



The Committee on Migrant Workers Draft general comment No. 2 on the rights of migrant workers in an irregular situation and members of their families

**APT Observations
10 January 2013**

The Association for the Prevention on Torture (APT) would like to thank the Committee on Migrant Workers for the opportunity to provide some observations and propose revisions to the draft general comment No.2 on the rights of migrant workers in an irregular situation and members of their families. **We have provided some specific recommendations, in the manner you propose, as track changes on the draft general comment itself.**

The APT strongly values the importance of General Comments. We consider that they are very useful for relevant stakeholders to better understand the requirements of the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, and accordingly better implement its provisions.

The APT is a Geneva-based international NGO with over 35 years' experience in the prevention of torture and other forms of ill-treatment to persons deprived of their liberty. In particular, the APT promotes independent visits to places of detention, among other procedural and legal safeguards. As a summary of the specific revisions we propose on the draft general comment itself, we offer the following broad topics for your consideration.

1. Vulnerability of migrants in detention

There is increased concern for the safety and respect for the human rights of migrants among NGOs, human rights mechanisms and the United Nations High Commissioner for Refugees (UNHCR) field staff. As the Committee has already highlighted, migrants held in detention are a particularly vulnerable group, frequently subjected to arbitrary and administrative detention without judicial oversight. The conditions of detention are often unsuitable to their particular situation and worse than those faced by persons detained under criminal legislation in the same country.¹

2. Safeguards against abuse

States should ensure that they implement several positive steps to ensure that migrants held in all places of detention, including private facilities, are provided with at least the same safeguards from abuse as those offered to other categories of detainees. Fundamental preventive safeguards against ill-treatment and torture in the

¹ In response, the APT together with UNHCR and the International Detention Coalition (IDC) are currently developing a new "Practical Guide on Monitoring Immigration Detention", to be launched in 2013.

early stages of detention for irregular migrants are the same as those for other categories of detainees. These are: (1) to have access to a lawyer, (2) to have access to a medical doctor, and (3) to be able to inform a relative or third party of one's choice about the detention measure.² Prompt access to consular protection is also a valuable protective measure and deterrent against ill-treatment in detention.

The right to be brought before a court is one further procedural safeguard which can serve a critical role in deterring torture and ill-treatment by detaining authorities, identifying and sanctioning such abuse, and protecting the detainee from further acts. As noted by the European Committee for the Prevention of Torture (CPT), “[d]etained irregular migrants should benefit from an effective legal remedy enabling them to have the lawfulness of their deprivation of liberty decided speedily by a judicial body.”³ This is examined in the draft general comment in paragraph 27. Although the purpose of this *habeas* petition is to challenge the legality of the detention, it is also an important safeguard against torture. As with the obligation to be brought before a judge, the *habeas corpus* proceeding is a key opportunity for the court to assess the detainee for signs of ill-treatment.

We recommend that the CMW consider the role procedural and legal safeguards play in protecting irregular migrants from abuse in places of detention, and adopts the language we propose in the general comment which urges States Parties to implement strong and effective safeguards against torture and ill-treatment.

3. The Optional Protocol to the Convention against Torture (OPCAT)

The experience of international and national organisations has shown that detention monitoring is an effective way to create transparency in detention institutions and to identify problems that were previously ignored. Monitoring not only sheds light on conditions and treatment in detention but can be instrumental in pressuring and assisting the authorities to address and improve them.

The Optional Protocol to the United Nations Convention against Torture (OPCAT) puts in place a mechanism to fulfil this innovative approach, creating a system of independent regular visits which can lead to increased transparency in places of detention and improved standards of detention. The APT recommends that all States Parties to the CMW ratify and implement this treaty as a priority, as a way to ensure improved standards for migrants in detention.

The APT recommends that the CMW adopts the amended text proposed in the draft general comment to highlight the important role that independent and regular monitoring in all places of detention where irregular migrants may be held plays in the prevention of torture.

² Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *CPT standards*, Rev. 2010, para.81.

³ *Ibid.*, para.86.