, fair, just and non-arbitrary. This requirement is considered to be especially important in respect of an asylum seeker who is by definition a foreigner.[69]

2. Where there is a deprivation of liberty it is particularly important to satisfy the general principle of legal certainty. If the law is clearly and precisely defined, the citizen will be able to foresee to a degree that is reasonable in the circumstances (and if necessary, taking appropriate advice) the consequences of a given act.[70] The law must also be accessible which implies they are made public. For example, the detention of a foreign national at the Russian border with Finland on the basis of Border Crossing Guidelines which were not found in national law, and not available to the public, was found to be arbitrary by the European Court of Human Rights (the Court).[71] Thus, where detention or the conditions or operation of detention facilities is incompatible with stated policy or legislation or is inconsistent with unpublished policy, it should be presumed that detention conflicts with the principle of legal certainty.

3. Therefore, the decision to detain should be made by a judicial authority, including a court or a judge or anyone else "empowered to exercise judicial power".[72] This is not the case in a number of member states. In Germany, pre-deportation detention must be determined by the local civil or criminal courts. In France, it could be a decision of the prefecture on transportation to the borders or of the ministry on expulsion and in the United Kingdom, it is officers and senior officers of the United Kingdom Border Agency.[73]

4. The Court in *Shamsa v. Poland* found that detention for several days which was not ordered by a judge, court or by anybody else empowered to exercise judicial power could not be considered fair within the meaning of Article 5.1.[74] Individuals cannot simply be de factodetained – the measure must have a sound

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66. “UNHCR revised guidelines on applicable criteria and standards relating to the detention of asylum seekers”, 26 February 1999, Guideline 2 (hereinafter, “UNHCR Guidelines”); Commissioner for Human Rights, "States should not impose penalties on arriving asylum seekers", 17 March 2008.
67. Committee of Ministers Twenty Guidelines on Forced Return; CPT General Standards; see also *SD v. Greece*, Application No. 53541/07, decision of 11 June 2009, paragraph 65.
68. *Soldatenko v. Ukraine*, Application No. 2440/07, judgment of 23 October 2008, paragraph 111.
69. *Amuur v. France*, Application No. 19776/92, judgment of 25 June 1996, paragraph 50.
70. *Dougoz v. Greece*, Application No. 40907/98, judgment of 6 March 2001, paragraph 55, *Shamsa v. Poland*, Application Nos. 5355/99 and 5357/99, judgment of 27 November 2003, paragraph 49, *Nolan and K. v. Russia*, Application No. 2512/04, judgment of 12 February 2009.
71. *Nolan and K. v. Russia*, Application No. 2512/04, judgment of 12 February 2009, paragraph 98.
72. *Shamsa v. Poland*, Application No. 45355/99 and 45357/99, judgment of 27 November 2003.
73. The Regional Coalition 2006, *Survey on Alternatives to Detention of Asylum Seekers in EU Member States* (hereinafter “Regional Coalition Report 2006”), www.alternatives-to-detention.org, pp. 20-22. See also for more information the United Kingdom Border Agency Enforcement Instructions and Guidance, Chapter 55.
74. *Shamsa v. Poland*, Application No. 45355/99 and 45357/99, judgment of 27 November 2003, paragraphs 58-59.

basis in national law.[75] Neither can detention be indeterminate and unpredictable. Unless detention is based on a specific statutory provision or a valid judicial decision, it is in itself contrary to the principle of legal certainty.[76]

5. The requirement that the decision to detain be made by a judicial authority bears a strong relationship with Article 5.4 concerning challenges made to the legality of detention.[77] For example, the Committee of Ministers has stated that measures of detention of asylum seekers should be reviewed regularly by a court in accordance with Article 5.4. This is considered below. Furthermore, the CPT advocates for an automatic and periodic review of detention by an independent authority.[78]

Principle IV: Detention shall be ordered only for the specific purpose of preventing an unauthorised entry or with a view to deportation or extradition

1. Under Article 5.1.*f* of the Convention there are only two specific circumstances in which detention of irregular migrants and asylum seekers can be justified, namely to prevent an unauthorised entry into the territory, and where action is being taken with a view to deportation or extradition. These two limbs are interpreted restrictively and no other circumstances, such as detention as a deterrent[79] or on the basis that an individual has not co-operated with the authorities,[80] may justify detention. However, the scope of these two justifications has been hotly debated.

2. The Court has kept the scope of the first limb wide considering that entry is "unauthorised" until it is authorised. [81] In the *Saadi v. the United Kingdom* case before the Court, the applicant co-operated fully and fulfilled every requirement imposed on him by the authorities, but was still deemed to have been seeking to effect an unauthorised entry because, under the Court's interpretation, entry is "unauthorised" until it is "authorised". This is clearly unacceptable because, taken to its natural conclusion, this could mean that unless the authorities authorise entry, a person can be detained *ad infinitum* on the ground that the authorities are preventing unauthorised entry. It also sanctions the detention of asylum seekers for the entire status-determination procedure, rather than the preliminary interview, which is in blatant conflict with the UNHCR Guidelines.

3. The rapporteur takes the view that a person should be considered as effecting an unauthorised entry only in a number of narrow circumstances. Where a person surrenders himself to the immigration authorities he may be seeking to effect an "authorised entry", in particular, where he acts in good faith, co-operates with the authorities and there are no objectively verifiable reasons to question identity. Neither would a person be seeking to effect an unauthorised entry where there was no evidence of previous absconding, no previous failure to comply with conditions of temporary release or bail, and there has been no determined attempt to breach immigration laws. However, where a person made a determined attempt to evade immigration control or abuse the system in some way he may well be seeking to make an "unauthorised entry".

4. In cases where it is considered that the person might be seeking to evade immigration restrictions, there must be objectively verifiable grounds to believe that the irregular migrant or the asylum seeker has taken such steps. This might include the destruction of travel documents or intention to mislead the authorities, a refusal to co-operate, or the existence of relevant criminal antecedents. It may also be that detention would be authorised (because entry would be unauthorised) where a person had travelled under false papers and it was necessary to determine their identity as it was in dispute (perhaps as they were using

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75. Report of the UN Working Group on Arbitrary Detention: Italy; CPT, "Response of the Ukrainian Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Ukraine from 5 to 10 December 2007", 19 May 2009, CPT/Inf(2009)16 (hereinafter, "CPT Report Ukraine 2009"); *Soldatenko v. Ukraine*, Application No. 2440/07, judgment of 23 October 2008, paragraph 111.
76. *Shamsa v. Poland*, Application Nos. 45355/99 and 45357/99, judgment of 27 November 2003, paragraph 58.
77. Ibid., paragraph 59, "A cet égard, la Cour souligne également qu'aux fins de l'article 5 paragraphe 1, la détention qui s'étend sur une période de plusieurs jours et qui n'a pas été ordonnée par un tribunal ou par un juge ou par toute autre personne 'habilitée … à exercer des fonctions judiciaires' ne saurait passer pour 'régulière' au sens de cette disposition. Si cette exigence n'est pas explicitement formulée à l'article 5 paragraphe 1, elle peut se déduire de l'article 5 pris dans sa globalité, en particulier du libellé du paragraphe 1 c) ('en vue d'être conduit devant l'autorité judiciaire compétente') et du paragraphe 3 ('doit être aussitôt traduite devant un juge ou un autre magistrat habilité par la loi à exercer des fonctions judiciaires'). En outre, la garantie d'habeas corpus que contient l'article 5 paragraphe 4 vient également appuyer l'idée que la détention qui est prolongée au-delà de la période initiale envisagée au paragraphe 3 appelle l'intervention d'un 'tribunal' comme garantie contre l'arbitraire (Baranowski c. Pologne, arrêt du 28 mars 2000, Recueil 2000-III)."
78. See CPT/Inf 2007(27), paragraph 86.
79. See UNHCR Guidelines, 3(iv).
80. *Mikolenko v. Estonia*, Application No. 10664/05, judgment of 8 October 2009.
81. *Saadi v. the United Kingdom*, Application No. 13229/03, judgment (GC) of 29 January 2008, paragraph 65.

various aliases). However, bearing in mind the presumption against detention, the outcome sought (for example, establishing identity and the essential facts of the asylum claim, and protecting public order) must not be possible to achieve by other less restrictive means in the absence of detention.[82]

5. The rapporteur takes the view that the above paragraph reconciles the Court's position in *Saadi v. the United Kingdom*,on the one hand, and the UNHCR Guidelines and the Committee of Ministers' recommendation on the other.[83] The rapporteur's approach is also evident in the case of *Amuur v. France,* which statedthat notwithstanding states' "legitimate concern to foil the increasingly frequent attempts to get around immigration restrictions", asylum seekers must not be deprived of the protection of the 1951 Convention (which prohibits penalisation of asylum seekers for unlawful entry without documents).[84]

6. While the Court has considered only one case relating to detention to prevent unauthorised entry (the Saadi case), it has on a number of occasions examined detention for the second specific purpose of facilitating removal. Again the principle of legal certainty is brought to bear on situations of detention under this second limb. For example, a policy of keeping the possibility of deporting a person "under active review" could not be considered sufficiently certain or determinative to amount to "action ... being taken with a view to deportation".[85]

7. Furthermore, the Court has found that detention will be permissible for this purpose where deportation or extradition is a practical reality capable of being enforced and is "imminent". This may be relevant in cases where the individual has exhausted all appeal rights and travel arrangements and documents had already been obtained. If deportation proceedings are dragging on and are not prosecuted with due diligence, the detention will cease to be permissible under Article 5.1.*f*.[86]The rapporteur notes that it is difficult to put a specific time limit on detention, notwithstanding that the eighteen month maximum laid down in the EU Return Directive is clearly excessive. It is, however, essential that all periods of detention are authorised and reviewed by a judicial authority to ensure the continuing need for detention and are not excessive, taking fully into account the 10 principles put forward in this document.

8. Even though the two specific circumstances in which immigration detention may be permissible have to be interpreted restrictively – it would appear that this rule is not adhered to in practice. There may be large numbers of people who are detained but do not necessarily fall within the scope of either of the two permitted grounds.

9. As regards the first limb (detention to prevent unauthorised entry), as described above, the rapporteur takes the view that administrative detention for the purpose of processing lots of asylum claims quickly would fall outside the specific purpose of detention to prevent an unauthorised entry. It cannot be that all asylum seekers are seeking to effect an unauthorised entry and neither can it be the case that states would want (or could) detain all of them.

10. As regards to the second limb (detention with a view to deportation or extradition), detention of an individual may not be permitted where an asylum seeker has exhausted all appeal rights and been served with a notice of deportation but no action is being taken to practically enforce the deportation order and there are no public order grounds justifying detention. In fact this situation pertains in many cases. Similarly, where

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82. These correspond to the "UNHCR revised guidelines on applicable criteria and standards relating to the detention of asylum seekers", 26 February 1999 (UNHCR Guidelines) and UNHCR, "Detention of refugees and asylum-seekers", 13 October 1986, No. 44 (XXXVII) – 1986 (UNHCR EXCOM Conclusion 44) as accepted by the Committee of Ministers and the Commissioner for Human Rights.

83. Arguably it deals with the fact that in *Saadi v. the United Kingdom*, Application No. 13229/03, judgment (GC) of 29 January 2008, the Court did "not accept that, as soon as an asylum seeker has surrendered himself to the immigration authorities, he is seeking to effect an 'authorised' entry, with the result that detention cannot be justified under the first limb of Article 5.1.*f*. To interpret the first limb of Article 5.1.*f* as permitting detention only of a person who is shown to be trying to evade entry restrictions would be to place too narrow a construction on the terms of the provision and on the power of the State to exercise its undeniable right of control referred to above." However, there is still a gulf of difference between narrow construction (detention is not authorised "as soon as" a person surrenders himself to the authorities), the middle ground sanctioned by the UNHCR and the Committee of Ministers, and the unacceptably wide approach of the Court which effectively sanctions the detention of any asylum seeker on entry.

84. *Amuur v. France*, Application No. 19776/92, judgment of 25 June 1996, paragraph 43.

85. *A and Others v. the United Kingdom*, Application No. 3455/05, judgment (GC) of 19 February 2009, paragraph 167 "the Court does not consider that the respondent Government's policy of keeping the possibility of deporting the applicants 'under active review' was sufficiently certain or determinative to amount to "action … being taken with a view to deportation".

86. *A and Others v. the United Kingdom*, Application No. 3455/05, judgment (GC) of 19 February 2009.

a person is granted interim measures from the Court suspending their removal until further notice it would not be legally possible to take action with a view to removal (even up to one or two years down the line). Quite simply, in such cases, removal can in no way be considered "imminent".

11. A slightly different situation concerns the immigration detention of foreign nationals convicted of criminal offences. When the foreign national ceases to be a serving prisoner they should not be detained unless there is a further risk to public order or a risk of absconding andany deportation order is capable of being enforced soon after. The situation is also inherently discriminatory given that where the states' own nationals are no longer a serving prisoner and no longer pose a risk, they are released. Furthermore, the rapporteur can think of few situations more arbitrary or unlawful than the detention of families to facilitate their removal as a group of persons, as opposed to a single person, in order to boost deportation "targets".[87]

12. The trend emerging here is that detention practice is broad but the legal provisions are in fact very narrow. It should be the case that beyond these two exclusive purposes, no third purpose can be permitted.[88] Furthermore, current practice and systematic detention makes it difficult to ascertain in individual cases whether or not detention is justified under the first limb or the second.

13. The orthodox principles governing the development of Court case law include that: the Court should not, without good reason, depart from its own precedents and the Convention is a living instrument which must be interpreted in light of contemporary circumstances. Nevertheless, the rapporteur considers that good reasons and contemporary needs dictate a re-examination by the Court of its restrictive case law on immigration detention (unmatched when comparing detention in other contexts). Thus, while the Court has made progress in defining the scope of the second limb/purpose (detention with a view to deportation of extradition) it needs to go further. In relation to the first limb/purpose (detention to prevent an unauthorised entry), the Court has been extremely restrictive and it needs to look at this issue much more closely, taking fully into account other international sources of law and views of the international community.

Principle V: Detention shall not be arbitrary

1. Human rights treaties prohibit arbitraryarrest or detention.[89] Despite some overlap, several ingredients make up this broad notion. Detention is not arbitrary where it is fair, just, non-capricious, exceptional and legal safeguards are in place. It is not arbitrary if it is applied following an individual, specific assessment of the case and if it is necessary, proportionate and appropriate, applied in good faith, and the duration is reasonable in the circumstances (and for the shortest possible time). Clearly, the prohibition of arbitrariness is interpreted to mean something more than mere conformity with the law.

2. More specifically, detention will be considered "arbitrary" unless it is:

– authorised by a court, a judge (or an official with judicial power), or pursuant to a procedure set down in law;[90]

– clearly prescribed by national law and sufficiently accessible, precise and foreseeable in its application, in order to avoid all risk of arbitrariness;[91]

– for a specific Convention purpose, that is to prevent unauthorised entry of the person to the country or to facilitate removal. Detention must also be ordered and executed in a way which genuinely conforms with the purpose of the restrictions permitted by the relevant sub-paragraph of Article 5.1. Furthermore, there must be some relationship between the ground of permitted deprivation of liberty relied on and the place and conditions of detention;[92]

– necessary in all the circumstances of the case, for example to prevent flight or interference with evidence;[93]

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87. McVeigh K., "Ministers under fire for locking up immigrant children", *Guardian*, 30 August 2009.
88. *Saadi v. the United Kingdom*, Application No. 13229/03, judgment (GC) of 29 January 2008; see the range of other circumstances set out in the report of the UN Working Group on Arbitrary Detention: Italy.
89. Ibid. The UN Working Group on Arbitrary Detention and the UN Human Rights Committee (UN HRC) are concerned only with "arbitrary" detention as explicitly prohibited by Article 9 ICCPR. However, whilst the prohibition of "arbitrariness" is not explicitly mentioned in the text of Article 5 ECHR, the Court has interpreted it to mean that "no one should be deprived of that liberty in an arbitrary fashion", irrespective of the type of detention (for example, criminal, immigration, psychiatric).
90. *Shamsa v. Poland*, Application Nos. 45355/99 and 45357/99, judgment of 27 November 2003, paragraphs 58-59.
91. *Nolan and K v. Russia*, Application No. 2512/04, judgment of 12 February 2009.
92. *Saadi v. the United Kingdom*, Application No. 13229/03, judgment (GC) of 29 January 2008, paragraph 69.
93. *A v. Australia*, No. 560/1993, CCPR/C/59/D/560/1993, see also *Saadi v. the United Kingdom*, Application No. 13229/03, judgment (GC) of 29 January 2008; and *Rusu v. Austria*, Application No. 34082/02, judgment of 2 October 2008.

– imposed only as a measure of last resort, other less severe measures having been considered and found to be insufficient to safeguard the individual or public interest which might require that the person concerned be detained;

– proportionate to the objective to be achieved;[94]

– carried out in good faith[95] with no element of deception;[96]

– appropriate or just.[97] In particular the place and conditions of detention must be appropriate, bearing in mind that "the measure is applicable not to those who have committed criminal offences but to aliens who, often fearing for their lives, have fled from their own country".

3. Furthermore, if detention is imposed with a view to extradition or deportation, those proceedings must be pursued with "due diligence".[98] In addition, if the length of the detention exceeds that reasonably required for the purpose pursued,[99] or does not continue beyond the period for which the state party can provide appropriate justification,[100] then it will be arbitrary.

4. Failure to guarantee one or more of the above principles will render detention arbitrary. For example, the UN Human Rights Committee (UN HRC) found in eight joined cases that the detention of each individual was arbitrary where the state concerned had not advanced grounds to justify continued detention for prolonged periods and did not demonstrate, in the light of each of the individual and particular circumstances, that there were less invasive measures capable of achieving the same aim.[101] In *A and Others v. the United Kingdom,* indefinite detention of persons who could not be removed on human rights grounds was found to be arbitrary, notwithstanding that the cases were said to have been kept under "active review".[102]

5. As seen above, it would be arbitrary to detain a person where there is no imminent prospect of removal. This led to a finding of a violation of Article 5.1.*f* in the A and Otherscase.[103] Similar considerations would apply where there are obstacles and practically insurmountable delays in obtaining the relevant paperwork for stateless persons. Detention would also be arbitrary where it was applied in bad faith, for example, providing spurious reasons for detention (for example, that the person previously absconded when they did not), or tricking individuals into detention (for example, inviting them to an interview regarding their asylum application whereas the sole purpose of seeing them is to detain them).

6. Detention would also be arbitrary where the detaining authorities fail to act on a recommendation of a medical practitioner to release an individual on health grounds. It is also arbitrary to lock people within the prison estate, along with serving prisoners, or to detain children with other adults or to punish a detainee with solitary confinement. The danger for arbitrariness is great given that the system is not transparent but tends to be closed with a lack of monitoring or record keeping. It is not necessary to establish which element of arbitrariness each of these situations refers to given that the notion is a broad one aimed at the protection of the individual.

Principle VI: Detention shall only be used when necessary

1. The Committee of Ministers has agreed on three separate occasions that measures of detention of asylum seekers should only be applied after a careful examination of their "necessity" in each individual case.[104] This has been reiterated by the Commissioner for Human Rights, the CPT, UNHCR, the UN HRC

94. *A v. Australia*, No. 560/1993, CCPR/C/59/D/560/1993.
95. *Saadi v. the United Kingdom*, Application No. 13229/03, judgment (GC) of 29 January 2008.
96. *Čonka v. Belgium*, Application No. 51564/99, judgment of 5 February 2002.
97. *A v. Australia*, No. 560/1993, CCPR/C/59/D/560/1993.
98. *Saadi v. the United Kingdom*, Application No. 13229/03, judgment (GC) of 29 January 2008.
99. *Saadi v. the United Kingdom*, Application No. 13229/03, judgment (GC) of 29 January 2008.
100. *A v. Australia*, *C v. Australia*, Communication No. 900/1999, UN Doc. CCPR/C/76/D/900/1999 (2002),*Shams and Others v. Australia*, CCPR/C/90/D/1255, 1256, 1259, 1260, 1266, 1268, 1270 and 1288/2004, 11 September 2007.
101. *Shams and. Others v. Australia* CCPR/C/90/D/1255, 1256, 1259, 1260, 1266, 1268, 1270 and 1288/2004, 11 September 2007.
102. *A and Others v. the United Kingdom*, Application No. 3455/05, judgment (GC) of 19 February 2009.
103. Ibid.
104. Recommendation Rec(2003)5 of the Committee of Ministers to member states on measures of detention of asylum seekers; Committee of Ministers Twenty Guidelines on Forced Return, Guideline 6(1), September 2005; Committee of Ministers, "Guidelines on human rights protection in the context of accelerated asylum procedures", most recently on 18 June 2009.

(which is the treaty body responsible for the interpretation of the ICCPR), the United Nations Working Group on Arbitrary Detention, the European Union[105] and civil society groups. Article 31 of the Geneva Convention stipulates that any restriction on free movement of asylum seekers must be necessary.

2. There would appear to be general agreement that it would in exceptional circumstances be necessary to detain an asylum seeker or irregular migrant in order to:

– verify their identity (for example, where identity is disputed, where the person concerned is carrying fraudulent documents or has no documents and there is an intention to mislead or a refusal to co-operate);

– determine the elements on which the claim to refugee status or asylum is based (for similar reasons as the above – for example, to deal with lack of co-operation with the authorities).[106] Alternatively because there is a risk that otherwise the evidence might be lost (if there is a risk of the individual absconding) or that there will be an interference with evidence);[107]

– deal with cases where asylum seekers and irregular migrants have destroyed their travel and/or identity documents or have used fraudulent documents to mislead the authorities of the country of refuge;

– protect national security or public order (for example, where the asylum seeker or irregular migrant has criminal antecedents and/or affiliations which are likely to pose a risk to public order or national security or where a person is under criminal investigation, or is likely to abscond with a view to take up illegal residence in the territory of the state or that of another state).[108]

3. In relation to asylum seekers, it is clear that detention for these four purposes would be for the preliminary interview only and not for the entire status determination procedure. Whilst there is general agreement that there must be an element of necessity, there is less unanimity as regards what necessity actually means. The spiritof the UNHCR detention guidelines make clear that a person may be detained in order to determine within the context of a preliminary interviewthe elements on which his application for asylum is based which in the absence of detentioncould be lost. Thus, unless the above tasks are impossible to carry out without detaining someone, then a person should not be detained. Therefore, the above principles in no way sanction detention for the whole of the asylum procedure, even if it the authorities take the view that the application may be decided reasonably quickly using accelerated procedures.

4. The Court has previously declined to endorse the necessity principle under the second limb of Article 5.1.*f*. The Court recently confirmed that "Article 5.1.*f* does not demand that detention be reasonably considered necessary, for example to prevent the individual from committing an offence or fleeing. Any deprivation of liberty under the second limb of Article 5.1.*f* will be justified, however, only for as long as deportation or extradition proceedings are in progress. If such proceedings are not prosecuted with due diligence, the detention will cease to be permissible under Article 5.1.*f* (*Chahal*, cited above, paragraph 113)."[109] In the only case in which the first limb of Article 5.1.*f* was considered, the Court found that it would be artificial to apply a different proportionality test to cases of detention at the point of entry than that which applies to deportation, extradition or expulsion of a person already in the country. However, that was decided with a substantial dissent of six votes.

5. As indicated above, while the necessity principle has been endorsed and developed by many actors, the Court still needs to incorporate it fully into its case law. Failure to do so would be questionable from the standpoint of international human rights law (because the ECHR must be interpreted fully in line with it).[110]

6. The rapporteur notes that in relation to children, the necessity principle should be overruled in favour of the best interest of the child.

Principle VII: Detention shall be proportionate to the objective to be achieved

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105. Article 3(7) of the Return Directive states that any restrictions on movement or confinement to a particular place must be "necessary". Furthermore, the directive requires that detention considerations must go beyond pure reasons of illegal stay.
106. *A v. Australia*, Communication No. 560/1993, CCPR/C/59/D/560/1993.
107. Ibid.
108. CPT General Standards.
109. *A and Others v. the United Kingdom*, Application No. 3455/05, judgment (GC) of 19 February 2009.
110. See in particular, Article 53 ECHR and *Al-Adsani v. the United Kingdom*, Application No. 35763/97, judgment (GC) of 21 November 2001.

1. Detention must be proportionate to the objective to be achieved.[111] The proportionality principle traditionally requires a fair balance to be struck between the individual's right to liberty and interest of the democratic state.[112] In essence, the proportionality assessment involves looking at the justifications put forward for the detention – its purpose, aim or necessity. Therefore, there is some overlap with the principles set out above. Some of the legitimate justifications for the necessity of detention have been established by the UNHCR and may give rise to a finding that detention is proportionate in an individual case.[113]

2. However, in the view of the rapporteur, some of the broader (and therefore illegitimate) grounds put forward by states for detention (including that it is a response to the "reasonable requirements of immigration control", or for "administrative" purposes such as the speedy processing of asylum claims) would render detention disproportionate. Clearly, such reasons do not even touch upon the individual grounds for detention which the state is required to provide, for example, risk of absconding, danger to public order, need to establish identity or basis of the claim. Hence the proportionality standard requires that the detaining authorities provide relevant and sufficient reasons for the necessity of detention in each case, in the sense that less intrusive measures would not suffice, and which show the measure to be proportionate to the aim pursued.[114]

3. In light of the above, detention which is automatic or mandatory would offend the proportionality principle because it is a blanket immigration-control response. It is using a sledgehammer to crack a nut and this makes it disproportionate. The measure is applied regardless of the individual need to detain and there is no opportunity even to balance the interest of the individual and the state. In striking such a balance it is clearly necessary to look at the whole range of detention circumstances including for example the necessity or arbitrariness of detention. The length of detention may also be a relevant factor in striking such a balance (because prolonged detention may be considered disproportionately long).[115]

Principle VIII: The place, conditions and regime of detention shall be appropriate

1. If detention is ordered then the place of detention, detention conditions and regime must be appropriate. Persons should not be housed in subhuman conditions. Therefore, it would be inappropriate to detain asylum seekers and irregular migrants:

– in facilities not specifically designed for the purpose of immigration detention; for example, in prisons and police stations, in facilities which are totally inadequate for the length of detention proposed (military barracks, tents, disused hotels, containers, etc.) and without the necessary regimes for those held in detention (exercise, contacts with the outside world, access to the outside and fresh air, reading and entertainment, etc.);

– for prolonged periods in short-term holding facilities (for example, borders and airport transit zones);[116]

– where they are not separated from ordinary prisoners, whether convicted or on remand;

– where men and women are not accommodated separately;

– where families are divided and the principle of family unity is not guaranteed.

2. If facilities which are specifically designed for the purpose of detention are not available, or if no other suitable detention facilities are available, persons should not be detained. In these circumstances, recourse should be had to alternatives such as open centres.[117] Detention must be tailored to the needs of the individual – in this respect, special consideration should be given to separating women and men.[118]

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111. See, for example, the way the term is used by the parties and the Court in *Saadi v. the United Kingdom*, Application No. 13229/03, judgment (GC) of 29 January 2008, paragraphs 16, 18, 31 , 53, 54, 58, 59, 70, 72 and 73, and the Joint Partly Dissenting Opinion of Judges Rozakis, Tulkens, Kovler, Hajiyev, Spielmann and Hirvelä.

112. The proportionality principle is usually engaged in the assessment of alleged violations of other Convention rights, including those under Articles 8-11 which all follow a similar structure, but one which is different to that of Article 5.

113. *Saadi v. the United Kingdom*, Application No. 13229/03, judgment (GC) of 29 January 2008.

114. UNHCR, *Saadi v. United Kingdom*. "Written submissions on behalf of the United Nations High Commissioner for Refugees", 30 March 2007, Application No. 13229/03.

115. *Saadi v. the United Kingdom*, Application No. 13229/03, judgment (GC) of 29 January 2008, paragraph 70.

116. CPT General Standards; European Commission, "Proposal for a directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers (recast)", 3 December 2008, COM(2008)815 final; UN High Commissioner for Refugees, "UNHCR comments on the European Commission's proposal for a recast of the directive laying down minimum standards for the reception of asylum seekers (COM(2008)815 final of 3 December 2008)", 13 March 2009.

117. UNHCR Study on Alternatives to Detention.

3. Detention will also be inappropriate if it is applied in certain cases, for example in the case of unaccompanied minors,[119] torture survivors or traumatised persons,[120] but also where the conditions and detention regimes are unable to appropriately deal with a person's individual needs, for example, because medical treatment or psychological counselling is unavailable.

4. Issues concerning the place, conditions and regime of detention are discussed further by the rapporteur in the second part of this report on the minimum standards for conditions of detention.

Principle IX: Vulnerable people should not, as a rule, be placed in detention and, specifically, unaccompanied minors should never be detained

1. The rule that vulnerable persons not be detained has been endorsed by the Committee of Ministers on three occasions[121] and is found under European Union law.[122] The detention of vulnerable persons may be considered unlawful under a number of different categories, including that it is "arbitrary", "disproportionate", "unnecessary" or "inappropriate". Care and provision for vulnerable people, in particular for children, should be found in national law.

2. A broad definition must be given to vulnerable people including accompanied and unaccompanied minors, vulnerable females (including those who are pregnant or victims of sexual violence), survivors of torture, traumatised persons, victims of trafficking or smuggling, the elderly and persons with physical or mental impairments or special needs. Asylum seekers and irregular migrants should be screened to identify their particular vulnerability – either as soon as possible after entry (and before detention) or as soon as an application for international protection is lodged – or in cases where detention has been imposed, at the very outset of that period. Where vulnerable persons are detained, there should be an enhanced requirement to ensure that conditions of detention are appropriate and that they are provided with the medical treatment, assistance and support they need.[123]

3. Unaccompanied minors shall never be detained.[124] "Minors" should be defined according to the standard of the Convention on the Rights of the Child, namely to include all persons under the age of 18. Unaccompanied or separated children should be placed in alternative accommodation in safe, non-custodial care settings, such as residential homes or foster placements, or where appropriate with a legal guardian or relative. In such cases all the necessary staffing and facilities must be in place in order to care for their specific needs. Special care must be made to ensure that children do not "disappear" from the care of local authorities, nor are coerced or misled by smugglers or traffickers.[125] The overarching requirement is that the child's best interests must take precedence in all cases.[126] The law and practice relating to the guardianship or representation of unaccompanied asylum seeking minors must be seriously overhauled, and member states should, as soon as possible, take measures to ensure the necessary representation of unaccompanied minors by legal guardianship. A guardian should be appointed to advise and protect the child and to ensure that all decisions are taken in the child's best interests. A guardian should have the necessary expertise in the field of childcare so as to ensure that the interests of the child are safeguarded and that the child's legal, social, physical and psychological health, material and educational needs are appropriately covered. Agencies or individuals whose interests could potentially be in conflict with those of the child's should not be eligible for

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118. These principles are drawn from the wealth of CPT experience of visiting detention centres. Confirmation of these principles is found in the case law of the Court and in the reports and recommendations of the Commissioner for Human Rights. These principles were consolidated in the guidelines on accelerated asylum procedures adopted on 1 July 2009 by the Committee of Ministers.

119. *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, Application No. 13178/03, judgment of 12 October 2006.

120. Recommendation Rec(2003)5 of the Committee of Ministers to member states on measures of detention of asylum seekers.

121. See Recommendation Rec(2003)5 of the Committee of Ministers to member states on measures of detention of asylum seekers; Committee of Ministers Twenty Guidelines on Forced Return, Guideline 6(1), September 2005; and Committee of Ministers, "Guidelines on human rights protection in the context of accelerated asylum procedures" July 2009.

122. Article 18 of the Council Directive 2005/85/EC on minimum standards on procedures for granting and withdrawing refugee status and the Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers in member states, 6 February 2003, 2001/0091 (CNS).

123. See Recommendation Rec(2003)5 of the Committee of Ministers to member states on measures of detention of asylum seekers, paragraphs 12 and 13.

124. European Commission, "Proposal for a directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers (recast)", 3 December 2008, COM(2008)815 final.

125. United Kingdom Border Agency, "Trafficked children missing from local authority care – United Kingdom Border Agency response", 7 May 2009.

126. Commission proposal for a recast.

guardianship. Regular assessments shall be made by the appropriate authorities. Whilst there is almost unanimous agreement even amongst state parties that children should not be detained, hundreds of children are being held unnecessarily in immigration detention centres.[127] Even more than adults, detention can have long-standing traumatising effect on children.[128]

4. Furthermore, the detention of families with children should be exceptional, and only imposed once full regard has been taken to the best interests of the child or children in the family. The Commissioner for Human Rights has stressed this point as it can cause children irreparable trauma.[129] Therefore, any decision to detain the whole family, including any relevant adults, must only be taken once the issue of the best interest of the children of the family has already been looked at.

5. Regarding the right to family life under Article 8 ECHR, the central point is that the whole is greater than the sum of its individual parts. Therefore, the effect of detention upon all the members of the family unit, who enjoy a single family life, must be looked at as a whole. While some interferences with family life may be justified in the interest of immigration control, where the interference is disproportionate, Article 8 will be breached.[130]

Principle X: Detention must be for the shortest time possible

1. Agreement on the principle that detention be for the shortest time possible is unanimous.[131] What is unclear is the meaning of "possible". Other proffered benchmarks are similarly unclear including the precise time which may be considered to: exceed that "reasonably required" for the purpose pursued;[132] continue beyond the period for which the state party can provide "appropriate justification";[133] be "arbitrary" or "disproportionate".

2. The Court has provided little guidance on the acceptable length of detention, or even the permissible bounds. For example, the Grand Chamber held in Chahal that the principle of proportionality applied to detention under the second limb of Article 5.1.*f* (detention with a view to deportation or extradition) only to the extent that the detention should not continue for an unreasonable length of time; thus, it held that any deprivation of liberty under Article 5.1.*f* will be justified only for as long as deportation proceedings are in progress. If such proceedings are not prosecuted with due diligence, the detention will cease to be permissible.[134]

3. The only instrument which stipulates a maximum detention period is the EU Return Directive which provides for a possibility to detain illegally staying third country nationals, including families, unaccompanied children as well as other vulnerable persons for six months.[135] However, states are permitted to extend this to up to eighteen months in the event of unco-operative behaviour on the part of the individual or delays in obtaining the necessary documents for third countries. However, this may be seen as the "lowest common denominator" approach of consensus politics. The danger is that this maximum period of detention extends even further the current lengthy practices of detention for a potentially large class of persons.[136] Furthermore, there is a risk that those states which applied higher standards before adoption of the directive may now use this legislation as a pretext to lower them.

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127. According to statistics in the United Kingdom, one in three children are detained for over one month (see Bail for Immigration Detainees (BID) press release on 1 September 2009, regarding Home Office statistics on children and families held in immigration detention).
128. McVeigh K., "Ministers under fire for locking up immigrant children", *Guardian*, 30 August 2009. UNHCR also reported in 2009 that 200 unaccompanied minors were detained in Lesvos, Greece, see UNHCR, "UNHCR alarmed by detention of unaccompanied children in Lesvos, Greece", 28 August 2009, www.unhcr.org/4a97cb719.html.
129. Commissioner for Human Rights, "Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Greece from 8 to 10 December 2008 – Issue reviewed: human rights of asylum seekers", 4 February 2009, CommDH(2009)6.
130. See regarding the scope of Article 8 ECHR, *Beoku-Betts (FC) Appellant v. Secretary of State for the Home Department* [2008] UKHL 39 (the House of Lords which was the then Court of final instance in the United Kingdom), in particular the judgments of Lord Brown and Baroness Hale.
131. See, *inter alia*, Council of Europe texts including the Committee of Ministers Twenty Guidelines on Forced Return, "Guidelines on human rights protection in the context of accelerated asylum procedures", and CPT General Standards.
132. *Saadi v. the United Kingdom*, Application No. 13229/03, judgment (GC) of 29 January 2008.
133. *A v. Australia*, *C v. Australia*, *Shams and Others v. Australia*.
134. *Saadi v. the United Kingdom*, Application No. 13229/03, judgment (GC) of 29 January 2008, paragraph 72 (and see also *Gebremedhin [Gaberamadine] v. France*, Application No. 25389/05, judgment of 26 April 2007, paragraph 74.
135. Return Directive, Article 15.
136. "ECRE information note on the Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in member states for returning illegally staying third-country nationals", 7 January 2009, CO7/1/2009/Ext/MDM.

4. There are huge disparities in member states as to the permissible length of time individuals may be detained. Some NGOs and the chair of the Human Rights Committee of the European Parliament have stated that if the arrangements for removal cannot be carried out within thirty days, any longer period would be unlikely to make any difference.[137]To give an idea of the disparities in lengths of detention, notwithstanding the Returns Directive, the United Kingdom continues to detain persons for an indeterminate (otherwise indefinite) period.[138] France and Cyprus had a thirty-two day limit whereas in a number of other states, individuals could be detained for over two years.[139] Concern has also been raised that individuals are detained for potentially unlimited periods of detention where they are released and immediately "re-detained" – or when a removal attempt is thwarted by the individual's objections and the authorities start afresh the detention time.[140]

5. In combination with the second purpose of Article 5.1.*f* (preventing an unauthorised entry into a country), the "critical issue" should be whether it would be possible to remove the applicant within a reasonable time. In the United Kingdom, for example, a domestic judicial review case examined the administrative detention of someone who had been detained for nearly sixteen months. The court in this case considered that where there is "no more than a hope" of being able to remove the applicant within the next few months, prolonged detention should not continue to be considered "reasonable" and the detainee should be released (unless there were other legitimate grounds to detain the person and not merely the risk of absconding).[141]

6. It may not be possible to produce an exhaustive list of all the circumstances relevant to the question of the length of time which constitutes the "shortest possible time" or a "reasonable time" for detention. However, the issues to take into account should include, *inter alia*: the length of the period of detention so far "served"; the nature of the obstacles which stand in the path of the domestic authorities preventing a deportation; the diligence, speed and effectiveness of the steps taken by the authorities to surmount such obstacles; the conditions in which the detained person is being kept; the effect of detention on the individual (and any family members); and the risk that if he or she is released from detention he or she will abscond and the danger that if released he or she will commit a criminal offence.

137. Ms Hélène Lambert, "Developments in the European Union and preoccupations of European parliaments", Committee on Migration, Refugees and Population hearing on detention of irregular migrants and asylum seekers, Paris, 14 December 2997, AS/Mig/Inf(2008)02, 4 February 2008; and London Detainee Support Group, "Detained lives, the real cost of indefinite immigration detention", January 2009, available at www.detainedlives.org.

138. Interestingly, such cases have not attracted the same kind of public furore over indefinite detention in other contexts (for example, under the rubric of counter-terrorism). See *A and Others v. the United Kingdom*, Application No. 3455/05, judgment (GC) of 19 February 2009.

139. London Detainee Support, "Detained lives".

140. Commissioner for Human Rights, "Report by the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, on his visit to Belgium from 15 to 19 December 2008, for the attention of the Committee of Ministers and the Parliamentary Assembly", 17 June 2009, CommDH(2009)14, paragraph 80.

141. See for example a list of useful principles set out by Mr Justice Foskett in the domestic judicial review case of *R (on the application of FR (Iran)) v. Secretary of State for the Home Department*, Case No. CO/3825/09, High Court of Justice Queen's Bench Division, [2009] EWHC 2094 (Admin).

Appendix 2 – 15 European rules governing minimum standards of conditions of detention for migrants and asylum seekers

Rule I: Persons deprived of their liberty shall be treated with dignity and respect for their rights

1. All persons deprived of their liberty shall be treated with dignity and respect for their rights. This includes those under international human rights law. *Non-refoulement* must also be guaranteed under the 1951 Convention (to asylum seekers). Restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate object for which they are imposed. Article 5 of the ECHR should be the starting point as a safeguard against unlawful deprivations of liberty.

2. Detention conditions may be so bad that they give rise to a finding of ill-treatment contrary to Article 3 of the ECHR.[142] The ill-treatment of detainees by immigration officials, in the form of beatings, handcuffing, or the disproportionate use of force also raises issues under Article 3 of the ECHR. Furthermore, rules regulating detention centres must be applied impartially, without discrimination on any ground such as sex, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. The right to private or family life under Article 8 ECHR is also relevant in the context of immigration detention.

3. Ensuring the dignity and respect of the individual requires their special needs to be taken into account. Children and vulnerable persons should not be detained. If there are exceptional circumstances where detention is necessary to safeguard the safety of a child or vulnerable individual, it should only be in places specially designed to meet their needs. There must be special regulations which take account of their status and needs.

4. Life in a detention centre shall approximate as closely as possible the positive aspects of life in the community. Co-operation with outside social services and with civil society, as far as possible, must be encouraged. Where funding is inadequate and facilities are so minimal that detention centres depend on the assistance of NGOs and international organisations, this should not discharge the state of its responsibilities towards those in its care.

5. Detention conditions that infringe detainees' human rights are never justified by a lack of resources. If adequate resources are not available, recourse to detention must be reduced. Relevant departments must be allocated the necessary financial means to run centres, notwithstanding the pressures of the economic crisis, or they must be closed down.

6. The rights of immigration detainees must be secured, irrespective of the location of the individual, the facilities where they are hosted (including the type of holding facility, be it temporary or long term) or the procedure or stage of procedure to which they are subject.

Rule II: Detainees shall be accommodated in centres specifically designed for the purpose of immigration detention and not in prisons

1. Detainees shall be accommodated in centres specifically designed for the purpose of immigration detention. Locations such as prisons police stations, borders, military barracks, tents, disused hotels, and containers are for the most part totally unsuitable and should be strictly avoided except in an emergency and only for such time until the persons concerned can be transferred to more appropriate facilities. Prisons should not be used for detaining asylum seekers.

2. Whilst alternative accommodation is seen as a response to overcrowding and a reaction to sudden inflows of irregular migrants they are not "specifically designed" for immigration detention purposes.[143] These facilities are inadequate for lengthy detention as they are without the necessary facilities and regimes (including exercise, contact with the outside world, access to the outside and fresh air, reading and entertainment). Furthermore, in a case where the use of such accommodation has been rendered necessary by emergency, immigration detainees must not be obliged to share cells with criminal suspects and any inter-mingling must be avoided. A prison is by definition not a suitable place in which to detain someone who is neither convicted nor suspected of a criminal offence. Detention in temporary holding centres should not be prolonged as conditions tend to be of an even lower standard than in other long-term closed holding centres.

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142. *Ribitsch v. Austria*, Application No. 18896/91, judgment of 4 December 1995; *Selmouni v. France*, Application No. 25803/94, judgment of 28 July 1999.

143. It is worth noting that the 15th Council of Europe Conference of Directors of Prison Administration are examining the treatment of prisoners, including foreign nationals in prison, and the issue of overcrowding. There should be a similar conference organised concerning treatment and overcrowding in immigration detention.

3. Detainees shall be allocated, as far as possible to detention centres close to any relatives or places in which they have developed community or other support links during their stay. This is bearing in mind that during the asylum procedure of their stay in the host country, asylum seekers or migrants may have developed relationships with other individuals or with support groups. This is particularly important in the case of foreign nationals (including long-term immigrants or refugees) who have served a prison sentence and are transferred to a detention centre pending their removal from the country.

4. Given that detained asylum seekers and migrants have committed no offence, the least restrictive security arrangements must be in place. In the case of children, in the rare instances, where they may need to be detained, appropriate facilities including education and recreation facilities shall be made available and all necessary steps shall be taken to ensure their safety and to prevent them escaping or harming themselves.

Rule III: All detainees must be informed promptly, in simple, non-technical language that they can understand, of the essential legal and factual grounds for detention, their rights and the rules and complaints procedure in detention

1. Article 5.2 of the ECHR stipulates: "Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him". The Court has interpreted this to mean that the person must be told in simple, non-technical language that she or he can understand, the essential legal and factual grounds for the arrest, so that she or he can, if necessary, apply to a court to challenge its lawfulness.[144] The information should be communicated orally and in writing. Detainees should be allowed to keep in their possession a written version of the information they are given. These rules apply to cases of detention for the purposes of preventing an unauthorised entry and pending extradition or expulsion.[145]

2. The rules also apply to communication to the individual asylum seeker or irregular migrant of information regarding their rights, information on their legal status, the procedure applied to them (including the detention procedure or the asylum procedure) and the right to lodge complaints.

3. Too often, individuals have complained to the CPT that there is a lack of knowledge regarding what was happening in their case and how long they might foreseeably spend in custody. Furthermore, following their apprehension, detainees should never be asked to sign documents in a language they do not understand and without understanding the content.[146]

Rule IV: Legal and factual admission criteria shall be complied with, including carrying out appropriate screening and medical checks to identify special needs. Proper records concerning admissions, stay and departure of detainees must be kept

1. In addition to the 10 guiding principles on the legality of detention of irregular migrants and asylum seekers, admission procedures must operate as an added safeguard. Admission criteria, procedures and screening would ensure that detainees are treated in accordance with their rights and that any special needs are identified as soon as an application for international protection is lodged, so that they can be dealt with. This is particularly critical as certain special needs, such as trauma, may affect the asylum seekers' ability to participate coherently in asylum interviews.

2. It should also be acknowledged that for a number of reasons, including shame or lack of trust, asylum seekers may be hesitant to disclose certain experiences immediately. This may be the case, amongst others, of persons who have suffered torture, rape or other forms of psychological, physical or sexual violence. Special needs resulting from such experiences may therefore go undiscovered at an early stage of the process. Later disclosure of such experiences should not be held against asylum seekers, nor inhibit their access to any special support measures or necessary treatment.

3. There are often deficiencies in the keeping of documentation or record-keeping in respect of detained foreign nationals.[147] It is essential that proper registers concerning admission, stay and departure are kept. Sometimes it has been impossible to establish how long persons brought in have been detained for. Details must be recorded immediately concerning each detainee including: information on their identity, the reason for

144. *Fox, Campbell and Hartley v. the United Kingdom*, Application Nos. 12244/86, 12245/86 and 12383/86, judgment of 30 August 1990.
145. *Saadi v. the United Kingdom*, Application No. 13229/03, judgment (GC) of 29 January 2008; *Shamayev and Others v. Georgia and Russia*, Application No. 36378/02, judgment of 12 April 2005.
146. CPT Report Ukraine 2009; *Nolan and K v. Russia*, Application No. 2512/04, judgment of 12 February 2009.
147. See, for example, the potential effects of this in *Sivanathan v. the United Kingdom*, Application No. 38108/07, decision of 3 February 2009.

detention and the authority for it, the day and hour of admission, any visible injuries and complaints about prior ill-treatment, and subject to the requirements of medical confidentiality any information about the detainee's health that is relevant to the physical and mental well-being of the detainee or others.

4. Where a detainee is not allowed to retain certain possessions (under the rules governing the centre) an inventory of the person's property shall be drawn up listing the property to be held in safe keeping. Steps shall be taken to keep the property in good condition. If the detainee brings in medication, the medical practitioner shall decide what use shall be made of it.

5. As soon as possible after the admission, the information regarding the health of the detainee must be supplemented by a medical examination. Any information on the social situation of the detainee shall be evaluated in order to deal with immediate personal and welfare needs.

6. Where vulnerable persons are detained, certification should be sought from a qualified medical practitioner that detention will not adversely affect their health and well-being. There must be regular monitoring, follow-ups, visits and support by suitably skilled professionals.[148]

Rule V: The material conditions shall be appropriate to the individual's legal and factual situation

1. The following material conditions should be provided in all the buildings where detainees are required to live and congregate. The accommodation conditions provided shall ensure that detainees are treated with human dignity and privacy and meet the requirements of health and hygiene. Due regard must be had to climatic conditions, floor space, cubic content of air, lighting, heating and ventilation. Centres should be properly maintained and kept clean at all times, in particular in order that all facilities are usable (for example, toilets, showers, water heaters, etc.).[149]

2. The number of beds placed in a room should not be excessive. Beds should be clean, dry and not uncomfortable. Each detainee should have their own separate bed and adequate sheeting, pillows and blankets. Individuals should, as far as possible, be given a choice before being required to share accommodation (for example, in a dormitory as opposed to a room).

3. Clean, warm and dry clothing and footwear must always be provided to an adequate degree for the needs of detainees. Clothing must be suitable for the climate (particularly in cold weather). It should be in good condition and replaced when necessary. Clothing should not identify them as detainees, especially where the detainee is required to go outside.

4. There should be a partitioned sanitary annex, a shower room and toilet. Adequate facilities shall be provided so that every detainee may have a bath or a shower, if possible daily. Detention centre staff shall provide detainees with the means (including soap and toiletries and cleaning equipment) to keep their person, clothing, and sleeping accommodation clean and tidy. Special provision must be made for the needs of women. Other communal areas (including sanitation facilities) must be kept clean and tidy and cleaning equipment must also be provided for this purpose to detainees.

5. Food supplied to detainees should be adequate for their needs. Food should be sufficient and nutritious, including three meals a day with regular intervals. Food should cater to the needs of detainees according to their age, health, physical condition, religion, culture and the nature of their work. Particular account has to be taken of the needs of detained families with children. Food shall be prepared and served hygienically. Clean drinking water shall be available at all times. The authorities should, where possible, allow the opportunity for detainees to prepare their own food.[150]

6. Health care facilities must be sufficient, including enough doctors, dentists and nurses attending the centre during the week.[151] The CPT has frequently been concerned by the lack of arrangements for persons in need of psychiatric care. Whilst some detainees require hospital treatment, regular visits by qualified staff must take place. Persons also need psychological support to deal with symptoms of depression, anxiety,

148. Commission proposal for a recast of the reception conditions directive; Committee of Ministers "Guidelines on human rights protection in the context of accelerated asylum procedures".
149. CPT Report Ukraine 2009.
150. CPT, "Report to the Government of Denmark on the visit to Denmark carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 11 to 20 February 2008", 25 September 2008, CPT/Inf(2008)26 (hereinafter, "CPT Denmark Report 2008").
151. Ibid., paragraph 89.

loneliness, isolation, grief, loss and suicidal tendencies. It should be the primary responsibility of the state to provide such care (although assistance from civil society should also be sought, the matter should not be left in civil society's hands).[152]

Rule VI: The detention regime must be appropriate to the individual's legal and factual situation

1. Detainees should not have to spend all day locked up in their cells. The regime in some centres is so appalling that even basic access to a TV (including foreign and domestic channels) or newspapers would improve the situation. The regime provided for all detainees should offer a balanced programme of meaningful activities, such as sports, vocational training and other educational or skills training (including language, provision of information about the country, its culture and traditions, social studies and computer studies) and communal, recreational, and other leisure activities.[153] Centres could liaise with other organisations or services, for example, community library services. Exercise in the open air should be guaranteed and where weather is not permitting, alternative arrangements should be made.

2. Particular attention should be paid to the needs of vulnerable detainees (as defined above) including those who have experienced physical, mental or sexual abuse. Special arrangements shall also be made to meet the needs of detainees who are struggling with any language barriers (arrangements should be made for interpretation and translation where necessary).

3. Detainees must never be compelled to practice a religion or belief, attend services or accept practices or visits. On the other hand, many detainees also find comfort through visits of counsellors, priests, rabbis or imams and the space to practice their religion or have some quiet time should be provided.[154]

4. Work may also be considered a positive element of the detention regime including that of a useful nature such as gardening or cooking. However, it shall never be used as a punishment. It is also significant that the EU Procedures Directive provides that access to the employment market should be guaranteed twelve months after lodging the asylum claim.[155] Situations of prolonged detention of asylum seekers beyond this time would clearly fall foul of this rule.

5. Detainees shall have access to educational programmes which are as comprehensive as possible and which meet their individual needs whilst taking into account their aspirations. Priority shall be given to those with literacy and numeracy needs. As far as practicable, the education of detainees shall be integrated or take place with the co-operation of external institutions.

6. Children should receive access to the education system and schooling in the same way as nationals of the host state. They should also have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age.[156]

Rule VII: The detention authorities shall safeguard the health and well-being of all detainees in their care

1. Health care provision requires a large number of detailed rules, however the broad aspects include:

– medical screening on arrival accompanied by appropriate information provided in a language the detainee understands;

– the provision of health care (including medication and transfer to specialised institutions or civil hospitals for specialist treatment where this is needed, paying special regard to the needs of those with mental health needs or learning difficulties) accompanied by guarantees for consent and confidentiality;

– health prevention (including information about sexually transmitted diseases);

– the organisation of detention centre health care (in close relation to the general health administration of the community or region);

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152. See the reports of the Jesuit Refugee Service (JRS), www.detention-in-europe.org.
153. Commissioner for Human Rights, "Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Greece from 8 to 10 December 2008 – Issue reviewed: human rights of asylum seekers", 4 February 2009, CommDH(2009)6. (Hereinafter, "Commissioner Report on Greece".)
154. See work of the JRS in Slovenia regarding the Pstojna Detention Centre, www.detention-in-europe.org.
155. The European Union Procedures Directive guarantees the right to work after twelve months; see Commission proposals for a recast of the reception conditions directive.
156. See Children's Rights Alliance, www.crae.org.uk; see Commission proposal to recast the reception conditions directive.

– arrangements to ensure access to medical and health care personnel (including the services of a qualified general medical practitioner and suitably trained personnel, including in emergency situations);

– the duties of medical and health care personnel (including reporting and documentation requirements, diagnosing illnesses, dealing with withdrawal symptoms from drugs, identifying psychological problems, etc.);

– medical follow-up and treatment; and

– the prohibition of experimental procedures.

2. Any provision of medication to persons subject to an expulsion order must be done only on the basis of a medical decision and in accordance with medical ethics. The professional opinion of medical practitioners, concerning fitness to travel, but also where release is advised on health grounds, must be put into operation.

3. Medical testing should not be a precondition for allowing entry into a territory or access to an asylum procedure or as a cause for detention.

Rule VIII: Detainees shall be guaranteed effective access to the outside world (including access to lawyers, family, friends, UNHCR, civil society, religious/spiritual representatives) and the right to receive frequent visits from the outside world

1. Centres shall ensure detainees' contact with the outside world. Immigration detainees should – in the same way as other categories of persons deprived of their liberty – be entitled, as from the outset of their detention, to inform a person of their choice of their situation. Detainees shall have access to a lawyer, doctor, families, and representatives of organisations (including the UNHCR or the IOM, the competent diplomatic representation of their country, or NGOs[157] including by letter, telephone and other access) as well as national preventive mechanisms under the Optional Protocol to the Convention Against Torture (OPCAT). Detainees shall be able to receive visits from these persons. They should also be able to arrange for the recovery of belongings and valuables prior to a forced return.

2. The CPT stressed that contact with the outside world must be available in practice as well as theory. The CPT has observed that these minimum safeguards are in place in some countries, but not in others. Sometimes this right is disputed by police officers in charge or by other officials or there are bureaucratic obstacles. Detention centre authorities shall assist detainees in arranging visits, and maintaining contacts. Privacy and confidentiality must be maintained, including in correspondence.

3. Access to a lawyer and the UNHCR or the representatives of other organisations is even more crucial for asylum seekers lodging a claim for international protection. Contact with the outside world is, in the view of the rapporteur, one of the most challenging issues. Many detainees in practice have little opportunity to contact lawyers, and lawyers often have little access to detainees. Much more needs to be done to match the demand for legal advice to the supply of legal advice and to improve the means of communications, including through availability of incoming and outgoing telephone calls.

Rule IX: Detainees shall be guaranteed effective access to legal advice, assistance and representation of a sufficient quality and legal aid shall be provided free of charge

1. Detainees should be afforded all the relevant procedural safeguards. The authorities shall provide detainees with reasonable facilities for gaining access to confidential legal advice. Lawyers and organisations providing legal advice shall be allowed access to the detainee and to their case file. Furthermore, detainees shall have access, or to be allowed to keep in their possession documents relating to their legal proceedings. Detainees may consult lawyers on any legal matter. Where detainees are transferred from one centre to another, all care must be taken to ensure that legal documentation and other possessions belonging to the detainee are kept intact (and not lost or destroyed). Interpretation and translation of documents should be provided free of charge where necessary.

2. Where an individual does not have sufficient means to pay for necessary legal assistance or representation, he or she should be given it free of charge, in accordance with the relevant national rules regarding legal aid.[158] The authorities should ensure that they bring to the attention of the detainees the possibility of free legal aid. Where legal assistance, including free legal aid, is provided, the statistics show a

157. CPT Denmark Report 2008, paragraph 96.

158. Committee of Ministers Twenty Guidelines on Forced Return, September 2005, Guideline 6(1); CPT General Standards 2006, Guideline 5.

much higher success rate in challenging detention. For example, in Germany, the numbers of those detained decreased in 2008. Legal aid was made available for detainees in Berlin, Brandenburg and Bavaria which ensured that 97 cases were assisted, 57 of which were successful.[159]

Rule X: Detainees must be able periodically to effectively challenge their detention before a court and decisions regarding detention should be reviewed automatically at regular intervals

1. Article 5.4 ECHR provides that individuals must be able to effectively challenge their detention before a court. Every detained migrant or asylum seeker should enjoy the right to take proceedings to challenge the lawfulness of his or her detention. The legality of his or her detention should be decided promptly by a court. The legality of detention should in any event be reviewed *ex officio* by a judicial authority at regular intervals and on request of the asylum seeker concerned, whenever circumstances arise or new information becomes available which affects the lawfulness of detention. There must be independent judicial scrutiny of the continued need for detention.[160]

2. If the detention is judged unlawful (subject to an appeal from that judgment) the person concerned should be released immediately.[161] Limited possibility of judicial review has been criticised as being in contradiction of the case law of the European Court of Human Rights.[162]

Rule XI: The safety, security and discipline of detainees shall be taken into account in order to maintain the good order of detention centres

1. Guaranteeing the safety, security and discipline of detainees is essential for the respect of the human dignity of detainees. Clear house rules are required[163] alongside legislation where appropriate. It includes protecting those at risk (for example, from inter-detainee violence, as reported by the CPT). Disciplinary measures applied to individual detainees shall be the minimum necessary to ensure the safe custody of detainees. Therefore, they should be imposed as a last resort.

2. Detainees who commit a violation of the internal rules or regulations of the detention centre could incur disciplinary punishment in the form of a warning, fine or confinement to a disciplinary cell. Temporary prohibition of association could also be imposed. Disciplinary punishments should be imposed sparingly and in a proportionate manner and only ever used against individuals (never against groups). Solitary confinement shall be imposed as a punishment only in very exceptional cases and for a very limited specified period of time. Rules concerning the use of solitary confinement need to be clearly drafted.[164]

3. Furthermore, there shall be clear procedures to be followed when disciplinary measures are applied. National law shall determine what acts or omissions constitute disciplinary offences, the procedures to be followed at disciplinary hearings, the types and duration of punishment that may be employed, the authority competent to impose such punishments, and access to an appeal procedure.

4. There needs to be a possibility for detainees to be able to discuss the conditions in detention with the authorities, including safety, security and disciplinary issues and detainees need to be encouraged to communicate with the authorities about such matters.

Rule XII: Detention centre staff and immigration officers shall not use force against detainees except in self-defence or in cases of attempted escape or active physical resistance to a lawful order and always as a last resort and proportionate to the situation

1. The amount of force used shall be the minimum necessary and shall be imposed for the shortest possible time. There shall be detailed procedures about the use of force including stipulations about the various type of techniques which can be used, the type of force that can be used in the restraint of detainees who pose a risk to the safety of others and the circumstances in which each type of force may be used and procedures (including reporting) to be followed.

2. The CPT have criticised the use of force and/or means of restraint capable of causing positional asphyxia, allegations of beating, binding and gagging, handcuffing and the administration of tranquillisers against the will of the persons concerned.[165] Weapons should not be carried or used by detention centre

159. www.detention-in-europe.org.
160. Twenty Guidelines on Forced Return, Guideline 8, see also Article 18 of the European Union Procedures Directive, which also provides for “speedy judicial review”.
161. Twenty Guidelines on Forced Return, Guideline 9.
162. *Saadi v. the United Kingdom*, Application No. 13229/03, judgment (GC) of 29 January 2008.
163. CPT/Inf 2007(27), paragraph 88.
164. See for more information, www.solitaryconfinement.org/uploads/sourcebook_web.pdf.

staff. Physical ill-treatment or violence towards immigration detainees, including punches, kicks and even blows with gun butts or truncheons,[166] at the time of apprehension or at the point of a forced return, by border guards or by immigration detention centre staff, is never acceptable. In some instances, this use of force has led to injury and hospital treatment or even death.

3. Furthermore, it is entirely unacceptable for persons subject to a deportation order to be physically assaulted as a form of persuasion/coercion to board a means of transport or as a punishment for not having done so.

4. Verbal abuse and rude behaviour by staff or certain types of bribery (for example, demanding valuables from detainees in return for being allowed certain privileges or for offering to speed up their release) must be prevented.[167]

5. Health care staff carrying out examinations at detention centres must ensure the privacy and confidentiality of the individual. Examinations should not be carried out in the presence of other guards or staff. Injuries must be systematically recorded and if necessary a system put in place to report incidents of ill-treatment to the competent authorities (for example, the prosecutor's office). Any type of psychological or emotional abuse or discrimination cannot be allowed to happen.

Rule XIII: Detention centre management and staff shall be carefully recruited, provided with appropriate training and operate to the highest professional, ethical and personal standards

1. Attention shall be paid to the relationship between the detention centre staff and the detainees under their care. The human rights obligations of the state apply equally to agents operating on their behalf, even if they are employed directly by private security companies.

2. The immigration detention centre's staff have a difficult job to do. They must be carefully selected and should be given specialised, adequate and continuous training.[168] This would include training on basic human rights standards[169] and other appropriate training in order to deal with different languages and cultures and practical matters such as inevitable communication difficulties caused by language barriers or stress symptoms of detained persons who find it difficult to accept that they have been deprived of their liberty when they are not suspected of any criminal offence. In particular, training must be provided in relation to vulnerable persons, such as victims of torture, vulnerable females and traumatised persons.

3. On a personal level, staff should ensure relaxed staff-detainee relations and sensitivity to cultural differences. Interpretation should be possible even in day-to-day dealings, importantly in the context of visits to the doctor. Guidelines on training and staff conduct should be envisaged.[170]

4. Even if the general atmosphere in a detention centre is relatively relaxed, detainees obviously experience considerable psychological stress and frustration due to the uncertainty of their situation.[171] Staff must be trained to deal with this situation as well as the manifestation of frustration through, for example, petitions, suicide attempts, self-mutilation and hunger strikes. Where individuals harm themselves or others, the incident must be fully investigated. The recruitment of female officers or the appointment of human rights officers in centres may also improve the situation in detention for females as well as males.

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165. CPT General Standards. See also the ICRC, "Strengthening protection and respect for prisoners and detainees", www.icrc.org.
166. CPT Report Ukraine 2009, paragraph 15.
167. Ibid.
168. "The staff of centres for immigration detainees have a particularly onerous task. Firstly, there will inevitably be communication difficulties caused by language barriers. Secondly, many detained persons will find the fact that they have been deprived of their liberty when they are not suspected of any criminal offence difficult to accept. Thirdly, there is a risk of tension between detainees of different nationalities or ethnic groups. Consequently, the CPT places a premium upon the supervisory staff in such centres being carefully selected and receiving appropriate training. As well as possessing well-developed qualities in the field of interpersonal communication, the staff concerned should be familiarised with the different cultures of the detainees and at least some of them should have relevant language skills. Further, they should be taught to recognise possible symptoms of stress reactions displayed by detained persons (whether post-traumatic or induced by socio-cultural changes) and to take appropriate action." See CPT General Standards, paragraph 29.
169. Commissioner for Human Rights, "Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to the United Kingdom between 5 and 8 February and between 31 March and 2 April 2008 – Issue reviewed: asylum and Immigration", 18 September 2008, CommDH(2008)23.
170. Ibid.
171. "Report to the Government of Denmark on the visit to Denmark carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 11 to 20 February 2008", CPT/Inf(2008)26.

5. As with the provision of health care, this area requires detailed and specific rules to be drawn up governing the management and staff, the management structure and operations, the concept of working in a detention centre (it is not to be viewed as demotion or prison), the selection of staff, training of staff, the use of specialist staff, and sensitivity towards vulnerable persons. A culture of openness should be fostered, accompanied by the effective publication of statistical evaluations.

Rule XIV: Detainees shall have ample opportunity to make requests or complaints to any competent authority and be guaranteed confidentiality when doing so

1. There should be satisfactory procedures for dealing with complaints submitted by detainees of ill-treatment by staff and allegations of misconduct must be taken seriously. In particular, detainees should be guaranteed confidentiality when filing a complaint. Whilst surveillance should never be used in a way which interferes with the privacy of the individual, in one-to-one situations between guards and detainees, there should be CCTV in operation and it should be made available in the event of an incident. Reporting of relevant events by staff to the management concerned (or to headquarters, in particular where the running of centres is out-sourced to private firms) is important. Furthermore, detainees shall not be punished for having made a request or lodged a complaint.

2. Any alleged criminal act committed by a detainee or an officer shall be investigated in the same way as it would be in free society and shall be dealt with in accordance with national law.

3. Detainees shall be afforded rights to appeal unsuccessful initial challenges relating to withdrawal or reduction of reception conditions.

Rule XV: Independent inspection and monitoring of detention centres and of conditions of detention shall take place

1. Detention centres shall be inspected regularly by an agency in order to assess whether they are administered in accordance with the requirements of national and international law. The CPT has observed that in many countries, specific monitoring systems have, unfortunately, been introduced only after particularly serious incidents, such as the death of detainees.

2. The conditions of detention and the treatment of detainees shall be monitored by an independent body or bodies whose findings shall be made public. National parliamentarians should also have a role in monitoring such places of detention. Monitoring should also be carried out by the national preventive mechanisms under the Optional Protocol to the Convention Against Torture (OPCAT). Civil society and the media have a right to know what is happening in detention centres and should have reasonable access to them and to individual detainees.

3. Deportation operations must be also carefully monitored and documented.

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Reporting committee: Committee on Migration, Refugees and Population

Reference to committee: Doc. 10948, Reference 3252 of 30 June 2008

Draft resolution and draft recommendation unanimously adopted by the committee on 9 December 2009

Members of the committee: Mrs Corien W.A. **Jonker** (Chairperson), Mr Hakki Keskin (1st Vice-Chairperson), Mr Doug Henderson, (2nd Vice-Chairperson), Mr Pedro **Agramunt** (3rd Vice-Chairperson), Mrs Tina Acketoft (alternate: Mr Göran **Lindblad**), Mr Francis Agius, Mr Alexander van der Bellen, Mr Ryszard Bender, Mr Márton Braun, Mr André Bugnon, Mr Sergej Chelemendik, Mr Vannino Chiti, Mr Christopher **Chope**, Mr Desislav **Chukolov**, Mr Boriss **Cilevičs**, Mr Titus Corlăţean, Mr Telmo Correia, Mrs Claire Curtis-Thomas, Mr David **Darchiashvili**, Mr Nikolaos Dendias,Mr Arcadio Díaz Tejera (alternate: Mr Gabino **Puche**), Mr Vangjel Dule, Mr Tuur Elzinga, Mr Valeriy Fedorov, Mr Oleksandr Feldman, Mr Relu Fenechiu, Mrs Doris Fiala, Mr Bernard Fournier, Mr Aristophanes Georgiou (alternate: Mr Fidias **Sarikas**), Mr Paul Giacobbi, Mrs Angelika Graf, Mr John Greenway, Mr Michael Hagberg, Mrs Gultakin Hajibayli, Mr Jürgen Herrmann, Mr Bernd Heynemann, Mr Jean **Huss**, Mr Tadeusz **Iwiński**, Mr Zmago Jelinčič Plemeniti, Mr Mustafa Jemiliev, Mr Tomáš Jirsa, Mr Reijo Kallio, Mr Ruslan Kondratov, Mr Franz Eduard Kühnel, Mr Andros Kyprianou, Mr Geert Lambert, Mr Pavel Lebeda, Mr Arminas Lydeka, Mr Jean-Pierre Masseret (alternate: Mr Denis **Jacquat**), Mr Slavko Matić, Mrs Nursuna Memecan, Mrs Ana Catarina Mendonça, Mr Gebhard Negele, Mrs Korneliya Ninova, Mr Hryhoriy Omelchenko, Ms Steinunn Valdís Óskarsdóttir, Mr Alexey Ostrovsky, Ms Vassiliki Papandreou, Mr Jørgen **Poulsen**, Mr Cezar Florin **Preda**, Mr Milorad **Pupovac**, Mrs Mailis Reps, Mr Gonzalo **Robles**, Mr Branko Ružić,Mr Džavid Šabović,Mr Giacomo Santini, Mr Samad Seyidov, Mr Fiorenzo

Stolfi, Mr Giacomo Stucchi, Mr László Szakács, Ms Elke Tindemans, Mr Dragan Todorović, Ms Anette Trettebergstuen (alternate: Mr Øyvind **Vaksdal**), Mr Tuğrul **Türkeş**, Mrs Özlem **Türköne**, Mr Michał Wojtczak, Mr Marco Zacchera, Mr Yury Zelenskiy, Mr Andrej **Zernovski**, Ms Naira Zohrabyan

NB: The names of the members who took part in the meeting are printed **in bold**

Secretariat of the committee: Mr Neville, Mrs Odrats, Mr Ekström