

# ***HANDBOOK FOR VISITORS AND SOCIAL WORKERS IN DETENTION CENTRES***

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## **Glossary of Terms**

**Asylum:** A grant of protection by a State to a person in its territory from another State who is fleeing persecution or serious danger. A person who is granted asylum is a refugee. Asylum includes a variety of elements, including the right of non-refoulement, permission to remain in the territory and to humane standards of treatment.

**Asylum seeker:** A person whose request for asylum has not been finally decided upon by the country of refuge.

**Arbitrary:** Related to the concepts of justice, refers to unpredictability, unreasonableness, capriciousness.

**Bond:** A monetary sum collected by a government to assure that a noncitizen in its territory will comply with certain required actions, such as appearance before government officials or tribunals or agreeing to depart the country.

**Customary International Law:** This refers to international laws which derive their authority from the consistent practice of States, rather than from a formal expression of such in a treaty, convention or other legal text. States follow such practices out of a sense of legal obligation.

**Detention:** Restriction on freedom of movement, generally within a confined environment, by governmental authorities. There are two types of detention: criminal and administrative. Criminal detention refers to detention of persons pending criminal proceedings or those who have been sentenced as a result of a criminal conviction. Administrative detention in the immigration context is used by governmental authorities to administer an administrative measure, such as deportation or expulsion. In many States, irregular migrants are subject to administrative detention although illegal entry or unauthorized stay in a host country is often not considered a criminal act. Refugees and asylum seekers are often subject to administrative detention pending the adjudication of their claims.

**Detainee:** Refers to any person deprived of his or her personal liberty as a result of administrative or criminal detention and held in a place of detention.

**Dublin Convention:** An agreement between the EU member states to determine which Member State is responsible for examination of an asylum application lodged in one of the Member States. The Dublin Convention prevents the same applicants from being examined by several EU Member States at the same time. It also includes provisions to ensure that an asylum seeker is not sent from one State to another because no one will take responsibility for the case.

**Due process:** The carrying out of legal procedures according to generally recognized and accepted rules and principles providing for the protection of privacy rights, including the right to notice and information and the right to a fair hearing before a court or administrative agency with jurisdiction to decide the case.

**Expulsion or deportation:** The removal or transfer of a non-citizen not authorized to remain in the State from which he or she is removed to another country. Return and removal are also terms used to describe this process. Non-citizens subject to expulsion from a country generally have a series of procedural rights which must be respected prior to their final removal.

**Expulsion order:** A formal order of a government for expulsion or deportation of a noncitizen not permitted to remain within its territory.

**Exclusion:** Formal denial of a noncitizen's admission into a State.

**Family unity:** The right to family unity refers to a family's right to live together and to receive respect, protection, assistance and support. The right is not limited to nationals living in their own countries and is protected by international law.

**Freedom of movement:** Under international law, persons have a right to freedom of movement within the territory of a country; the right to leave any country; and, the right to return to his or her own country.

**Forced migrant:** There is no formally accepted definition of what the term "forced migrant" means. One refugee law scholar, Arthur Helton, suggested that a forced migrant is a person who has been forced to leave his or her country for arbitrary reasons and who has valid objects to returning. Forced migrants can include both refugees and persons who flee poverty.

**Forced return:** The compulsory return of a person to the country of origin, transit or third country.

**Habeas corpus:** An action filed with a court to challenge the legality of detention.

**Humanitarian Status Cases:** Persons formally permitted under national law to reside in a country on humanitarian grounds. These cases may also include persons who do not qualify for refugee status.

**Illegal entry:** Act of crossing a border into another country without the necessary permission or documents for legal entry.

**Inhumane treatment:** Physical or mental cruelty which endangers the life or wellbeing of a person.

**Interception:** An action used by States outside its national territory to prevent, intercept or stop the entry of persons without proper documentation and/or visas from entering into the destination country.

**International legal protection:** Interventions by States or the United Nations High Commissioner for Refugees on behalf of refugees and asylum-seekers to ensure that their rights, security and welfare are recognized and protected in accordance with international standards. This protection includes: respect for the principle of non-refoulement; admission to safety; access to fair procedures for the determination of refugee status; and, humane standards of treatment.

**Irregular Migrant:** A variety of terms are used to refer to migrants living in countries without legal authorization or valid immigrant status. These terms include “undocumented migrants,” “sin papeles”, clandestine migrants and illegal migrants. In Europe, the term “irregular migrant” is often used. These terms generally refer to persons, either because of illegal entry or the expiration of their visas, lack legal status in a transit or host country.

**Judicial review:** A court’s review of a lower court’s or administrative body’s factual and legal findings.

**Migrant Worker:** As defined by the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, a migrant worker is a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national. The definition in the Convention makes no distinction between documented and undocumented workers.

**Minor:** A minor refers to a person who is below the legal age of majority and, therefore, not legally independent. Under the Convention on the Rights of the Child (CRC), a “child” is a person who is below the age of eighteen, unless the applicable law establishes a lower age. The CRC equates the term “child” with “minor.”

**Non-refoulement:** One of the core principles of refugee law which prohibits States from returning refugees in any manner whatsoever to countries or territories in which their lives or freedoms may be threatened. This principle is part of customary international law and, therefore, is binding on all States regardless of whether they have signed the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (hereinafter “Geneva Convention”).

**Persecution:** Generally refers to any severe violation of human rights. Within the refugee context, a threat to life or freedom on account of race, religion, nationality, political opinion or membership in a particular social group is considered persecution.

**Place of detention:** In this Manual, the term place of detention refers to any place where a person is deprived of his or her liberty, including local jails, police stations, centres for foreigners or asylum seekers, transit zones in airports and border points.

**Readmission:** Refers to an act by a State to accept the reentry of an individual (own national, third country national, stateless person) found illegally in another State or illegally at another State's border.

**Readmission agreement:** An agreement between States which addresses procedures for returning noncitizens in an irregular situation to their countries of origin or transit.

**Reception Centre:** This term generally refers to government supported accommodation centres to house groups of refugees and asylum seekers pending the outcome of their claims for status.

**Reception conditions:** Refer to the set of measures that States grant to asylum seekers upon arrival, pending adjudication of their claim and upon grant of refugee status. Such conditions include housing, food, clothing and financial support.

**Refugee:** Under the Geneva Convention, a refugee is a person who flees his or her country because of a well-founded fear of persecution based upon race, religion, nationality, political opinion or membership in a particular social group. The definition of refugee is broader in Africa and Latin America. The Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa, adopted in 1969, repeats the definition contained in the 1951 Convention but also includes persons compelled to leave their country because of external aggression, occupation, foreign domination or events seriously disturbing public order. The Cartagena Declaration, created in 1984 and adopted by a group of government representatives, academics and distinguished lawyers from Latin America includes the 1951 Convention definition but also recommends that the definition include persons fleeing their country because their lives, safety or freedom have been threatened by general violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances which seriously disturb the public order. It is important to note that a person is a refugee as soon as he or she fulfils the criteria contained in the 1951 Convention definition. Recognition of refugee status does not make a person a refugee, but declares him or her to be one.

**Refugee status determination (RSD):** Process to determine whether a person should be recognized as a refugee under national and international law.

**Refugee *sur place*:** Refers to a person who was not a refugee at the time he or she left the country of origin, but who became a refugee at a later date, due to a change in circumstances.

**Separated child:** A child under the age of eighteen who is separated from both parents or from his or her previous legal or customary or primary caregiver. The term "separated" rather than "unaccompanied" is used by the Separated Children in Europe Programme because it better describes their situation, as separated from their caregivers.

Some children actually may be accompanied but not by the appropriate person responsible for their care.

**Schengen Agreement:** Intergovernmental agreement signed in 1985 to create a European free movement area without controls at internal land, water and airport borders.

**Stateless person:** A person who is not considered a national by any State.

**Temporary protection:** Procedure generally used in exceptional circumstances by States to grant temporary protection to large groups of people who are unable to return to their country of origin.

**Torture:** Any act by which severe pain or suffering, whether physical or mental is intentionally inflicted on a person for purposes such as obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by, or at the instigation or with the consent or acquiescence of a public official or other person acting in an official capacity.

**Voluntary return:** Refers to the assisted or independent return of a non-citizen to the country of origin, transit country or other third-country based on his or her own free will.

## **Selected Abbreviations**

APT	Association for the Prevention of Torture
BPP	Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
BPTP	Basic Principles for the Treatment of Prisoners
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CPT	European Committee for the Prevention of Torture
CRC	Convention on the Rights of the Child
ECPT	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IGO	Intergovernmental organization
IOM	International Organization for Migration
NGO	Non-governmental organization
UDHR	Universal Declaration of Human Rights
UNHCR	United Nations High Commissioner for Refugees
WGAD	UN Working Group on Arbitrary Detention

## INTRODUCTION

### ***(i) Purpose of Training and Manual***

The Jesuit Refugee Service Europe and its staff in 22 countries in the region accompany refugees, asylum seekers and migrants in detention and reception centres throughout Europe. During its many years of working directly on the ground, it has come to recognize the great need for more information and training to better attend to their needs. Therefore, it designed and implemented the *Training Project for Persons Attending to the Needs of Refugees and Asylum Seekers in Detention and Reception Centres* (“Detention Training Project”) which has been generously funded by the European Refugee Fund.

The purpose of the Manual is to provide the following:

- An understanding of what reception standards a country should provide to arriving refugees and asylum seekers;
- An understanding of what international and regional (European) law says about when a refugee, asylum seeker or migrant can be detained and under what circumstances;
- Identification of the psychosocial issues detainees face and suggestions for response to those needs;
- Information on how cultural differences affect communication between refugees, asylum seekers and migrants and those working with them.

The Manual presents recommendations on how governments should treat persons arriving on their territory based on their human rights’ obligations. It also provides advocacy tips and practical suggestions to those visiting and/or representing refugees, asylum seekers and migrants on how to improve the situation generally and advocate for successful resolution individually in cases.

### ***(ii) Where are refugees, asylum seekers and migrants detained and for how long?***

Administrative detention – by which we mean detention of noncitizens for migration related reasons – is practiced in almost all of the 45 countries in Europe to one degree or another. With the exception of the United Kingdom and the Netherlands, all countries in the European Union place some limitation on the amount of time that a person may be detained for migration related reasons. France imposes the shortest time limit, at 32 days. Spain follows France with a limitation of 40 days. Germany, however, permits a lengthy period of administration detention, up to 18 months. It is interesting to note that the UK and Germany – countries which permit the longest periods of detention in the EU – are

also the countries with the lowest deportation rates.<sup>1</sup> Detainees are housed in a variety of different settings, including privately run facilities, in general prisons and in government run migrant detention centres. A number of different names are used to describe these places including “reception centres”, “removal centres” and “detention centres.”

### ***(iii) Statistics relating to administrative detention of refugees, asylum seekers and migrants***

It is difficult to determine with any degree of certainty the number of refugees, asylum seekers and migrants who are detained in the European Union for migration related reasons. Some countries do maintain statistics which they make available to the public. The UK, which has a capacity of over 2,700 bed spaces for administrative detention does publish statistics on the number of noncitizens detained in its removal centres around the country.<sup>2</sup> However, many countries either do not regularly compile those numbers or share them with the public. Immigration statistics relating to detention throughout the European Union are difficult to obtain.

### ***(iv) Detention as deterrence***

There are concerns relating to both the increase in the use of detention throughout the European Union and the manner of detention. As the practice of detention has risen, the number of asylum applications has decreased. In 2004, EU countries received 19% fewer applications for asylum than during the previous year. Applications dropped 30% in Germany, and 31% in the United Kingdom, the countries with the longest rates of detention as noted above. However, during the same period, certain new Members States on the border of Europe – Malta and Cyprus – experienced over a 100% increase in the number of applications.<sup>3</sup> Many agree that the decrease in applications does not necessarily mean there are less refugees arriving in Europe who are in need of protection. Rather the increased use of detention coupled with flawed asylum systems have resulted in pushing more and more refugees and asylum seekers into “illegality.”

Groups have grown increasingly concerned that detention is being used – inappropriately and in violation of regional and international human rights law – to deter the arrival of refugees and asylum seekers. Additionally, groups and individuals have expressed concern that refugees, asylum seekers and migrants – who have committed no crime – are being held arbitrarily without adequate legal representation, without the opportunity for regular and automatic judicial review of their detention, without being adequately informed of their rights in a manner and language which they understand and being housed in unsanitary, harsh and inhuman conditions. All of this happens within the borders of the European Union whose Member States have signed all of the major human rights agreements and instruments and subscribe to the many guidelines and conclusions

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<sup>1</sup> See, Liza Shuster, *The Exclusion of Asylum Seekers in Europe*, p. 6, Centre on Migration, Policy and Society Working Paper No. 1 (University of Oxford 2004).

<sup>2</sup> For detention statistics in the UK, visit the Home Office page on immigration and statistics at <http://www.homeoffice.gov.uk/rds/index.htm>.

<sup>3</sup> See, UNHCR Global Report 2004, pp. 450, 451.

adopted by regional and international bodies relating to reception and protection of refugees, asylum seekers and migrants.

One of the primary challenges for non-governmental organizations, faith based groups and individuals who accompany and work with and on behalf of detained refugees, asylum seekers and migrants is to develop effective strategies to encourage Member States to comply with their obligations under the many treaties, guidelines and conclusions and where they fail to do so, to hold Member States accountable. Hopefully, the series of trainings carried out by the Jesuit Refugee Service Europe and supported by the European Refugee Fund will work towards promoting such compliance.

### ***(v) Advocacy Issues***

The Manual addresses the international and European legal framework relating to reception standards and detention of refugees, asylum seekers and migrants. It does not include information regarding national systems, except to point out some examples of certain national practices. These international and regional laws and procedures can and should be used to promote better treatment of refugees, asylum seekers and migrants nationally. Advocates are urged to examine international and regional law and determine whether national laws comply with the standards set and agreed to by their governments. A helpful checklist on areas to look at in determining if states comply with their obligations is attached as Appendix E. Where states do not comply, advocates are urged to work in coalition with other relevant organizations to encourage compliance. Part of any advocacy strategy includes dialogue with the government and campaigns to raise awareness among the public of the situation. Additionally, where the government refuses to dialogue or change, advocates can and should consider filing law suits nationally and accessing complaint and reporting mechanisms at the regional and international level, as described later in the manual.

### ***(vi) International Coalition on the Detention of Refugees, Asylum Seekers and Migrants***

The International Coalition on Detention of Refugees, Asylum Seekers and Migrants is a recently formed coalition of non-governmental groups and individuals working around the world providing legal, social and other services, carrying out research and reporting, and doing advocacy and policy work on behalf of refugees, migrants, and asylum seekers who have come together to share information and to promote best practices on the use of detention vis-à-vis this population. In addition to joining local and national coalitions, NGOs, academics and individuals should consider joining the international coalition. For more information on the coalition, contact Anna Gallagher at [anna@comunicacionglobal.com](mailto:anna@comunicacionglobal.com)

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## **CHAPTER I**

### **LEGAL FRAMEWORK GOVERNING THE RECEPTION AND DETENTION OF REFUGEES, ASYLUM SEEKERS AND MIGRANTS**

Countries are bound under national, regional and international instruments to provide a series of services to arriving refugees and asylum seekers.

#### ***1.1 What is the definition of reception standards?***

Reception standards refer to a set of measures related to the treatment of refugees and asylum seekers from the time that they make their formal claims for recognition of status – in country or at the border – until a final decision is taken on their applications or they are transferred to another Member State responsible for the adjudication of the claims.

#### ***1.2 Who do the standards apply to and where are they applied?***

These standards apply to refugees and asylum seekers who are in detention, residing in group accommodations designed for them or living in the community awaiting a final decision. The measures to be applied include adequate reception conditions upon arrival at the border, access to legal counselling, freedom of movement, medical care and employment. Additionally, special arrangements should be made to attend the needs of children, women and elderly asylum seekers. States have broad discretion in determining how they will establish adequate reception standards. It should be noted that in creating a package of services which meet these standards they must assure that the basic dignity and human rights of asylum seekers are protected and that any services provided are adequate for the country in which they are applying for protection.

#### ***1.3 What constitutes adequate reception standards under law?***

##### ***(i) Introduction***

International and regional treaties, conventions and laws clearly provide standards on how refugees and asylum seekers should be treated upon arrival and throughout their stay and adjudication of their claims for protection. The tools, therefore, are in place to protect refugees and asylum seekers. Unfortunately, governments sometimes fail to comply with their obligations.

This section is divided into the following areas:

- Reception on arrival
- Information and legal counselling
- Freedom of movement
- Documentation and status pending final adjudication
- Assistance, housing and accommodation
- Health care
- Educational and vocational training
- Employment
- Groups with special needs

***RESOURCE TIP – ADEQUATE RECEPTION STANDARDS***

***For more information on suggested reception standards and EU compliance, advocates should review the following:***

- ***UNHCR Reception Standards for Asylum Seekers in the European Union (Geneva 2000)***
- ***The EC Directive on Reception of Asylum Seekers: Are asylum seekers in Europe receiving material support and access to employment in accordance with European legislation? (ECRE 2005)***

The Manual explains what should happen and refers to the relevant supporting treaties, laws, regulations and guidelines. Annotated lists of the relevant international and regional instruments are located in Appendices A and B of the Manual.

***(ii) What reception conditions should be provided to refugees, asylum seekers and/or migrants upon arrival?***

Refugees, asylum seekers and migrants are often in a vulnerable position at the time of arrival in host or destination countries. They lack the necessary information regarding their rights, are often tired and may suffer physical ailments from the journey. Torture survivors are especially vulnerable and require immediate assistance. In order for countries to comply with their international and regional human rights obligations towards this population, the following is recommended:

- Border facilities, including airports and border transit zones, should provide basic food, shelter and sanitary and health facilities as required under Article 1(1) of the ICESCR. (UDHR, art. 25; ICESCR, articles 1(1), 2(2), 11; Reception Directive, articles 13, 14, 15)

- Family unity should be respected. Single men and women should be provided separate accommodation, and families should be provided the opportunity to stay together in the facility or premises. (ECHR, art. 8; Reception Directive, articles 8, 14)
- Governments and local NGOs should consider drafting agreements for collaboration in the provisions of emergency and ongoing reception services for asylum seekers and refugees.
- Special efforts should be made to quickly identify survivors of torture and trauma and to attend to their needs. Governments should be urged not to place survivors of torture and trauma in detention centres. (UNHCR Detention Guidelines 7, 10; Reception Directive, art. 20)
- Information regarding the noncitizen's rights, including the right to asylum, should be explained to them shortly after arrival in the language and in terms, which he or she can understand. This information can be provided by government personnel or by non-governmental organization representatives. (CPT Standards, para. 30; Reception Directive, art. 5)

**(iii) Information and legal counselling**

Most refugees and asylum seekers are unaware of the asylum process in the countries in which they seek asylum and, therefore, may not adequately exercise their rights under the Geneva Convention and other human rights treaties. Therefore, it is vital that correct information be provided to them in a language and manner they understand and that legal advice and counselling immediately be made available. Thus, the following is recommended:

- Asylum seekers should have access to effective legal assistance at the very outset of the asylum procedure. Lawyers or legal representatives should be on call and available to meet with refugees, asylum seekers and migrants within a short time after their arrival. Posting a list of lawyers' names and contact information in detention centres is not enough and does not satisfy the states' obligations to provide access to legal counsel. (UNHCR Executive Conclusion No. 8)

***PRACTICE TIP – KNOW YOUR RIGHTS***

***NGOs should negotiate with and encourage detention authorities to permit “Know Your Rights” Presentations to be given to newly arrived groups of refugees, asylum seekers and migrants. These presentations are prepared and presented by lawyers or persons trained in relevant refugee and migration law and can be done on a weekly basis in detention centres. Information given includes national laws on refugee and asylum procedures; rights of migrants to remain in the country; procedures relating***

*to voluntary return or deportation, etc. Such presentations benefit both the government and the detainees – information can be used by refugees, asylum seekers and migrants to take important decisions regarding their lives and cases, including identifying if they have a claim for refugee status. Such presentations also act to calm fears and frustrations of new arrivals, and create a calm environment in the centres.*

- Information – oral or written – should be provided to refugees and asylum seekers regarding practical issues relating to their reception. They should be given information on how the asylum procedure works and what their obligations are. All information provided to refugees and asylum seekers– whether written, oral or through the use of video – must be understandable. That means it must be translated into a language they understand and presented in culturally appropriate ways. (Reception Directive, art. 5; Commission Proposal for a Council Directive laying down minimum standards on procedures in Member States for granting and withdrawing refugee status, art. 10 (Procedures Directive), (Council Document 14203/04, Asile 64 of 9 November 2004))
- Access to qualified interpreters should be provided from the initial stage of the procedure. (UNHCR Ex Com Conclusion No. 8)

#### ***PRACTICE TIP - CONSIDERATIONS WHEN USING INTERPRETERS***

*Some tips to consider when using interpreters in interviewing detainees, especially detainees who may have suffered torture or trauma in their home countries or during the journey, are the following:*

- *Make sure that the person agrees to the use of the interpreter and knows that the interpreter has a professional duty to respect confidentiality*
- *Be aware that the interpreter may find parts of the interview difficult*
- *Make sure any interpreter understands the need for absolute confidentiality*
- *Be aware that non-professional interpreters may be more easily drawn into conversation than professional interpreters. Therefore, clearly explain that you want him or her to interpret only what is said by you or the person you are interviewing.*
- *If you can, avoid using family members of detainees who may be in the same centre, other detainees or centre staff to provide interpretation. When interviewing female detainees, especially about information forming the basis of*

*an asylum claim, try to bring a female interpreter.*

- *Remember not to switch off during an interview – even when the interpreter is speaking with the person, it is important for you to demonstrate that you are interested in what the person is saying.*

- UNHCR, non-governmental organizations (NGOs) and individuals working with UNHCR should have free access to refugees and asylum seekers at all stages of the process, including from arrival. Information regarding UNHCR, NGOs and individuals who can assist refugees and asylum seekers should be given to refugees and asylum seekers upon arrival. (UNHCR ExCom Conclusion No. 22; Reception Directive, art. 14(7))
- A written decision should be given to the applicant relating to the asylum claim. Any decision should be explained in the language and in terms which the applicant understands. (Proposed Procedures Directive, art. 9)
- If an asylum application is denied based on the “safe third country” grounds – meaning that the applicant could have applied in another country – the applicant should be informed of this and should also be told that the claim has not been examined on its merits. Therefore, he or she has the right to apply for asylum in a third country. (UDHR, art. 14, confirming the right to asylum)

*(iv) Are refugees, asylum seekers and migrants entitled to freedom of movement?*

All countries in Europe detain refugees, asylum seekers and migrants under certain circumstances. There are different stages of detention: pre-admission detention; pre-deportation detention; and, detention in order to remove someone, transfer a person to a safe third country or to transfer a person to the responsible State under the Dublin Convention. Article 31(2) of the 1951 Convention Relating to the Status of Refugees states that the freedom of movement of refugees and asylum seekers should be restricted only when necessary. The UNHCR states that detention of refugees and asylum seekers should be avoided with few exceptions.<sup>4</sup> In some European countries, it is common for applicants who are awaiting final decision to be required to reside at a particular address or in a particular area. Under the European Convention on Human Rights, such restrictions are generally permissible. Consistent with human rights treaties and regional and national laws regarding freedom of movement, the following are recommended:

- Asylum seekers should not be accommodated in remote areas where access to transportation is difficult. Housing refugees or asylum seekers in places where they cannot access public transportation or where they have no funds to pay for

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<sup>4</sup> UNHCR Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers (February 1999).

transportation inappropriately restricts their freedom of movement, especially when needed services and support are located far away. If governmental authorities do accommodate refugees and asylum seekers in remote places, they should provide appropriate funds to pay for transportation costs.

- Detention of refugees and asylum seekers should be avoided.
- Accommodation of asylum seekers with children should take into account access to local educational facilities.

(v) ***What documentation should refugees and asylum seekers have during the time that their cases are pending?***

Asylum seekers should be assured that their stay pending a final decision in the host country is legal. UNHCR Executive Committee Conclusion No. 35 recommends that those asylum seekers whose cases cannot be decided without delay be given provisional documentation sufficient to guarantee that they will be provided temporary protection until the final outcome of their case.<sup>5</sup> Additionally, Article 6(1) of the Reception Directive requires Member States to issue documentation evidencing that an asylum application is pending to asylum seekers. In most countries, a temporary permit is issued to an asylum seeker once the case is admitted into the asylum adjudication procedure. In order to assure that asylum seekers are protected during the processing of their claims, the following are recommended:

- Temporary permits should be issued to asylum seekers. The permits should be valid until a final decision is taken on the application. (UNHCR ExCom Conclusion No. 93; UNHCR ExCom Conclusion 91)<sup>6</sup>
- Although the Reception Directive permits Member States to exclude asylum seekers in detention from receiving documentation, Member States should be encouraged to issue such documentation to all asylum applicants so as to avoid burdensome additional paperwork and likely delays in issuing such when detainees are released.

(vi) ***What assistance should states give to refugees, asylum seekers or migrants?***

Under Article 11(1) of the ICESCR, States are required to provide assistance to persons who unable to support themselves. Asylum seekers are entitled to an adequate standard of living throughout the processing of their claims. Assistance should include both basic necessities and whatever is necessary to ensure a life of dignity. The Reception Directive requires that Member States ensure a dignified standard of living in all Member States to asylum applicants.<sup>7</sup> This includes providing basic housing, food, clothing and health care.<sup>8</sup> In order to comply with their obligations, Member States are urged to do the following:

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<sup>5</sup> See, also, Identity Documents for Refugees and Asylum Seekers: Guidance on Issuing Identity Documents to Persons of Concern (Project Profile/PGDS Working Draft 2003).

<sup>6</sup> See, UNHCR Executive Committee Conclusion No. 35; Geneva Convention, art. 27.

<sup>7</sup> Reception Directive, point 7, Preamble.

<sup>8</sup> Reception Directive, articles 2(j), 13 and 15.

- Needy asylum seekers should be given all necessary support to live in conditions of dignity. This means that they should be given sufficient food, appropriate clothing and decent housing throughout the process until a final decision is taken. Religious beliefs and customs should be taken into account when providing food.
- Assistance should be provided either in kind (direct provision of food, clothing, pocket money, etc.) or through access to the state social system or a combination of both. Any stipends which are provided must adequately cover any additional expenses not provided for with in kind donations or through the social welfare system.
- In those cases where removal may be permissible under the Dublin Convention, assistance should be provided until the person is removed to the other country.

**(vii) *What standard of housing or accommodation should be given?***

In most cases, asylum seekers have no place to go after arrival. Some depend on the help of family and friends. Others have no such support network. The situation is even grimmer considering that they are not permitted to work legally in the country. Even where they can afford accommodation, they often face discrimination and racism in seeking housing. Some states have reception centres for asylum seekers; others provide housing, which is organized and administered by non-governmental organizations. The Reception Directive requires Member States to provide adequate accommodation throughout the asylum adjudication process.<sup>9</sup> Therefore, states are urged to do the following:

- Conditions in reception centres or other types of collective accommodations should satisfy the minimum standards for dignified living, including access to health care and education. (ICESCR, art. 11; ICESR General Comment No. 12 contained in E/C 12/1999/5)
- Any accommodation for asylum seekers should respect both the right to privacy and to family life. Collective centres should have facilities to accommodate families. Arrangements should also be made to house women and unaccompanied children separate from men. (Reception Directive, articles 8, 14)
- Where asylum seekers are housed in homes and apartments in local communities, governments should make efforts to develop public information campaigns to highlight the situation of refugees and the need for communities to welcome them.
- Any housing – either in reception centres or in individual homes or apartments – should facilitate access to education by minors and access to basic public life generally. Refugees and asylum seekers should not be housed in remote areas.

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<sup>9</sup> Reception Directive, articles 2(j), 14.

(viii) ***What rights do refugees, asylum seekers and migrants have relating to health care?***

Asylum seekers and refugees may suffer from health problems, including emotional or mental distress as a result of what they experienced in their home countries or during their journeys. International and regional law requires that states provide medical care to persons residing within their territories, including asylum seekers.<sup>10</sup> In order for states to comply with their obligations, the following are suggested:

- Free basic medical care – both physical and psychological – should be made available immediately to asylum seekers and refugees after arrival and throughout the asylum adjudication process.
- Any medical care provided should be subjected to strict confidentiality requirements. The UNHCR recommends that any HIV testing should be done only at the request of the applicant. It should be noted that the Reception Directive does not authorize mandatory medical screening of asylum seekers, but does permit Member States to require screening on public health grounds.<sup>11</sup>
- Asylum seekers in need of treatment because of torture or trauma should receive specialized attention.
- Psychological care and counselling should be made available free of charge after referral by medical personnel.
- Authorities and medical personnel receiving and treating asylum seekers should receive special training on how to effectively work with persons from different cultures.

***RESOURCE TIP – DOCUMENTING ALLEGATIONS OF TORTURE***

***“The Torture Reporting Handbook – How to document and respond to allegations of torture within the international system for the protection of human rights” by Camille Giffard and published by the Human Rights Centre at the University of Essex is an excellent resource for doctors, lawyers and other professionals who come into contact with survivors of torture. It provides helpful suggestions for effectively and sensitively gathering information regarding torture and presenting that information – if the person agrees – to international bodies and tribunals.***

<sup>10</sup> See, UDHR, art. 25; ICESCR, art. 12(1); CRC, art. 24(1); Reception Directive, art. 15.

<sup>11</sup> See, UNHCR Policy regarding Refugees and Acquired Immune Deficiency Syndrome (AIDS). Interoffice Memorandum 78/98 and Field Office Memorandum 84/98. Geneva, 1 December 1998; Refugees and HIV/AIDS, EC/51/SC/CRP.7, 15 February 2001.

(ix) ***Do refugees and asylum seekers have a right to education or vocational training?***

After leaving their country, children suffer an interruption of their education. In order to adequately care for and protect them, it is necessary to begin their education immediately after arrival in the country of origin. International and regional laws and standards affirm the right to education.<sup>12</sup> The Reception Directive requires Member States to guarantee access to education for asylum seeker children and minor children of asylum seekers.<sup>13</sup> In order to comply with their obligations, governments should be urged to do the following:

- Both primary and secondary education should be made available to asylum seekers. (CRC, art. 28)
- Asylum seeker children and minor children of asylum seekers should be registered in the local school system and be permitted to attend classes shortly after arrival.
- Children in detention should be provided access to education. (CRC, art. 28)
- States should provide access to vocational training to asylum seekers regardless of whether they have access to employment at the time of the training. (Reception Directive, art. 12).

(x) ***Can refugees and asylum seekers access employment?***

Asylum seekers who are working are less dependent on the State. The right to work is an element of human dignity, especially in light of long periods of time taken in many countries to finally adjudicate asylum claims. Once a person has obtained refugee status, states generally permit them to work legally in their territory. Some EU Member States permit asylum seekers to work under certain conditions. Article 11 of the Reception Directive requires Member States to decide on conditions to grant access to employment for asylum seekers whose claims are pending a year or more.<sup>14</sup> Therefore, it is recommended that:

- Asylum seekers should be permitted to work after a certain period of time during which their application is pending.

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<sup>12</sup> See, UDHR, art. 26, Art. 2 of Protocol No. 1 to the ECHR; ICESCR, art. 13; CRC, art. 28; UNHCR Guidelines on Protection and Care of Refugee Children; ICESCR General Comments No. 11 in document E/C/1999/4, and No. 13 in document E/C.12/1999/10.

<sup>13</sup> Reception Directive, art. 10(1).

<sup>14</sup> ECRE - The EC Directive on Reception of Asylum Seekers: Are asylum seekers in Europe receiving material support and access to employment in accordance with European legislation? (AD3/11/2005/EXT/SH).

(xi) *Treatment of groups with special needs – children, women and the elderly*

Special attention should be given to cases involving children, unaccompanied or separated children, female asylum seekers and elderly asylum seekers.

- Children: When designing and implementing reception policies and procedures, states should be guided by the best interest of the child. This can take the form of appointment of a guardian for child asylum applicants. Reception standards for children should address the special education, medical, psychological, recreational and other needs of children as required by international and regional human rights laws, procedures and guidelines. (CRC, art. 3(1))
- Unaccompanied or separated children: Unaccompanied or separated children should be placed in appropriate care-giving arrangements, such as foster care or special reception centres, as early as possible after arrival. Tracing activities should be undertaken as soon as possible in compliance with Article 3(3) of the European Union Council Resolution of 26 June 1997. Legal representatives should be appointed to handle the social and legal rights of unaccompanied or separated children throughout the entire asylum process. (CRC, articles 7, 22(2); European Union Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries, para. 3(4))

**RESOURCE TIP – CHILDREN**

*The UNHCR has published materials to guide persons working with children asylum seekers and refugees, including separated children. These are:*

- *UNHCR Guidelines on the Protection and Care of Refugee Children (Geneva 2004)*
- *UNHCR Guidelines on Policies and Procedures in dealing with unaccompanied children seeking asylum (Geneva 1997).*

*The Separated Children in Europe Programme, a joint initiative of the UNHCR and Save the Children established in 1997, seeks to improve the situation of separated children in Europe through research, policy analysis and advocacy. The Programme has drafted a “Statement of Good Practice” which is available on its website at <http://www.separated-children-europe-programme.org>. The statement provides helpful information and guidance for working with separated children and addresses issues relating to identification, family tracing, appointment of guardians, registration and documentation, freedom from detention, health and education among others.*

- Female asylum seekers: For many women, being outside of their home country for the first time may make them vulnerable. In providing adequate reception conditions and fair asylum procedures, gender and culture awareness should take precedent. Single women with special security needs should be given separate and safe accommodation. Many women asylum seekers have suffered sexual or gender based violence. Special attention should be given in such cases. Medical assistance for asylum seekers upon arrival and in reception centres should include counselling on reproductive health matters. Pregnant women should receive the same prenatal and child clinical services as nationals.

#### **RESOURCE TIP – WOMEN AND GENDER ISSUES**

*Several countries have issued guidelines on addressing claims filed by women asylum seekers and gender based claims, including claims by homosexuals and by survivors of gender based violence. For more information on gender issues and guidelines, visit the websites of the following organizations:*

- *Center for Gender and Refugee Studies – <http://www.cgrs.uchastings.edu>. CGRS advocates within the United States and internationally for greater respect and sensitivity of gender based claims. Its website hosts a variety of resources, including gender guidelines from several countries and case law relating to gender based claims.*
- *The Refugee Womens’ Law Group – <http://www.asylumaid.org.uk>. RWLG is a project of Asylum Aid, a UK based organization advocating for the rights of asylum seekers. The RWLG website also contains a number of reports and relevant information relating to women’s claims.*

*The UNHCR Europe Bureau sponsored a study on the treatment of gender based asylum in Europe. The results of that study are published in “A Comparative Analysis of Gender Related persecution in national asylum legislation and practice in Europe” (UNHCR 2004) which is available on the UNHCR website at <http://www.unhcr.ch>.*

- Elderly asylum seekers: Elderly asylum seekers are often poor and at risk of abandonment and neglect by family members who are unable to care for them. They have lost traditional support networks which existed in their home countries and are particularly vulnerable given their age and, at times, their physical and mental health. As with most asylum seekers, they are unaware of their rights and services available to them after arrival in countries of destination. Because of their advanced age, prompt access to medical and health care is vital. Efforts

should be made early on to identify elderly asylum seekers and their needs and adequately respond to them. Tracing activities should be undertaken as soon as possible.<sup>15</sup>

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<sup>15</sup> For additional recommendations, see, UNHCR Policy on Older Refugees, EC/50/SC/CRP.8 (7 February 2000) as endorsed at the Standing Committee's 17<sup>th</sup> meeting. See, also, ICESCR General Comment No. 6 on the economic, social and cultural rights of older persons (E/1996/22).

## CHAPTER II

### LEGAL FRAMEWORK GOVERNING DETENTION OF REFUGEES, ASYLUM SEEKERS AND MIGRANTS

#### 2.1 *Introduction*

Despite the fact that the UNHCR advises against detention and the Geneva Convention itself specifically advises governments not to penalize refugees for unlawful entry, most choose instead to detain hundreds to thousands of refugees and asylum seekers a year, generally pointing to the fact of their lack of documentation to justify their policies.

#### ***WHO MAY BE SUBJECT TO DETENTION?***

- *Refugees who have not yet formally applied for asylum*
- *Asylum seekers awaiting adjudication of their claims*
- *Rejected asylum seekers*
- *Persons in irregular migration status*
- *Migrants awaiting expulsion or deportation*
- *Men, women and children refugees, asylum seekers and migrants regardless of age, physical or mental health or disability*

It is difficult to determine with any precision the number of refugees, asylum seekers and migrants world wide who are placed in administrative detention. Some governments gather and provide regular and open statistics on the numbers. Many others, however, do not provide those numbers. The UNHCR, relying on reports from governments, does gather and publish statistics on refugees and asylum seekers worldwide but the statistics do not cover detention.

**HOW MANY REFUGEES, ASYLUM SEEKERS AND MIGRANTS ARE  
DETAINED FOR MIGRATION RELATED REASONS?**

- *Most governments do not maintain and provide public information on the number of detainees.*
- *The UK, the United States and Australia do maintain publicly available statistics on detained asylum seekers and migrants.<sup>16</sup>*
- *EUROSTAT, the statistical office of the European Union, publishes statistics and information on asylum (applications and decisions) but not on detention of asylum seekers.<sup>17</sup>*
- *The EU Centre of Information, Discussion and Exchange on the Crossing of Frontiers and Immigration (CIREFI) consists of experts from Member States – all government officials – who meet monthly to share information and statistics on legal migration, illegal migration and other issues. This information is kept confidential.*
- *The Action Plan for the collection and analysis of Community Statistics in the field of migration presented to the European Council and the European Parliament by the European Commission in 2003 includes no provisions for the collection of statistics on migration related statistics.<sup>18</sup>*

Refugees, asylum seekers and migrants are detained at all stages of their migration or refugee process: prior to formal admission at land borders, on the high seas and at airports; during the adjudication of any claims seeking permission to remain in the country (including application for asylum status); and, prior to expulsion or deportation. Length of administrative detention varies among EU Member States, with some placing a limit of as low as 32 days (France) to indefinite detention (UK). Times may vary depending on whether the noncitizen is an undocumented migrant or an asylum seeker. Also, duration sometimes depends on the location of detention and the number of beds available on any given day. The chart below provides an idea of the maximum duration under which asylum seekers and migrants are held under national laws. For updated

<sup>16</sup> For detention statistics in the UK, visit the Home Office page on immigration and statistics at <http://www.homeoffice.gov.uk/rds/index.htm>. US statistics relating to detention are available on the US Citizenship and Immigrant Services website at <http://uscis.gov> on its Statistics page. Australian statistics are available from its Department of Immigration and Multicultural Affairs website at [www.immi.gov.au](http://www.immi.gov.au).

<sup>17</sup> Visit the EUROSTAT website at <http://epp.eurostat.cec.eu.int>.

<sup>18</sup> See, Communication from the Commission to the Council and the European Parliament to present an Action Plan for the collection and analysis of Community Statistics in the field of migration, COM (2003) 179 final, Brussels, 15/4/2003. See, also, Eurostat Working Paper – Draft Manual on Statistics of Asylum-seekers and refugees (3/1998/E/No. 18).

information on duration of detention in European countries, visit the JRS Europe webpage on detention at <http://www.detention-in-europe.org>.

**HOW LONG ARE REFUGEES, ASYLUM SEEKERS AND MIGRANTS HELD IN ADMINISTRATIVE DETENTION IN EU MEMBER STATES?**

- *Denmark – 72 hours*
- *Finland – 4 days (in police stations); 8 days (alien centre)*
- *Sweden – 10 days*
- *Hungary – 1 month*
- *France - 32 days*
- *Spain – 40 days*
- *Portugal – 60 days*
- *Austria – 60 days*
- *Italy – 60 days*
- *Ireland – 8 weeks (for those facing removal); indefinite (asylum seekers)*
- *Greece – 3 months*
- *Luxembourg – 3 months*
- *Slovenia – 4 months (asylum seekers); 6 months (migrants)*
- *Belgium – 5 months*
- *Lithuania – 180 days*
- *Slovakia – 180 days*
- *Slovenia – 180 days*
- *Czech Republic – 180 days*
- *Poland – 1 year*
- *Germany – 18 months*
- *Malta – 18 months*
- *Latvia – 20 months*
- *UK – Indefinite (no maximum prescribed by law)*
- *Netherlands - Indefinite (no maximum prescribed by law)*

International treaties, resolutions, guidelines and rules addressing the issue of the detention of refugees, asylum seekers and migrants have been developed and signed onto by governments around the world. As in the case relating to reception standards, tools exist to protect the human rights of refugees, asylum seekers and migrants who may be subject to detention. These instruments address procedural guarantees to be afforded to persons facing restrictions on their freedom of movement and on the necessary conditions which must be put in place in centres where noncitizens are detained. This section provides an overview of those instruments and recommendations for implementation.

## **2.2 Recommendations for State Compliance under International and Regional Laws Relating to Detention of Refugees, Asylum Seekers and Migrants**

As noted above, detainees are protected by many binding and non-binding instruments regardless of their migration status. Before addressing the specific protections for persons after they are detained, it is important to emphasize that arguments can and should be made against detention of refugees and asylum seekers as expressed in international and regional instruments.

### **ARGUMENTS TO PRESENT AGAINST THE USE OF DETENTION FOR REFUGEES AND ASYLUM SEEKERS**

- *The great majority of persons who seek international protection – refugees and asylum seekers – are not criminals and, therefore, should not be treated as such.*
- *UNHCR Guidelines specifically urge states against the use of detention with the following narrow exceptions: to verify identity; to determine the elements on which a claim is based; in the case of the use of false documents with the intent to mislead; to protect national security and public order.*
- *Where a state is considering detention, it should first look to alternatives as suggested by the UNHCR: monitoring; provision of a guarantor; posting of bail; housing in open centres.*
- *Since refugees and asylum seekers are lawfully in host countries – awaiting final adjudication of their application – they should not be considered to be effecting an illegal entry or unauthorized stay and, therefore, should not be detained as provided by the ECHR, article 5.*
- *Studies have been done which show that alternatives to detention – such as reporting requirements – are effective in guaranteeing that refugees, asylum seekers and migrants appear for government interviews and hearings.<sup>19</sup>*
- *The following categories of people should not be detained: unaccompanied or separated minors; elderly persons; torture or trauma victims; persons with mental or physical disability; pregnant women; nursing mothers.*

<sup>19</sup> See, Sullivan, E., Mottino, F., Khashu, A., O’Neil, M., Testing Community Supervision for the INS: An Analysis of the Assistance Appearance Program (Vera Institute for Justice 2001) (91% appearance rate for persons in reporting appearance program).

### **2.3. What rights do detained refugees, asylum seekers and migrants have?**

Detained refugees, asylum seekers and migrants have the following rights:

- The right to seek asylum
- Freedom from arbitrary arrest, detention or exile
- Freedom from torture, inhuman or degrading treatment
- The right to be treated with humanity and respect for the inherent dignity of the person

The sections below provide detailed information on what states should do to guarantee that these rights are implemented and respected.

#### **RESOURCE TIP – DETENTION STANDARDS**

*Several countries have issued formal detention rules and/or regulations governing detention of refugees, asylum seekers and migrants. Governmental agencies and NGOs have also issued proposed guidelines on detention standards and human rights.*

- *United Kingdom – UK Detention Centre Rules 2001, 2001 No. 238, are available on the website of AVID at <http://www.aviddetention.org.uk>.*
- *United States – Detention Operations Manual, U.S. Immigration and Customs Enforcement, are available on the ICE website at <http://www.ice.gov>.*
- *Australia – Immigration Detention Standards, Australia Department of Immigration and Multicultural Affairs (1997) are available on the website of the JRS Europe Detention Training Project at <http://www.accompanydetainees.org>.*
- *Canada – Citizenship and Immigration Canada Enforcement Manual – Chapter 20: Detention, is available on the CIC website at <http://www.cic.gc.ca>.*
- *Australian Human Rights and Equal Opportunity Commission (HREOC) Report – Immigration and Detention Guidelines (March 2000), available on its website at <http://www.hreoc.gov.au>*

**(i) How should governments guarantee that the right to asylum is respected in the context of detention?**

Almost all European countries have national legislation providing for asylum protection. Despite such legislation, they many times fail to identify refugees because the implementation of such procedures is faulty. Access to fair and efficient asylum

procedures becomes even more difficult where refugees and asylum seekers are in detention. Asylum seekers in detention are completely dependent upon their attorneys or legal representatives to come to them. Asylum seekers and refugees cannot easily access supporting witnesses or documents while detained. In order for governments to guarantee that a detainee actually can exercise his or her right to asylum, they should address the following:

- **Information:** Shortly after being detained, all detainees should be given information about their right to ask for asylum. Such information must be presented in a language and manner that they understand.
- **Access to counsel:** Governments must facilitate easy access of attorneys and legal representatives to the detention centres. Attorneys should have access to their clients seven days a week, twenty four hours a day as necessary. Governments should remember that providing access to legal representation is not satisfied with merely having the presence of an attorney during the merits or substantive interview. Instead, he or she must be active before, during and at the end of the process. This means that the attorney must spend time interviewing the client, gathering country of origin information, developing the legal arguments and finally preparing the asylum application for presentation to the government. If the attorney does not speak the language of the asylum seekers, he or she must have access to an interpreter during preparation.
- **Individualized hearing:** Governments should provide individualized hearings in a setting which respects the confidentiality of the applicant and the seriousness of the procedures. Hearings should not take place in open areas in the detention centre. Rather a separate office should be provided in conditions consistent with a respect for the importance of the refugee status determination process.
- **Access to effective and professional translation:** Translators and interpreters should be professionally trained and applicants should have access to them throughout the procedure. In cases involving sexual or gender based claims, female translators or interpreters should be provided.<sup>20</sup>
- **Confidentiality:** Governments should guarantee the confidentiality of the procedure. This means that government officials, security staff, interpreters and translators, attorneys, NGO staff, social workers and medical personnel who provide services to asylum seekers and refugees in detention are under a duty to ensure the confidentiality of the information received from or about the applicant, including the fact that the applicant has applied for asylum. In order to protect confidentially, special rooms should be made available to attorneys for visits with their clients.

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<sup>20</sup> See, Practice Tip – Considerations When Using Interpreters.

- Access to judicial review: Governments must provide access to effective judicial review, ensuring that applicants continue to have legal representation throughout review and that they are advised of the review procedures and final decision.
- Procedures for special needs: Governments should create guidelines and implement procedures to deal with cases involving special needs. For example, governments should develop national guidelines – using UNHCR and other materials as guides – on issues relating to claims based on sexual and gender based violence, asylum applications filed by children, and procedures for elderly asylum seekers. Personnel involved in special needs cases – both governmental and NGO alike – should be trained in providing the necessary services in a sensitive manner.<sup>21</sup>

***RESOURCE TIP – FAIR AND EFFECTIVE ASYLUM PROCEDURES***

*The UNHCR has published materials relating to standards for fair and efficient refugee status determination and asylum procedure.*

- *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (Geneva 1992)*
- *Department of International Protection, Procedural Standards for Refugee Status Determination under UNHCR’s Mandate (Geneva 2005)*
- *Global Consultations on International Protection – Asylum Processes (Fair and Efficient Asylum Procedures), U.N. Doc. EC/GC/01/12 (31 May 2001).*

*Additionally, RSD Watch collects information on refugees status determinations carried out by the UNHCR and promotes fairness and transparency in the processes. More information on RSD Watch is available on its website at <http://www.rsdwatch.org>*

**(ii) *What procedural safeguards do refugees, asylum seekers and migrants have relating to their detention?***

Governments should guarantee freedom from arbitrary arrest, detention or exile to all persons within their borders. International, regional and national law establishes that no one shall be subject to arbitrary arrest, detention or exile.<sup>22</sup> In order for detention to be

<sup>21</sup> See, Resource Tip – Children; Resource Tip – Women and Gender Issues.

<sup>22</sup> UDHR, article 9; ICCPR, article 9(1); ECHR, article 5(1). See, Human Rights Committee, General Comment No. 8/1982 (ICCPR article 9(1) applies to all deprivations of liberty, including in cases relating to immigration control); Human Rights Committee Communication No. 560/1993 (must be necessary in all circumstances and element of proportionality relevant); Human Rights Committee Communication No.

lawful, there must be a basis in law for ordering detention. Any order must be made for a legitimate purpose; there must be no lesser means available to achieve the objective justifying detention (i.e. attendance at interviews and hearings, compliance with removal order). Detention must be of a limited duration and must be applied in a non-discriminatory manner. In order for governments to respect their obligations under the law, they should comply as follows:

- Provide prompt information to the detainee: Immediately after arrest, the arresting authority should provide information for the reasons of arrest and detention and the detainees' rights. This must be presented in a language and manner which the person understands. If persons arrive in groups and are presented to a local magistrate as a group, care must be taken that interpreters are available in the courtroom or facility where the proceeding is taking place to adequately explain what is going on. Upon arrival, refugees, asylum seekers and migrants are especially vulnerable after the journey. Therefore, assuring that they understand what is occurring and what their rights are is fundamental. Additionally, lawyers should be present and speak with the new arrivals. A group proceeding without assurances that all arrivals understand what is going on violates the right to information. (ICCPR, art. 9(2)); BPP 10, 11, 13; UNHCR Detention Guidelines, Guideline 5)

#### ***PRACTICE TIP – KNOW YOUR RIGHTS***

*As was mentioned previously, Know Your Rights Presentations by NGOs are an effective way to provide much needed information to all detainees. Several groups in the United States have developed such projects – the Florence Immigrant and Refugee Rights Project (<http://www.firrp.org>) and the Capitol Area Immigrants' Rights Coalition (CAIR) (<http://www.caircoalition.org>) with the agreement of the government which has provided support and funding in some cases. The government recognizes that the more detained refugees and immigrants are aware of their rights, the faster and more efficient procedures take place to adjudicate their cases.*

- Provide access to effective legal counsel: Governments should have the ability to quickly contact legal counsel to be present shortly after arrest to help the detainee understand his or her rights and to determine if he or she has an asylum claim. (ICCPR, art. 14(c); BPP 17, 18; UNHCR Detention Guidelines, Guideline 5)

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900/1999 (risk of absconding does not provide justification for prolonged detention where other less invasive means are available, such as reporting, bond or other conditions); *Chahal v. UK*, judgment of 15 November 1996 (due diligence standard in relation to detention).

- Identification of torture survivors or persons with special needs: Governments should create a screening process to quickly identify torture survivors, unaccompanied or separated children, and other vulnerable persons, including pregnant women, persons with medical needs and elderly persons and access alternative open accommodation for them which will address their needs.
- Initial and periodic review: Governments must provide information to detainees regarding their right to review and should establish a process for periodic review of detained cases without delay before a judicial or administrative body independent of the authorities who ordered the initial detention. (ICCPR, art. 9(4); ECHR, art. 5(4); BPP 4, 11, 32; UNHCR Detention Guidelines, Guideline 5; Human Rights Committee Communication No. 560/1993; Human Rights Committee General Comment No. 8, Article 9 (Sixteenth Session 1982))
- Contact with the local UNHCR office, national refugee bodies or other agencies or advocates: In order to provide real contact and access to the UNHCR and other agencies or advocates, governments must do more than just post a list with contact information inside detention centres. Governments should permit regular access by the UNHCR and NGOs to detention centres in order for them to provide information to the general population on their rights on a regular basis. (UNHCR Guidelines, Guideline 5)

#### **RESOURCE TIP**

*The European Council on Refugees and Exiles (ECRE), an umbrella organization of 76 refugee assisting agencies in 30 countries, works toward promoting fair and humane policies for the treatment of refugees and asylum seekers. As part of its work, it conducts research and issues position papers. It has issued the “1996 ECRE Position Paper on Detention”, a helpful document with recommendations relating to procedural safeguards for detainees and conditions of detention. This paper is available on the ECRE website at <http://www.ecre.org>.*

(iii) ***Conditions of detention – freedom from torture, inhuman or degrading treatment***

The prohibition against torture, inhuman or degrading treatment is firmly established in international law.<sup>23</sup> Conditions of detention may amount to torture, inhuman or degrading treatment under certain circumstances. Torture can be both mental and physical and take different forms, including the following: electric shocks, beatings, suspension in painful poses, rape, burning with cigarettes, deprivation of food, sleep or communication, noise and intimidation. Individual practices alone may not constitute torture but when taken as a whole may in fact be torture. For example, in detention the following can constitute inhuman or degrading treatment: systematically ignoring a detainee's request until it is repeated many times; applying detention regulations in an arbitrary and uneven manner; creating a climate of suspicion and distrust among detainees; speaking to detainees as if they were children; or, entering detainee's cells and space suddenly and without reason. In order for states to comply with their obligations to prevent torture, inhuman or degrading treatment, they should address the following:

- **Information:** All detainees should be provided with information in a language and manner which they understand regarding regulations in the detention centre. Detainees should be given this information upon arrival and provided with an opportunity to ask any questions relating to procedures during the entire period they are detained.
- **Complaint procedure:** Governments should establish complaint procedures which detainees can access to complain of alleged violations. All personnel working in detention centres should wear badges which identify them by name and rank. The complaint procedure should be independent and accessible by detainees. Detainees should be able to present complaints orally or in writing. (BPP, Principle 33; UNHCR Detention Guidelines, Guideline 10)
- **Capacity:** Detainees should not be housed in overcrowded conditions. Centres should not exceed their designated capacity in housing detainees.

***RESOURCE TIP – MONITORING PLACES OF DETENTION***

***The Association for the Prevention of Torture, a Geneva-based NGO, works towards preventing torture and other forms of ill-treatment throughout the world. To achieve its objectives, it promotes monitoring of places of detention, encourages the adoption and respect of legal norms and standards that prohibit torture and combat impunity, and strengthens the capacities of individuals and groups to prevent torture. As part of its work it has published “Monitoring Places of Detention – A Practical Guide”, an excellent resource for all persons working with detainees. Information regarding the***

<sup>23</sup> Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, Principle 6; ICCPR, art. 7; ECHR, art. 3; UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, articles, 1, 16; CRC, art. 37.

*(iv) Conditions of detention – right to be treated with humanity and respect for the inherent dignity of the person*

International law requires that detainees be treated with dignity and respect.<sup>24</sup> Conditions of detention must respect the human rights of detainees, including the following: the right to family life and privacy; right to medical care, appropriate accommodation and food; right to cultural life; right to recreation; right to religion; right to education, among others. In order to respect the human rights of detainees, governments should guarantee the following:

- **Accommodation:** Accommodation should meet all requirements of local and national health regulations. Care should be taken to provide heating during cold season and fans and ventilation during the warmer seasons. Sanitary installations should allow every detainee to attend to his or her own needs in a clean and decent manner. Adequate bathing and shower installations should be provided as necessary so that every detainee can bathe or shower, at a temperature suitable to the season, whenever he or she needs for general hygiene. All parts of the centre should be properly maintained and cleaned. All detainees should be provided with separate beds, and with clean and warm bedding. Men and women should be segregated and facilities should be made available for families. Administrative detainees should not be held with persons awaiting trial or persons with criminal convictions. (Standard Minimum Rules for the Treatment of Prisoners, rules 9 – 14, 19, 86; UNHCR Detention Guidelines, Guideline 10(ii), (ix))
- **Food:** Every detainee should be provided with food of nutritional value adequate for his or her health and strength. Facilities in which the food is prepared should be clean and food should be distributed to detainees in a sanitary manner. Facilities should provide detainees who so request a reasonable and equitable opportunity to observe their religious dietary practices. (Standard Minimum Rules for the Treatment of Prisoners, rule 20(1); ICESCR, art. 11; UN Rules for the protection of juveniles deprived of their liberty, rule 37)
- **Medical care and health services:** Detainees should receive appropriate medical treatment, and where needed, psychological counselling. Sick detainees who require specialized attention should be transferred to the appropriate medical facilities. A proper medical examination should be offered to detainees as promptly as possible. Screening should be done as soon as possible to identify possible survivors of torture and detainees with other special needs in order to provide the appropriate care. Detainees should be able to choose between a male or female doctor. Any health services should also include reproductive health services. It should be noted that many detainees suffer psychological and

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<sup>24</sup> UNHCR Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers, Guideline 10; Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, Principles 1, 6; Standard Minimum Rules for the Treatment of Prisoners, Rule 27.

physical effects as a result of their detention. Care should be taken to identify the onset of depression or other disabilities resulting from detention and to provide the necessary care, including advocating for release of the person. (ICESCR, art. 12; BPP, Principle 24; Standard Minimum Rules for the Treatment of Prisoners, rules 22, 25; Code of Conduct for Law Enforcement Officials, art. 6; Principles of Medical Ethics relevant to the Role of Health Personnel particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Principle 1)

- **Education:** All children, regardless of status, have a right to access to education. Where children are detained, they should be provided with education similar to that provided to nationals. Qualified teachers should provide classes on site or children should be transferred to local schools for classes. (CRC, art. 28; UNHCR Guidelines and Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, Guidelines 7.12, 7.13, 7.14)
- **Adult education and other programs:** Adult detainees should have the opportunity to continue their education or have access to vocational training. Cultural and education programs should be created and implemented in detention centres. (BPP, Principles 15, 18(1), 19; Standard Rules for the Treatment of Prisoners, rule 37; UNHCR Detention Guidelines, Guideline 10)
- **Recreation:** Detainees should have access to recreational activities while in detention. Outdoor exercise areas should be maintained by authorities and equipment made available for exercise. (CRC, art. 31; Standard Minimum Rules for the Treatment of Prisoners, rule 21; UNHCR Detention Guidelines, Guideline 10(vi))
- **Religious services:** Detainees should have the opportunity to exercise their religion. Separate facilities in detention centres should be made available for religious worship. Pastors, priests, imams and other religious personnel should be permitted regular access to detention centres to attend to the pastoral needs of detainees. (ICCPR, art. 18; Standard Rules for the Treatment of Prisoners, rules 41, 42; UNHCR Detention Guidelines, Guideline 10)
- **Contact with the outside world:** Detainees should be permitted to contact family, friends and counsel. Additionally, they should be permitted visits. In order to facilitate contact, detainees should be provided with phone cards. There should be facilities in each centre to permit visits in conditions of dignity. (BPP, Principles 15, 18(1), 19; Standard Rules for the Treatment of Prisoners, rule 37; UNHCR Detention Guidelines, Guideline 10)
- **Vulnerable groups:** Given the negative effects of detention on the psychological well being of particular detainees, efforts should be made to seek alternatives to detention to the following groups: unaccompanied elderly persons; torture or trauma victims; persons with a mental or physical disability; pregnant women and

mothers of infants and small children; unaccompanied or separated children. If detained, a medical doctor should certify that detention will not be harmful to them and regular follow up care and services should be provided by skilled personnel. (Standard Rules for the Treatment of Prisoners, rules 23(1), 53(1); UNHCR Detention Guidelines, Guideline 7)

#### ***RESOURCE TIP – DETENTION OF WOMEN AND CHILDREN***

***Several groups have reported on the particular situation of women and children in detention.***

- ***Women in Immigration Detention – More questions than answers (University of Technology, Sydney 2005) (UK)***
- ***‘They took me away’ - Women’s experiences of immigration detention in the UK (Asylum Aid 2004) (UK)***
- ***Behind Locked Doors: Abuse of Refugee Women at the Krome Detention Center (Women’s Commission for Refugee Women and Children 2000) (USA)***
- ***Liberty Denied: Women Seeking Asylum Imprisoned in the United States (Women’s Commission for Refugee Women and Children 1997) (USA)***
- ***Unaccompanied Children in Immigration Detention (Amnesty International 2003) (USA)***
- ***Report of the National Inquiry into Children in Immigration Detention (HREOC 2004) (Australia)***

- **Training:** All staff working with detainees should receive proper training regarding asylum, the causes of refugee movements and the situation in countries of origin of detainees. Additionally, there should be training on methods of recognizing and responding to symptoms of stress, which detained asylum seekers and refugees may exhibit. Staff should be trained on the human rights standards applicable to detention. Detention centres should work in collaboration with NGOs to create and implement training programmes with an opportunity for participation of both during certain trainings. (Standard Minimum Rules for the Treatment of Prisoners, rules 36, 27; Rules for the Protection of Juveniles Deprived of Their Liberty, paras. 88, 81)

**(v) *Are there bodies or institutions which monitor issues relating to detention?***

In addition to challenging detention either through the use of national advocacy campaigns or litigation in courts, advocates may also want to consider filing complaints with international or regional monitoring bodies. The UN Working Group on Arbitrary Detention (WGAD), based in Geneva, Switzerland, and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), based

in Strasbourg, France, are two bodies which monitor issues relating to procedural safeguards and conditions of detention.

**(a) *UN Working Group on Arbitrary Detention***

The Working Group on Arbitrary Detention (WGAD) was established in 1991 by the Commission on Human Rights with the following mandate:

- To investigate cases of arbitrary detention;
- To seek and receive information from governments, inter-governmental organizations and non-governmental organizations, and from individuals concerned, their families or representatives;
- To present a comprehensive report to the Commission at its annual session.

The WGAD is the only non-treaty based mechanism whose mandate provides for individual complaints. It is empowered to investigate cases and receive information concerning violations of human rights specifically related to deprivation of liberty. The WGAD is composed of five independent experts appointed by the Chairman of the Commission on Human Rights. It is assisted by the Secretariat of the Human Rights High Commissioner and holds three sessions per year, each lasting between five to eight days.<sup>25</sup>

The WGAD is empowered to investigate individual cases alleging violations of human rights standards relating to deprivation of liberty. In cases involving an individual or individuals, a communication should be sent, if possible accompanied by the model questionnaire to:<sup>26</sup>

Working Group on Arbitrary Detention  
c/o Office of the UN High Commissioner for Human Rights  
United Nations Office at Geneva  
CH-1211, Geneva 10  
Switzerland

Once a communication is received by the WGAD, it forwards the communication to the government concerned which is given 90 days to comment and respond. If the government desires additional time, it must specifically request an extension. Extensions may be granted for an additional two months. The WGAD does not reveal the identity of the individual who filed the complaint to the government. The reply by the government is shared with the individual filing the complaint for any additional comments. In light of the information collected, the WGAD will render an opinion determining whether or not an arbitrary deprivation of liberty has been established. If the WGAD finds a deprivation, it will issue recommendations to the government. If a person has been

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<sup>25</sup> For more on the WGAD, see, Fact Sheet No. 26 – The Working Group on Arbitrary Detention, available on the Office of the High Commissioner for Human Rights website at <http://www.unhchr.ch>.

<sup>26</sup> A copy of the model questionnaire is available in Appendix D. Additionally, copies are available on the UNHCHR website at <http://www.unhchr.ch>.

released, the WGAD can file the case or it can still issue an opinion. The WGAD opinions are published by the WGAD in a yearly report.

The WGAD also has an “urgent action” procedure for cases in which there are reliable allegations that a person is being detained arbitrarily and that continued detention might constitute a serious danger to that person’s health or life. In such cases, the urgent action is sent to the Minister of Foreign Affairs of the country concerned, requesting that the government take appropriate measures to ensure that the person’s right to life and physical and mental health are respected. For communications requesting that the Working Group launch an urgent appeal on humanitarian grounds, communications should be sent to the above address or, preferably by fax to: 41 22 917 90 06.

The WGAD can also visit countries to investigate conditions of detention. However, such visits can only be done at the invitation of the government concerned. In addition to field missions, the WGAD prepares a report for the High Commissioner for Human Rights, which describes its activities and includes information on complaints filed and opinions issued.

**(b) *The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment***

The CPT is a non-judicial mechanism authorized by the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to protect detainees. The CPT, through visits, is empowered to examine the treatment of persons deprived of their liberty with a view to strengthening the protection of such persons from torture. The Secretariat of the CPT forms part of the European Council’s Directorate General of Human Rights.<sup>27</sup> The CPT is comprised of independent experts from a variety of backgrounds, including medical doctors, lawyers and specialists in penal matters. There is one member for each Contracting State.

CPT members are empowered to visit all places of detention, including immigration detention centres. They have unlimited access, and can organize “ad hoc” visits as necessary – different to that of the Working Group on Arbitrary Detention which must request permission from governments to visit. States cannot object to the time or place of a visit with the exception of reasons of national defense, public safety, serious disorder, the medical condition of a person or during an urgent interrogation relating to a crime in progress. As of December 2005, the CPT carried out 206 visits to different facilities throughout Europe, 128 of those visits were periodic visits and 78 were ad hoc visits.

After completing a visit, the CPT provides information concerning its concerns confidentially to the government to begin a dialogue with the ultimate objective being improvement of the situation. If the state agrees to improve and does cooperate, the information remains confidential. However, where it does not, the CPT can publish the report. Additionally, the government itself can request publication of the report. The CPT publishes an annual report with a description of its activities.

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<sup>27</sup> Visit the webpage of the CPT at <http://www.cpt.coe.int> for more information.

## CHAPTER III

### PSYCHOSOCIAL ISSUES AFFECTING DETAINED REFUGEES, ASYLUM SEEKERS AND MIGRANTS

#### 3.1 Introduction

This section is directed primarily to those persons who visit detainees and to those persons who provide social services to them as well. It is meant as a guide for persons working directly with detainees and volunteers who visit to help them identify the psychosocial needs of detainees with suggestions on how to meet those needs. When we talk about psychosocial wellbeing and health we refer to both the psychological and social aspects of a person's life. Psychosocial intervention involves resolving the emotional, mental and behavioral effects of a traumatic event by helping those affected to utilize their internal and external coping mechanisms and resources. Many refugees and asylum seekers have suffered trauma in their countries of origin and during their flight. This trauma is often exacerbated in detention. Therefore, it is vital for those who work with and for refugees, asylum seekers and other forced migrants to attend to these very important needs.

#### **RESOURCE TIP – PSYCHIATRIC HARM AND LONG TERM DETENTION**

*Several studies have been carried out documenting the harm of long term detention on detained refugees, asylum seekers and migrants, including the following:*

- *Psychiatric Assessment of Children and Families in Immigration Detention – Clinical, Ethical and Administrative Issues. This paper was presented at the “Forgotten Rights Symposium, Professional Alliance for the Health of Asylum Seekers”, 12 November 2003, Sydney, Australia. Children in detention functioned below their expected cognitive potential, demonstrated symptoms of post traumatic stress disorder and major depression with suicidal ideation.*
- *From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers (Physicians for Human Rights and Bellevue & NYU Program for Survivors of Torture 2003). Reports on significant symptoms of depression, anxiety, post-traumatic stress disorder among detained asylum seekers. Situation improved upon release, but effects of detention lingered.*
- *Psychological disturbances in asylum seekers held in long term detention: a participant observer account. 175 Medical Journal of Australia 2001, pp. 593-596. Reported on signs of severe depression, despair, hopelessness, paranoia, chronic rage, persecutory delusions, sub-syndromal psychosis and persistent self-harming behaviour for those persons of persons in detention for certain*

*periods of time.*

- *A Second Exile: the Mental Health Implications of Detention of Asylum Seekers in the United Kingdom (Birmingham Mental Health NHS Trust 1995). Reports on depression, post traumatic stress disorder, profound despair, suicidal ideation and self-harming.*

### **3.2**     ***First visits***

In order to adequately attend to the needs of detainees, it is important to establish a relationship of ease and trust. Make sure to introduce yourself and explain the limits of what you can offer and the help that you can provide. The personal side of the relationship is the most important and the practical side will follow on. Have some subjects in mind as ice breakers to start the conversation, for example football, cooking, their country, how they are coping with detention. Be careful of questions about family until you know more about the person you are visiting.

Skills for persons working with detainees and for visitors are based on knowledge and understanding. Necessary knowledge includes, e.g., how the detention centre operates, its entry procedures, how to obtain help for the detainee under different circumstances etc. Additionally, it is helpful to review country of origin information of the detainee before the first visit. Therefore, it is very important to be familiar with the rules or regulations of the centre. Every so often, read through some of it just to remind yourself how to find the information you need. Other necessary knowledge will be gained as you become more experienced.

Understanding comes when we have insight, comprehension, and perception. Problems which hinder us can include misunderstanding motives, expectations, language barriers, legal processes, assumptions etc. Ignorance, secrets, half truths, lies, ambivalence, doubts, uncertainties, lack of trust all hinder our relationship with both the detainees and professionals.

### **3.3**     ***Listening Skills***

It sounds elementary – but the importance of developing effective listening skills cannot be overstated. Successful listening is a skill which requires the following:

- Genuine concern for the person and a desire to help
- Attention to cues to a person's emotional state
- Temporarily giving up one's own opinions, judgments and feelings

Blocks to effective listening include the following:

- Giving advice
- Reassuring the person

- Telling the person what to do, taking away their initiative or responsibility

Helpful hints for listening include the following:

- Listen with undivided attention, without interrupting
- Remember what has been said, with as much detail as possible
- Listen not only to what is being said, but possibly what is being felt
- Watch for non-verbal cues to help you understand
- Try to tolerate pauses and moments of silence that are a little longer than usual
- Help yourself and the other person feel comfortable and relaxed with each other
- Try to keep calm even when you don't feel like it

In responding to detainees, make sure you are as accurate as possible in what you say and clarify anything they have said that you do not understand. Keep questions to minimum unless you need precise information – then ask a precise question. Ask open questions – starting with “what” or “how” – if you want to encourage them to talk. Avoid using loaded remarks or making judgments. Also, avoid speaking too soon, too often or too long.

Sometimes, after receiving bad news or just because they are depressed or despondent, people may not want to talk. If they come to meet you, they are telling you that they want you to be there and they need you. Try to be as reassuring as possible. Leave pauses and silence so that there is a chance for them to say something.

**(i) *Sympathy, Identification and Empathy***

Sympathy has its roots in our own thoughts and feelings about what is happening. The response will be based on the judgements we are making about the situation. We tend to feel sympathetic when the person is a victim. We feel sorry they are suffering and so tend to qualify our sympathy if we feel they have in some way brought their problem on themselves.

Identification is based on our own personal experience. We have had similar feelings and may have been in a similar situation, are of the same religion, age etc. Your immediate response may be “this happened to me so I know how it feels”. You know how it feels for you but not for them. Your feelings will dictate your response.

Empathy is an expression of our efforts to understand how it is for them. It comes from listening to and respecting that the other person is different from me. Empathy statements are about “you” and not “I”.

Feelings can be transferred: Positive feelings of friendship; negative feelings of despair. Emotions are downloaded and we must be aware that this can happen both by us and by

the detainee. Boundaries need to be established at the beginning and you need to have a clear understanding of what you can offer.

**(ii) *Support for the visitor***

Visiting is a stressful job and visitors need to recognize the need for support for themselves. This can either be on an individual basis, with a supervisor or therapist, or as part of a group, where mutual support is offered. Feelings and emotions can be transferred to and from the person being visited. Positive feelings of friendship; negative feelings of despair. Emotions are downloaded and we must be aware that this can happen and think of ways in which they can be dealt with. Visitors would be wise to have a strategy in place, e.g., a calming tape to listen to in the car on the way home from a visit.

**(iii) *Boundaries***

Boundaries are very important. They may be different to those of another visitor but need to be established at the beginning, giving a clear understanding of what can be offered. Boundaries can always be changed, when the visitor understands fully the work being done.

**(iv) *Confidentiality***

It is important to fully understand the confidentiality rules of any organization with which visiting is being carried out. The detainee needs to be reassured that you will respect what they tell you and nothing should be disclosed without their permission.

### **3.4 *Psychological Issues in Detention and Depression***

There are many negative feelings common to detainees in all detention centres. They are suddenly in an unfamiliar environment where new relationships have to be worked out with staff, other detainees, visitors, lawyers and social and medical workers. Detainees face challenges with language and culture shock among other problems.

Some psychological issues, which face many detained refugees, asylum seekers and migrants include the following:

- Disorientation – new people, new language, culture shock
- Adapting to a “secure” environment which may reinforce and disturb people who have been imprisoned in their home countries – uniformed guards, loud noises, banging of gates, radios carried by guards, jangling keys
- Concerns for the life left behind and having little power over their new life – forced to abandon family, home, friends, work and study
- Arrest and imprisonment carry a stigma
- Concern and anxiety about the future
- Distress from journey to what was hoped to be a safe haven

- Disappointed by reception
- Problems left behind

**(i) *What is Depression?***

People often use the expression "I'm feeling depressed" when feeling sad or miserable. Usually, these feelings pass in due course. But, if the feelings are interfering with life or do not go away after a couple of weeks, or if they come back, over and over again, for a few days at a time, it could be a sign that someone is depressed in the medical sense of the term. In its mildest form, depression can mean just being in low spirits. It makes everything harder to do and seem less worthwhile. At its most severe, major depression (clinical depression) can be life-threatening, because it can make people suicidal or simply give up the will to live.

At least one person in every six becomes depressed in the course of their lives. One in 20 is clinically depressed. Figures suggest that more women become depressed, but men may find it harder to admit to or talk about. All age groups can be affected, and it's important to take symptoms seriously and not to dismiss them as an inevitable part of growing up or growing old. By recognizing and treating the symptoms, and getting help, it's possible to overcome depression, and prevent it coming back.

**(ii) *What are the symptoms of depression?***

Depression shows up in many different ways. People don't always realize what's going on, because their problems seem to be physical, not mental. They tell themselves they're simply under the weather or feeling tired. But, if you tick off five or more of the following symptoms, it's likely a person is depressed.

***SYMPTOMS OF DEPRESSION***

- *Restless and agitated*
- *Waking up early, having difficulty sleeping, or sleeping more*
- *Feeling tired and lacking energy; doing less and less*
- *Smoking more than usual*
- *Not eating properly and losing or putting on weight*
- *Frequent crying*
- *Difficulty remembering things*
- *Physical aches and pains with no obvious physical cause*
- *Feeling low-spirited for much of the time, every day*
- *Being unusually irritable or impatient*
- *Getting no pleasure out of life or what is usually enjoyed*
- *Losing interest in sex life*
- *Finding it hard to concentrate or make decisions*

- *Blaming themselves and feeling unnecessarily guilty about things*
- *Lacking self-confidence and self-esteem*
- *Being preoccupied with negative thoughts*
- *Feeling numb, empty and despairing*
- *Feeling helpless*
- *Distancing themselves from others; not asking for support*
- *Taking a bleak, pessimistic view of the future*
- *Experiencing a sense of unreality*
- *Self harming*
- *Thinking about suicide*

**(iii)      *Anxiety***

People who are depressed are often very anxious. It's not clear whether the anxiety leads into the depression or whether the depression causes the anxiety. A person feeling anxious may have a mind full of busy, repetitive thoughts, which make it hard to concentrate, relax, or sleep. They may have physical symptoms, such as headaches, aching muscles, sweating and dizziness. It may cause physical exhaustion and general ill health, resulting in poor eating and lack of physical fitness.

**(iv)      *How to help in situations of depression***

As noted above, many detained refugees and asylum seekers arrive in the host countries after experiencing traumatic events causing their flights. Most refugees, asylum seekers and other forced migrants face harrowing experiences during their journeys. These experiences can and often do result in depression. Therefore, it is vital for social workers and visitors to be able to identify the signs and think how to help the person overcome their depression. The following are some suggestions for helping.

**Encourage asking for help from medical centre**

Painful experiences are hard to talk about, but healthcare professionals understand this. Encourage the person you are supporting to be as open as they can and to seek the help of a staff psychologist or medical personnel. Help may come in the form of medication or in the form of talk therapy. Antidepressant drugs are the most common medical treatment for depression. They work on chemical messengers in the brain to lift your mood. They can't cure depression, but they can alleviate the symptoms. It often takes between two to four weeks before the drugs take effect. It is important that people understand how long it may take before they begin to notice any effect. It may also be important to help someone understand that a pill is a way of helping depression, as this is not understood in all cultures. Antidepressants can cause unpleasant side effects, which are worse to begin with but which fade as the body gets used to them.

If self-help groups exist in detention, it can be a great relief to meet and share experiences with other people who are going through the same experience. It can break down feelings of isolation and, at the same time, show you how other people have coped.

### **Encourage physical activity**

It is very therapeutic to take part in physical activities, for 20 minutes a day. Using any of the facilities in the centre, even just brisk walking can stimulate chemicals in the brain called endorphins, which can help to make a person feel better.

### **Befriending**

The very nature of depression, which brings a sense of hopelessness, helplessness and worthlessness, can prevent someone who's depressed from seeking help. They often withdraw rather than asking for help or support. However, this is a time when they need help and support most. Perhaps the most important thing that you can do is to encourage them to seek appropriate treatment.

### **Positive reinforcement**

Praise is much more effective than criticism. You can reassure them that it is possible to do something to improve their situation, but you need to do so in a caring and sympathetic way. People who are depressed need someone who cares for them. You can show that you care by listening sympathetically, by appreciating the person, or simply by spending time with them. You can help by encouraging them to talk about how they are feeling and getting them to work out what they can do in order to cope with their depression.

## **3.5 *Suicide Awareness and Self-Harm***

Suicidal feelings are frightening for the person who is experiencing them and for those around them. Anxiety and confusion about what to do and how to cope add to a distressing situation. Some people have a very strong, clear desire for death. They may feel hopeless about the future, believing that things will never get better. Suicide may seem to be the only way of solving problems, once and for all, ending the emotional pain of living.

However, a lot of self-destructive emotion, thoughts and behaviour is far more confused than this. Someone who feels that their situation and problems have become intolerable may see no alternative but to attempt to kill themselves. Yet, they are likely to have extremely mixed feeling about this, and feel very afraid.

Someone who tries to take an overdose of drugs, or to cut a vein in their wrist, may know only that they cannot go on with life as it is. In the weeks beforehand, depression, hopelessness and irritability often build up their tension. Under pressure, people may become desperate, but may still feel confused. They want to escape an impossible

situation, to relieve an unbearable state of mind, or to convey desperate feelings to others. Many may be past caring whether they live or die. The important fact for others to recognize is that, however wavering and confused the feelings may be, they remain life threatening.

In detention conditions, sometimes attempting suicide is a cry for help about their situation and custodians frequently say that they are just trying it in order to be released. However, it must be taken seriously as there are a number of suicides in detention centres each year. Some detainees would rather die than be returned to torture and imprisonment.

Self-harm is common in detention centres, but people who deliberately harm themselves are not necessarily suicidal. Some hurt themselves – by cutting, burning or scratching – in order to cope with overwhelming emotions and to release tension, so that emotional distress is transformed into physical pain. This may be caused by terrible feelings of guilt, shame and fear about what they are doing, yet they may feel powerless to stop. There is evidence of a link between attempted suicide and self-harming behaviour. Whether or not death is the objective, self-harm is not about seeking attention or playing games. Like suicidal feelings, self-harming behaviour may express a powerful sense of despair, and should be taken seriously.

#### ***FACTORS FOR SUICIDE RISK***

- ***Level of hopelessness – this is the single biggest indicator of risk, perhaps even more so than the level of depression***
- ***Level of fear about present situation – anxiety is also a notable indicator***
- ***Suicidal ideas – how specific and serious are they?***
- ***Suicide threats and similar statements– these are often ignored because people believe someone serious about suicide will keep it to themselves. This is not true.***

### ***3.6 Post Traumatic Stress Disorder (PTSD)***

Formerly called shell shock, combat fatigue, rape trauma syndrome, this is now included in the diagnostic manual of the American Psychiatric Association. Research and treatment of Vietnam veterans established it as a disorder in its own right.

It is an anxiety disorder that can occur following exposure to a traumatic event that caused intense fear, helplessness, or horror. PTSD can result from personal experiences (e.g. rape, war, natural disasters, abuse, serious accidents, captivity) or from witnessing or learning of a violent or tragic event. While it is common to experience a brief state of anxiety or depression after such occurrences, those with PTSD continually re-experience

the traumatic event. Those diagnosed with PTSD experience these symptoms for longer than one month and are unable to function as they did before the event. PTSD usually appears within three months of the traumatic experience, but in some circumstances can surface months or even years later.

There are three groups of symptoms which can be manifested in Post Traumatic Stress Disorder:

- **Re-experience:** Individuals with PTSD often experience recurrent and intrusive recollections of and/or nightmares about the stressful event. Some may experience flashbacks, hallucinations, or other vivid feelings of the event happening again. Others experience great psychological or physiological distress when certain things (objects, situations, sounds etc.) remind them of the event.
- **Avoidance:** Many with PTSD will persistently avoid things that remind them of the traumatic event. This can result in avoiding everything from thoughts, feelings, or conversations associated with the incident to activities, places, or people that cause them to recall the event. In others there may be a general lack of responsiveness signalled by an inability to recall aspects of the trauma, a decreased interest in formerly important activities, a feeling of detachment from others, a limited range of emotion and/or feelings of hopelessness about the future.
- **Persistent arousal:** Symptoms in this area may include difficulty concentrating, becoming very alert or watchful and/or jumpiness or being easily startled.

PTSD sufferers often experience impaired memory. They either cannot remember what happened or do not want to remember, becoming distressed in recalling the events. PTSD also affects emotional responses. Some sufferers may appear unemotional. Detention often serves as a constant reminder of their trauma where detainees experience loud noises and the feeling of constantly being watched. It is important to note that those with PTSD may be at an increased risk of suicide.

#### ***What treatment should be pursued for PTSD?***

Drug therapy reduces some symptoms of PTSD but does not provide a cure. Drugs are given for anxiety and depression and they can reduce symptoms of anxiety which has a knock-on effect on the avoidance symptoms. Cognitive behavioural therapy (CBT) is the non-pharmacological treatment of choice. The Medical Foundation for the Care of Victims of Torture provides CBT therapy in sessions ranging from 4 to 20 persons. 50% of those who participate report improvement in their symptoms.<sup>28</sup> Unfortunately, CBT often does not work in detention as most people only improve after release.

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<sup>28</sup> For more information on the Medical Foundation, visit its website at <http://www.torturecare.org.uk>.

### **3.7     *Hunger Striking***

A detainee is in a position of extreme powerlessness while the decision is being made on his or her case. By resorting to a hunger strike, some are using the threat of their slow and publicized physical decline as a tool of negotiation with the authorities, while others are showing the extent of their fear by deciding that they would rather die than be returned to their country.

Provided detainees consume fluids with salt and sugar, hunger strikers can survive for four to six weeks without food, depending on their age, build and general health. Underlying medical problems can be a factor, and deaths occurring earlier than this have been recorded.

During a hunger strike, the body's priority is to supply sufficient nourishment to the brain. Various mechanisms will come into play to meet this end. Overall, to conserve energy, other body systems slow down.

Physical consequences of hunger striking include the following:

- Loss of muscle tone
- Shrinkage of the heart and sluggish circulation
- Feeling cold and tiredness
- Falling blood pressure
- Experience of dizziness on standing
- Increased susceptibility to infections, eg. pneumonia

After two weeks, the hunger-striker will no longer experience stomach cramps and the overwhelming desire for food. As death draws nearer, eye muscle control is lost and a state of continuous light-headedness and repeated vomiting occurs. This can persist for four or five days, after which they cease and the strikers enter a somewhat euphoric state of mind. Speech, vision and smell began to fail and death follows.

The psychological health of hunger-strikers will depend entirely on individuals and the circumstances they find themselves in. Detainees with a strong political ideology and commitment appear to cope well, whilst conversely, those individuals particularly prone to depression might be the least able to survive a prolonged hunger strike.

#### ***What are the long term effects of hunger striking?***

The degree of any physical damage from a halted hunger strike will depend on the combination of the individual's constitution and the length of time without food. Psychologically, it will depend on how the outcome of the hunger-strike is perceived. If the demands have not been met, anger or depression may follow.

#### ***What role should a doctor play?***

It might be helpful at this point to consider the role of a detainee's doctor and the ethical framework in which decisions are made. A visitor may approach a detainee's doctor with a set of assumptions about what action, if any, a doctor may take. This has been an ethical minefield in the past. Internationally, there is no agreed consensus within the medical community as to what doctors' first considerations should be, and they can find themselves under considerable pressure from various parties. The British Medical Association's ethical guidelines state that it is unethical for a doctor to force-feed a hunger-striker. The guidelines should be researched for the country concerned.

The World Medical Association's Declaration on Hunger Strikers recognizes "that while there are conflicting ethical obligations for doctors caring for hunger strikers, they must ultimately respect the patient's wishes. Competent patients who refuse food and/or fluids should not be forcibly fed, even though the decision may lead to death."<sup>29</sup>

### *What role should a visitor play?*

Visiting a detainee on hunger-strike can obviously be extremely difficult and stressful. It is very important that the visitor does not confuse his or her emotion and world view with those of the detainee. This is not to say that visitor's role should be passive, as he or she is in a position to provide very valuable support. However, it is to be expected that a hunger-striker may well evoke a range of often conflicting emotions, from feelings of hopelessness and powerlessness to frustration and irritation. Visitor's attitudes will vary depending on the relationship they have built up with detainees before the hunger strike.

The following points should be borne in mind:

- Most importantly, talk to the detainee about why he or she wants to go on a hunger-strike. For example, there may be pressure to do so by fellow detainees.
- Make sure the detainee is aware of when and how health will be affected. It is vital that the importance of continuing to take fluids with sugar and salt is appreciated, otherwise decline will be rapid, and therefore there will not be enough time for the inevitable long-drawn out negotiations with the authorities.
- Try to discuss with the detainee how realistic is their chance of success.
- A visitor must not feel it is his or her duty to take responsibility for the detainee's life. Ultimately, it is no-one's decision but the detainee's who will benefit greatly if a visitor offers continued support and practical help whatever that decision may be.

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<sup>29</sup> World Medical Association Declaration on Hunger Strikers, adopted by the 43<sup>rd</sup> World Medical Assembly Malta, November 1991 and editorially revised at the 44<sup>th</sup> World Medical Assembly Marbella, Spain, September 1992. The declaration is available on the Association's website at <http://www.wma.net>.

## CHAPTER IV

### CULTURAL AWARENESS AND SENSITIVITY

#### 4.1 Introduction

The purpose of this section of the manual is to signpost issues for people working with detained refugees, asylum seekers and migrants on issues of communication and culture. Effective communication with people of different cultures is often challenging. Culture provides people with a way of thinking, a way of seeing, hearing and interpreting the world in their own context. Cultures see, feel and interpret words and actions in different ways. Therefore, it is vital when working with refugees, asylum seekers and migrants to understand our own culture and their cultures to find ways to effectively and honestly communicate.

In order to promote reflection on the issue of cultural sensitivity, it is helpful to understand the following terms and definitions.<sup>30</sup>

#### TERMS AND DEFINITIONS

- **Race:** *A dictionary definition is: the descendants of a common ancestor, especially those who inherit a common set of characteristics. However, according to scientists, the difference between racial groups is superficial and thus the term ‘race’ is in fact meaningless. There is actually only one race, the human race.*
- **Culture:** *Refers to attitudes, values and ways of life, e.g. religion, customs and food belonging to a particular group of people.*
- **Prejudice:** *Acquired beliefs and opinions that lead an individual or group of individuals to be biased for or against members of a particular group. ‘Prejudice’ means prejudging and is usually negative. Prejudiced opinions are not based on actual knowledge but on negative aspects that generate hostile views.*
- **Stereotyping:** *Refers to an image or opinion directed towards someone’s ethnic grouping which characterizes that person too readily or simplistically. Such images or opinions are often based on myths and hearsay.*

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<sup>30</sup> These terms and definitions were taken from “Strangers No More – Transformation through racial justice,” a training resource published by the Committee for Racial Justice of the Methodist Church UK. For more information on this publication and other training resources, visit the Methodist Church UK website at <http://www.methodist.org.uk>.

- **Ethnic:** *The word 'ethnic' is derived from the Greek word 'ethnikos' and refers to a people or a nation. Everyone has an ethnic origin. An ethnic group is a self-conscious collection of people, united or closely related by shared experience and distinct identity (e.g. language or culture). The term 'ethnic minority' or 'minority ethnic' refers to such a group of people who are numerically in a minority within a majority dominant group in society.*
- **Ethnocentrism:** *Refers to the belief in the superiority of ones' own cultural group or society and corresponding dislike or misunderstanding of other such groups.*
- **Xenophobia:** *'Fear of strangers.'* *Some people are more comfortable using the word xenophobia rather than racism, the implication being that we all fear strangers. This avoids the more fundamental basis for the fear, which is often racist.*
- **Racism:** *Racism in general terms consists of conduct, words or practices, which advantage or disadvantage people because of their colour, culture or ethnic origin. In its more subtle form it is as damaging as in its overt form.*

## 4.2 Awareness of different cultures

Culture is an identity which everyone has, based on a number of factors such as memories, ethnic identity, family attitudes to child rearing, class, money, religious or other celebrations, division of family roles according to gender or age. Cultures are neither superior nor inferior to each other. They are constantly evolving for both individuals and communities. Changes are ongoing both here and in other countries. Older people often have different attitudes to younger, more experienced members of their family.

Cultural awareness is:

- The ability to respect and positively acknowledge the similarities between people of different backgrounds and origins.
- Paying due respect to how people prefer to be treated and addressed.
- Approaching unfamiliar situations/issues with an open mind.
- Respecting boundaries and acknowledging our own limitations as well as using appropriate mechanisms to address difficult situations.
- About being self-aware and acknowledging that no one particular culture is superior in relation to other cultures.
- Not making assumptions.
- Avoiding stereotypical attitudes and behaviours.

Elements of culture include the following: tradition, etiquette, ceremony, values, body language, space, food, artistic expression, attitude to women, virginity, male / female role, dress, language, religion, left hand / right hand, time, giving, touching, greeting, kissing, sexuality and many more.

Cultural universals would usually include murder as universally wrong and life cycle rights.

Sensitivity and clarification are needed on meeting another culture. Awareness is also needed of our own cultural attitudes, which are often applied to others without awareness on our part.

When meeting a detainee for the first time, be aware that it may not be permitted to touch, hug or be demonstrative. There may also be surprise if a woman visits a man alone. Seek permission for touching, how close to sit (May I sit here?), what they would like to call you (e.g. Pakistanis/Indians show respect for elders by never calling them by their given name).

### ***4.3 What are some elements to consider in order to be culturally sensitive?***

*SPACE* is important. Our culture says leave a certain distance - do they prefer to be closer or further away?

*EYE CONTACT* - is it permitted in their culture between men and women?

*GREETING* - They may feel you are a figure of authority and so keep their eyes down in your presence to start with. This does not mean they are depressed or not interested in you - just that this is how they express respect.

*STATUS* varies according to culture. Men and women do not shake hands in some societies. Men are in authority, particularly in Muslim countries, and men and women do not touch in public.

*ATTRACTING ATTENTION* - Perhaps we would touch to attract attention to ourselves. "Shh, pst," might be used in Nigeria. In China to touch anyone on the head is very offensive.

*DON'T MAKE ASSUMPTIONS* - watch their body language and eye contact and if in doubt, ask if you have caused offence or for clarification of a point. If using an interpreter, enlist their help.

*BE AWARE OF WHO DOMINATES THE CONVERSATION* in order to develop a genuine relationship. Remember that a good story can be enhanced in order to get a detainee into the country of their choice.

#### **4.4 What are some key things to bear in mind when working with people from different cultures?**

Don't be the expert – ask questions to establish their needs.

Don't make assumptions; clarify anything, which worries you or the detainee.

Beware of stereotyping.

Always consider the detainees' perspective, especially their experience.

Become aware of what you bring into the relationship and how this might create barriers.

Focus on what you both want to achieve.

Be aware of the impact of the language we use – verbal, body, gestures, etc.

Be extremely aware of the power in the relationship – detainees have little power over their lives and their choices are limited.

Be responsive and sensitive, showing how we value each person even if correct etiquette is not always observed.

We are human beings and as such, may make mistakes.

Be aware that people are culturally bound, e.g. with respect to medical matters.

Differences are not bad, they can enrich our understanding of what it is to be human.

#### **4.5 What is culture shock?**

Culture shock is a term used to describe the psychological and physiological stress experienced when familiar cues are not longer present. This stress is common to any anxiety-producing situation and may be severe or mild, lasting several months or appear only fleetingly.

It is important to be remember that detainees are in a new setting, with unfamiliar social patterns and with perhaps a new language, different food and a great deal of stress at their situation. It is a different experience for every detainee as some may have come from the community and some may have been detained country immediately on entering the country.

Symptoms can include sleepiness, apathy, depression, compulsive eating or drinking, homesickness and exaggerated yearning for all things left behind, insecurity, panic, negative attitude to host nationals, fear of being cheated, decline in efficiency, minor illnesses and obsession with cleanliness. These symptoms may be mild or severe, and occur singly or in combination. A sympathetic response to the symptoms will go a long way towards helping them overcome their stress and shock.

Support can be given through:

- Encouraging them to discuss their problems and helping them find their own solutions;
- Boosting their morale by praising their efforts at helping themselves, e.g. learning English if this is a problem they face;

- Exercising in the gym or taking part in any of the classes held in the Detention Centre.
- Suggesting small steps towards tasks, which they see as enormous.

#### ***4.6 Some questions to consider in examining your own cultural background***

We are all part of a culture. Many of us have complex cultural roots. It is easy to assume that others share our attitudes to everyday human interactions. When these assumptions are false, we may unwittingly hurt, offend or make a barrier to trust or friendship. In order to promote greater sensitivity on our part, it is important for us to look where we come from and why we behave in certain ways. Consideration and discussion of the following questions may help you and your colleagues in being more aware and respectful of different cultures.

When you first meet someone, how do you feel about:

- Shaking hands?
- Eye contact?
- Use of your given name?

How do you feel about being questioned about personal things such as:

- Income?
- Family details?
- Education?
- Job?
- Diet?
- Physical appearance?

Are you a member of a minority in any part of your life? For example:

- Gender
- Religion
- Political views
- Family background
- Medical history

Have you ever felt offended by a remark, which touched on your culture? For example:

- Religion
- Job
- Activity as a man or woman

Can you think of an example when someone made you feel good by a remark, which showed their understanding of your personal culture?

## APPENDIX A

### *International Legal Framework Governing Detention of Refugees, Asylum Seekers and Migrants*

Below is a description of the international treaties, guidelines, resolutions and principles relevant to administrative detention.

- **Universal Declaration of Human Rights 1948 (UDHR):** Article 3 of the UDHR provides that everyone has the right to liberty. Additionally, article 13 states that every person has the right to freedom of movement and residence within the borders of each state, including the right to leave any country and to return. Article 14 of the UDHR provides that every person has the right to seek and enjoy asylum from persecution.
- **1951 Convention relating to the Status of Refugees (the Geneva Convention):** The Geneva Convention is the primary document addressing the issue of refugee protection, establishing the definition of refugee, the rights of refugees and the obligations of States to provide protection. Article 26 requires states to permit freedom of movement for refugees and asylum seekers who are lawfully in the territory. Persons with asylum applications pending should be considered to be lawfully in the territory and, therefore, should not be detained. Article 31(1) advises states that they should not penalize refugees or asylum seekers on account of illegal entry or presence in the host country. Article 31(2) urges governments to restrict freedom of movement only when necessary. The drafters of the Geneva Convention understood that detention could be necessary under certain circumstances. Therefore, under Article 9, governments are permitted to take provisional measures in times of war or other exceptional or grave circumstances and necessary to national security. Such provisional measures include detention.
- **International Covenant on Civil and Political Rights (ICCPR):** The ICCPR establishes the basic civil and political rights of individuals. Articles relevant to detention include the following: 1) Article 2 requires State Parties to ensure to all individuals within its territories that the rights delineated in the covenant be respected; 2) Article 7 contains the prohibition against torture or cruel, inhuman or degrading treatment; 3) Article 9 guarantees the right of liberty and security of persons to all; 4) Article 10 provides that all persons detained shall be treated with humanity and dignity; 5) Article 12 establishes that all persons within a state's territory be guaranteed freedom of movement and freedom to choose residence; 6) Article 13 establishes due process in expulsion procedures; and, 7) Article 40 requires State Parties to submit reports relating to their compliance with the treaty. Article 1 of the Optional Protocol to the ICCPR provides for an individual complaint mechanism for persons alleging violations of the Convention.

- **International Covenant on Economic, Social and Cultural Rights (ICESCR):** Article 3 of the ICESCR obliges State Parties to ensure the equal rights of men and women in the enjoyment of all economic, social and cultural rights as set forth in the treaty. This provision makes no distinction between nationals of States Parties and foreigners residing therein.
- **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT):** Under Article 3 of CAT, State Parties are prohibited from returning or extraditing persons to another State where they may face torture. Article 16 requires states to prevent acts of cruel, inhuman or degrading treatment or punishment by or at the instigation of or with the consent or acquiescence of public officials or other persons in an official capacity. CAT also provides an individual complaint mechanism for persons to file against State Parties who claim to be victims of a violation of the Convention.
- **Convention on the Rights of the Child (CRC):** Article 3 of the CRC establishes the standard of best interest of the child in all actions concerning children, whether taken by public or private institutions. Article 9 requires State Parties to ensure that children are not separated from their parents against their will with some exceptions. Article 22 requires that State Parties take all appropriate measures to make sure that a refugee child or one who is seeking refugee status, whether accompanied or unaccompanied, be given appropriate protection and humanitarian assistance. Article 37 prohibits torture or other cruel, inhuman or degrading treatment or punishment against children and states that children should not be deprived of their liberty unlawfully or arbitrarily. Detention should only be used as a last measure and for the shortest time possible.
- **Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers Convention):** Several provisions in the Migrant Workers Convention address detention. Article 16 provides that migrants should not be subjected either individually or collectively to arbitrary arrest or detention. Article 17 states that when detained, migrants must be held in conditions of dignity and should be held separate from persons convicted of crimes or awaiting trial. Article 23 provides that migrants in detention have a right to be advised of their right to contact their consulate and efforts should be made by the detaining authorities to facilitate such access when requested. It should be noted that the Migrant Workers Convention applies to both documented and undocumented migrants.
- **Standard Minimum Rules for the Treatment of Prisoners:** These rules were adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Geneva in 1955 and approved by the Economic and Social Council by resolutions in 1957 and again in 1977. They apply to both civil and criminal prisoners and set out what is good principle and practice in the treatment of prisoners and the management of institutions which detain and house

prisoners. The Rules cover issues such as: separation of different categories or prisoners; type of accommodation; personal hygiene; clothing and bedding; exercise and sport; medical services; discipline and punishment; instruments of restraint; information to and complaints by prisoners; contact with the outside world; books; religion; retention of prisoners' property; notification of death, illness, transfer, etc.; removal of prisoners; institutional personnel; and inspection of prisons.

- **Code of Conduct for Law Enforcement Officials:** The code, adopted by the UN General Assembly in 1979, applies to all law enforcement personnel defined as: all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention. The code obliges law enforcement officials to protect human dignity and respect the human rights of all in the performance of their duties. The code addresses the narrow circumstances justifying a use of force by law enforcement, confidentiality, prohibition on acts or acquiescence in acts of torture or inhumane treatment, protection of health of persons in their custody and other matters.
- **Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:** These principles were adopted by the UN General Assembly in 1982 and apply to both civil and criminal prisoners. The principles require physicians and health personnel to provide prisoners and detainees with protection of their physical and mental health and treatment of the same quality and standard as afforded to those not imprisoned or detained. They oblige health personnel and physicians to not engage in any activities, either passively or actively, which involve torture or inhumane or cruel treatment.
- **Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment:** In approving the Body of Principles in 1988, the UN General Assembly urged that every effort be made to ensure respect for these principles worldwide. They apply to all persons under any form of detention or imprisonment. The principles define "detained person" as any person deprived of personal liberty except as a result of conviction for an offense. "Detention" means the condition of a detained person as previously defined. The principles provide that all persons under any form of detention should be treated humanely and with dignity. Detained persons should be separated from those awaiting trial or who have been convicted. The principles address both procedural guarantees relating to detention and conditions of detention, including the right to information and counsel, the prohibition against torture or inhumane or cruel treatment, the right to family visits and the right to medical care.
- **Basic Principles for the Treatment of Prisoners (1990):** These principles were adopted by the UN General Assembly in 1990 and establish basic standards for

the treatment of persons in prison, emphasizing respect for dignity, religious beliefs and culture.

- **Rules for the Protection of Juveniles Deprived of their Liberty:** These rules, adopted by the UN General Assembly in 1990, apply to all persons under 18 years of age. The rules are intended to establish minimum standards accepted by the United Nations for the protection of minors deprived of their liberty consistent with human rights principles. The rules address the management of juvenile facilities, specifically on the following issues: records; admission, registration, movement and transfer; physical environment and accommodation; education, vocational training and work; recreation; religion; medical care; notification of illness, injury and death; contacts with the outside world; limitation of physical restraint and the use of force; disciplinary procedures; and inspections and complaints.
- **UNHCR Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum:** These guidelines, issued by the UNHCR in 1997, provide guidance to governmental and non-governmental personnel alike in dealing with unaccompanied minor asylum seekers. They should be applied in conjunction with the UNHCR Guidelines on Refugee Children. The guidelines recognize that children are entitled to special care and protection and specifically state that children seeking asylum should not be kept in detention. The guidelines address the following issues: access to the territory for children asylum seekers; identification and initial action; access to asylum procedures; interim care and protection of children seeking asylum; refugee status determination; identification and implementation of durable solutions; and cooperation and coordination between agencies.
- **UNHCR Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers:** These guidelines are the primary non-binding instrument governing detention of asylum seekers. According to the UNHCR, detention of asylum seekers is inherently undesirable, especially in vulnerable cases, such as those involving children, disabled people, the elderly, pregnant women and other persons with special needs. Asylum seekers should not be detained except under the following circumstances: to verify identity; to determine the elements on which the claim for refugee status or asylum is based; in cases where asylum seekers have destroyed documents or used false documents to mislead authorities; or to protect national security and public order. Regarding verification of identity, this refers to cases where identity may be undetermined or in dispute. The exception relating to determining the elements upon which a claim is based refers to an initial interview to confirm that the person needs protection. It does not refer to the full interview to determine the merits of a claim. The exception relating to false documents is applied when the applicant has an intent to mislead authorities. Asylum seekers who are unable to obtain documents prior to leaving their country of origin should not be detained solely for that reason. Regarding the public security exception, this relates to cases where there

is evidence to show that the asylum seeker has a criminal background or affiliations which pose a risk to public order or national security. The guidelines stress that detention cannot be used to deter the entrance of future asylum seekers. The UNHCR urges governments to use alternatives to detention first before taking a decision to detain. These alternatives can include the following: a monitoring or reporting requirement; the provision of a guarantor; release on bond; or accommodation in open centres. In addition to addressing the presumption against detention, exceptions to this presumption and alternatives, the guidelines address the following issues: procedural safeguards; detention of persons under the age of 18 years; detention of vulnerable persons; detention of women; and conditions of detention.

- **UNHCR Executive Committee Conclusion No. 44 of 1986: Detention of Refugees and Asylum Seekers**
- **UNHCR Executive Committee Conclusion No. 22 of 1981: Protection of Asylum Seekers in Situations of Large Scale Influx**
- **UNHCR Executive Committee Conclusion No. 58 of 1989: Problem of Refugees and Asylum Seekers Who Move in an Irregular Manner from a Country in Which They Had Already Found Protection**
- **UN Human Rights Committee, General Comment 8, Article 9 (Sixteenth Session, 1986)**
- **UN Human Rights Committee, General Comment 15 (Twenty-seventh Session, 1986)**
- **UN Human Rights Committee General Comment 21, Article 10 (Forth-fourth Session, 1992)**
- **UN Human Rights Committee, General Comment 20, Article 7 (Forty Fourth Session, 1992)**

## APPENDIX B

### *European Legal Framework Relating to Detention*

- **European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR):** The ECHR and its five protocols are enforced by the European Court of Human Rights and is the treaty of reference of the Council of Europe. 45 countries have ratified the ECHR.<sup>31</sup> The ECHR provisions most relative to detention are: article 3 – prohibition of torture; article 5 – the right to liberty and security; article 8 – right to respect for family and private life.
  - *ECHR Article 3 (prohibition against torture):* This provision prohibits torture or inhuman or degrading treatment or punishment and is particularly relevant to conditions of detention. In the “Greek Case,” the European Court of Human Rights concluded that detention conditions in the Greek facility constituted a violation of Article 3 where the conditions included overcrowding, inadequate heating, inadequate sleeping and toilet facilities, insufficient food, recreation and contacts with the outside world.<sup>32</sup>
  - *ECHR Article 5 (right to liberty):* Under this provision, detention is permitted when a procedure is prescribed by law and only in certain cases. In the case of administrative detention, article 5(f) permits the lawful arrest or detention of a person to prevent him or her from entering the country without authorization or of a person against whom deportation or extradition procedures are pending. The European Court of Human Rights has ruled that a procedure prescribed by law means a fair and proper procedure, conducted by an appropriate authority and free from arbitrariness.<sup>33</sup>
  - *ECHR Article 8 (right to family and privacy):* This provision protects the right to family and privacy. Therefore, where two or more family members are detained, the authorities must avoid separating them.

Relating to the protection of liberty, ECHR article 5 provides the following rights: the right to prompt information regarding the reasons for detention in a language which the person understands;<sup>34</sup> the right to challenge detention and to legal

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<sup>31</sup> Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Russia, San Marino, Serbia and Montenegro, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, Ukraine and the United Kingdom.

<sup>32</sup> *Dougoz v. Greece*, judgment of 6 March 2001. See, also, *Cyprus v. Turkey*, Commission report of 10 July 1976 (not providing enough food, water and medical assistance in detention centre constitutes inhuman treatment).

<sup>33</sup> *Winterwerp v. the Netherlands*, judgment of 24 October 1979; see also, *Conka v. Belgium*, judgment of 5 February 2002; *Amuur v. France*, judgment of 25 June 1996.

<sup>34</sup> See *Fox, Campbell and Harley v. the United Kingdom*, judgment of 30 August 1990 (arrested person must be told in simple, non-technical language that he can understand, the essential legal and factual grounds for arrest and that he can challenge the decision in a court).

assistance;<sup>35</sup> and the right to compensation for persons deprived of their liberty in violation of the ECHR. The ECHR makes no specific mention of time limits for administrative detention. However, the Court has ruled that continued detention is not justified where expulsion or deportation proceedings are not carried out with due diligence.<sup>36</sup> Finally, it should be noted that article 2 of Protocol 4 to the ECHR provides free movement for those persons lawfully in the territory of a State and the right to choose one's residence. Since states are bound by law to respect the principle of non-refoulement and all persons have the right to seek asylum protection, it follows that asylum seekers with a pending application are lawfully within a country pending final adjudication of their claims.<sup>37</sup>

- **Charter of Fundamental Rights of the European Union:** Under article 45 of the Charter, freedom of movement is granted not only to EU citizens, but may also be granted to third country nationals legally resident in the territory of a Member State. National legislation determines who is legally residing in the territory but refugees are not considered illegal where there are no grounds for their removal.<sup>38</sup>
- **Standards of the European Committee for the Prevention of Torture (CPT Standards):** Article 1 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment provided for the creation of a committee to visit places of detention to ensure compliance with its provisions. The Secretariat of the CPT forms part of the Council of Europe's Directorate General of Human Rights. In several of its General reports, the CPT has described some of the substantive issues it addresses during its visits to places of detention. The CPT Standards represent updated substantive sections of those reports providing guidance on issues dealing with policy custody, imprisonment, training of law enforcement personnel, health care services in prisons, foreign nationals detained under aliens legislation, involuntary placement in psychiatric establishments and juveniles and women deprived of their liberty. The standards addressing foreigners discuss the following issues: safeguards during detention, safeguards during expulsion proceedings and implementation of expulsion orders.
- **EU Council Directive on minimum standards for the reception of asylum seekers (2003):** This directive instructs Member States on reception standards they must put in place for refugees and asylum seekers in their territories. These standards also apply to refugees and asylum seekers in detention.

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<sup>35</sup> Al Nashif v. Bulgaria, judgment of 20 May 2002.

<sup>36</sup> Bozano v. France, judgment of 18 December 1986.

<sup>37</sup> See article 31 of the Geneva Convention (states should not penalize the unlawful entry or stay of refugees); see, also, Commentary on the Refugee Convention 1951, published by the Division of International Protection of the UNHCR, 1997: "If a refugee is allowed to establish himself in a country and takes up residence there, he is lawfully staying in the country."

<sup>38</sup> Commentary on the Refugee Convention 1951, published by the Division of International Protection of the UNHCR, 1997: "If a refugee is allowed to establish himself in a country and takes up residence there, he is lawfully staying in the country."

- **Council of Europe Recommendation Rec (2003) of the Committee of Ministers to member states on measures of detention of asylum seekers:** This resolution, adopted by the Council of Europe on April 16, 2003, cautions governments to use detention only under very narrow circumstances.
- **Council of Europe – Twenty Guidelines on Forced Return:** In May 2005, the Committee of Ministers of the Council of Europe adopted these guidelines, which address the following: voluntary return; removal orders; detention pending removal; readmission; and forced removals. These guidelines promote alternatives to detention, recommend that detention pending deportation should be for periods as short as possible and urge governments to implement deportation proceedings and final removal with due diligence. The guidelines also recommend that children be detained only as a last resort. The guidelines also address conditions in detention centres pending final removal.

## APPENDIX C

### UNHCR REVISED GUIDELINES ON APPLICABLE CRITERIA AND STANDARDS RELATING TO THE DETENTION OF ASYLUM SEEKERS<sup>1</sup>

(February 1999)

#### Introduction

1. The detention of asylum-seekers is, in the view of UNHCR inherently undesirable. This is even more so in the case of vulnerable groups such as single women, children, unaccompanied minors and those with special medical or psychological needs. Freedom from arbitrary detention is a fundamental human right and the use of detention is, in many instances, contrary to the norms and principles of international law.

2. Of key significance to the issue of detention is Article 31 of the 1951 Convention <sup>2</sup>. Article 31 exempts refugees coming directly from a country of persecution from being punished on account of their illegal entry or presence, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. The Article also provides that Contracting States shall not apply to the movements of such refugees restrictions other than those which are **necessary**, and that any restrictions shall only be applied until such time as their status is regularised, or they obtain admission into another country.

3. Consistent with this Article, detention should only be resorted to in cases of **necessity**. The detention of asylum-seekers who come "directly" in an irregular manner should, therefore, not be automatic, or unduly prolonged. This provision applies not only to recognised refugees but also to asylum-seekers pending determination of their status, as recognition of refugee status does not make an individual a refugee but declares him to be one. Conclusion No. 44(XXXVII) of the Executive Committee on the Detention of Refugees and Asylum-Seekers examines more concretely what is meant by the term "**necessary**". This Conclusion also provides guidelines to States on the use of detention and recommendations as to certain procedural guarantees to which detainees should be entitled.

4. The expression "coming directly" in Article 31(1), covers the situation of a person who enters the country in which asylum is sought directly from the country of origin, or from another country where his protection, safety and security could not be assured. It is understood that this term also covers a person who transits an intermediate country for a short period of time without having applied for, or received, asylum there. No strict time limit can be applied to the concept "coming directly" and each case must be judged on its merits. Similarly, given the special

situation of asylum-seekers, in particular the effects of trauma, language problems, lack of information, previous experiences which often result in a suspicion of those in authority, feelings of insecurity, and the fact that these and other circumstances may vary enormously from one asylum seeker to another, there is no time limit which can be mechanically applied or associated with the expression "without delay". The expression "good cause", requires a consideration of the circumstances under which the asylum-seeker fled. The term "asylum-seeker" in these guidelines applies to those whose claims are being considered under an admissibility or pre-screening procedure as well as those who are being considered under refugee status determination procedures. It also includes those exercising their right to seek judicial and/or administrative review of their asylum request.

5. Asylum-seekers are entitled to benefit from the protection afforded by various International and Regional Human Rights instruments, which set out the basic standards and norms of treatment. Whereas each State has a right to control those entering into their territory, these rights must be exercised in accordance with a prescribed law, which is accessible and formulated with sufficient precision for the regulation of individual conduct. For detention of asylum-seekers to be lawful and not arbitrary, it must comply not only with the applicable national law, but with Article 31 of the Convention and international law. It must be exercised in a non-discriminatory manner and must be subject to judicial or administrative review to ensure that it continues to be necessary in the circumstances, with the possibility of release where no grounds for its continuation exist.<sup>3</sup>

6. Although these guidelines deal specifically with the detention of asylum-seekers the issue of the detention of stateless persons needs to be highlighted.<sup>4</sup> While the majority of stateless persons are not asylum-seekers, a paragraph on the detention of stateless persons is included in these guidelines in recognition of UNHCR's formal responsibilities for this group and also because the basic standards and norms of treatment contained in international human rights instruments applicable to detainees generally should be applied to both asylum-seekers and stateless persons. The inability of stateless persons who have left their countries of habitual residence to return to them, has been a reason for unduly prolonged or arbitrary detention of these persons in third countries. Similarly, individuals whom the State of nationality refuses to accept back on the basis that nationality was withdrawn or lost while they were out of the country, or who are not acknowledged as nationals without proof of nationality, which in the circumstances is difficult to acquire, have also been held in prolonged or indefinite detention only because the question of where to send them remains unresolved.

***Guideline 1: Scope of the Guidelines.***

These guidelines apply to all asylum-seekers who are being considered for, or who are in, detention or detention-like situations. For the purpose of these guidelines, UNHCR considers detention as: confinement within a narrowly bounded or restricted location, including prisons, closed camps, detention facilities or airport transit zones, where

freedom of movement is substantially curtailed, and where the only opportunity to leave this limited area is to leave the territory. There is a qualitative difference between detention and other restrictions on freedom of movement.

Persons who are subject to limitations on domicile and residency are not generally considered to be in detention.

When considering whether an asylum-seeker is in detention, the cumulative impact of the restrictions as well as the degree and intensity of each of them should also be assessed.

### ***Guideline 2: General Principle***

As a general principle asylum-seekers should not be detained.

According to Article 14 of the Universal Declaration of Human Rights, the right to seek and enjoy asylum is recognised as a basic human right. In exercising this right asylum-seekers are often forced to arrive at, or enter, a territory illegally. However the position of asylum-seekers differs fundamentally from that of ordinary immigrants in that they may not be in a position to comply with the legal formalities for entry. This element, as well as the fact that asylum-seekers have often had traumatic experiences, should be taken into account in determining any restrictions on freedom of movement based on illegal entry or presence.

### ***Guideline 3: Exceptional Grounds for Detention.***

Detention of asylum-seekers may exceptionally be resorted to for the reasons set out below as long as this is clearly prescribed by a national law which is in conformity with general norms and principles of international human rights law. These are contained in the main human rights instruments.<sup>5</sup>

There should be a presumption against detention. Where there are monitoring mechanisms which can be employed as viable alternatives to detention, (such as reporting obligations or guarantor requirements [see Guideline 4]), these should be applied first unless there is evidence to suggest that such an alternative will not be effective in the individual case. Detention should therefore only take place after a full consideration of all possible alternatives, or when monitoring mechanisms have been demonstrated not to have achieved the lawful and legitimate purpose.

In assessing whether detention of asylum-seekers is necessary, account should be taken of whether it is reasonable to do so and whether it is proportional to the objectives to be achieved. If judged necessary it should only be imposed in a non-discriminatory manner for a minimal period.<sup>6</sup>

The permissible exceptions to the general rule that detention should normally be avoided must be prescribed by law. In conformity with EXCOM Conclusion No. 44 (XXXVII) the detention of asylum-seekers may only be resorted to, if necessary:

(I) to verify identity.

This relates to those cases where identity may be undetermined or in dispute.

(ii) to determine the elements on which the claim for refugee status or asylum is based.

This statement means that the asylum-seeker may be detained exclusively for the purposes of a preliminary interview to identify the basis of the asylum claim.<sup>7</sup> This would involve obtaining essential facts from the asylum-seeker as to why asylum is being sought and would not extend to a determination of the merits or otherwise of the claim. This exception to the general principle cannot be used to justify detention for the entire status determination procedure, or for an unlimited period of time.

(iii) in cases where asylum-seekers have destroyed their travel and /or identity documents or have used fraudulent documents in order to mislead the authorities of the State, in which they intend to claim asylum.

What must be established is the absence of good faith on the part of the applicant to comply with the verification of identity process. As regards asylum-seekers using fraudulent documents or traveling with no documents at all, detention is only permissible when there is an intention to mislead, or a refusal to co-operate with the authorities. Asylum-seekers who arrive without documentation because they are unable to obtain any in their country of origin should not be detained solely for that reason.

(iv) to protect national security and public order.

This relates to cases where there is evidence to show that the asylum-seeker has criminal antecedents and/or affiliations which are likely to pose a risk to public order or national security should he/she be allowed entry.

Detention of asylum-seekers, which is applied for purposes other than those listed above, for example, as part of a policy to deter future asylum-seekers, or to dissuade those who have commenced their claims from pursuing them, is contrary to the norms of refugee law. It should not be used as a punitive or disciplinary measure for illegal entry or presence in the country. Detention should also be avoided for failure to comply with the administrative requirements or other institutional restrictions related residency at reception centres, or refugee camps. Escape from detention should not lead to the automatic discontinuation of the asylum procedure, or to return to the country of origin, having regard to the principle of non- refoulement.<sup>8</sup>

#### ***Guideline 4: Alternatives to Detention.***

Alternatives to the detention of an asylum-seeker until status is determined should be considered. The choice of an alternative would be influenced by an individual assessment of the personal circumstances of the asylum-seeker concerned and prevailing local conditions.

Alternatives to detention, which may be considered, are as follows:

(i) Monitoring Requirements.

Reporting Requirements: Whether an asylum-seeker stays out of detention may be conditional on compliance with periodic reporting requirements during the status determination procedures. Release could be on the asylum-seeker's own recognisance, and/or that of a family member, NGO or community group who would be expected to ensure the asylum-seeker reports to the authorities periodically, complies with status determination procedures, and appears at hearings and official appointments.

Residency Requirements: Asylum-seekers would not be detained on condition they reside at a specific address or within a particular administrative region until their status has been determined. Asylum-seekers would have to obtain prior approval to change their address or move out of the administrative region. However this would not be unreasonably withheld where the main purpose of the relocation was to facilitate family reunification or closeness to relatives<sup>9</sup>

(ii) Provision of a Guarantor/ Surety. Asylum seekers would be required to provide a guarantor who would be responsible for ensuring their attendance at official appointments and hearings, failure of which a penalty most likely the forfeiture of a sum of money, levied against the guarantor.

(iii) Release on Bail. This alternative allows for asylum-seekers already in detention to apply for release on bail, subject to the provision of recognisance and surety. For this to be genuinely available to asylum-seekers they must be informed of its availability and the amount set must not be so high as to be prohibitive.

(iv) Open Centres. Asylum-seekers may be released on condition that they reside at specific collective accommodation centres where they would be allowed permission to leave and return during stipulated times.

These alternatives are not exhaustive. They identify options, which provide State authorities with a degree of control over the whereabouts of asylum-seekers while allowing asylum-seekers basic freedom of movement.

***Guideline 5: Procedural Safeguards.***<sup>10</sup>

If detained, asylum-seekers should be entitled to the following minimum procedural guarantees:

(i) to receive prompt and full communication of any order of detention, together with the reasons for the order, and their rights in connection with the order, in a language and in terms which they understand;

(ii) to be informed of the right to legal counsel. Where possible, they should receive free legal assistance;

(iii) to have the decision subjected to an automatic review before a judicial or administrative body independent of the detaining authorities. This should be followed by regular periodic reviews of the necessity for the continuation of detention, which the asylum-seeker or his representative would have the right to attend;

(iv) either personally or through a representative, to challenge the necessity of the deprivation of liberty at the review hearing, and to rebut any findings made. Such a right should extend to all aspects of the case and not simply the executive discretion to detain;

(v) to contact and be contacted by the local UNHCR Office, available national refugee bodies or other agencies and an advocate. The right to communicate with these representatives in private, and the means to make such contact should be made available.

Detention should not constitute an obstacle to an asylum-seekers' possibilities to pursue their asylum application.

***Guideline 6: Detention of Persons under the Age of 18 years.***<sup>11</sup>

In accordance with the general principle stated at Guideline 2 and the UNHCR Guidelines on Refugee Children, minors who are asylum-seekers should not be detained.

In this respect particular reference is made to the Convention on the Rights of the Child in particular:

- Article 2 which requires that States take all measures appropriate to ensure that children are protected from all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians or family members;
- Article 3 which provides that in any action taken by States Parties concerning children, the best interests of the child shall be a primary consideration;
- Article 9 which grants children the right not to be separated from their parents against their will;
- Article 22 which requires that States Parties take appropriate measures to ensure that minors who are seeking refugee status or who are recognised refugees, whether accompanied or not, receive appropriate protection and assistance;
- Article 37 by which States Parties are required to ensure that the detention of minors be used only as a measure of last resort and for the shortest appropriate period of time.

Unaccompanied minors should not, as a general rule, be detained. Where possible they should be released into the care of family members who already have residency within the asylum country. Where this is not possible, alternative care arrangements should be made by the competent child care authorities for unaccompanied minors to receive adequate accommodation and appropriate supervision. Residential homes or foster care placements may provide the necessary facilities to

ensure their proper development, (both physical and mental), is catered for while longer term solutions are being considered.

All appropriate alternatives to detention should be considered in the case of children accompanying their parents. Children and their primary caregivers should not be detained unless this is the only means of maintaining family unity.

If none of the alternatives can be applied and States do detain children, this should, in accordance with Article 37 of the Convention on the Rights of the Child, be as a measure of last resort, and for the shortest period of time.

If children who are asylum-seekers are detained at airports, immigration-holding centres or prisons, they must not be held under prison-like conditions. All efforts must be made to have them released from detention and placed in other accommodation. If this proves impossible, special arrangements must be made for living quarters, which are suitable for children and their families.

During detention, children have a right to education, which should optimally take place outside the detention premises in order to facilitate the continuation of their education upon release. Provision should be made for their recreation and play, which is essential to a child's mental development and will alleviate stress and trauma.

Children, who are detained, benefit from the same minimum procedural guarantees (listed at Guideline 5) as adults. A legal guardian or adviser should be appointed for unaccompanied minors.<sup>12</sup>

#### ***Guideline 7: Detention of Vulnerable Persons.***

Given the very negative effects of detention on the psychological well being of those detained, active consideration of possible alternatives should precede any order to detain asylum-seekers falling within the following vulnerable categories:<sup>13</sup>

Unaccompanied elderly persons.

Torture or trauma victims.

Persons with a mental or physical disability.

In the event that individuals falling within these categories are detained, it is advisable that this should only be on the certification of a qualified medical practitioner that detention will not adversely affect their health and well being. In addition there must be regular follow up and support by a relevant skilled professional. They must also have access to services, hospitalisation, medication counseling etc. should it become necessary.

***Guideline 8: Detention of Women.***

Women asylum-seekers and adolescent girls, especially those who arrive unaccompanied, are particularly at risk when compelled to remain in detention centres. As a general rule the detention of pregnant women in their final months and nursing mothers, both of whom may have special needs, should be avoided.

Where women asylum-seekers are detained they should be accommodated separately from male asylum-seekers, unless these are close family relatives. In order to respect cultural values and improve the physical protection of women in detention centres, the use of female staff is recommended.

Women asylum-seekers should be granted access to legal and other services without discrimination as to their gender,<sup>14</sup> and specific services in response to their special needs<sup>15</sup>. In particular they should have access to gynecological and obstetrical services.

***Guideline 9: Detention of Stateless Persons.***

Everyone has the right to a nationality and the right not to be arbitrarily deprived of their nationality.<sup>16</sup>

Stateless persons, those who are not considered to be nationals by any State under the operation of its law, are entitled to benefit from the same standards of treatment as those in detention generally.<sup>17</sup> Being stateless and therefore not having a country to which automatic claim might be made for the issue of a travel document should not lead to indefinite detention. Statelessness cannot be a bar to release. The detaining authorities should make every effort to resolve such cases in a timely manner, including through practical steps to identify and confirm the individual's nationality status in order to determine which State they may be returned to, or through negotiations with the country of habitual residence to arrange for their re-admission.

In the event of serious difficulties in this regard, UNHCR's technical and advisory service pursuant to its mandated responsibilities for stateless persons may, as appropriate, be sought.

***Guideline 10: Conditions of Detention<sup>18</sup>***

Conditions of detention for asylum-seekers should be humane with respect shown for the inherent dignity of the person. They should be prescribed by law.

Reference is made to the applicable norms and principles of international law and standards on the treatment of such persons. Of particular relevance are the 1988 UN Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment, 1955 UN Standard Minimum Rules for the Treatment of Prisoners, and the 1990 UN Rules for the Protection of Juveniles Deprived of their Liberty.

The following points in particular should be emphasised:

- (i) the initial screening of all asylum seekers at the outset of detention to identify trauma or torture victims, for treatment in accordance with Guideline 7.
- (ii) the segregation within facilities of men and women; children from adults (unless these are relatives);
- (iii) the use of separate detention facilities to accommodate asylum-seekers. The use of prisons should be avoided. If separate detention facilities are not used, asylum-seekers should be accommodated separately from convicted criminals or prisoners on remand. There should be no co-mingling of the two groups;
- (iv) the opportunity to make regular contact and receive visits from friends, relatives, religious, social and legal counsel. Facilities should be made available to enable such visits. Where possible such visits should take place in private unless there are compelling reasons to warrant the contrary;
- (v) the opportunity to receive appropriate medical treatment, and psychological counseling where appropriate;
- (vi) the opportunity to conduct some form of physical exercise through daily indoor and outdoor recreational activities;
- (vii) the opportunity to continue further education or vocational training;
- (viii) the opportunity to exercise their religion and to receive a diet in keeping with their religion;
- (ix) the opportunity to have access to basic necessities i.e. beds, shower facilities, basic toiletries etc.;
- (x) access to a complaints mechanism, (grievance procedures) where complaints may be submitted either directly or confidentially to the detaining authority. Procedures for lodging complaints, including time limits and appeal procedures, should be displayed and made available to detainees in different languages.

## **Conclusion.**

The increasing use of detention as a restriction on the freedom of movement of asylum seekers on the grounds of their illegal entry is a matter of major concern to UNHCR, NGOs, other agencies as well as Governments. The issue is not a straight-forward one and these guidelines have addressed the legal standards and norms applicable to the use of detention. Detention as a mechanism which seeks to address the particular concerns of States related to illegal entry requires the exercise of great caution in its use to ensure that it does not serve to undermine the fundamental principles upon which the regime of international protection is based.

1. These Guidelines address exclusively the detention of asylum seekers. The detention of refugees is generally covered by national law and subject to the principles, norms and standards contained in the 1951 Convention, and the applicable human rights instruments.

2. The Geneva Convention of 28 July 1951 Relating to the Status of Refugees.

3. Views of the Human Rights Committee on Communication No. 560/1993, 59th Session, CCPR/C/D/560/1993.

4. UNHCR has been requested to provide technical and advisory services to states on nationality legislation or practice resulting in statelessness. EXCOM Conclusion No. 78(XLVI) (1995), General Assembly Resolution 50/152, 1996. See also Guidelines: Field Office Activities Concerning Statelessness. (IOM/66/98-FOM70/98).

5. Article 9(1) International Covenant on Civil and Political Rights. (ICCPR)

Article 37(b) UN Convention on the Rights of the Child. (CRC)

Article 5(1) European Convention for the Protection of Human Rights and Fundamental freedoms. (ECHR)

Article 7(2) American Convention on Human Rights 1969.(American Convention)  
Article 5 African Charter on Human and People's Rights. (African Charter)  
6. Article 9(1), Article 12 ICCPR,  
Article 37(b) CRC  
Article 5(1)(f) ECHR  
Article 7(3) American Convention  
Article 6 African Charter  
EXCON Conclusion No. 44(XXXVII)  
7. EXCON Conclusion No  
8. Sub committee of the Whole of International Protection Note EC/SCP/44 Paragraph 51©  
9. Art 16, Art 12 UDHR  
10. Article 9(2) and (4) ICCPR  
Article 37(d) CRC  
Article 5(2) and (4) ECHR  
Article 7(1) African Charter.  
Article 7(4) and (5) American Convention  
EXCOM Conclusion no. 44 (XXXVII) UN Body of Principles for the Protection of All Persons under any  
Form of Detention or Imprisonment. 1988  
UN Standard Minimum Rules for the Treatment of Prisoners 1955  
11. See also UN Rules for the Protection of Juveniles Deprived of their Liberty 1990  
12. An adult who is familiar with the child's language and culture may also alleviate the stress and trauma  
of being alone in unfamiliar surroundings.  
13. Although it must be recognised that most individuals will be able to articulate their claims, this may not  
be the case in those who are victims of trauma. Care must be taken when dealing with these individuals  
as their particular problems may not be apparent, and it will require care and skill to assess the situation of  
a person with mental disability or a disoriented older refugee who is alone.  
14. See UNHCR Guidelines on The Protection of Refugee Women.  
15. Women particularly those who have traveled alone may have been exposed to violence and  
exploitation prior to and during their flight and will require counseling.  
16. Art 15 UDHR. See EXCOM No. 78(XLVI) Article 6 African Charter. EXCOM Conclusion No.  
44(XXXVII) 7. EXCOM Conclusion No. 44 (XXXVII) 8. Sub Committee of the Whole of International  
Protection Note EC/SCP/44 Paragraph 51(c)  
17. Article 10(1) ICCPR  
1988 UN Body of Principles for the Protection of All Persons under any Form of Detention or  
Imprisonment. UN Standard Minimum Rules for the Treatment of Prisoners 1955 1990 UN Rules for the  
Protection of Juveniles Deprived of their Liberty  
18. Article 10(1) ICCPR  
1988 UN Body of Principles for the Protection of All Persons under any Form of Detention or  
Imprisonment.  
1955 UN Standard Minimum Rules for the Treatment of Prisoners.  
1990 UN Rules for the Protection of Juveniles Deprived of their Liberty.

**APPENDIX D**

***Model Questionnaire to be completed by persons alleging arbitrary arrest or detention***

**I. IDENTITY**

1. Family name: .....

2. First name: .....

3. Sex: (Male) (Female) .....

4. Birth date or age (at the time of detention):.....

5. Nationality/Nationalities: .....

6. (a) Identity document (if any): .....

(b) Issued by: .....

(c) On (date): .....

No.: .....

7. Profession and/or activity (if believed to be relevant to the arrest/detention):  
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.....

8. Address of usual residence:  
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## II. Arrest

1. Date of arrest: .....

2. Place of arrest (as detailed as possible):

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.....  
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3. Forces who carried out the arrest or are believed to have carried it out:

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4. Did they show a warrant or other decision by a public authority?

(Yes) ..... (No).....

5. Authority who issued the warrant or decision:

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6. Relevant legislation applied (if known):

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### III. Detention

1. Date of detention: .....

2. Duration of detention (if not known, probable duration): .....

3. Forces holding the detainee under custody:  
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4. Places of detention (indicate any transfer and present place of detention):  
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5. Authorities that ordered the detention:  
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6. Reasons for the detention imputed by the authorities:  
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7. Relevant legislation applied (if known):  
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IV. Describe the circumstances of the arrest and/or the detention and indicate precise reasons why you consider the arrest or detention to be arbitrary

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V. Indicate internal steps, including domestic remedies, taken especially with the legal and administrative authorities, particularly for the purpose of establishing the detention and, as appropriate, their results or the reasons why such steps or remedies were ineffective or why they were not taken

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VI. Full name and address of the person(s) submitting the information (telephone and fax number, if possible)

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.....  
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Date: ..... Signature: .....

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*This questionnaire should be addressed to the Working Group on arbitrary detention. Office of the High Commissioner for Human Rights, United Nations Office at Geneva, 8-14 avenue de la Paix, 1211 Geneva 10, Switzerland, fax No. (022) 917.90.06, E-mail: [urgent-action@ohchr.org](mailto:urgent-action@ohchr.org).*

## APPENDIX E

### Checklist of detention standards

#### *Treatment*

- Allegations of torture and ill-treatment
- Use of force or other means of restraint
- Use of solitary confinement

#### *Protection Measures*

##### **Information Provided to Detainees**

- What information is given to detainees upon arrival?
- Accessibility to internal rules and procedures of the detention centre or facility
- Access to attorneys or interpreters
- Access to NGOs

##### **Access to the Asylum Procedure**

- What information is given to the detainee regarding his or her right to asylum? In what language? For persons who cannot read or write, how is the right to asylum explained?
- What access to UNHCR and NGOs do detainees have?
- Are lawyers available to speak with and represent detainees? When and under what conditions?
- What access do lawyers have to the detention centre or facility?
- What access to interpreters do detainees have?
- Are asylum interviews conducted in the detention centre or facility? If so, under what conditions? Is there privacy? Where are the interviews held?

##### **Disciplinary procedure and sanctions**

- What are the procedures for disciplinary actions against detainees?
- What are the sanctions for violating the rules?
- Who determines whether a detainee violates the rules? What is the composition of the disciplinary authority?
- Are there possibilities of appeal?
- What are the sanctions?
- Statistics of sanctions by type and reasons
- Are there disciplinary cells?

##### **Complaint and inspection procedures**

- Are there complaint and inspection procedures for the detention centre or facility? If so, describe.

- Describe the independence of those procedures.
- Accessibility of the procedures.
- Do guards wear identification badges?

#### **Separation of detainees**

- Are men separated from women?
- Are families provided separate accommodation?
- Are separated or unaccompanied minors provided separate accommodation?

### ***Material Conditions***

#### **Capacity and occupancy of the detention centre or facility**

- Number of detainees by nationality, age and gender
- What is the approved capacity of the facility?

#### **Accommodations/Cells**

- What is the size and occupancy of the cells or units where detainees sleep?
- Material conditions: lighting, ventilation, furniture, sanitary facilities
- Hygiene conditions

#### **Food**

- Meals (quality, quantity, frequency)
- Special dietary regimes (for medical, cultural or religious reasons)

#### **Personal hygiene**

- Showers (number, cleanliness, state of repair, frequency for access by detainees, etc.)
- Sanitary facilities (inside cells, outside, access, cleanliness)
- Bedding (quality, cleanliness, frequency of change)
- Possibility of access to laundry facilities

### ***Detention Regime and Activities***

#### **Administration of Time**

- Time spent inside unit or cells daily
- Time spent in daily exercise
- Time spent daily working
- Time spent in sports
- Time spent in other activities

#### **Activities offered**

- Work: Is there access to work? Type of work? Remuneration for work? Description of the work.

- Education: Access to studies by adults and children? Types of studies offered (literacy, primary school, high school, language classes, vocational, university studies). Description of facilities used to provide education in the centre.
- Leisure: Types of leisure activities, access, description of leisure rooms and sports facilities. Access to library.
- Religious activities: Access by religious representatives (imam, priest, pastor, etc.). Conditions of access, frequency and duration of visits. Access to religious services and access to a facility to practice. Opportunity to follow religious practices such as washing and diet.

#### **Contacts with outside world**

- Visits: access, frequency, conditions for having visits, duration of visits, who can visit, description of visiting rooms.
- Correspondence and parcels: frequency, censorship, procedures for sending correspondence and letters.
- Telephone access: frequency, payment for costs.

### ***Medical Services***

#### **Access to medical care**

- Medical examination upon entry: what type of examination? Who does the examination? Option to request female nurses or doctors.
- Procedure for accessing medical care while in detention.
- Medical Infirmary: number of beds, equipment, medication, personnel.
- Psychological care: Access to psychologists or psychiatrists. Frequency of access. Description of care or services provided.
- Special care for torture survivors, children, women or elderly.
- Medical staff: number and availability of doctors, nurses, psychologists and psychiatrists.

### ***Prison Staff***

- Number of staff by categories
- Type of staff: military, police or civilian?
- Relationship between guards and detainees; relationship between management and the detainees.
- Training of staff (basic initial training and on-going training).

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<sup>i</sup>1)