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**Promotion and protection of all human rights, civil  
political, economic and social and cultural rights,  
including the right to development**

## **Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante\***

### *Summary*

The present report is the fifth report submitted to the Human Rights Council by the Special Rapporteur on the human rights of migrants, Jorge Bustamante, since his appointment in July 2005. Submitted in accordance with Council resolution 8/10, the report covers the activities carried out by the Special Rapporteur from January 2009 to December 2009.

In the thematic section of the present report, the Special Rapporteur focuses on the enjoyment of rights to health and adequate housing by migrants. He recalls the applicable international legal framework and discusses main challenges encountered by migrants in the enjoyment of these rights, with particular attention to the situations of migrant women and girls and children. The Special Rapporteur also highlights a number of good practices and makes recommendations for further consideration and action by States and other stakeholders.

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\* Late submission.

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## **I. Activities of the Special Rapporteur**

1. Prior to addressing the thematic issues in this report, the Special Rapporteur would like to report on the activities he conducted during the reporting period.

### **A. Country visits**

2. The Special Rapporteur first wishes to thank the Governments of Japan, Romania, Senegal, South Africa and the United Kingdom of Great Britain and Northern Ireland for having responded positively to his requests for a country visit; he is awaiting the responses of the Governments of India and Thailand. The Special Rapporteur would also like to thank the Government of Belarus for its invitation, which is currently under consideration.

3. During the period under review, the Special Rapporteur undertook three country visits: Romania, from 15 to 20 June 2009; the United Kingdom, from 21 to 26 June 2009; and Senegal, from 17 to 21 August 2009. The Special Rapporteur would like to thank the Governments that have responded positively to his requests for visits and to urge Governments that have not yet done so to provide a response.

### **B. Communications with Member States**

4. From 1 January to 31 December 2009, the Special Rapporteur sent a total of 28 communications alleging violations of the rights of migrants to 18 Member States and received 10 responses from the Governments concerned. The Special Rapporteur thanks all the Governments that responded to his communications for their collaboration. He wishes to remind Governments that have not yet responded to do so and to address all the concerns raised in each communication. A summary of all communications sent during the period under review are included in an addendum to the present report (A/HRC/14/30/Add.1).

### **C. Other activities**

5. During the reporting period, the Special Rapporteur attended various events at the international level. From 20 to 24 April 2009, he participated in the Durban Review Conference, held in Geneva pursuant to General Assembly resolution 61/149. On 24 April 2009, the Special Rapporteur participated in an event on the theme "Migration, discrimination and economic, social and cultural rights", held parallel to the Durban Review Conference and organized by the Office of the United Nations High Commissioner for Human Rights, with the participation of the International Labour Organization (ILO), the Office of the United Nations High Commissioner for Refugees and the International Organization for Migration. On 17 September 2009, he addressed the Human Rights Council at a panel discussion on human rights of migrants in detention centres, held pursuant to Council resolution 11/9.

6. The Special Rapporteur also actively engaged with civil society organizations through participation in events which focused on relevant thematic issues. On 2 and 4 June 2009, he participated in events on the themes "The global economic crisis: implications for migration and development" and "Migrant children – unprotected and neglected in migration policies?", organized by Migrant Forum in Asia, Migrants Rights International, the Platform for International Cooperation on Undocumented Migrants and the National Network for Immigrant and Refugee Rights. On 3 June 2009, the Special Rapporteur participated in a meeting on the theme "Migrant domestic workers forging ahead towards

an ILO convention: challenges and opportunities”, organized by the Migrant Forum in Asia, Migrants Rights International and the Asian Migrant Domestic Workers Alliance. He also participated in an expert meeting on migration and peace organized by the Spanish Society for International Human Rights Law.

7. The Special Rapporteur also contributed to regional dialogue on issues concerning his mandate. He was a keynote speaker at the 1st meeting of the Permanent Forum of Arab-African Dialogue on Democracy and Human Rights, held at the headquarters of the League of Arab States in Cairo from 7 to 9 December 2009.

8. Additionally, the Special Rapporteur participated in the 16th annual meeting of special procedures mandate holders of the Human Rights Council, held from 29 June to 3 July 2009.

## **II. The rights to health and adequate housing in the context of migration**

9. The Special Rapporteur recalls the universality and indivisibility of human rights, and stresses that States must take immediate and concrete steps to ensure the realization of human rights for migrants at all stages of migratory processes in countries of origin, transit and destination. In this context, the present report is focused on the enjoyment of the rights to health and adequate housing for migrants in host countries, in the light of the growing trend in many host countries to adopt immigration policies and measures which significantly hamper the enjoyment of these rights by migrants.

10. In particular, the Special Rapporteur wishes to take this opportunity to draw the attention of Member States to a number of reports he received on violations of migrants’ rights to health and adequate housing. He emphasizes that the enjoyment of these rights by all individuals in society regardless of their citizenship, nationality and immigration status is not only an end in itself as a matter of entitlement, but also a crucial means to ensure equitable human development and social integration of migrants in host societies. Migrants can play an active role in the social and economic development of host countries, particularly when their fundamental rights, such as the rights to health and adequate housing, are fulfilled in a manner that ensures equal opportunities and gender equity.

11. In the present report, the Special Rapporteur also outlines recommendations for States to consider in their efforts to respect, protect and promote the fundamental rights to health and adequate housing on an equal basis. Due to space limitations, he addresses only the aspects of these rights which are most pertinent to migrants and pays particular attention to migrant women and children, who warrant special protection.

## **III. Major challenges in the realization of migrants’ rights to health and adequate housing**

12. In adopting the Universal Declaration of Human Rights, States accepted the solemn commitment to promote the universal respect for, and protection of, all human rights and fundamental freedoms. States also recognized that all human rights are universal, indivisible and interdependent and interrelated.<sup>1</sup> The principle of non-discrimination enshrined in the Universal Declaration of Human Rights (art. 2), in the International Covenant on Civil and Political Rights (art. 2, para. 1; art. 26) and the International

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<sup>1</sup> Vienna Declaration and Programme of Action, para. 5.

Covenant on Economic, Social and Cultural Rights (art. 2, para. 2), recognizes that individuals are entitled to all human rights without distinction of any kind as to “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. Economic, social and cultural rights are guaranteed to “everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation”,<sup>2</sup> and the International Covenant on Economic, Social and Cultural Rights obliges States to take immediate, deliberate, concrete and targeted steps towards the realization of these rights.<sup>3</sup> The non-discrimination principle vis-à-vis migrant workers is reinforced by the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Convention on Migrant Workers), which guarantees the human rights of all migrant workers and their families.

13. Notwithstanding that the principle of non-discrimination is well established in international human rights law, some misconceptions related to its applicability to non-nationals impede the universal implementation of the rights to health and adequate housing. Consequently, the enjoyment of these rights by non-nationals is often dictated by the host State’s laws, policies and practical concerns.

14. Various treaty bodies have expressed concerns that migrants and their families are often subject to discrimination in practice in the areas of employment, housing, health care and education.<sup>4</sup> In the wake of the global economic crisis, discrimination and xenophobia have increased, as has the corresponding negative impact on the enjoyment of human rights by migrants. Increasingly, States have enacted restrictive measures which adversely affect the enjoyment of the rights to health and adequate housing, arguably as a means of deterring irregular migrants and promoting “voluntary” returns to countries of origin.<sup>5</sup> Such laws discriminating against migrants or programmes and policies which fail to address the specific needs and vulnerabilities of migrants often make it difficult for migrants to obtain access to basic services or permit access only at levels that do not meet international human rights standards.

15. Further, the criminalization of irregular migration as well other related measures of immigration control may indirectly preclude the enjoyment of human rights by irregular migrants. Laws imposing requirements for public servants, health professionals, judiciary and other stakeholders to report irregular migrants to the police or immigration authorities effectively deny such migrants access to health care and housing, as well as access to justice, as they become reluctant to seek public services or legal remedies, fearing negative consequences flowing from the detection of their irregular status.<sup>6</sup>

16. The Special Rapporteur is also concerned about a general lack of comprehensive policies and measures aimed at protecting and promoting the rights to health and adequate housing for migrants. The absence of such policies and measures may give rise to violations of the States’ obligation to take steps towards the full realization of these rights. For instance, newly-arrived migrants may face a variety of challenges in accessing health care

<sup>2</sup> Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009), para. 30.

<sup>3</sup> *Ibid.*, para. 36.

<sup>4</sup> See for example, concluding observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families: Egypt (CMW/C/EGY/CO/1), para. 20, and Syrian Arab Republic (CMW/C/SYR/CO/1), para. 23.

<sup>5</sup> Ryszard Cholewinski, *Study on Obstacles to Effective Access of Irregular Migrants to Minimum Social Rights* (Strasbourg, Council of Europe, 2005), p. 17.

<sup>6</sup> UNICEF, briefing note, p. 9. See also Office of the Commissioner for Human Rights, Council of Europe, “Criminalisation of migration in Europe: human rights implications”, Issue Paper (Strasbourg, 2010).

or housing, given their limited command of the language of the host State and their lack of knowledge of the laws and systems in the host countries. The enjoyment of the rights to health and adequate housing by migrants would be effectively hampered in the absence of necessary support, such as the provision of language training or free information on relevant laws and regulations.

17. Connected to this concern is a lack of disaggregated indicators on the economic, social and cultural rights of all individuals, including migrants.<sup>7</sup> While the use of such indicators is crucial in developing effective public policies which protect the rights to health and adequate housing of all individuals including migrants, data collected in many countries is not disaggregated by migrant status, rendering invisible irregular migrants in particular.<sup>8</sup>

#### **IV. The right to health for migrants**

18. The health dimension of migration and what the enjoyment of the right to health means in this context are key concerns for the international community. This right is a long-established norm in international human rights law, with a defined scope and content.<sup>9</sup> The central provision is article 12, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, in which the States parties clearly recognize “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.

19. The application of the right to health to migrants is guaranteed by the principle of non-discrimination provided, *inter alia*, in the Universal Declaration of Human Rights as well as in article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights. Further, the Committee on Economic, Social and Cultural Rights expressly confirmed the States’ obligation to ensure equal access to preventive, curative and palliative health services by all persons, including migrants regardless of legal status and documentation.<sup>10</sup> Similarly, referring to article 5 (e) (iv) of the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee on the Elimination of Racial Discrimination recommended that States respect the right of non-citizens to health by, *inter alia*, refraining from denying or limiting their access to preventive, curative and palliative health services.<sup>11</sup>

20. Additionally, article 43 of the Convention on Migrant Workers specifically obliges States to ensure equal access to health care by regular migrant workers and their family members. The Convention also guarantees the right of migrant workers and their family members to receive any medical care that is urgently required for the preservation of their life or for the avoidance of irreparable harm to their health, regardless of their irregularity with regard to stay or employment (art. 28).

21. In analysing the normative content of this right, it is recalled that the right to health is not a right to good health, but rather a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable

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<sup>7</sup> UNICEF, briefing note, p. 5.

<sup>8</sup> *Ibid.*, p. 6.

<sup>9</sup> Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000).

<sup>10</sup> *Ibid.*, para. 34; Committee on Economic, Social and Cultural Rights, general comment No. 20, para. 30.

<sup>11</sup> General recommendation No. 30 (2004), para. 36.

standard of health.<sup>12</sup> Such facilities, goods and services must be available, accessible, acceptable and of good quality.<sup>13</sup>

22. The element of accessibility stipulates that health facilities, goods and services must be physically and economically accessible by all sections of the population, especially vulnerable or marginalized groups, without discrimination on any of the prohibited grounds. To that extent, the principle of non-discrimination constitutes an important starting point, although migrants are often discriminated against, in law and in practice, while attempting to gain access to health care. Many host countries justify restricting migrants' access to health care on the grounds of protecting their welfare systems from abusive claims and, increasingly, as a means of deterring migration. While this reasoning may look attractive and may be politically useful in host countries, several studies seriously question this premise and the desired deterrent effect of such measures.

### A. Health conditions of migrants

23. A number of reports indicate that migrants may be more vulnerable to poor health by virtue of their often low socio-economic status, the process of migration and their vulnerability as non-nationals in the new country. While studies in several countries that belong to the Organization for Economic Cooperation and Development have found that migrants generally may be of good health or initially gain benefits in improved health conditions from migration,<sup>14</sup> such benefits diminish over time, partly due to the exposure to the adverse working, housing and environmental conditions that often characterize low-income groups in industrial countries.<sup>15</sup> Many migrants are often employed in the three "D" jobs (dirty, difficult and dangerous) in mostly informal and/or unregulated sectors with little respect for labour and other protection. Typically, such work is of intensive and temporary or seasonal nature, with significantly higher occupational hazards.

24. The mental health of migrants is also an issue of concern, as factors such as social isolation caused by separation from family and social networks, job insecurity, difficult living conditions and exploitative treatment can have adverse affects.<sup>16</sup> While better economic opportunities may result in positive effects on migrants' mental health, other reports indicate that migrants suffer a higher incidence of stress, anxiety and depression than residents.<sup>17</sup> Further concerns are expressed about the mental health of migrants in detention, in particular with regard to the lack of access to mental health care and services, and inadequate allocation of resources to treat mental health ailments while in detention.<sup>18</sup>

25. The processes of migratory movement may also have a significant negative impact on the health of migrants before they arrive in the host country. The stricter restriction for

<sup>12</sup> Committee on Economic, Social and Cultural Rights, general comment No. 14, para. 9.

<sup>13</sup> *Ibid.*, para. 12.

<sup>14</sup> Steven Kennedy, James Ted McDonald and Nicholas Biddle, "The healthy immigrant effect and immigrant selection: evidence from four countries", SEDAP [Program for Research on Social and Economic Dimensions of an Aging Population] Research Paper No. 164 (December 2006).

<sup>15</sup> Barry R. Chiswick, Yew Liang Lee and Paul W. Miller, "Immigrant selection systems and immigrant health", *Contemporary Economic Policy*, vol. 26, No. 4, pp. 555–578 (pp. 561–565).

<sup>16</sup> United Nations Development Programme (UNDP), *Human Development Report 2009 – Overcoming Barriers: Human Mobility and Development* (New York, 2009), p. 56. Available from <http://hdr.undp.org/en/reports/global/hdr2009/>.

<sup>17</sup> *Ibid.*

<sup>18</sup> See for example Doctors without Borders/Médecins Sans Frontières, "Migrants, refugees and asylum seekers: vulnerable people at Europe's doorstep", 6 July 2009. Available from [www.doctorswithoutborders.org/publications/reports/2009/MSF-Migrants-Refugees-AsslymSeekers.pdf](http://www.doctorswithoutborders.org/publications/reports/2009/MSF-Migrants-Refugees-AsslymSeekers.pdf).

entry to richer Northern countries has increased the use of clandestine, unofficial and dangerous entries. For instance, vulnerable groups of migrants, such as asylum-seekers, or victims of trafficking and people-smuggling, may have been exposed to sexual and gender-based violence, greater vulnerability to ill-health and may have had a diminished ability to exercise informed choices concerning their health in countries of origin or in transit. According to the World Health Organization (WHO), the exposure to risk associated with population movements also raises migrants' vulnerability to psychosocial disorders, drug abuse, alcoholism and violence. In addition, limited access to health care during the transit and early insertion phases of migration increases the resultant burden of untreated conditions.<sup>19</sup>

## B. Challenges in accessibility

26. A considerable gulf exists between the rhetoric of the universal application of human rights and the enjoyment of these rights in practice. While the international human rights standards require that States provide essential primary health care to all individuals regardless of their nationality or immigration status,<sup>20</sup> host States have been less willing to meet this standard, fearful that such a move will defeat migration control policies and overburden health and other social services.

27. Entitlements and access to health care for migrants and the level of such care vary enormously, depending on the State in focus as well as on immigration status.<sup>21</sup> It may range from emergency care to expansive health coverage for all, including migrants in irregular situations. On one end of the spectrum, regular migrants satisfying certain conditions may have entitlements comparable to citizens of host States, although there may be differences between long-term and short-term migrants with regard to entitlements and access.<sup>22</sup> On the other end, non-nationals may not be able to access life-saving medication, because facilities deny treatment on the basis of "being foreign" or not having a national identity document.<sup>23</sup> What may exist between the two extremes is the payment for preventative and primary health care, including urgent or emergency care and free medical service on certain restricted grounds.<sup>24</sup> Most countries, however, link access to non-emergency health care to migrants' immigration status.

28. While States have developed different criteria for what constitutes emergency health care, this regrettably does not address the fundamental issue of not conditioning health care to a person's immigration status. In this regard, mere commitment to emergency care is unjustified not only from a human rights perspective, but also from a public health standpoint, as a failure to receive any type of preventive and primary care can create health risks for both migrants and their host community. Experts have suggested that given the relatively small proportion of migrants in irregular situations and their underutilization of services, providing them with access to preventive and primary care rather than with

<sup>19</sup> World Health Organization, "Health of migrants", document A61/12, para. 17.

<sup>20</sup> See Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990), para. 10.

<sup>21</sup> See Platform for International Cooperation on Undocumented Migrants (PICUM), *Access to Health Care for Undocumented Migrants in Europe* (Brussels, 2007). Available from [www.picum.org/article/reports](http://www.picum.org/article/reports).

<sup>22</sup> Immigrant Centre of Ireland and Independent Law Centre, submission to the Special Rapporteur on the human rights of migrants on access to economic and social rights by migrants – particularly, the enjoyment of the right to an adequate standard of living and the right to health for undocumented migrants in Ireland, January 2010.

<sup>23</sup> UNDP, *Human Development Report 2009*, p. 56.

<sup>24</sup> See PICUM, *Access to Health Care*, pp. 7–9.

delayed emergency intervention may actually lower the costs of the health system.<sup>25</sup> In this context, the Special Rapporteur stresses the critical importance of providing migrants with essential primary health care, given that migrants may often have to self-medicate and use health services at a later stage in the progression of their ailments than members of the host community.

### C. The right to health for migrant women and girls

29. Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women guarantees the right to access health-care services, including family planning services, on a basis of equality of men and women. This provision is particularly pertinent, as migrant women and girls face specific challenges in the field of health. They may be subject to sex- and gender-based discrimination, such as mandatory HIV/AIDS, pregnancy or other testing without their consent, as well as sexual and physical abuse by agents and escorts during transit.<sup>26</sup> In host States, many female migrants are employed in relatively low-skilled jobs within the manufacturing, domestic service or entertainment sectors, often without legal status and little access to health services. They are often subject to exploitation and/or physical and sexual violence by their employers or clients. They may be particularly vulnerable to HIV and have few alternative employment opportunities.<sup>27</sup>

30. Female migrant workers engaged in domestic services are one of the most vulnerable groups of migrant workers. There appears to be a widespread pattern of physical, sexual and psychological abuses of migrant domestic workers,<sup>28</sup> and they are also often exposed to health and safety threats without being provided with adequate information about risks and precautions. Further, their vulnerability is heightened by the lack of domestic legal mechanisms recognizing or protecting their rights. Consequently, they are often excluded from health insurance and other important social and labour protections.<sup>29</sup> Given the lack of health care, they tend to seek care late.

31. Migrant women and girls also often experience different and more problematic pregnancy and gynaecological health issues, compared to the host population.<sup>30</sup> Many arrive from countries with poor sexual and reproductive health services or information, including on family planning, or with little knowledge or experience in such services. Consequently, the rate of unwanted pregnancies among migrant women and girls may be high and they may be more exposed to risks of deportation or coercive abortion than women from the host country.<sup>31</sup> Indeed, owing to the persistent discrimination against pregnant women, the number of requests for abortion in populations of migrant women and

<sup>25</sup> See Global Health Advocacy Project, "Proposals to exclude overseas visitors from eligibility to free NHS primary medical services: a summary of submissions to a Department of Health consultation whose findings were never published" (Cambridge, 2008). Available from [www.medsin.org/downloads/page\\_attachments/0000/1939/Where\\_s\\_the\\_Consultation\\_-\\_FINAL.pdf](http://www.medsin.org/downloads/page_attachments/0000/1939/Where_s_the_Consultation_-_FINAL.pdf).

<sup>26</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 26 (2008), paras. 12, 17 and 18.

<sup>27</sup> UNAIDS, "HIV and International Labour Migration", Policy Brief, June 2008, first page.

<sup>28</sup> See United Nations Population Fund (UNFPA), *State of World Population 2006: A Passage to Hope – Women and International Migration* (New York, 2006). Available from [www.unfpa.org/swp/2006/english/introduction.html](http://www.unfpa.org/swp/2006/english/introduction.html).

<sup>29</sup> UNICEF, briefing note (see footnote 5), p. 12.

<sup>30</sup> Manuel Carballo, "The challenge of migration and health", *International Centre for Migration and Health Feature Article* (2007), p. 2.

<sup>31</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 26, para. 18.

girls may be up to three to four times higher than that of host populations. Additionally, the absence of prenatal care may contribute to the high incidence of premature births, preeclampsia, and other complications among migrant women and girls.<sup>32</sup> In some countries where citizenship is granted based on the *jus soli* principle (birthright citizenship), several obstacles and limitations have been put in place, intended to prevent migrant women from giving birth in the host country and thus acquiring citizenship for their children.<sup>33</sup> Moreover, pregnant migrant women may be obliged to pay hospital fees based on their nationality or immigration status in cases where nationals do not have to pay. Particular concern is raised in relation to pregnant migrant women and girls in irregular situations who are charged for services rendered other than on an emergency basis.<sup>34</sup>

32. With regard to immigration detainees, the Special Rapporteur received reports of detainees being wilfully and maliciously denied proper medical treatment, to which they are entitled by legislation, while they are in the custody of the national authorities.<sup>35</sup> This is particularly worrying with respect to children and women, as well as with respect to victims of torture. The denial of reproductive rights for those who have been sexually assaulted or the failure to provide adequate information on their reproductive choices in the event of pregnancy are breaches of the obligation of States to ensure equal access to health care.

#### D. The right to health for migrant children

33. The Convention on the Rights of the Child extensively provides for the right of the child to the enjoyment of the highest attainable standard of health (art. 24). In that same article, obligations are placed on States to make every effort “to ensure that no child is deprived of his or her right of access to such health care services” by, inter alia, providing children with “necessary medical assistance and health care” and ensuring “appropriate prenatal and post-natal healthcare for mothers”.

34. Regrettably, there are vast discrepancies between international human rights norms and their actual implementation in the field of health care for migrant children, whether these children are in regular or irregular situations, accompanied or unaccompanied. Inadequate care has long-lasting consequences on a child’s development; for this reason, and in the light of the State duty to protect the most vulnerable, access to health care for migrant children should be made an urgent priority.

35. In general, the constraints on the rights of adult migrants immediately have an adverse impact on the rights of their children, and in the long term, may inhibit the children’s development.<sup>36</sup> Reports suggest that poor working and economic conditions for migrant adults affect the general health and welfare of their children, as manifested in the

<sup>32</sup> P. Bollini and others, “Pregnancy outcome of migrant women and integration policy: a systematic review of the international literature”, *Social Science and Medicine*, vol. 68, No. 3 (February 2009), pp. 452–461.

<sup>33</sup> Brooke Kirkland, “Limiting the application of *jus soli*: the resulting status of undocumented children in the United States”, *Buffalo Human Rights Law Review*, vol. 12 (2006). See also for example N. Bernstein, “Protests brew over attempt to deport a woman”, *New York Times*, 14 February 2006. Available from [www.nytimes.com/2006/02/14/nyregion/14deport.html](http://www.nytimes.com/2006/02/14/nyregion/14deport.html).

<sup>34</sup> See for example Ulrike Nordin, “Health care for the hidden”, *Magazine of the Red Cross Red Crescent*, No. 1 (2007). Available from [www.redcross.int/EN/mag/magazine2007\\_1/14-15.html](http://www.redcross.int/EN/mag/magazine2007_1/14-15.html).

<sup>35</sup> See for example Human Rights Watch, *Detained and Dismissed: Women’s Struggles to Obtain Health Care in United States Immigration Detention* (New York, 2009). Available from [www.hrw.org/en/reports/2009/03/16/detained-and-dismissed](http://www.hrw.org/en/reports/2009/03/16/detained-and-dismissed).

<sup>36</sup> UNICEF, briefing note (see footnote 5), p. 12.

birth of premature babies and increased risks of serious illness or death.<sup>37</sup> Further, where migrant parents are deprived of health care, their children will also likely be deprived of such care.

36. The legal status of migrant parents may also affect access to health care by migrant children. While some migrant children may be citizens of the host country by virtue of *jus soli*, they may still face obstacles in accessing health care, in particular if their parents are migrants in irregular situations and therefore reluctant to seek health care for fear of their immigration status being detected. Similarly, many children in irregular situations are not enrolled in schemes for low-income migrant children that provide health care regardless of ability to pay, because their parents are reluctant to approach the social services for fear of being reported to the authorities.<sup>38</sup>

37. In addition, certain laws, policies and measures may indirectly hamper irregular migrant children's access to health. For instance, in some countries, a parent must be a regular migrant in order to obtain a birth certificate for her child, thus making access to health care difficult for children of migrants in irregular situations.

38. The Special Rapporteur also expresses particular concern about the administrative detention of migrant children and recalls his earlier pronouncements that the detention of migrant children should be a last resort.<sup>39</sup> He notes with concern that children suffering from serious medical conditions as well as children with disabilities were routinely kept in detention despite guidelines stating clearly they should not be. The health concerns for migrant children in detention are further exacerbated by the provision of inadequate medical services and treatment.<sup>40</sup> Further, there is a failure to properly diagnose the mental health of children as well as inadequate access to counselling and other assistance.<sup>41</sup>

## V. The right to adequate housing for migrants

39. The importance of ensuring the fulfilment of the right to adequate housing cannot be overemphasized, given its relationship to the realization of other fundamental human rights, such as the right to health. Clearly, the lack of adequate housing may trigger many health problems, such as poor nutrition, mental health problems and substance abuse,<sup>42</sup> as well as illness caused by the lack of safe drinking water or sleeping rough. Despite the importance of this right, there still remains "a disturbingly large gap" between international human rights standards and the situation prevailing in many parts of the world,<sup>43</sup> in particular with respect to migrant women and children.

<sup>37</sup> See for example Amnesty International, *Disposable Labour: Rights of Migrant Workers in South Korea* (London, 2009), p. 78.

<sup>38</sup> F. Crépeau and others, "Right and access to healthcare for undocumented children: addressing the gap between international conventions and disparate implementations in North America and Europe", *Social Science and Medicine*, vol. 70, No. 2 (January 2010), p. 5. Available from <http://ssrn.com/abstract=1513419>.

<sup>39</sup> Report of the Special Rapporteur on the human rights of migrants (A/HRC/11/7), paras. 43 and 60.

<sup>40</sup> See "The arrest and detention of children subject to immigration control: a report following the Children's Commissioner for England's visit to Yarl's Wood Immigration Removal Centre" (11 Million, 2009).

<sup>41</sup> See "The Children's Commissioner for England's follow up report to: The arrest and detention of children subject to immigration control" (11 Million, 2010), pp. 44–46.

<sup>42</sup> Human Rights and Equal Opportunity Commission (Australia), "Homelessness is a human rights issue" (2008), p. 8.

<sup>43</sup> Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991), para. 4.

40. The right to adequate housing is an integral component of the right to an adequate standard of living, as recognized in article 11, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights. Pursuant to this provision, States have obligations to take progressive measures to the extent of available resources, individually and through international assistance, to respect, protect and promote the right of everyone to adequate housing, regardless of their citizenship. Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination also guarantees this right without distinction as to race, colour, or national or ethnic origin (art. 5 (e)), and the Committee on the Elimination of Racial Discrimination affirmed that discrimination on the basis of citizenship is prohibited.<sup>44</sup> Under article 64, paragraph 1, of the Convention on Migrant Workers, States are also obliged to promote “sound, equitable and humane conditions” in connection with international migration, which arguably implies the right to adequate housing for all migrant workers. Regular migrant workers are also specifically guaranteed equal treatment in access to housing, including social housing schemes, and protection against exploitation in respect of rents under article 43, paragraph 1, of the Convention.

41. In analysing the challenges faced by migrants in the enjoyment of this right, it is important to note that the right to adequate housing is not a right to mere shelter, but the right to live in a safe, peaceful and dignified environment.<sup>45</sup> Whether or not housing is adequate is contingent on a number of elements, including, inter alia, the security of tenure, affordability, accessibility, location and availability of services, facilities and infrastructure. In the context of migrants, the attention of the Special Rapporteur has been drawn to challenges in accessibility and the security of tenure, owing to migrants’ vulnerable status as non-nationals.

#### A. Challenges in accessibility

42. The principle of non-discrimination and equality plays a key role in ensuring that adequate housing is accessible to those entitled to it. In this regard, the Committee on Economic, Social and Cultural Rights has underlined that priority consideration should be afforded to disadvantaged groups to ensure full and sustainable access to adequate housing.<sup>46</sup>

43. In practice, however, a variety of challenges remain to be tackled in fully realizing this element of the right to adequate housing. In the private housing market, discrimination often inhibits migrants’ access to adequate housing. Discrimination may be direct in the sense that some housing advertisements may explicitly indicate that certain groups of individuals are not desired as tenants or state preferences for nationals with permanent jobs.<sup>47</sup> There are also reports that individuals identified or perceived to be from certain ethnic and religious groups have been subjected to discrimination in the private rental housing market, particularly since the attacks of 11 September 2001.<sup>48</sup>

44. Discrimination in housing may also result from poverty and economic marginalization. Migrants, who may experience marginalization in the labour market and often have difficulties in securing stable jobs with reasonable pay, are often relegated to a lower socio-economic status and may be subject to differential treatment by housing

<sup>44</sup> Committee on the Elimination of Racial Discrimination, general recommendation No. 30, para. 32.

<sup>45</sup> Committee on Economic, Social and Cultural Rights, general comment No. 4, para. 7.

<sup>46</sup> *Ibid.*, para. 8 (e).

<sup>47</sup> See Committee on the Elimination of Racial Discrimination, communication No. 18/2000, *F.A. v. Norway*, Decision on Admissibility adopted on 21 March 2001.

<sup>48</sup> Ontario Human Rights Commission, *Policy on Human Rights and Rental Housing* (2009), p. 19.

providers.<sup>49</sup> The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context has received testimonies from migrant workers who did not have access to quality housing and who were forced to live in informal dwellings, on construction sites or in overcrowded houses, or to rent beds by the hour.<sup>50</sup>

45. Migrants may be subject to indirect discrimination in that certain criteria for accessing rental housing may have a disproportionate impact on them. For example, where landlords demand rental, credit or employment history records as part of applications for housing, newly-arrived migrants are at disadvantage as they do not have such records in the host State.<sup>51</sup> The use of such criteria may constitute discrimination where they have a disproportionate impact on individuals on the grounds of citizenship or immigration status.<sup>52</sup> In addition, newly-arrived migrants who do not speak the language of the host State may find it difficult to acquire information on the laws, contracts and other obligations relating to housing, as well as on governmental or community housing support.

46. Given their limited access to housing through the private market, it is of concern that migrants often do not enjoy the safety net provided by social housing in many countries, especially where there is a shortage of social housing in general.<sup>53</sup> Certain categories of migrants, such as holders of temporary visas, may not be entitled to social housing,<sup>54</sup> or migrants may be considered less desirable applicants than citizens.<sup>55</sup> In some countries, the acquisition of citizenship is a requirement for renting social housing,<sup>56</sup> which prevents newly-arrived migrants, including those in destitute situations, from gaining access to social housing.

47. Challenges in accessing adequate housing are even greater for irregular migrants; it is extremely difficult for them to rent private properties of good quality. The Special Rapporteur observed during his country missions that irregular migrant workers are often homeless or living in crowded, unsafe and unsanitary conditions.<sup>57</sup> The difficulties are amplified in countries where the irregular presence of migrants is a criminal offence,<sup>58</sup> and there are obligations to “denounce” irregular migrants. In some countries, it is in fact a criminal offence to let accommodation to irregular migrants.<sup>59</sup>

48. Further, irregular migrants often face practical obstacles in renting. For instance, landlords may require a variety of documentation, such as proof of residential registration,

<sup>49</sup> Ibid., p. 61.

<sup>50</sup> Report of the Special Rapporteur on adequate housing, Mission to Spain (A/HRC/7/16/Add.2), para. 74; see also Mission to the United States of America (A/HRC/13/20/Add.4).

<sup>51</sup> Network of Immigrant and Refugee Women Australia Inc., “Housing and homelessness: challenges for immigrant and refugee women, follow-up report” (2009), p. 17.

<sup>52</sup> Ontario Human Rights Commission, *Policy*, pp. 61–62.

<sup>53</sup> Cholewinski, *Study on Obstacles* (see footnote 6), p. 34.

<sup>54</sup> See for example Network of Immigrant and Refugee Women Australia Inc., “Housing and homelessness”, p. 11.

<sup>55</sup> See for example A. Chrzanowska, K. Wencel and M. Fagasinski, “Poland: a migration crossroad”, in Social Watch, *European Report 2009 – Migrants in Europe as Development Actors: Between Hope and Vulnerability* (Brussels, 2009), p. 73.

<sup>56</sup> Rebecca Van Parys and Nele Verbruggen, “Report on the housing situation of undocumented migrants in six European countries: Austria, Belgium, Germany, Italy, the Netherlands and Spain” (Platform for International Cooperation on Undocumented Migrants, 2004), p. 24.

<sup>57</sup> See for example the report of the Special Rapporteur on the human rights of migrants, mission to the United States of America (A/HRC/7/12/Add.2), para. 89.

<sup>58</sup> See for example Van Parys and Verbruggen, “Housing situation”, p. 24.

<sup>59</sup> “Criminalisation of Migration in Europe” (see footnote 9), p. 26.

employment history and income statements, which is almost impossible for irregular migrants to provide.<sup>60</sup> Thus, irregular migrants often resort to sublets or renting in an unofficial housing market, and must pay exorbitant rents despite the very poor conditions of the accommodation. Reports suggest that given the high rent, it is common for irregular migrants to live in overcrowded conditions and share beds with several other people who have different working schedules.<sup>61</sup>

49. In some cases, employers provide migrant workers with housing as part of the employment conditions. Often, however, the standards of housing provided are far from adequate. In some countries, migrant workers are provided with transport containers or trailers, or make-shift accommodations in buildings that they are constructing,<sup>62</sup> which clearly does not meet the standards of adequate housing.

50. The precarious housing situations are further exacerbated by the fact that irregular migrants are usually excluded by law from most public services, including social housing.<sup>63</sup> Particular concern is expressed with respect to asylum-seekers who become irregular migrants and lose all social support and housing entitlements once their claims for asylum are rejected.<sup>64</sup> Even when social housing is provided to rejected asylum-seekers, the housing provided may be below the adequate standards, designed to encourage their return to the countries of origin.<sup>65</sup>

## B. Challenges in security of tenure: forced evictions

51. Adequate standards of housing encompass the security of tenure, which guarantees legal protection against forced eviction, harassment and other threats.<sup>66</sup> Forced eviction is “permanent or temporary removal against the will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection”.<sup>67</sup> It is widely acknowledged that forced evictions constitute gross violations of a broad range of human rights, particularly the right to adequate housing.<sup>68</sup>

52. The Special Rapporteur notes with regret the widespread practices of forced evictions of migrants around the world.<sup>69</sup> There are many instances where migrants, most often vulnerable groups such as irregular migrants, asylum-seekers and unaccompanied children, are forcibly evicted from their homes without adequate notice, prior consultation or alternative accommodation.<sup>70</sup> Such forced evictions often take place to clear slums, squatter camps and other informal settlements in the name of development, beautification

<sup>60</sup> Van Parys and Verbruggen, “Housing situation”, pp. 20–21.

<sup>61</sup> *Ibid.*, pp. 17 and 21.

<sup>62</sup> Human Rights Watch, *Are you Happy to Cheat Us? Exploitation of Migrant Construction Workers in Russia*, p. 62.

<sup>63</sup> See Van Parys and Verbruggen, “Housing situation”, p. 24.

<sup>64</sup> Cholewinski, *Study on Obstacles* (see footnote 6), p. 34.

<sup>65</sup> See for example David Weissbrodt, *The Human Rights of Non-Citizens* (Oxford, Oxford University Press, 2009), pp. 149–150.

<sup>66</sup> Committee on Economic, Social and Cultural Rights, general comment No. 4, para. 8 (a).

<sup>67</sup> Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997), para. 3.

<sup>68</sup> See, for example, the report of the Special Rapporteur on adequate housing (A/HRC/4/18), para. 6.

<sup>69</sup> See for example Centre on Housing Rights and Evictions (COHRE), *Forced Evictions: Violations of Human Rights 2007–2008* (Geneva, 2009).

<sup>70</sup> See for example Amnesty International, “Greece: Amnesty International condemns forced evictions in Patras”, public statement, 16 July 2009.

and regeneration of the areas concerned, or for the holding of major events.<sup>71</sup> In the absence of alternative accommodation provided by States, the evicted residents are often rendered homeless and pushed into areas where they have no access to basic services, employment opportunities or sources of livelihood.<sup>72</sup> Reports suggest that irregular migrants are often arrested and arbitrarily deported to their countries of origin following forced evictions.<sup>73</sup> These practices of forced evictions clearly undermine not only migrants' right to adequate housing, but also other related rights such as the rights to health, food, water and education.

### C. The right to adequate housing for migrant women

53. Women face significant barriers in accessing adequate housing due to discrimination<sup>74</sup> and migrant women are subject to multiple discrimination given their marginalized status in societies. Labour market opportunities for women from developing countries are often skewed towards care activities, domestic work and the informal sector, which often provide very low wages and labour protections.<sup>75</sup> Clearly, the resultant low socio-economic status of migrant women adversely affects their access to housing.

54. In some occupations, such as domestic work, women migrant workers may be provided with housing by their employers or legally required to live with them as part of the conditions for their visa sponsorships.<sup>76</sup> However, numerous reports indicate that the housing conditions of domestic workers are often grossly inadequate, without running water or adequate sanitary facilities.<sup>77</sup> Such workers may also have no privacy and may be forced to sleep on the kitchen or bathroom floor, which degrades the workers' dignity and leads to psychological abuse.<sup>78</sup> Even in such situations, migrant women would be reluctant to complain about the housing conditions for the fear of the loss of employment and forced evictions, thereby perpetuating the violations of their right to adequate housing.

55. The Special Rapporteur also recalls the linkage between violence against women and the right to adequate housing.<sup>79</sup> Many migrant women are vulnerable to various forms of violence, including domestic violence, sexual abuse and harassment, physical violence and forced evictions. Such violence is a serious concern for migrant domestic workers, whose options are effectively reduced to either enduring violence or reporting it to the authorities, thereby risking homelessness and eventual loss of employment and deportation. Further, migrant women at risk of homelessness are made even more vulnerable to further violence, such as sexual exploitation and trafficking.

<sup>71</sup> A/HRC/4/18, para. 8 and A/HRC/13/20, para. 6.

<sup>72</sup> UNDP, *Human Development Report 2009* (see footnote 17), p. 87.

<sup>73</sup> See for example COHRE, *Forced Evictions: Violations of Human Rights 2003–2006* (Geneva, 2006), p. 93.

<sup>74</sup> See reports by the Special Rapporteur on adequate housing, E/CN.4/2006/118 and E/CN.4/2005/43.

<sup>75</sup> UNDP, *Human Development Report 2009*, p. 51.

<sup>76</sup> See for example Bahrain Centre for Human Rights, Bahrain Youth Society for Human Rights and Caram-Asia, "The situation of women migrant domestic workers in Bahrain", report submitted to the forty-second session of the Committee on the Elimination of Discrimination against Women, October 2008, sixth page.

<sup>77</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 26, para. 17.

<sup>78</sup> Human Rights Watch, "As if I Am Not Human", p. 51.

<sup>79</sup> E/CN.4/2005/43, para. 41.

## D. The right to adequate housing for migrant children

56. The right to adequate housing is specifically guaranteed to children under article 27 of the Convention on the Rights of the Child, which recognizes the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. Where necessary, States are also obliged to provide parents and others responsible for the child with material assistance and support programmes, particularly with regard to nutrition, clothing and housing. This right is not limited to children who are nationals, but extends to all children, including asylum-seeking, refugee and migrant children, irrespective of their nationality, immigration status or statelessness.<sup>80</sup>

57. A lack of adequate housing may have a profound impact on children, given the integral link between children's housing rights and living conditions, and their cognitive, physical, cultural, emotional and social development. A safe and secure living environment is crucial for them in realizing a whole range of other human rights, such as the rights to education, health and personal security.

58. The stark reality is that this right remains unfulfilled in many parts of the world, often owing to the higher risk of poverty experienced by migrant children as compared to national children.<sup>81</sup> A study shows that migrant children are more likely than national children to live in overcrowded housing, which may have a negative impact on their development.<sup>82</sup> The concern is heightened with respect to irregular migrant children, whose right to adequate housing is dictated by the conditions of social exclusion that their families are subjected to. The lack of access to adequate housing for irregular migrant parents means that their children are deprived of housing as well.<sup>83</sup> The Special Rapporteur has also been informed of cases where the authorities are willing to provide housing assistance to irregular migrant children, but not to their families. This gives rise to difficult situations where children must either choose to live with their families at risk of homelessness, or separate from them to receive housing assistance.<sup>84</sup>

59. Further, concern is expressed in particular with respect to independent, unaccompanied migrant children. Unaccompanied children are particularly vulnerable to social exclusion and often have limited access to housing, due to the absence of adults' assistance either via social networks or housing markets.<sup>85</sup> Thus, independent and unaccompanied migrant children are more likely to be homeless or to live in collective dwelling or temporary homes of lower quality, such as shacks and rooms, compared to national children or migrant children with parents or guardians.<sup>86</sup> A study conducted by the United Nations Children's Fund (UNICEF) shows that the vast majority of independent migrant children in developing countries often sleep on the streets and in markets, shop fronts and kiosks, which exposes them to inadequate sleep, sexual harassment, robbery and

<sup>80</sup> Committee on the Rights of the Child, general comment No. 6 (2005), para. 12.

<sup>81</sup> Platform for International Cooperation on Undocumented Migrants (PICUM), *Undocumented Children in Europe: Invisible Victims of Immigration Restrictions* (Brussels, 2009), p. 71.

<sup>82</sup> UNICEF Innocenti Research Centre, *Children in Immigrant Families in Eight Affluent Countries: Their Family, National and International Context* (Florence, 2009), p. 58.

<sup>83</sup> PICUM, *Undocumented Children*, p. 74.

<sup>84</sup> *Ibid.*

<sup>85</sup> Shahin Yaqub, "Independent child migrants in developing countries: unexplored links in migration and development", Innocenti Working Paper No. 2009-01 (Florence, UNICEF Innocenti Research Centre, 2009), pp. 49–50.

<sup>86</sup> Shahin Yaqub, "Child migrants with and without parents: census-based estimates of scale and characteristics in Argentina, Chile and South Africa", Innocenti Discussion Paper IDP No. 2009-02 (Florence, UNICEF Innocenti Research Centre, 2009), p. 13.

assault.<sup>87</sup> Even where unaccompanied children are provided with housing by the State, they are often accommodated in hostels or bed and breakfast accommodation,<sup>88</sup> which may not be a suitable environment for children.

## VI. Good practices

60. In discharging his mandate, the Special Rapporteur has come across a number of initiatives, activities and policies implemented by Governments, international organizations, civil society and other stakeholders which reflect their commitment to the realization of migrants' rights to health and adequate housing. He believes it is important to exchange information on good practices with a view to bridging policy and protection gaps at all levels.

61. The Special Rapporteur commends efforts undertaken by Governments to ensure migrants' access to economic and social rights, regardless of immigration status. For example, the Migration Law (Law 25.871 of 2004) of Argentina recognizes the State obligation to ensure equal access to, inter alia, shelter, social services, public goods, and health for migrants and their families, regardless of immigration status. In Spain, all migrants, regardless of immigration status, are also entitled to register in the local government's register, which is a requirement for, inter alia, having access to education and health care. It is worth noting that the content of the registration information is not shared with immigration authorities.

62. A number of initiatives have been also undertaken at the regional level. For example, the Migration Policy Framework for Africa, adopted by the African Union in 2006, aims at developing a coordinated migration policy based on common priorities, including the interlinkages among migration, poverty and conflict as well as between migration and health.<sup>89</sup> In 2008, the Inter-American Commission on Human Rights also developed the *Guidelines for the Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights*, in which it recommends that States consider groups and sectors enduring situations of severe inequality which limit their enjoyment of social rights, including migrants in irregular situations.<sup>90</sup> In the Asia-Pacific region, there are initiatives, such as the Joint United Nations Initiative on Mobility and HIV/AIDS in South-East Asia, which seek to develop and strengthen policies, legislation, plans and mechanisms to ensure universal access by migrants to HIV prevention, treatment, care and support services throughout the migration cycle.

63. The Special Rapporteur also notes initiatives undertaken by trade unions. For example, the Estonian Association of Trade Unions, the Central Organization of Finnish Trade Unions (SAK) and the Finnish Union of Salaried Employees (TU) provide information to migrant workers on housing, work permits, taxes, employment applications and services offered by trade unions. In the Republic of Korea, the Medical Mutual-Aid Union for Migrant Workers in Korea systematically responds to the issues of irregular migrant workers and its programmes have been expanded to provide regular migrant workers without workplace health insurance with, inter alia, health care and treatment through a mobile clinic in several cities, as well as financial support for medical expenses such as hospitalization, emergency treatment and childbirth/delivery.

<sup>87</sup> Yaqub, "Independent child migrants", p. 52.

<sup>88</sup> PICUM, *Undocumented Children*, p. 80.

<sup>89</sup> Migration Policy Framework for Africa, p. 2. Available from: [http://fasngo.org/assets/files/resources/EXCL276\\_IX\\_Strategic\\_Framework\\_for\\_Policy\\_Migration.pdf](http://fasngo.org/assets/files/resources/EXCL276_IX_Strategic_Framework_for_Policy_Migration.pdf).

<sup>90</sup> OEA/Ser.L/V/II.132, Doc. 14 (2008), para. 53.

## A. The right to health

64. The Special Rapporteur welcomes national constitutions which recognize universal access to health regardless of immigration status, such as those of Colombia (art. 49) and South Africa (art. 27), and encourages other States to follow these practices. Some countries, such as Uruguay<sup>91</sup> and Argentina,<sup>92</sup> prohibit by law the denial of health-care services on the grounds of irregular immigration status.

65. The Special Rapporteur has also been informed of the initiative by the Ministry of Manpower of Singapore in September 2009 to increase the minimum medical insurance coverage of foreign workers. He also was informed of the adoption in 2003 of the Act on Foreign Workers' Employment in the Republic of Korea, which introduces the Employment Permit System for foreign workers. The System contains specific provisions for health insurance and coverage for the occupational health and safety of migrant workers in the manufacturing sector.

66. The Special Rapporteur welcomes the guidelines for grantees adopted by the Department of Health and Human Services of the United States of America, which requires its health and welfare institutions to provide interpretation services and translation of vital documents for clients who do not speak English.<sup>93</sup>

## B. The right to adequate housing

67. The Special Rapporteur welcomes the universal application of the right to adequate housing by regional human rights mechanisms. The European Committee of Social Rights recently enunciated that a State has an obligation to provide adequate shelter to irregular migrant children as long as they are in its jurisdiction and to ensure that the conditions should be such as to ensure human dignity.<sup>94</sup> The Special Rapporteur encourages other regional human rights mechanisms to promote the principle of non-discrimination in the application of the right to adequate housing.

68. The Special Rapporteur also welcomes the provision of clear guidance on the responsibilities of housing providers in ensuring equal access to housing. For example, in Canada, the *Policy on Human Rights and Rental Housing*, adopted by the Ontario Human Rights Commission in 2009, states that a prospective tenant cannot be refused a rental apartment on the grounds of, among other things, his or her race, colour, ethnic background or citizenship, including refugee status. Harassment by housing providers or other tenants or any unfair treatment on those grounds are also prohibited.

69. The attention of the Special Rapporteur has been also drawn to initiatives undertaken by trade unions, such as the operation of a seasonal work centre for migrant workers by the trade union confederations Confédération Française Démocratique du Travail and Force Ouvrière of France, in partnership with employers and local government representatives. The centre provides information to migrant workers on, inter alia, their

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<sup>91</sup> Law 18.250, art. 9.

<sup>92</sup> Law 25.871, art. 7.

<sup>93</sup> See Department of Health and Human Services, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, available at: [www.hhs.gov/ocr/civilrights/resources/specialtopics/lep/policyguidancedocument.html](http://www.hhs.gov/ocr/civilrights/resources/specialtopics/lep/policyguidancedocument.html).

<sup>94</sup> European Committee of Social Rights, *Defence for Children International (DCI) v. the Netherlands* (complaint No. 47/2008), Decision on the Merits of 20 October 2009, p. 4.

rights as well as on housing and operates a building to house hotel workers during the hotel season.

## VII. Conclusions and recommendations

70. In conclusion, the realization of the rights to health and adequate housing plays a crucial role in the integration of migrants in host societies. Obstructing and limiting access to services, institutions and goods that give effect to such fundamental rights represents not only violations of migrants' human rights, but also obstacles to migrants' inclusion and their active participation in the host States. In the view of the Special Rapporteur, such denial of human rights carries significant costs not only to migrants and their home countries, but also to host countries, including social disintegration and public health dangers. Despite progress made as a result of a number of encouraging good practices, the Special Rapporteur considers that many challenges lie ahead and wishes to make the following recommendations.

71. As a matter of fundamental principle, States should fulfil the "minimum core obligation" to ensure the satisfaction of minimum essential levels of primary health care as well as basic shelter and housing for all individuals within their jurisdiction,<sup>95</sup> regardless of their citizenship, nationality or immigration status, including migrants, migrants in irregular situations, migrant children and women. In times of severe resource constraints, the vulnerable members of society must be protected by the adoption of relatively low-cost targeted programmes.

72. States should expressly recognize in laws the rights to health and adequate housing for all individuals, regardless of their nationality or immigration status. Particular attention should be paid to removing laws which have a disproportionately negative impact on the enjoyment of these rights, such as the criminalization of irregular migration and the "obligation to denounce". States should also strengthen legal frameworks to guarantee access to justice regardless of immigration status.

73. States should collect disaggregated data and develop indicators on access to the rights to health and adequate housing by all individuals, paying particular attention to vulnerable groups such as migrants in irregular situations, migrant children and women. The indicators should form the basis of rights-based interventions designed to promote access to the rights to health and adequate housing by all.

74. As newly-arrived migrants may encounter practical difficulties in obtaining information which enables them to meaningfully exercise their rights, States should provide free information and advice on relevant laws, policies and regulations and local practice as well as language training for migrants who do not speak the language of the host States.

75. States should also consider and develop policies on the regularization and integration of migrants in irregular situations in order to reflect their contributions to the host societies and to provide better protection of their rights, including those to health and adequate housing.

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<sup>95</sup> Committee on Economic, Social and Cultural Rights, general comment No. 3, para. 10.

## A. The right to health

76. States are obligated under international human rights law to provide essential primary health care for migrants, including preventative and palliative care, irrespective of their immigration status. To this end, there is a need to clarify or define the entitlements of the right to health for migrants at the national level, as well as the scope and function of the existing public reimbursement schemes. A distinction must be made between entitlement and access to health services for migrants.

77. States should work to reduce obstacles to health care for migrants by ensuring that access to health services is not conditioned upon one's immigration status. Access to health services for migrants should also be ensured while in detention. In this regard, States should work to remove legal and other impediments such as the "obligation to denounce" or similar provisions in their national laws which impede the enjoyment of access to health by migrants.

78. States should also provide adequate information through campaigns and outreach, commit sufficient funds and promote implementation measures relevant to migrants' health issues. These policies should also (a) include the promotion of health services that are culturally and gender sensitive and conducive to reducing linguistic, communication and cultural barriers, and (b) be aimed at facilitating increased confidence and awareness of health services among migrant communities.

79. States should provide appropriate training to civil servants working in the area of migration and health and sensitize them on the issues of discrimination against migrants, particularly with respect to migrant women and girls and children. States must ensure that migrants are not denied access to health care due to uncertainty among public service providers, such as nurses and doctors, about what the law allows them to do for migrants.

80. In view of the fact that migratory processes and living conditions of migrants in host States may have negative effects on their mental health, States should ensure that migrants' access to health care includes mental health care. In this regard, States should pay particular attention to improving the mental well-being of migrants by creating services that are integrated and appropriate to their needs. Further studies into the mental health needs of migrants, which recognize the crucial interrelationship between social circumstances and mental health and help provide an insight into relevant mental health care and assistance, in particular to migrant women, migrant children and migrants in detention, are required.

81. Sending, transit and receiving countries should have inclusive health access programmes to address the health requirements of migrants in a continuum. Such interventions must move beyond emergency care, and address physical, mental and social well-being, including reproductive health and infectious diseases, while providing adequate health education and information for migrants.

82. In view of the specific health risks to which migrant women and girls are exposed, the gender dimension often involved in migration and the structural power relationships which frequently govern women's access to health care, States should provide adequate, appropriate and specialized medical assistance to migrant women and girls. States of origin should also provide free or affordable gender-sensitive pre-

departure information and training programmes which raise migrant women's and girls' awareness of potential risks to their health.<sup>96</sup>

83. States should ensure the provision of standardized and authentic health certificates if required by host countries and oblige prospective employers to purchase medical insurance for migrant workers. All required pre-departure HIV/AIDS testing or other pre-departure health examinations must be respectful of the human rights of migrants and be accompanied with health information and health promotion efforts. Special attention should be paid to voluntariness, the provision of free or affordable services and to the problems of stigmatization.

84. The best interest of the child requires that States take specific measures to ensure that all migrant children are able to enjoy the right to health, including continued access to health, as well as the rights related to health, such as the right to obtain a birth certificate. The right to health for unaccompanied children must be ensured immediately upon arrival, regardless of their immigration status. Furthermore, any decision to repatriate children to countries of origin should take into account the access to the right to health in those countries in the determination of what is in the child's best interest.

## B. The right to adequate housing

85. States should develop a comprehensive national housing strategy taking into account the needs and circumstances of migrants, who are often vulnerable to homelessness. Through the housing strategy States should seek to address underlying factors which dictate people's access to housing, such as low socio-economic status, gender, age and ethnicity.<sup>97</sup> The strategy should also encompass a regular monitoring system for housing situations of migrants, both in public and private sectors, to identify and address any discriminatory practices.

86. States should formulate comprehensive criteria which provide clear and practical guidance to housing providers on what constitutes discrimination on the basis of citizenship, nationality or immigration status and their responsibilities to ensure equal access to housing by all, including migrants.

87. Creative strategies at the local level are strongly encouraged, such as deposit-guarantee and rent-deposit schemes, whereby a local authority or a housing association acts as a guarantor to the landlord to facilitate access to housing by migrants.<sup>98</sup> In a similar vein, local authorities should proactively engage with landlords to promote equal access to housing through innovative programmes such as accreditation schemes for landlords, whereby the local authorities certify and approve responsible landlords.<sup>99</sup>

88. States should, at a minimum, provide migrants in irregular situations at risk of homelessness with a level of housing which ensures their dignity and allocate resources to shelters which provide assistance to migrants in irregular situations. In

<sup>96</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 26, para. 24 (b) (i).

<sup>97</sup> Heaven Crawley, "The situation of children in immigrant families in the United Kingdom", Innocenti Working Paper No. IWP-2009-18 (Florence, UNICEF Innocenti Research Centre, 2009), p. 35.

<sup>98</sup> Building and Social Housing Foundation, *Home from Home: Addressing the Issues of Migrant Workers' Housing* (Coalville, 2008), p. 22.

<sup>99</sup> *Ibid.*, p. 33.

this regard, cooperation and partnerships with non-governmental organizations, welfare organizations and community-based organizations at the grass-roots level are strongly encouraged. In the long term, regularization of migrants in irregular situations should be considered, so as to better protect their right to adequate housing.

89. States should ensure that evictions are carried out only in exceptional circumstances and in accordance with international human rights law. Affected individuals should be fully consulted and informed in advance of any planned evictions in languages they understand, and should be provided with alternative accommodation and compensation, and due process rights. In this regard, the Special Rapporteur encourages States to refer to the Basic Principles and Guidelines on Development-Based Evictions and Displacement formulated by the Special Rapporteur on adequate housing (A/HRC/4/18, annex).

90. States should fully take into account factors which affect access to housing by migrant women and girls. In particular, States should develop mechanisms to monitor workplace conditions of migrant women, especially where they are required to reside with their employers. States should ensure that migrant women workers have equal protection of the law and should provide accommodation for those who wish to leave abusive employers in the meantime.<sup>100</sup>

91. States should provide parents and others responsible for the child with material assistance and support programmes, particularly with regard to housing. Irregular migrant families and their children should be provided with a minimum level of housing which ensures their basic needs. Throughout the process, the best interest of the child should be the paramount concern and the guiding principle.

92. States should rapidly identify unaccompanied migrant children without access to adequate housing and provide them with accommodation suitable to their needs and circumstances. States should also appoint guardians in order to prevent the social exclusion of these children and ensure that they have adequate access to basic services.

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<sup>100</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 26, para. 26.