



## Protecting asylum-seekers, refugees and migrants in detention

### APT position paper

The Association for the Prevention of Torture (APT) is an international NGO based in Geneva, Switzerland, with 35 years of experience in the prevention of torture and ill-treatment. The APT promotes regular monitoring to all places and situations of risk where persons are deprived of their liberty by **independent control mechanisms**. Good practices have shown that the mere fact that independent bodies can enter places of detention, at any time, has a strong deterrent effect and sheds light on conditions and treatment in detention, and can be instrumental in pressing and assisting the authorities to address and improve them.

Today there is a growing tendency to detain asylum seekers, refugees and migrants around the world and of States to criminalise irregular migration. This category of detainees is particularly vulnerable and exposed to the risk of ill-treatment and torture. The APT is therefore putting emphasis on this particular vulnerable group.

In line with the legal and policy framework related to immigration detention, APT asserts that:

- ✓ Detention of migrants should only be used as a measure of **last resort**. Detention is only permitted as a matter of international law<sup>1</sup> where it is necessary and proportionate to the legitimate objective to be achieved and only after **less restrictive alternatives** have been found to be unsuitable in **each individual case**.
- ✓ When detention is used, it should be under conditions that reflect their **non-criminal status** and their needs. International guidance stipulates that, except for short periods, detained migrants should be “held in specifically designed centres in conditions tailored to their legal status and catering for their particular needs”<sup>2</sup>. Thus the detention of migrants in unsuitable locations (such as police stations or prisons) may contribute to violations that can amount to torture and other cruel, inhuman or degrading treatment or punishment.
- ✓ When detention is used, the **relevant international and regional detention standards must be respected**. Migrants in detention frequently have limited or no access to asylum procedures and are denied other safeguards which are important to prevent torture. Such **safeguards** include prompt access to a lawyer, the ability to challenge detention, a medical examination by an independent physician and the ability to contact family or consular representatives.
- ✓ **Special needs of vulnerable groups of migrants** must be taken into account and appropriate safeguards must be in place. Every person who is deprived of liberty is vulnerable, but beyond the vulnerability of being held, some individuals face greater risks of violations of their rights in

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<sup>1</sup> The applicable international legal framework includes International Human Rights Law (IHR) and International Refugee Law (IRL). Both frameworks stipulate that there should be a presumption against detention and prohibit arbitrary arrest and detention, *without making further express provisions of circumstances in which deprivation of liberty is permitted*.

<sup>2</sup> CPT Standards, Extract from 7<sup>th</sup> General Report, p54.

virtue of their particular characteristics and/or situational factors. Children, women, migrants with mental health issues and/or specific health needs, victims of trafficking and the elderly are vulnerable groups of migrants and should therefore be given additional protection. Ultimately, governments should create appropriate mechanisms to respond to their needs, including placing them in **open accommodation rather than jail-like facilities**.

- ✓ **Independent control mechanisms**, such as under the Optional Protocol to the United Nations Convention against Torture (OPCAT) should be established **to monitor States compliance and ensure transparency in all places and situations of risks of ill-treatment (such as transfers and forced deportations) where migrants may be detained**.
- ✓ **States should ratify and implement the OPCAT by establishing a National Preventive Mechanism (NPM) with adequate powers to visit all places of detention and guarantees to function independently**. The OPCAT represents an innovative instrument that can contribute to protect detained migrants.
- ✓ In OPCAT States Parties where NPMs already exist, **the Organisations working with refugee and migrants can engage** with these preventive bodies in order to raise awareness and exchange information on these vulnerable groups and give NPMs the means with which to respond to their mandate with regard to migrants in detention.
- ✓ Existing NPMs could include in their program of visits **thematic visits to all places and situations of risks where migrants may be detained**. This would enable a cross-sectional analysis of risk factors and patterns of good and bad practices<sup>3</sup>.
- ✓ Monitoring bodies including NPMs should include in their **monitoring teams: a physician or qualified health professional** as their participation is necessary to assess the particular sensitive health issues<sup>4</sup>. They should also consider hiring **interpreters** when relevant to conduct private interviews with migrants in detention.

APT /February 2012

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<sup>3</sup> OPCAT – Implementing Manual, Revised Edition, APT & IIDH, 2010, chapter V, p241.

<sup>4</sup> For example, the most crucial moments where the use of restraints such as handcuffs and leg cuffs can amount to degrading or humiliating treatment is during transfers, removals and medical examinations. It is crucial to have a medical expert to evaluate the necessity and proportionality.