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Management of mixed migration and asylum challenges beyond the European Union's eastern border

Report¹

Committee on Migration, Refugees and Displaced Persons

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Summary

Countries beyond the eastern borders of the European Union are facing increasing pressure from flows of refugees, asylum seekers and irregular migrants ultimately seeking to enter the European Union. Turkey is under particular pressure, but countries in the east, including in the Balkans, Ukraine and Russia, are also facing increasing flows. But are these countries able to cope with these flows?

The report looks at the consequences of these flows in terms of international protection and asylum, the use of detention, readmission agreements and the support given by the European Union to the countries in question. It concludes that these countries are insufficiently prepared to act as the European Union's eastern watchdog against irregular migration. Their asylum systems, for the most part, do not yet adequately guarantee that individuals in need of asylum receive it. Furthermore their reception and detention policies, including conditions of detention, do not, in many instances, meet acceptable human rights standards.

The countries beyond the European Union's eastern border are victims of an EU policy which increasingly seeks to externalise irregular migration and asylum. If the European Union wishes to maintain this policy it will need to reinforce heavily its assistance to the countries in question to allow them to do a job which is largely a consequence of the European Union's own policies. Those countries also have a responsibility to improve their own handling of the situation, including in terms of operating effective asylum systems, examining alternatives to detention and improving conditions of detention in the facilities that they run.

1. Reference to committee: [Doc. 12525](#), Reference 3758 of 11 April 2011.

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A. Draft resolution²

1. The mixed flow of migrants, asylum seekers and refugees increasingly takes place in the countries beyond the European Union's eastern border. As routes of irregular migration, smuggling and trafficking are closed down, new ones open up, testing borders and the capacity of States to deal with these flows.
2. Turkey is the country beyond the eastern border of the European Union that is currently under the most pressure. This is not simply because of the influx of refugees from Syria, but because Turkey is seen as a stepping stone for refugees and migrants from Asia and Africa for entry into Greece and up into other European Union member States. Turkey is not, however, alone in this, as countries in the Balkans are seeing a growth in mixed migration flows, and Ukraine, the Republic of Moldova and Russia are also impacted.
3. The European Union and its member States have a direct interest in keeping these mixed migration flows out of the European Union and returning persons who have entered the European Union without authorisation to the countries from which they have come. At the same time, they are responsible for respecting their obligations under international law.
4. The countries beyond the external borders of the European Union are increasingly in the position of having to take responsibility for persons who want to enter the European Union but cannot. They are thus becoming not only countries of transit but also *de facto* countries of destination.
5. While it is clear that the European Union is taking steps to help these countries to deal with these mixed flows, some, if not most, of the countries are not in a position to cope. Evidence of this comes from the countries themselves, which have launched appeals for assistance. Furthermore, institutions such as the United Nations High Commissioner for Refugees (UNHCR) and the European Court of Human Rights have indicated on various occasions that it is not safe to send certain persons back to these countries.
6. Many people sent back to these countries are returned using readmission agreements negotiated between the European Union and the countries concerned. The problems in using these agreements have been highlighted by the Parliamentary Assembly in its [Resolution 1741 \(2010\)](#) on readmission agreements: a mechanism for returning irregular migrants. There are particular concerns about provisions that require readmitting countries to take back not only their own nationals, but also third-country nationals.
7. The Assembly recognises that the European Union and its member States have a right to control their borders. However, the burden and responsibility for dealing with these mixed migratory flows, primarily destined for the European Union, should not be shifted to its neighbouring countries. On the one hand, it is a question of fairness as the problem stems from the European Union itself being the magnet for these mixed flows. On the other hand, it is a question of commitment to protection of human rights at an international level. The countries having to take the consequences of closed EU borders must be in a position to guarantee the rights of those entering their territory or being returned to their territory.
8. The Assembly therefore considers that much more needs to be done in the spirit of international co-operation and burden sharing by the European Union and its member States to assist the countries beyond their eastern borders to deal with these migratory pressures and to make sure that persons involved in these mixed flows are treated humanely and that their human rights and international protection needs, including the right to asylum, are respected.
9. The Assembly therefore calls on the European Union and its member States to:
 - 9.1. increase substantially support to their eastern neighbours, to:
 - 9.1.1. ensure that all necessary steps are taken to guarantee the rights of those with international protection needs, including the right to asylum, which is also protected in the Charter of Fundamental Rights of the European Union;
 - 9.1.2. provide adequate reception facilities for mixed flows of migrants, asylum seekers and refugees, and where migrants or asylum seekers are detained in line with international standards; and where alternatives to detention are not possible, ensure that detention facilities comply with human rights and humanitarian standards;

2. Draft resolution adopted unanimously by the committee on 4 April 2013.

9.2. respect their obligations under international law, including most importantly the principle of *non-refoulement*, which also applies at borders and prohibits indirect *refoulement*; and refrain from returning third-country nationals when it is clear that the readmitting countries either cannot cope or cannot guarantee fundamental rights. Furthermore, readmission agreements should be revised to ensure that they:

9.2.1. contain adequate safeguards to ensure that returned asylum seekers are provided effective access to the asylum procedure;

9.2.2. contain suspension clauses to be activated in case of persistent violations of human rights in the countries concerned;

9.2.3. regulate what happens at borders, guarding against automatic or semi-automatic returns without a proper examination of an individual's situation;

9.2.4. provide for adequate monitoring of the application of the agreements and the situation of persons following their return.

10. The Assembly calls on countries beyond the European Union's eastern border to:

10.1. enhance intra-regional and cross regional co-operation and develop comprehensive and protection sensitive strategies to address mixed flows, based on the UNHCR's 10-Point Plan of Action on Refugee Protection and Mixed Migration;

10.2. improve their capacity to deal with asylum claims, in particular by:

10.2.1. putting in place fair and effective asylum systems accessible to asylum seekers;

10.2.2. strengthening their structures and human resources for dealing with asylum claims and providing training for those involved in the asylum process;

10.2.3. enhancing the capacity of border guards to identify refugees and persons with specific needs and to refer them to competent authorities for appropriate follow-up;

10.2.4. ensuring that persons with international protection needs obtain legal advice and assistance, particularly when held in detention;

10.2.5. paying attention to persons with specific needs seeking asylum;

10.2.6. training judges on relevant international standards relating to asylum and international protection;

10.2.7. guaranteeing the quality and consistency of asylum decisions in line with Assembly [Resolution 1695 \(2009\)](#) on improving the quality and consistency of asylum decisions in the Council of Europe member States;

10.2.8. complying with all judgments and interim measures indicated by the European Court of Human Rights;

10.2.9. improving their capacity to ensure that minimum social rights, such as means of subsistence, free health services and accommodation, are provided;

10.2.10. increasing reception capacities and ensuring that reception centres for asylum seekers comply with international standards;

10.2.11. ensure that asylum seekers are made aware of the dangers of traffickers and smugglers who may try to make contact with them;

10.3. improve their capacity to deal with the reception and detention of irregular migrants, notably by:

10.3.1. limiting the use of detention and the periods for which it is authorised, and looking for alternatives to detention;

10.3.2. transferring the management of detention centres away from the police or the military to authorities better able to cope with persons who have not committed any crimes;

10.3.3. ensuring access to asylum, the ability to challenge detention, and other legal rights in detention;

10.3.4. refraining from detaining children and other persons with specific needs, keeping in mind that unaccompanied and/or separated children should never be detained;

10.3.5. guaranteeing detainees access to lawyers and members of their family, and also guaranteeing them access to health care;

10.3.6. opening places of detention up to monitoring by national and international bodies for the sake of transparency, and ensuring that parliamentarians are given the right to visit places of detention and are encouraged to use this right;

10.3.7. ensure that sub-standard detention facilities are closed down and that only centres that can guarantee humane conditions of detention with access to health care, adequate activities, etc. are used.

B. Explanatory memorandum by Mr Rigoni, rapporteur

1. Introduction

1. The mixed flow of migrants, asylum seekers and refugees is moving increasingly from the south of Europe towards the east. As routes of irregular migration, smuggling and trafficking are closed down, new ones open up, testing borders and the capacity of States to deal with these problems.

2. Many member States of the Council of Europe are highly conscious of these challenges. Those which are members of the European Union are anxious to keep these mixed flows out of their area of jurisdiction. member States beyond the European Union's external borders find themselves in a difficult position as they are increasingly becoming countries of transit for those seeking to enter the European Union, as well as countries of destination in their own right.

3. The aim of this report is to look at some of the main challenges that these countries are facing, and to examine whether the countries beyond the European Union's eastern border are able and ready to deal with them. If they are not, it is then necessary to examine the steps that need to be taken to assist them in dealing with these challenges while upholding human rights and asylum concerns. This is a responsibility not only for countries beyond the European Union's eastern border but also for EU countries, which are the primary pull factor for these mixed migration flows.

4. In my report I have decided to concentrate on four issues linked to these mixed migration flows, two of which are essentially human rights concerns.

5. The first issue is the challenge of identifying refugees and other persons in these flows who have international protection needs.

6. The second issue is that of detention. The Parliamentary Assembly has indicated on many occasions that detention of irregular migrants and asylum seekers should be a measure of last resort and only after alternatives to detention have been explored.³ In reality, however, detention is often used as a form of migration management and as an automatic measure. The question therefore arises whether these countries have the appropriate laws and practices in place to ensure that detention complies with international legal standards, and also whether they have the appropriate facilities for holding detainees, or mechanisms in place to propose alternatives to detention.

7. The third issue is that of returns from the European Union to these countries and the use of what are known as EU readmission agreements for these returns. It is clear that any migration management policy needs a returns policy and readmission agreements are often part and parcel of such a policy. All returns have to be in conformity with the Council of Europe's Twenty Guidelines on Forced Return. Keeping this in mind questions have to be asked about the fairness of these agreements, in particular when pressure is put on non-EU countries to take back third country nationals, for which EU member States would otherwise be responsible. Furthermore, there are human rights concerns that arise in the context of these agreements which have previously been raised by the Assembly in its [Resolution 1741 \(2010\)](#) on readmission agreements: a mechanism for returning irregular migrants.

8. The fourth and final issue I would like to take up is that of the support given by the European Union and the impact and effectiveness of this support.

9. In collecting together information for this report, I had the opportunity of visiting Ukraine and also Turkey. I am grateful to the authorities of the countries concerned for their openness. I am also grateful to all those who assisted and provided me with further background information for my report. I am particularly indebted to the United Nations High Commissioner for Refugees (UNHCR) and its various offices in the region. They assisted me throughout my time as rapporteur, including during the visits and in the preparation of the report.

3. [Resolution 1707 \(2010\)](#) on the detention of asylum seekers and irregular migrants in Europe, paragraph 9.1.1.

2. The scope of the problem

10. The number of irregular migrants, asylum seekers and refugees flowing into the countries under examination is constantly increasing. In some cases these increases are substantial and are in part due to events in North Africa, in particular Tunisia, Libya and now Syria. They are also due to flows from former conflict zones such as Afghanistan. However, one of the major reasons for these increases is that the more traditional mixed migration routes in the southern Mediterranean have been progressively closed down.

11. To give some specific statistics, in Turkey in 2010 there were 9 230 asylum claims; in 2012, this figure was up to over 20 000. This figure does not include the addition of 258 200 Syrian nationals currently receiving temporary protection in Turkey. The figures become even more worrying if one looks at the UNHCR's projections for the end of 2013, where they calculate that there could be as many as 703 340 people of concern to them (586 000 of them Syrians)⁴.

12. Serbia registered over 2 499 asylum-seekers in 2012, a 500% increase over a two-year period.⁵ Croatia saw the number of claims it received go up 180% between 2010 and 2011 (going up from 290 to 807 during this period, with the figure climbing above 1 000 in 2012).

13. These are just three examples, but they show how quickly the scale of the problem can change.

3. Are the asylum systems in these countries ready and able to cope with future challenges of mixed migration flows?

14. The asylum systems in the countries under consideration are for the most part new. Furthermore, many of those responsible for operating them are relatively inexperienced. The UNHCR has provided substantial support to these countries to help them build up their asylum systems and train the persons involved in managing them. Additional targeted efforts are underway to assist States in the Balkans in developing co-operative and protection-sensitive responses to challenges raised by mixed movements, along the lines of the UNHCR's 10-Point Plan of Action on Refugee Protection and Mixed Migration. The European Union has also provided a great deal of support and funding. The question remains however whether these countries are able to cope and meet their international and European legal obligations?

3.1. Legislation

15. In terms of bringing legislation into line, most of the countries have taken many, but not all steps necessary to bring their legislation into line with international standards.

16. Croatia has amended its Asylum Act of 2007 bringing it into line with international standards. This has been welcomed by the international community. In 2002, the Republic of Moldova acceded to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and its new Law on Asylum entered into force in March 2009. The latter is also largely in line with international standards, but still needs some amendments regarding its *non-refoulement* and exclusion provisions.

17. In the Russian Federation, according to the UNHCR, legal protection afforded to asylum-seekers and refugees has improved in recent years.⁶ The country acceded to the 1951 Convention relating to the Status of Refugees and its Protocol in 1992 and in 1993 it adopted the Federal Law on Refugees. Since then, a new draft Law on Refugees has been prepared by the Federal Migration Service (FMS) in co-operation with the UNHCR. Unfortunately, its consideration by the Duma is likely to be put back to 2015. Pending approval of this new law, the FMS has filled some of the gaps in the legislation through changes in regulations. The UNHCR has been involved in this process, for example by giving comments on issues such as the suspensive effect of appeals and extending the validity of documentation during appeals procedures.

18. Turkey, although a signatory to the 1951 Refugee Convention, maintains a geographic reservation. This means it only accepts as refugees, persons coming from Europe. Those coming from outside of Europe are currently dependent on the UNHCR granting them status and organising for their resettlement in a third country. Turkey is under pressure to remove the geographic reservation, but this is tied up with negotiations

4. UNHCR Appeal 2013 update – Turkey, 1 December 2012.

5. Asylum-Migration related challenges in the Republic of Serbia, UNHCR Office in Serbia, January 2013.

6. www.unhcr.org/pages/49e48d456.html, 6 April 2011.

for Turkey's entry into the European Union. It is, however, to be welcomed that Turkey is in the process of adopting its first ever asylum law which will provide guarantees of *non-refoulement* and grant other rights to asylum seekers as well.

19. In Ukraine, there have finally been positive developments in strengthening the legal framework for asylum, motivated in part by the incentive of the European Union Action Plan on Visa Liberalisation with Ukraine. A new Law on Refugees and Persons in Need of Complementary or Temporary Protection in Ukraine came into force on 28 July 2011. This introduces complementary protection for persons who cannot return to their country of origin, and also provides for a unified asylum-system certificate.

20. In Serbia, the legal framework would appear to be largely in place following adoption of a Law on Asylum in 2007. However, when one takes into account that the refugee recognition rate stands at almost zero,⁷ it is clear that there have been major problems in guaranteeing international protection, including asylum.

21. The last point leads me to the conclusion that while there are many positive legislative developments in these countries, emphasis now has to be placed on putting laws into practice. On the legislative front, Turkey needs to be encouraged to continue its efforts to adopt the new asylum law and take steps to remove the geographic reservation to the 1951 Refugee Convention as soon as possible.

3.2. Practice

22. Passing legislation is one thing, but putting it into practice is another. Keeping in mind that many of these countries have new legislation and little experience in implementing this asylum legislation and dealing with significant numbers of asylum seekers, it is perhaps not surprising that most of the issues and problems arise in terms of practice rather than of law.

23. Some of the most common problems I came across in preparing this report revolve around the following issues:

- the structures that have been set up to deal with asylum claims;
- the volume of claims;
- quality and consistency of asylum decisions;
- low recognition rates;
- the role of border guards;
- the training of all those involved in the asylum process (border guards through to asylum officials, lawyers and judges);
- levels of staffing;
- financial resources;
- short time limits for claiming asylum;
- insufficient capacity of reception centres for asylum seekers;
- unfair adjudication;
- failure to comply with judgments and interim measures of the European Court of Human Rights;
- access to legal support;
- access to medical care, accommodation, social support, employment;
- lack of specific safeguards for vulnerable asylum seekers;
- access to asylum procedures in detention.

In this part of the report, I would like to concentrate on the issue of the quality and consistency of asylum decisions, which englobes many of the above issues.

7. As recently reported by the UNHCR, the recognition rate was less than 1% – three persons having been granted refugee status towards the end of 2012.

3.2.1. Quality and consistency of asylum decisions

24. A clear indicator of problems is the low recognition rate of asylum seekers in many countries. In Serbia, no one has received refugee status since 2008, and only five individuals have received subsidiary protection. There are a host of reasons for this, stemming in part from the organisation of the asylum process and the consequences of having border police processing claims in the asylum office as opposed to professional civilians.⁸ As a result of this situation, many asylum seekers simply abandon their asylum claims.⁹

Recognition data (2010 statistics)¹⁰

Acceptance rate/ Countries	Convention Status	Complementary protection status	Total applications	Acceptance rate
Albania	4	The value is zero or not available	9	44.4%
Belarus	22	8	291	10.30%
Croatia	5	8	314	4.14%
“The former Yugoslav Republic of Macedonia”	/	/	89	0%
Russian Federation	124	1 040	4 104	28.3%
Serbia	/	1	614	0.1%
Turkey	6 485	/	10 827	59.9%
Ukraine	260	49	1796	17.2%

25. In Ukraine, there continue to be a range of problems affecting the quality and consistency of asylum decisions. The UNHCR has indicated that many persons do not have access to a lawyer before a court hearing (in particular when they are detained), free legal aid is not available and court hearings sometimes take place without an interpreter or with an interpreter speaking a language the person does not understand. Furthermore, asylum seekers do not always receive copies of the decisions in their case which makes an appeal extremely difficult in the short five-day limit provided. Another problem noted in Ukraine was that following the reorganisation of the State Migration Service in 2011, there was a large drop in the number of asylum seekers registered due to a lack of institutional capacity (only 890 in 2011). This indicates that new and redeployed personnel of the State Migration Service need further training and guidance to ensure access to asylum procedures.

26. In Russia, the UNHCR has been working closely with the Federal Migration Service on capacity building of the asylum system. One problem which remains is the lack of free legal aid. While local non-governmental organisations (NGOs) and the UNHCR have stepped in to provide free legal aid wherever possible, this issue remains a concern. Another major concern has been the risk of *refoulement* from within the country but also at borders, including at international airports. There have been a number of alleged incidents of *refoulement* and the UNHCR has had to intervene on a number of occasions to prevent further *refoulement* taking place.

27. The problem of the quality and consistency of asylum decisions will need additional investment from the countries in the region and they will require further assistance from the European Union and the UNHCR. In this respect, the systemic gaps in the asylum system will need to be addressed using as a foundation an effective asylum service, operating as an independent entity with its own budget and sufficient well-trained staff.

28. To address this need, the UNHCR has just launched a two-year regional asylum capacity-building project, focusing on national refugee status determination (RSD) procedures, which is co-funded by the European Union. Building on tested methodology of previous projects in central and southern Europe, it aims to put in place sustainable quality assurance mechanisms for national RSD procedures in eastern Europe (Ukraine, Belarus, Republic of Moldova, Georgia, Azerbaijan, Armenia and Russia as an observer). This will

8. www.mup.gov.rs/domino/zakoni.nsf/Asylum%20Law.doc.

9. The reason for them abandoning their claims cannot be put down only to the quality of the asylum process. It is also linked to the fact that many persons are seeking to enter the European Union and continue their journey. Croatia is particularly affected by this phenomenon and, according to the UNHCR, about 85% of asylum seekers leave the country before a final decision is taken on their claim.

10. Information taken from the UNHCR Statistical Yearbook 2010, Table 9, p. 86.

be done by improving the quality of training, through promoting the European Asylum Curriculum (EAC) as a standardised training tool, and introducing a Russian version of the UNHCR's REFWORLD database to facilitate access to high-quality country of origin information for Russian-speaking case adjudicators.

29. An issue which will also need attention across the region are the consequences of accelerated asylum procedures and tight deadlines, whether these be for claiming asylum or appealing decisions. Without efficient functioning asylum systems, these deadlines and accelerated asylum processes exacerbate the risk of the asylum process failing persons genuinely in need of protection.

3.3. Conclusions

30. The question asked at the outset was whether the countries' asylum systems were ready and able to cope with the future challenge of increased numbers of asylum seekers and refugees. The answer is clearly no. While much has been done to bring legislation into line with international refugee and human rights standards, the practices do not yet follow. The statistics on acceptance rates for asylum seekers attest to this situation.

31. These countries are increasingly becoming countries of destination and not only countries of transit, but in the absence of fully functioning fair asylum procedures, people will not stay and will choose or be forced by circumstances to move on into the European Union looking for protection.

4. Detention of irregular migrants and asylum seekers

32. In looking at this issue, I would like to recall Assembly [Resolution 1707 \(2010\)](#) on the detention of asylum seekers and irregular migrants in Europe. In this resolution, the Assembly makes it clear that member States should not detain a migrant in an irregular situation or an asylum seeker unless it is legally permissible. For this to be so, States need to comply with Article 5.1 of the European Convention on Human Rights (ETS No. 5, "the Convention"), which provides that irregular migrants may only be deprived of their liberty either when action is being taken with a view to deportation or in order to prevent unauthorised entry into the country.

33. With increased mixed migration flows to and through the countries on the European Union's eastern border, there has been an increase in the use of detention. This has led to a number of problems and issues, including the legal basis for detention, general safeguards and rights of detainees and the general conditions in detention.

4.1. Legal basis for detention

4.1.1. International standards

34. International human rights law and international refugee law provide the legal framework against unlawful and arbitrary detention.

35. Article 5 of the European Convention on Human Rights prohibits arbitrary and unlawful detention. The Assembly has sought to clarify further the circumstances in which detention may be legally permissible. This has been put forward in 10 guiding principles in its [Resolution 1707 \(2010\)](#). These principles can be found in Appendix 1 of this report.

36. Out of these 10 principles, I would like to highlight four which are particularly relevant for my report, as they have come up in a number of countries in the region as being problematic. They are: detention should be exceptional and a last resort and only after alternatives have been considered; detention should distinguish between asylum seekers and irregular migrants; detention should be for the shortest possible time; and, finally, as a general rule, vulnerable people (children, pregnant women, etc.) should not be held in detention.

4.1.2. National legislation

37. The essential safeguard against arbitrary detention is that all forms of detention must be adequately prescribed in national law.¹¹ While laws exist providing for detention of asylum seekers and migrants in the countries concerned, they do not always provide all the necessary safeguards.

38. The first problem, which appears to be common practice for many countries,¹² is that the countries concerned all too often automatically resort to administrative detention of migrants and asylum seekers. Furthermore, there is almost no consideration of alternatives to detention.

39. Another problem is that little distinction appears to be made between asylum seekers and migrants. This is in part due to the earlier problem, namely the almost automatic resort to detention.

40. A further problem is that detention should be for the shortest possible time. Already in the European Union there has been much criticism of the length of detention allowed under the "Return Directive" 2008/115 which effectively allows detention for six months and then for it to be extended for a further 12 months (total of 18 months¹³). As a result of heavy criticism, this period is in the process of being reduced to 12 months. However, this still remains an extremely long period to detain persons who have not committed any crime.

41. Looking at the situation in some of the countries in the Balkan region: In Croatia and Serbia, national legislation has been brought into conformity with the European Union Return Directive.

42. In Turkey, where a new draft law is awaiting adoption by the parliament, migrants are detained on the basis of an administrative ruling by the Ministry of Interior, and they cannot challenge the decision on their detention. Persons often remain in detention more than six months as there is no clear legislative definition of the maximum period for the administrative detention of foreigners.

43. In Russia, administrative law sets the maximum term of detention before expulsion at one year.

44. In the Republic of Moldova, where illegal entry is considered a criminal offence and illegal stay an administrative offence, asylum seekers are usually put into administrative detention centres while asylum procedures are pending. Immigrants, including those who did not have the chance to apply for asylum, are also put into detention. Detention is for a period of up to six months.

45. In Ukraine, foreign nationals can be expelled and/or placed in administrative detention for a number of immigration-related infractions. These include attempting to enter the country without proper documentation, staying in the country irregularly and without registration, committing certain categories of crimes, and posing a threat to security, public order or health. Detention can be for a period of up to 12 months and there are no alternatives to detention. Worryingly, the current law allows for a person to be detained without a court order (for example by a state border guard), whereas previously detention had to be authorised by a court. A speedy review of the lawfulness of detention is required by Article 5 of the European Convention on Human Rights, and it is certain that problems will exist under the Convention if this is not provided for.

46. It is clear from this short analysis that there is an increasing tendency for States to rely on detention for relatively long periods of time, without considering alternatives to detention. This tendency needs to be reversed. Not only are such policies expensive for States in terms of management of detention centres, but long periods of detention have important human consequences for those detained. These are exacerbated further when the conditions of detention are substandard.

4.2. General safeguards and rights of detainees

47. The Assembly has also made it clear in [Resolution 1707 \(2010\)](#) what it expects in terms of safeguards and rights for irregular migrants and asylum seekers. It has done this by highlighting 15 rules which need to be applied. These rules can be found in Appendix 2 of this report.

11. International Commission of Jurists (ICJ) Migration and International Human Rights law, Practitioners Guide No. 6, 2011, p. 150.

12. That said, in Croatia, asylum seekers are not detained and in Serbia there is a detention centre in Belgrade that has the capacity to accommodate 120 persons, but most of the time it is empty.

13. A distinction can be drawn with asylum seekers who need to be released after 12 months as they have a right to access the labour market.

48. In this section, I have chosen to focus on four issues, analysing some of the problems in respect of access to lawyers and procedural rights, contacts with family members, the right to medical attention, and protection of children as a vulnerable group. Another major issue is that of access to asylum procedures in detention which has already been mentioned above.

4.2.1. Right of access to a lawyer and other procedural rights

49. All detainees should have access to a lawyer and should benefit from an effective legal remedy to be able to challenge their detention. They should also be informed of the reasons for their detention, of their rights, and of the rules and complaints procedure in detention.

50. While in theory these rights are accorded to detainees, in practice the situation is often different. One of the problems I have noted is that legal assistance is provided to detainees mostly by specialised NGOs, and the authorities are largely, if not totally, reliant on this assistance and do not foresee the creation of a properly funded system of free legal aid. Sometimes, as observed during my fact-finding visits to Turkey and Ukraine, detainees were deprived of their liberty without being informed of the reasons for their detention. Lack of interpretation exacerbates the problem and makes it difficult for detainees to challenge the situation they find themselves in. Notwithstanding that legal advice is left to NGOs, these NGOs often do not have free access to the detention centres which means that the detainees do not have effective access to legal advice. This appears to be the case, for example, in Turkey, Russia and Ukraine.

4.2.2. Right to medical attention

51. When detainees arrive at a detention centre, they should have the right to be examined by a doctor to evaluate their state of physical and mental health. Depending on the results of such an examination, the persons concerned may need special medical care and be admitted to hospital. Detainees should also be able to request a consultation with a doctor, although they may be asked to cover the costs of such a consultation.

52. Not surprisingly, this right is not always respected in all the countries concerned. The majority of countries do not have sufficient resources to provide medical assistance in the detention centres on a permanent basis.

53. In Serbia, for example, medical care for asylum seekers in the reception centres is not free of charge and there is no clear instruction from the Ministry of Health regarding the provision of health care to asylum seekers and refugees. Basic health care is currently provided by the Danish Refugee Council financed by the UNHCR. The same situation was witnessed in Turkey and Ukraine.

4.2.3. Right to contact with family members

54. It is important for detained persons to inform their families and relatives of their current situation and have regular contacts. Therefore, detainees should have the right to keep their mobile phones or to have access to them or other means of contacting their families.

55. In Ukraine and Turkey, detainees can purchase international telephone cards. Nevertheless, this measure is limited to those who have the financial resources to do so.

4.2.4. Unaccompanied children

56. The Assembly has been clear on the issue of unaccompanied children. They should never be detained and under no circumstance should they ever be detained with adults. There may, however, be cases where children have to be detained with their parents, but these should be exceptional and only when found to be in the child's best interests, in conformity with Article 3 of the Convention on the Rights of the Child.

57. That said, there are still cases of unaccompanied children being detained and placed in detention centres with adults in the countries concerned. This happens, for example, when the authorities ignore children's declarations as to their age. As a consequence, and in the absence of an adequate age assessment procedure, children are registered as adults and may be detained for long periods of time in an extremely vulnerable situation. This practice is contrary to the United Nations Convention on the Rights of the Child and does not reflect the overriding principle of the convention, namely the best interest of the child.

58. I am pleased to note that the Government of Ukraine has attempted to respond to this problem. In co-operation with international organisations, it has sought to elaborate a reliable age assessment procedure which could help prevent cases of the detention of children. However, the problem of age-disputed asylum seekers in administrative detention continues to exist for the moment in Ukraine, as in other countries.

4.3. Conditions of detention

59. As I stressed earlier, irregular migrants are not criminals and their detention conditions should be humane, showing respect for the inherent dignity of the person. The UNHCR has recently published Detention Guidelines highlighting this.¹⁴ In these guidelines, certain principles are put forward, including: detention only on the basis of clear and exhaustive legal grounds and judicial oversight of its legality; detention only in officially recognised places of detention and not in police cells; segregation of men and women; appropriate provision of medical treatment, opportunity to conduct physical exercise and practice their religion; provision of basic necessities and food and access to reading materials; access to timely information, access to education and vocational training, possibility to submit complaints, etc.

60. These guidelines largely mirror those put forward by the Assembly in its [Resolution 1707 \(2010\)](#) and expanded upon in the related report of the Committee on Migration, Refugees and Population.¹⁵

61. It is beyond the scope of this report to analyse the situation of detention centres across all the countries concerned. The visit reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and reports written by Amnesty International, Human Rights Watch and others, do, however, give a clear indication of a range of problems which I was able to see for myself in visiting detention centres in Ukraine and Turkey. I was fortunate in that I could visit one centre which was newly built with substantial funding from the European Union, and another much older centre which did not have such funding.

62. The comments that I can make from visiting these centres could be applied to many institutions (new and old) in other countries on the European Union's eastern border (as well as to some within the European Union). My visits to detention centres in Ukraine and Turkey thus serve as case studies for this report.

Ukraine

63. In Ukraine, the conditions of detention of migrants have improved over the last few years, with technical assistance and support from the European Union. There are several types of detention facilities and the State Border Guard Service operates 86 short-term holding facilities with a total capacity of 573 places. There are 73 specially equipped premises, intended for stays of up to three days, and 13 temporary detention facilities, which are used to hold detainees for up to 10 days.¹⁶ Furthermore, the State Migration Service runs five temporary accommodation centres for the detention of foreign nationals.

64. During my fact-finding mission to Ukraine, I visited the temporary accommodation centre for foreigners and stateless persons in the Chernihiv region. The centre, which can accommodate 208 people, housed around 70 at that time. The centre occupied a large area, was well equipped and had good sanitation facilities. The detainees were provided with adequate health care, had access to a range of social activities and could use mobile phones. The main problem faced in the centre was that detainees arrived in poor health (including some suffering from tuberculosis and a range of psychological problems) and in many cases needed special health care in hospitals.

65. This was in many respects a model centre for Ukraine, and represents the type of conditions that, if detention is required, should be the type of facility provided. Unfortunately, however, the conditions in this centre are not replicated throughout Ukraine and there are many credible reports not only of the poor conditions in detention but also of abuse by guards. The CPT has reported on overcrowding and poor sanitation. The border guard facilities are particularly criticised because of alleged abuse by the guards. Furthermore, insufficient health-care conditions and a general lack of communication with detainees due to language barriers

14. See in particular Guideline 8: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to detention, UNHCR, 2012.

15. [Doc. 12105](#) (Rapporteur: Ms Ana Catarina Mendonca, Portugal, SOC).

16. Global Detention project: Ukraine Detention Profile, November 2009.

would also appear to be a problem.¹⁷ Reports from respected NGOs such as Human Rights Watch have also been highly critical, raising concerns about arbitrary detention, ill treatment at the hands of border guards, corruption and ill-treatment of vulnerable persons, including children.¹⁸

66. Ukraine is a good example to look at, because it shows two sides. It shows how improvements are possible, but it also shows that there remain many problems that need to be addressed by the authorities which will need further assistance from the European Union and the international community.

Turkey

67. According to the Turkish authorities, Turkey has a capacity to accommodate 2 176 irregular migrants. In addition to existing removal centres, there is an EU project for the building of two additional removal centres. Furthermore, a removal centre with a capacity to house 400 persons is being built in the Aegean region and another two removal centres are being built in the eastern part of Turkey with a capacity to take 1 000 people.

68. While I was in Turkey, I had the opportunity of visiting Kumkapi detention centre in Istanbul, where I witnessed very poor detention conditions. The centre was overcrowded and detainees had inadequate bedding (20 people in one room, some rooms without windows), poor hygiene, lack of access to fresh air and inadequate medical treatment. Detainees also complained about the absence of information on legal procedures and about the treatment they received from the police authorities.

69. Unlike the centre in Ukraine, this was not a centre that had received substantial funding from the European Union and the conditions reflected this. The challenges that Turkey faces at the moment are enormous bearing in mind that it is one of the most important gateways for irregular migration and that it is having to cope with a massive influx of Syrian refugees.

70. Notwithstanding the new centres under construction and the support of the European Union, Turkey needs more assistance, not only with conditions in its detention centres, but also in looking into alternatives to detention.

4.4. Conclusions

71. In addition to the issues raised in the two case studies above, there is one additional matter I would like to highlight. Some of the most serious problems involving inhuman and degrading treatment occur at the early stages of detention, while persons are held in police detention facilities before being sent on to immigration detention centres. This is not just an issue in Ukraine and in Turkey, but it is also one in other countries such as the Republic of Moldova and Russia.

72. Part of the problem is that these places are highly dispersed, difficult to monitor, poorly adapted for receiving irregular migrants and asylum seekers and staff are not trained to deal with these types of detainees. This will certainly be an area where much more attention will be required in the future.

73. My first conclusion has to be that detention should be avoided wherever possible and should be the last and not the first option. Furthermore, the length of detention should be kept to a minimum. This does not appear to be the general practice in the countries concerned. Furthermore if persons are to be detained they should be held in facilities adequate for this task. Notwithstanding the building of a number of new facilities it is clear that many detention centres are clearly substandard and should either not be used or be substantially upgraded.

74. Furthermore, access to a lawyer, interpreter and family members as well as access to asylum and other legal procedures appears to be a widespread problem. I am also concerned that not enough attention is given to the needs of vulnerable persons, including children, who should not in principle be detained.

75. Following my discussions with the authorities in detention centres, I came to the conclusion that for the benefit of both detainees and member States, detention centres should not be managed by the police. They should rather be run by authorities whose training and approach is adapted to dealing with non-criminals. In instances where the police continue to be involved, they need to have the necessary training to carry out a function which goes well beyond simply guarding people.

17. CPT report on the visit to Ukraine, 2009.

18. Human Rights Watch, "Buffeted in the Borderland", December 2010.

76. In view of the many problems highlighted, it is essential that organisations or bodies involved in monitoring places of detention, such as the CPT and national monitoring structures, be allowed to carry out their work. Others such as NGOs also have a role to play, as do national parliamentarians, who should be allowed access to these places of detention and encouraged to go there.

5. Readmission agreements

77. For any migration strategy to work there needs to be an effective returns system for irregular migrants and failed asylum seekers which respects the rights of persons being returned and guarantees the principle of *non-refoulement*.

78. One of the mechanisms for promoting these returns are readmission agreements. Historically, these were set up on a bilateral basis between countries, but more recently the European Union has negotiated a range of these on behalf of its member States, including with countries on the European Union's eastern border.

79. Currently, EU readmission agreements have been signed with the Republic of Moldova, the Russian Federation, Serbia, Montenegro, Bosnia and Herzegovina, "the former Yugoslav Republic of Macedonia" and Ukraine,¹⁹ as well as other countries outside Europe. Croatia has no such agreement with the European Union, but it has concluded 25 bilateral agreements on returns, including with many EU member States. The readmission agreement with Turkey was initialled in June 2012 but still needs signing.

80. There have been a number of concerns raised about the negotiation and use of these readmission agreements, including by the Assembly in its [Resolution 1741 \(2010\)](#) on readmission agreements: a mechanism for returning irregular migrants.²⁰

81. The problem is not so much the return of nationals of the returnee countries, but the readmission of third-country nationals. As the European Commission has itself recognised in a recent communication: "All third countries hold a deep aversion to the third-country national clause, arguing that they cannot be held responsible for citizens of third countries and that they therefore do not have an obligation to readmit such people."²¹ Paraphrasing an NGO, States are being asked to manage the foreigners the European Union does not want.²²

82. It is important to understand this aversion, as those third-country nationals sent back are the ones who find themselves returned to the border, and then often put into detention before ultimately being sent back or released if return is not possible. It is thus essential that safeguards and human rights guarantees are in place for these persons, and that the principle of *non-refoulement* is respected.

83. I have five main concerns²³ about these readmission agreements, which link into other issues raised in this report.

84. The first is the lack of suspension clauses in these agreements for persistent violations of human rights in third countries. Clearly if there are major problems in any of these countries, the agreements should not be used.

85. The second is that all the agreements should have clauses requiring receiving countries to respect international human rights and refugee law. This is particularly important for example in relation to *non-refoulement* and to detention. In addition, practical measures need to be in place to ensure that these measures are applied in practice

19. These readmission agreements entered into force in 2008 for all the above countries except for the Russian Federation whose agreement became legally binding from June 2007. The agreements with the Russian Federation and Ukraine started to be implemented from January 2010.

20. See also [Doc. 12168](#), report of the same title by the Committee on Migration, Refugees and Population (Rapporteur: Ms Tineke Strik, Netherlands, SOC).

21. COM(2011)76 final. Communication from the Commission to the European Parliament and the Council. Evaluation of EU Readmission Agreements.

22. Migreurop: European Commission evaluation of EU readmission agreements. Some comments and questions.

23. These are largely raised by the Commission in its Communication. COM(2011)76 final, op. cit.

86. The third concern is how these agreements are implemented at the border. Some readmission agreements provide for “accelerated” readmission processes – with no obligation to afford access to asylum procedures if a person is apprehended within a certain limited time or distance from the border. Such clauses/practices are at variance with international refugee law. There is a clear danger that accelerated procedures using readmission agreements become automatic or semi-automatic without a proper individual examination of each returnee’s case and protection needs.

87. The fourth concern is the lack of monitoring of the application of the agreements and the situation of persons following their return. While there are Joint Committees set up for discussing how the agreements are functioning, they are not transparent. NGOs and international organisations (particularly the UNHCR) should be involved in these in the future. Furthermore, it is necessary to set up what has been referred to as “post return” monitoring mechanisms to check on what happens to returnees under the readmission agreements following their return.

88. The fifth concern is the lack of explicit reference to asylum obligations of signatory States in some cases (sometimes referred to as “non-attraction clause”), or inclusion of such clauses without monitoring their observance.

89. While the above issues have been taken up both in Assembly [Resolution 1741 \(2010\)](#), as well as in the European Commission’s own communication (referred to above), there has been little action on these fronts and the Council of the European Union’s Conclusion defining the European Union strategy on readmission in June 2011 did not go very far in addressing these issues.²⁴

90. In terms of conclusions on the use of readmission agreements, it is accepted that they are needed, and furthermore, if they include sufficient safeguards, they could facilitate safe return and access to the asylum procedure. However, they need to be understood in the context of competing interests between States that want to get rid of a problem and States that are reluctant to take on a problem. In this, there are people in the middle, seen as the problem, namely the migrants and, on occasion, asylum seekers. The risk that human rights become secondary to national interests are real, hence the need to ensure human rights safeguards in these agreements and the monitoring of the application of these agreements and of the situation of those who are returned.

6. The role of the European Union

91. One of the issues at the top of the European Union’s agenda is dealing with the migratory pressures on the European Union and in particular the issue of irregular migration.

92. Since 2005, the European Union has developed a Global Approach to Migration (GAM). In 2007, this approach was extended to the countries of eastern Europe and central Asia. In the 2009 Stockholm Programme, which defined the political priorities of the European Union in the area of migration and asylum for 2010-2014, the importance of launching and developing new Regional Protection Programmes and establishing a strategic partnership with the UNHCR was highlighted. The most recent renewed Global Approach to Migration and Mobility (GAMM), presented in 2011, supersedes the GAM and provides the overarching framework of the EU External Migration Policy.

93. Furthermore, co-operation has been established between European Union member States and the countries in eastern Europe through different co-operation platforms, such as the EU Eastern Partnership Panel for Migration and Asylum,²⁵ the Budapest Process²⁶ and the Prague Process.²⁷

24. Council Conclusion defining the European Union strategy on readmission (8 June 2011), Document 11260/11.

25. The Söderköping Process has created a forum for discussion on common asylum, migration and border management issues among governments, and between governments and civil society, and it serves as an instrument for bilateral and multilateral co-operation in areas of common concern. It has allowed Border Guard Services, Ministries of the Interior and Migration Services to interact, share information, data, best practices and engage in dialogue.

26. In 1991, Germany initiated a consultative forum aimed at the development of joint measures against the increase of irregular migration pressures in Europe. Fifty governments and 10 international organisations have now joined this process now in order to exchange information and best practices in dealing with topics such as regular and irregular migration, asylum, visas, border management, trafficking in human beings and smuggling of migrants, readmission, return, etc. Through this dialogue, the Budapest Process promotes good governance in the field of migration, a harmonised approach in dealing with irregular migration challenges, and the transfer and common understanding of migration concepts and policies.

94. In addition, since 2007, the European Commission has incorporated questions relating to migration and asylum into its Thematic Programme for Cooperation with Third Countries in the areas of Migration and Asylum. A forthcoming new Multiannual Financial Framework – EU budget for the period 2014-2020 will provide for successor programmes to the Thematic Programme (ending in 2013).

95. It is through these thematic programmes that the intentions of the Panel on Migration and Asylum, the Budapest and Prague processes are put into practice. In 2011-2013, the main priorities in the eastern European countries have been identified, namely to:

- support the implementation and negotiation of readmission agreements;
- support international protection-related activities, in particular in the framework of Regional Protection Programmes, and with special focus on registration, reception and resettlement conditions, as well as measures aimed at protecting refugees against exploitation and mistreatment, racism and xenophobia;
- prevent and control irregular migration;
- provide special attention to the international protection of asylum seekers and refugees and supporting the implementation of Regional Protection Programmes.

96. To give some concrete example, in 2005, the European Commission identified Ukraine, the Republic of Moldova and Belarus as target countries for the first pilot Regional Protection Programme. This programme provided funding to strengthen the international protection of asylum seekers and refugees, and to provide durable solutions in the form of repatriation, local integration and/or resettlement.²⁸

97. A programme has also been launched entitled “European Union border assistance to Moldova and Ukraine” (EUBAM).²⁹ This provides technical assistance and advice to Moldovan and Ukrainian border guards. Furthermore, under a twinning project named “Support to Turkey’s Capacity in Combating Illegal Migration and Establishing Removal Centers for Illegal Migrants”, the European Union provided approximately €15 000 000 for the establishment of two removal centres and the development of standards for their management by 2012.³⁰

98. These different programmes have undoubtedly provided a boost to the countries concerned in bringing their asylum systems closer into line with international norms and standards. They have also certainly helped in terms of improving some of the detention centres, as I witnessed for myself in Ukraine.

99. The scale of the problem, however, remains daunting, in particular if one looks at the migratory and asylum pressures on the countries on the European Union’s external eastern border, and it is clear that much greater assistance will be needed by these countries if they are expected to act as the buffer zone protecting the European Union from irregular migration.

7. General Conclusions

100. Mixed migration flows are on the move eastwards. Movements into and through Turkey are indicative of this and without doubt these movements will continue to increase and move north up the eastern borders of the European Union, putting the Balkans, Ukraine and Russia under even greater pressure.

101. The European Union and its member States are aware of the pressures being placed on its eastern neighbours and they have been giving support to them to help them control this mixed flow of irregular migrants, asylum seekers and refugees.

27. This process promotes migration partnerships among the European Union, the Schengen Area, south-eastern and eastern Europe and central Asia, in addition to Turkey. The Declaration defined five main priorities: combating illegal immigration, readmission, voluntary repatriation and reintegration, legal immigration, integration, migration and development. The Prague Process Action Plan for the years 2012-2016 has 22 priorities intended to stimulate co-operation. It foresees activities on preventing and countering irregular migration, encouraging re-admissions, voluntary returns and lasting re-integration. It also includes actions to promote regular migration and mobility with particular reference to gainful migration, promotion of integration, treatment of migration and mobility as positive development forces and enhancement of the asylum capabilities of host countries and their international protection.

28. COM(2005)388 final, 1 September 2005.

29. www.eubam.org/en/about/what_we_do, 25 April 2011.

30. www.globaldetentionproject.org/countries/europe/turkey/introduction.html.

102. From what I have seen and learnt, this assistance is nowhere near enough; these countries are not sufficiently well equipped to deal with current challenges, let alone future challenges. The European Union and its member States have to assist these countries more. It should not be forgotten that the European Union is the main pull factor for these mixed migration flows. Those countries with a frontier with the European Union also have a responsibility to do more and should not be over reliant on assistance for matters for which they have responsibilities.

103. Recent history has shown how unprepared Europe is for large-scale movements of people. It was not ready for the first wave of boat people to Europe in the mid-1990s. It was not ready for the large-scale displacement caused by the Libyan crisis. It was not ready for the large-scale arrival of Syrians, even if Turkey has been doing a commendable job in providing refuge for over 258 000 Syrians. Furthermore, Europe has not been able to take the pressure off Greece which is buckling under the strain of debt, austerity, mixed migration flows and xenophobia.

104. The call is therefore for much more to be done to support the countries beyond the European Union's eastern border.

Appendix 1 – Ten Guiding Principles governing the circumstances in which the detention of asylum seekers and irregular migrants may be legally permissible

(Extract from Parliamentary Assembly [Resolution 1707 \(2010\)](#) on the detention of asylum seekers and irregular migrants in Europe)

“9.1. ... These principles aim to ensure that:

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

9.1.2. detention shall distinguish between asylum seekers and irregular migrants; asylum seekers must be protected from penalties on account of their unauthorised entry or presence;

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

9.1.4. detention shall be ordered only for the specific purpose of preventing unauthorised entry into a State’s territory or with a view to deportation or extradition;

9.1.5. detention shall not be arbitrary;

9.1.6. detention shall only be used when necessary;

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

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

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

9.1.10. detention must be for the shortest time possible;”

Appendix 2 – Fifteen European Rules governing minimum standards of conditions of detention for irregular migrants and asylum seekers

(Extract from Parliamentary Assembly [Resolution 1707 \(2010\)](#) on the detention of asylum seekers and irregular migrants in Europe)

These rules are intended to ensure that:

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

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

9.2.3. all detainees must be informed promptly, in simple, non-technical language that they can understand, of the essential legal and factual grounds for detention, their rights and the rules and complaints procedure in detention; during detention, detainees must be provided with the opportunity to make a claim for asylum or complementary/subsidiary protection, and effective access to a fair and satisfactory asylum process with full procedural safeguards;

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

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

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

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

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

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

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

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

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

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

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

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