



人权理事会  
第十四届会议

议程项目 3

增进和保护所有人权——公民权利、政治权利、  
经济、社会和文化权利，包括发展权

移徙者人权问题特别报告员豪尔赫·布斯塔曼特的报告\*

增编

对大不列颠及北爱尔兰联合王国的访问

(2009年6月22日至26日)

提要

本报告将大不列颠及北爱尔兰联合王国主要作为移民流动目的地国，从这一角度审查了该国对移徙者人权的保护情况。本报告介绍了国际、欧洲和国内层面与移徙者人权有关的法律框架，强调了在执行现行法律方面的差距，指出了可受益于人权方法的政策。特别报告员介绍了主要的趋势和挑战，强调了良好做法并提出了建议。

\* 本文件的内容提要以所有正式语文分发。报告本身载于内容提要附件，仅以原文分发。

## Annex

### Report submitted by the Special Rapporteur on the human rights of migrants, Jorge Bustamante, on his mission to the United Kingdom of Great Britain and Northern Ireland 22–26 June 2009

#### Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–5	3
II. General background.....	6–12	3
A. Migration data.....	6–10	3
B. Migration trends.....	11–12	5
III. Normative and institutional framework.....	13–33	6
A. The international and regional legal framework.....	13–16	6
B. The national legal and institutional framework.....	17–33	7
IV. Good practices.....	34–44	10
A. Identifying, sharing and promoting good practices.....	35	10
B. Setting up independent mechanisms to monitor migration governance using international law.....	36–37	10
C. Sharing the responsibility of protecting persons in need of international protection.....	38	11
D. Protecting and empowering children in the context of migration.....	39–40	11
E. Workers organizations' cooperation initiatives in countries of destination and origin.....	41	11
F. National human rights institutions' commitment to the protection of the human rights of migrants.....	42	12
G. Other good practices.....	43–44	12
V. Major challenges.....	45–72	12
A. The criminalization of irregular migration and the detention of immigrants.....	45–48	12
B. The detention of asylum-seekers.....	49–52	13
C. The protection of children.....	53–56	14
D. The protection of migrant domestic workers.....	57–62	15
E. The protection and assistance for victims of human trafficking.....	63–66	16
F. Access to health care, regardless of immigration status.....	67–68	17
G. Other concerns.....	69–72	17
VI. Conclusions and recommendations.....	73–85	18

## I. Introduction

1. The Special Rapporteur on the human rights of migrants visited the United Kingdom of Great Britain and Northern Ireland from 22 to 26 June 2009, at the invitation of the Government. Given the short length of his visit, the Special Rapporteur only visited England, one of the four nations comprising the United Kingdom. While a comprehensive approach is privileged in the report, a number of examples are drawn from the observations and information gathered in situ. This report presents information on the protection afforded to migrants by the Government in light of international human rights standards. The report also presents major trends and key challenges, highlights good practices and makes recommendations.

2. During his visit, the Special Rapporteur consulted with government officials from the Foreign and Commonwealth Office, the Home Office, the Department of Health and the Department for Children, Schools and Families. He met with the Children's Commissioner for England, observed immigration operations at Heathrow Airport and visited immigration removal centres in the districts of Dover and Gosport.

3. At Heathrow airport, he observed operations in terminals 1 and 2 including short-term holding facilities and the Flight Connections Centre. He was briefed on the iris-recognition immigration system<sup>1</sup> and asylum-seeking processes. In Dover and Gosport, he visited immigration removal centres, where he observed routine operations, including the initial age assessment interview in a disputed age case. He also interviewed detainees charged with immigration-related offences.

4. The Special Rapporteur also held consultations with the Director of the United Kingdom Office of the European Parliament, a number of academic institutions and a variety of stakeholders, including representatives of non-governmental organizations<sup>2</sup> and the International Organization for Migration. He also gathered information directly from migrants and held consultations with representatives of the United Nations Children's Fund (UNICEF) and the Office of the United Nations High Commissioner for Refugees (UNHCR).

5. The Special Rapporteur expresses his appreciation to the Government, to UNHCR and UNICEF for the support provided in the organization and facilitation of the visit as well as to all stakeholders for their time and cooperation.

## II. General background

### A. Migration data

6. The United Kingdom is now a major country of destination of immigration flows. International migration has contributed nearly three quarters of the total population growth in recent years<sup>3</sup> and the number of international migrants has doubled over a 25-year

<sup>1</sup> This is a means of border control that uses digital technology to recognize a person from the pattern of the person's iris (the coloured part of the eye), which is unique in every individual. It allows registered passengers to enter the United Kingdom quickly through automated barriers at certain airports.

<sup>2</sup> List available from the Secretariat.

<sup>3</sup> Office for National Statistics, National Statistics Quality Review of Immigration Statistics in the UK, March 2005.

period. The United Nations Global Migration Database shows a total of 3,389,925 international migrants residing in the United Kingdom in 1981 and 6,486,000 in 2007. The population survey carried out in 2007 showed a total of 60,975,000 inhabitants, suggesting that international migrants accounted for 10 per cent of the population.<sup>4</sup> Also in 2007, other sources estimated the number of irregular migrants to be 618,000 (with a range of 417,000 to 863,000),<sup>5</sup> which suggests that irregular migrants represented 9.5 per cent of all international migrants.

7. International migrants include European Union nationals. Figures published by the Office for National Statistics in December 2009 showed that between 2004 and 2008, migrants from Accession 8 (A8)<sup>6</sup> countries living in the United Kingdom increased from 167,000 to 689,000.<sup>7</sup>

8. In 2001, around 2.1 million children — representing 16.3 per cent of the total child population — were from immigrant families. A fifth of those children were foreign-born and the remainder were born in the United Kingdom to at least one foreign-born parent. More than 40 per cent were from families from Asia, around 20 per cent from families from Africa and around 20 per cent from families from other countries in Europe. The main countries of origin include Bangladesh, Jamaica, India and Pakistan.<sup>8</sup> Estimates also suggest that one child in six in the United Kingdom lives with at least one immigrant parent.<sup>9</sup>

9. During 2008 and 2009, the Home Affairs Committee conducted an inquiry into human trafficking, in which it highlighted the lack of accurate statistical information and estimated that there are at least 5,000 trafficked victims in the United Kingdom.<sup>10</sup> Between April and September 2009, China and Nigeria were the main source countries for the 347 victims referred to the United Kingdom Human Trafficking Centre. Over the same period, there were also 31 female victims of sexual exploitation under 18 years old, which means that approximately 43 per cent of cases concerned trafficking of women for sexual exploitation. Between March 2007 and February 2008, 325 children from 52 different countries of origin were identified as potentially trafficked or exploited. Many of the children came from the United Kingdom, but also from Afghanistan, China, Nigeria, Romania and Viet Nam. Some of them have been forced to work in brothels and restaurants.<sup>11</sup>

<sup>4</sup> Ibid.

<sup>5</sup> London School of Economics, *Economic Impact on the London and UK Economy of an Earned Regularisation of Irregular Migrants to the UK* (London, Greater London Authority, May 2009), para. 12.

<sup>6</sup> The eight countries that joined the European Union on 1 May 2004 are usually referred to as Accession 8 or A8 countries. They are: Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia.

<sup>7</sup> Office for National Statistics news release, “National statistician’s annual report on UK population statistics”, 8 December 2009.

<sup>8</sup> Heaven Crawley, “The Situation among Children in Immigrant Families in the United Kingdom”, Innocenti Working Papers, No. 2009-18 (Florence, UNICEF, 2009), p. 1.

<sup>9</sup> UNICEF, *Children in Immigrant Families in Eight Affluent Countries: their family, national and international context* (Florence, 2009), p. 13.

<sup>10</sup> See House of Commons, “The Trade in Human Beings: Human Trafficking in the UK”, Sixth Report, 2009, para. 28. See also Sally Almandras, Human trafficking: UK responses, Home Affairs, 11 March 2010, p. 5–6. (Standard Note SN/HA/4324). Available from <http://www.parliament.uk/commons/lib/research/briefings/snha-04324.pdf>.

<sup>11</sup> Ibid., pp. 49–50.

10. The variety of migration-related data collection tools and methods makes data comparison and analysis difficult. The country's population census does not include data on immigration status and the Control of Immigration Statistics and International Passenger Survey, which are the most common statistical tools, record annual inflow of people but do not indicate the status or size of the country's foreign population. Furthermore, no national database includes data on the number of children in immigrant families, while Home Office data cover dependents, but do not differentiate among them. Statistics on migrants' detention are not disaggregated by sex and age. Some of these weaknesses are being addressed.<sup>12</sup>

## B. Migration trends

11. Migration trends in the United Kingdom are heavily affected by global trends and the main triggers of international migration into the United Kingdom are economic migration, family reunification and asylum-seeking. Since 1997, economic migration has increased as a response to a growing labour demand. In 2002, the Government established a programme to attract highly skilled migrants<sup>13</sup> and, in 2004, opened the labour market to A8 nationals. Recent governmental policy has grown more restrictive in relation to family migration and the acquisition of settlement and British citizenship. This more restrictive tendency has mainly resulted from the perceived lack of social integration of some immigrants and requirements for language capacity and knowledge of life in the United Kingdom have therefore been introduced, first for naturalization as a British citizen (as of 1 November 2005) and then for settlement (as of 2 April 2007).

12. According to the International Labour Organization (ILO), with the economic downturn, the unemployment rate for migrant workers increased in the third quarter of 2008 to 7.3 per cent, almost one point higher than the total labour force unemployment rate, which was estimated to be 6.5 per cent over the same period. The unemployment rate of the total labour force is expected to increase to 9.5 per cent in 2010. The range of jobs on the National Shortage Occupation List<sup>14</sup> has been reduced and the Resident Labour Market Test<sup>15</sup> reinforced for skilled jobs. Moreover, the qualifications and salary requirements for foreign workers have been raised to a master's degree and a minimum salary of £20,000. It is expected that these changes will contribute to a decrease in the number of non-European Union highly skilled workers by half.<sup>16</sup> Immigration for low-skilled occupations was suspended indefinitely, inter alia, to reduce the number of non-European Union migrant workers. Lately, the rate of emigration from the United Kingdom has been increasing.<sup>17</sup>

<sup>12</sup> Office for National Statistics, Migration Statistics Improvement Work Programme Update, August 2009.

<sup>13</sup> See infra para 21.

<sup>14</sup> This list presents the occupations for which qualified persons are in short supply in the United Kingdom and demonstrates that resident workers are insufficient to fill the available jobs in a particular occupation, and thus facilitates the admission of foreign nationals to be employed in those jobs.

<sup>15</sup> This test includes a series of requirements such as the advertisement of the job vacancy in the United Kingdom, inter alia, in accordance with the code of practice specific to the sector and job or using the Jobcentre Plus, which is a job-seeking tool.

<sup>16</sup> Ibrahim Awad, *The global economic crisis and migrant workers: Impact and response* (Geneva, ILO, 2009), pp. 8–9 and 47.

<sup>17</sup> Office for National Statistics news release, "Emigration reaches record high in 2008", 26 November 2009.

### III. Normative and institutional framework

#### A. The international and regional legal framework

13. The United Kingdom has ratified seven of the core international human rights instruments. The State has also ratified the Convention relating to the Status of Refugees and its Protocol; the ILO Convention concerning Migration for Employment No. 97; the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption (both of which contain provisions requiring or encouraging measures of protection for witnesses of offences sanctioned under those treaties); the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air (both of which supplement the Convention against Transnational Organized Crime). The United Kingdom is yet to ratify the International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families (hereinafter “Migrant Workers Convention”)<sup>18</sup> or the ILO Migrant Workers (Supplementary Provisions) Convention No. 143 (1975).

14. The United Kingdom has repeatedly been encouraged to ratify the Migrant Workers Convention, for example, by the Committee on Economic, Social and Cultural Rights,<sup>19</sup> the Committee on the Rights of the Child<sup>20</sup> and the Committee on the Elimination of Discrimination against Women.<sup>21</sup> In the context of the universal periodic review, the State did not accept the recommendation regarding the ratification of the Migrant Workers Convention<sup>22</sup> and stated it has no plans to sign it.<sup>23</sup> This position was stressed during the Special Rapporteur’s visit when the United Kingdom Border Agency (UKBA) highlighted that the United Kingdom requires a stronger and rather restrictive approach to labour migration, particularly to irregular migration.

15. In this regard, the Special Rapporteur wishes to highlight that the ratification of the Convention does not limit the right of the State to determine the conditions for admitting migrant workers and their family members, as stated in article 79 of the Convention. In his view, ratification of the Convention is not incompatible with the Government’s policy goals since, even if the United Kingdom wishes to adopt a restrictive approach to irregular labour migration, the State is under the general obligation to treat migrants, regardless of their immigration status, in accordance with international human rights standards. He also draws attention to the pledges and commitments presented by the State to the General Assembly in its campaign for re-election as a member of the Human Rights Council, particularly to its fourth commitment on upholding the highest standards of human rights at home, including by “tackling inequality and discrimination, to ensure that every individual is able to fulfil their potential through the employment of equal opportunities, rights and responsibilities”.<sup>24</sup>

<sup>18</sup> Ratification of the Migrant Workers Convention has strongly been encouraged, inter alia, by the European Parliament (resolution of 24 February 2005 (P6\_TA(2005)0051), para. 22) and the European Economic and Social Committee (Opinion of 30 June 2004 (SOC/173)).

<sup>19</sup> E/C.12/GBR/CO/5, para. 46.

<sup>20</sup> CRC/C/GBR/CO/4, para. 81.

<sup>21</sup> A/63/38, para. 300.

<sup>22</sup> A/HRC/8/25, recommendation No. 21.

<sup>23</sup> A/HRC/8/25/Add.1, para. 20.

<sup>24</sup> See A/62/730, para. 4 (ii).

16. At the regional level, the State is a member of the Council of Europe and the European Union and became a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms. The United Kingdom is also a party to several of the protocols to that Convention, although it is yet to ratify Protocol No. 12 on the prohibition of discrimination. The State has signed the (revised) European Social Charter but is yet to ratify regional instruments strengthening the human rights protection of migrant workers.<sup>25</sup> The State is a party to the Council of Europe Convention on Action against Trafficking in Human Beings, which it ratified in December 2008.

## **B. The national legal and institutional framework**

17. The United Kingdom, a constitutional monarchy and parliamentary democracy, comprises England, Northern Ireland, Scotland and Wales. The Westminster Parliament legislates on certain matters that affect the whole of the United Kingdom and some acts of Parliament (including the Human Rights Act of 1998) apply throughout the State. The United Kingdom Crown Dependencies and Overseas Territories are not part of the territory, but the United Kingdom is responsible for their external affairs.<sup>26</sup>

18. Migration is managed by both the Home Office and the Foreign and Commonwealth Office. The Home Office, through the UKBA, is responsible for securing and managing the borders and enforcing immigration and customs regulations. The Foreign and Commonwealth Office manages migration from a foreign affairs perspective, including the management of embassies and consulates worldwide, and works in partnership with the UKBA to achieve common strategic goals in migration governance.

19. The three national human rights institutions in the United Kingdom (England, Northern Ireland and Scotland) and the four children's commissioners (England, Northern Ireland, Scotland and Wales) have widely supported the protection of human rights in the context of migration, as described in section IV below.

20. Within the judiciary, the Special Immigration Appeals Commission, a superior tribunal, deals with appeals against decisions made by the Home Office to deport foreign nationals on grounds of national security or for reasons of public interest. The Commission's procedures allow it to examine all deportation-related evidence, including highly classified material, without jeopardizing the source through unauthorized disclosure.<sup>27</sup> With the new reform, the Commission's decisions may be reviewed by the Upper Tribunal.

### **Immigration law and policy**

21. The key legal instrument regulating immigration in the United Kingdom is the Immigration Act 1971. The current legal framework for immigration is complex and includes a wide range of legal instruments yet to be consolidated in a single text, such as the Immigration (Carrier's Liability) Act 1987; the Immigration Act 1988; the Asylum and Immigration Appeals Act 1993; the Asylum and Immigration Act 1996; the Special Immigration Appeals Commission Act 1997; the Immigration and Asylum Act 1999; the Nationality, Immigration and Asylum Act 2002; the Asylum and Immigration (Treatment

<sup>25</sup> The European Convention on the Legal Status of Migrant Workers, together with the (revised) European Social Charter (arts. 18 and 19 in particular) and the European Convention on Social Security strengthen the protection of migrant workers in Europe.

<sup>26</sup> See A/HRC/WG.6/1/GBR/1, paras. 4–5.

<sup>27</sup> *Ibid.*, para. 90

of Claimants, etc.) Act 2004; the Immigration, Asylum and Nationality Act 2006; the UK Borders Act 2007 and the Borders, Citizenship and Immigration Act 2009.

22. The United Kingdom developed in 2002 the Highly Skilled Migrant Programme, which was replaced in 2009 by the highly skilled worker tier on the basis of a points system described in paragraph 26. In 2004, it developed a workers registration scheme for A8 workers, who are thereby required to register (and pay a one-time registration fee of £90) with the Home Office within one month of taking up employment.

23. Since July 2006, steps have been taken to replace the existing immigration laws with a single simplified or consolidated law. In this regard, consultations began in 2007<sup>28</sup> and stand-alone changes to the current system were introduced in July 2009 with the adoption of the Borders, Citizenship and Immigration Act 2009.

24. The new act allows for certain functions to be transferred from Her Majesty's Revenue and Customs Office to UKBA. It also amends several provisions, such as the British Nationality Act 1981 provisions relating to naturalization as a British citizen, children of foreign and Commonwealth members of the Armed Forces and the registration as British citizens of children born abroad to British mothers before 7 February 1961. It also introduces powers to control all those arriving in the United Kingdom from another part of the Common Travel Area,<sup>29</sup> establishes restrictions on studying in the United Kingdom, introduces powers to take fingerprints and detain at ports in Scotland, allows judicial review applications in immigration and nationality cases to be heard by the new Upper Tribunal and introduces a new duty for UKBA to safeguard the welfare of children. Although this law complements legislation currently in force, the main goal is to adopt a full simplified or consolidated bill and a framework for immigration rules in the near future.

25. A five-year asylum and immigration strategy was developed between 2005 and 2006 to: strengthen border control; fast-track asylum decisions; enforce compliance with immigration laws; boost the economy by bringing skills in demand from around the world; and ensure legal entry to the country.<sup>30</sup>

26. The strategy sets forth five expected accomplishments, which the Special Rapporteur considers punitive rather than protective: (a) to strengthen the use of intelligence and risk assessment to target the people, routes and places with a view to increasing scrutiny of those who will enter the United Kingdom; (b) to manage the identity of foreign nationals through a secure, unique identification to help manage migration and reduce unauthorized work; (c) to implement cross-government enforcement action; (d) to enhance the system of fast removal of third-country nationals; and (e) to improve the management of asylum-seekers to cope with the workload relating to the large numbers of applications. UKBA also established a three-pronged business plan (2009–2012)

27. The points-based system, based on a set of criteria aimed at meeting workforce specific needs, was introduced in 2008. This system, also known as the “five-tier immigration system”, applies to five categories of migrants, each of which has a different set of conditions, entitlements and entry clearance checks: tier 1 is for highly skilled individuals; tier 2 for skilled workers with a job offer; tier 3 for low-skilled workers needed to fill temporary labour shortages (suspended indefinitely); tier 4 for students and tier 5 for

<sup>28</sup> See Home Office, “Simplifying Immigration Law: an initial consultation”, June 2007.

<sup>29</sup> The Common Travel Area is an immigration arrangement that creates a “free-movement” (passport-free) area comprising the United Kingdom, the Republic of Ireland, the Bailiwick of Guernsey, the Bailiwick of Jersey and the Isle of Man.

<sup>30</sup> Home Office, “Fair, effective, transparent and trusted: rebuilding confidence in our immigration system”, July 2006.



temporary workers and young people covered by a youth mobility scheme. For each category, applicants need to score a certain number of points to be allowed to enter or stay in the country.

### **Counter-human trafficking and the protection of victims**

28. The Sexual Offences Act 2003 established a wide range of offences of human trafficking for sexual exploitation into, within or from the United Kingdom. The Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 prohibits human trafficking for labour exploitation and organ transplantation. Offences carry a maximum sentence of 14 years' imprisonment.

29. In 2003, the Office for Criminal Justice Reform set up the Poppy Project, aimed at providing short-term accommodation and support to women trafficked into prostitution. Its capacity amounts to 54 bed spaces in houses and it is the only such project being implemented in the country. Only limited numbers of victims of trafficking for sexual exploitation have access to accommodation, advice and/or outreach services. Between March 2003 and August 2009, the Poppy Project helped 490 victims, including 239 by providing urgent accommodation and 251 by providing outreach assessment.<sup>31</sup> Since April 2009, it has also provided help to victims of forced labour and domestic servitude.

30. At the time of the report, admission to the Poppy Project was assessed against three main criteria, which are age (victims should be over 18), timing (victims should have been involved in prostitution within three months of referral), and nationality (victims should have been trafficked into the United Kingdom from abroad). However, more recent information provided by the Government indicates that the three-month requirement has been dropped and that victims who have been trafficked into or within the United Kingdom are now eligible for Poppy Project support. Information received by the Special Rapporteur also suggested that, in practice, the Government considered victims' cooperation as a requirement to accommodating them under the Poppy Project. In this connection, the Government highlighted that cooperation with the police is not a requirement for victims to receive assistance, as they must only show a willingness to enter the National Referral Mechanism.

31. In March 2007, the Government launched the UK Action Plan on Tackling Human Trafficking as a platform for developing a more strategic and holistic approach to this issue. Accordingly, the Government established the United Kingdom Human Trafficking Centre as a cooperative framework for protecting and promoting the human rights of trafficked persons and coordinating efforts with civil society.<sup>32</sup> The centre acts as the central repository for all data and intelligence on human trafficking and is a multiagency centre composed of, inter alia, representatives from the police, UKBA, the Serious Organised Crime Agency, Crown Prosecution Service and the Foreign and Commonwealth Office.

32. The Child Exploitation and Online Protection Centre has a child trafficking unit mandated to act as focal point for producing and disseminating information on and raising knowledge and understanding of the nature and scale of the trafficking of children in the United Kingdom, along with policy, guidance and training on the best responses to the problems identified. On the ground, children services departments are responsible for supporting and protecting children abused or with specific needs, by providing foster and/or residential care. Assessment or duty teams carry out an initial assessment and facilitate children's access to the various specialist teams, including the team for children with

<sup>31</sup> Home Office, Update to the UK Action Plan on Tackling Human Trafficking, October 2009, p. 22.

<sup>32</sup> See "Fair, effective, transparent and trusted: rebuilding confidence in our immigration system", p. 6.

disabilities, the child protection team, a family support team or a “looked after children team”. The social worker assigned to a specific case establishes a detailed core assessment of the child’s needs and then develops a plan to be followed accordingly.

33. With the ratification of the Council of Europe Convention on Action against Trafficking in Human Beings in 2008, trafficked victims are now provided with a reflection and recovery period of at least 45 days, during which time the victims are assisted and not removed from the United Kingdom. Furthermore, victims may be granted discretionary leave to remain in certain circumstances, as described in section IV.

## IV. Good practices

34. During his visit, the Special Rapporteur was informed of various cooperation initiatives, which, in his view, illustrate the commitment of the Government and/or other stakeholders to a human rights-based approach to migration and/or the protection of the human rights of migrants.

### A. Identifying, sharing and promoting good practices

35. The Special Rapporteur welcomes the establishment of the Migration Excellence Programme funded by the Department of Communities and Local Government and implemented by the Improvement and Development Agency, which operated from 2007 to October 2008.<sup>33</sup> He especially welcomes the added value of this programme in identifying, sharing and promoting good practices in migration governance, particularly concerning: integrating new migrants from A8 States and collecting migration data; modifying local services to meet the needs of new residents; and highlighting sample actions to minimize tensions between communities.

### B. Setting up independent mechanisms to monitor migration governance using international law

36. The Special Rapporteur commends the establishment of the independent Chief Inspectorate of UKBA, created in 2007 to focus on the overall efficiency and effectiveness of the main governmental agency responsible for migration governance. He especially welcomes the Inspectorate’s mandate, which includes, inter alia, the functions of: reviewing the process involved in handling individual cases; examining UKBA goals and programmes to determine their compliance with international obligations; and carrying out unannounced inspections at ports and embassies.

37. The Special Rapporteur also commends the establishment of four posts of children’s commissioners (for England, Northern Ireland, Scotland and Wales), in charge of promoting awareness of the views and interests of children, particularly regarding health and education, training and recreation and their protection from harm and neglect. He especially welcomes their role in the protection of children in the context of migration, both within their respective jurisdictions<sup>34</sup> and collectively through the elaboration of a number

<sup>33</sup> See, inter alia, Improvement and Development Agency, “Overview: migration excellence programme”, 2008.

<sup>34</sup> See, for example, Al Aynsley-Green, *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* (London, 11 Million, 2009).

of recommendations, inter alia, on special protection measures for unaccompanied children seeking asylum.<sup>35</sup>

### **C. Sharing the responsibility of protecting persons in need of international protection**

38. The Special Rapporteur commends cooperation established between UNHCR and the Government through the Quality Initiative Project, whereby UNHCR provides expertise to the Home Office on improving the quality of first-instance decision-making in asylum-seeking applications. He also welcomes the partnership between UNHCR and UKBA in the Gateway Protection Programme for resettling the most vulnerable refugees to the United Kingdom, which currently offers a legal route for up to 750 refugees per financial year who are deemed eligible to be resettled from first countries of asylum to the United Kingdom. Furthermore, the beneficiaries are granted permission upon arrival to settle permanently instead of being granted a temporary authorization to stay for five years, as is the practice in the standard procedure for claiming asylum in the United Kingdom. The Special Rapporteur also welcomes the UKBA instruction on mandate refugees<sup>36</sup> for the handling of applications from abroad for leave to enter for settlement purposes by persons recognized as refugees and given asylum by a host country, without this affecting their refugee status.

### **D. Protecting and empowering children in the context of migration**

39. The Special Rapporteur commends the inclusion of migrant children and children from a migrant background in early childhood services aimed at developing children's capacities in general, while also addressing specific issues such as language command. He also welcomes efforts to build intercultural and teaching skills to facilitate inclusion of migrant families and their children, regardless of their immigration status, and praises the Government's efforts to accommodate linguistic and religious diversity and cultural perspectives in education plans and programmes.

40. The Special Rapporteur welcomes the child-specific refugee status determination process aimed at considering the child's needs and requirements handled by officials trained in child protection as part of an accelerated procedure of a maximum length of six months, including any appeal. The Special Rapporteur welcomes the adoption of statutory guidance to UKBA on making arrangements to safeguard and promote the welfare of children, issued under section 55 of the Borders, Citizenship and Immigration Act 2009.

<sup>35</sup> See, for example, "UK Children's Commissioner's Report to the UN Committee on the Rights of the Child", June 2008.

<sup>36</sup> A mandate refugee is a person in a third country, who has been recognized as a refugee by, and given the protection of, UNHCR. Such a person may also be recognized as a refugee and given asylum by a host country without this affecting their mandate refugee status. See UKBA, "Mandate Refugees", 2009. Available from <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/manadaterefugees.pdf?view=Binary>.

**E. Workers organizations' cooperation initiatives in countries of destination and origin**

41. The Special Rapporteur commends the agreement signed in 2001 between the national Trades Union Congress and the General Confederation of Portuguese Workers aimed at promoting membership in Trade Union Congress unions of Portuguese migrant workers who are Confederation members. He especially welcomes the information campaigns undertaken in the migrant workers' own language on their rights.

**F. National human rights institutions' commitment to the protection of the human rights of migrants**

42. The Special Rapporteur welcomes the commitment of the three national human rights institutions in the United Kingdom to promoting both the human rights of migrants and the protection of human rights in the context of migration. He commends migrant rights-related activities by the Equality and Human Rights Commission, established in 2007, which include the publication of a study highlighting the several benefits that migration brings to the economy of the United Kingdom<sup>37</sup> and the establishment of a helpline to address non-nationals' equality rights. He also praises migrant rights-related activities undertaken by the Northern Ireland Human Rights Commission, established in 1998, and the Scottish Commission for Human Rights, which commenced operations in June 2008.

**G. Other good practices**

43. The Special Rapporteur welcomes the possibility given to asylum-seekers of indicating a preference for the gender of the UKBA representative who will conduct the substantive asylum interview and the official who will be responsible for handling their claim. Although preferences indicated may not be accommodated for operational reasons, the Special Rapporteur welcomes the opportunity given to claimants to indicate the gender preference of the interpreter.

44. The Special Rapporteur welcomes the legal options available to persons who need protection but who are not deemed refugees. In this regard, he welcomes the establishment of the "discretionary leave to remain", granted for a maximum three-year period, available to those who have not been considered for international protection or have been excluded. He also welcomes the "humanitarian protection leave" granted to persons, including refused asylum-seekers, who, if returned to their countries may face serious risks to their life arising from the death penalty, unlawful killing, torture or inhuman or degrading treatment or punishment.

---

<sup>37</sup> See Will Somerville and Madeleine Sumption, *Immigration and the labour market: theory, evidence and policy* (Migration Policy Institute, 2009).

## V. Major challenges

### A. The criminalization of irregular migration and the detention of immigrants

45. Section 33 (1) of the 1971 Act, as amended by the 1996 Act, defines an “illegal entrant” as a person that is either (a) unlawfully entering or seeking to enter in breach of a deportation order or of the immigration laws, or (b) entering or seeking to enter by means which include deception by another person, and includes a person who has so entered. This includes entry without leave (clandestine entry, absconders, unwitting evasion of the control); verbal deception; documentary deception; no evidence of lawful entry; entry in breach of a deportation order; illegal entry from the Republic of Ireland; and illegal entry from the Channel Islands and the Isle of Man.

46. UKBA is responsible for the removal of “illegal entrants”, who can depart voluntarily, either independently or with the support of the International Organization for Migration’s Assisted Voluntary Return Programme. Those who opt out of voluntary departure can be issued a deportation order by the Home Secretary and detained under the Immigration Act for examination or removal.

47. Detention figures that report the number of persons detained solely under Immigration Act powers showed that, at the end of March 2009, a total of 2,460 persons were detained in UKBA premises (a figure 7 per cent higher than at the end of March 2008, when it stood at 2,305); 2,360 were held at UKBA removal centres and 100 in UKBA short-term holding facilities. Furthermore, 30 people detained solely under Immigration Act powers were recorded as being less than 18 years of age; 20 of these had been in detention for less than 29 days; 5 for between 29 days and 2 months and the remaining 5 for 2–3 months.

48. Detention statistics provided by the Government show that of the 2,460 people detained, 960 had been in detention for less than 29 days; 425 for between 29 days and 2 months; 360 for 2–4 months; 225 for between 4–6 months; 270 for between 6 months and 1 year; and the remaining 215 for longer than 1 year. These figures are not directly comparable with previous figures on length of detention prior to December 2008 because of the use of a revised methodology.

### B. The detention of asylum-seekers

49. The legal regime applicable to asylum-seekers includes the “detained fast-track” (DFT) procedure, by virtue of which asylum-seekers are held in detention while their asylum claims are decided according to an accelerated procedure. Under the DFT, men have been held in detention at Harmondsworth near Heathrow Airport since 2003, and women have been held at Yarl’s Wood near Bedford since 2005. Although the DFT is supposed to be for cases which can be settled quickly, it is reported that, in practice, most asylum claims can be routed through the DFT, regardless of the complexity of the case or whether it can be heard properly within an accelerated legal schedule. Additional information provided by the Government emphasized the UKBA clear eligibility instruction and exclusion criteria for assessing the suitability of a case for DFT and highlighted that around 15 per cent of cases entering the DFT procedure are taken out because of their complexity.

50. Under a new asylum model introduced in March 2007, asylum-seekers are not detained, but are subject to closer contact management, through a dedicated Home Office

case-owner, and have decisions on their asylum claims made according to faster schedules. Despite the fact that the model offers accelerated decision-making processes and increased contact with asylum-seekers without resorting to detention, the Special Rapporteur's attention was also drawn to cases of children, torture survivors and trafficked women who were detained while their asylum cases were being decided.<sup>38</sup>

51. Official figures report that, at the end of March 2009, a total of 1,740 asylum-seekers had been detained at some stage solely under Immigration Act powers (71 per cent of all detainees), 6 per cent higher than at the end of March 2008 (1,640). Of the asylum-seekers detained, 88 per cent were male.

52. In this connection, the Special Rapporteur also heard numerous allegations of instances of indefinite periods of detention of asylum-seekers. This allegation was acknowledged as true by UKBA officers in the last meeting held with the Special Rapporteur on 26 June 2009, when reference was made to the case of Ahmed Daq,<sup>39</sup> a Somali national and failed asylum-seeker with a criminal record, who was detained for over three years with no prospect of deportation and who, by a ruling of the High Court of Justice, was granted bail under stringent conditions, including tagging, daily reporting to an immigration officer or police station and residence at an address to be identified or agreed by the Secretary of State.<sup>40</sup>

### C. The protection of children

53. The Special Rapporteur welcomes the withdrawal on November 2008 of the general reservation that the State had made upon ratification of the Convention of the Rights of the Child in connection with its application in the context of migration. He also notes with appreciation the establishment of the "Every Child Matters" framework aimed at ensuring that all children – regardless of their background or circumstances – are supported in the areas of health, education, social inclusion, participation and economic well-being. However, he regrets that, despite the numbers of immigrant children and children from a migrant background in the country, immigration status continues being a major barrier to children's equal access to education and health care, as suggested by a study released by UNICEF in October 2009.<sup>41</sup>

54. Despite the law recognizing equal rights for students, regardless of refugee or other status, including for the purpose of the right to mandatory education maintenance grants and loans, asylum-seekers who have not been granted any type of leave to remain in the United Kingdom must in practice fulfil a three-year residency requirement before becoming eligible for higher education grants or loans. They are regarded as overseas students for purposes of fees and awards for further and higher education, although they may be eligible to take part-time further education courses at reduced fees. Furthermore, asylum-seekers

<sup>38</sup> See Amanda Shah and Adeline Trude, *Out of sight, out of mind: experiences of immigration detention in the UK* (London, Bail for Immigration Detainees, 2009).

<sup>39</sup> See *The Queen on the application of Ahmed Daq v. Secretary of State for the Home Department*, EWHC 1655 (Admin), CO/3586/2009, 25 June 2009. Available from <http://www.unhcr.org/refworld/pdfid/4a5d96c22.pdf>.

<sup>40</sup> This case was also covered by local media. See, inter alia, Tom Whitehead, "Criminal failed asylum seeker to be released due to Home Office delays", *Telegraph*, 26 June 2009 and Toops Chambers, "High Court Orders Release of Somali Asylum Seeker after Three Years in Detention Awaiting Deportation", 26 June 2009. Available from <http://www.toops.co.uk/law/immigration/>.

<sup>41</sup> See "The Situation among Children in Immigrant Families in the United Kingdom".

generally face difficulties in securing access to further and higher education, particularly if they live outside London.<sup>42</sup>

55. The Special Rapporteur remains concerned about the use of detention in immigration control and the process of refugee status determination. In this connection, the House of Commons has stated in a report that nearly 1,000 children in families each year are detained in immigration removal centres.<sup>43</sup> Stakeholders estimate that the figure is actually double that.

56. The Special Rapporteur has been informed of the instruction issued by UKBA regarding age-disputed cases of asylum-seekers, whereby “the claimant should be treated as an adult if their physical appearance/demeanour very strongly suggests that they are significantly over 18 years of age” and expresses concern about the lack of recognition of the benefit of the doubt in age-disputed cases. He notes with dismay that this guidance relies excessively on subjective criteria, having as a consequence the possibility that minors could be considered as adults throughout the application process and detained on this basis. Furthermore “the lack of available information about the range of children involved [in asylum-seeking] raises considerable concern about safeguarding arrangements”.<sup>44</sup>

#### **D. The protection of migrant domestic workers**

57. Reports suggest that approximately 17,000 visas are granted yearly to domestic workers, the vast majority of whom are women from non-European Union countries accompanying their employers and employed to undertake a range of activities in private households, including housekeeping and care work. These workers come from a variety of countries such as India, Indonesia, the Philippines and Sri Lanka, while their employers are mainly Middle Eastern, Indian or British nationals.<sup>45</sup>

58. Regular migrant domestic workers enjoy employment law protection, including the right to the national minimum wage, adequate rest breaks, remunerated holidays and maternity-related rights, including leave. Information received suggests that challenges remain in the monitoring of living and working conditions, as the workplace of domestic workers is the home of their employers.

59. Stakeholders drew the Special Rapporteur’s attention to reports documenting a wide range of abuses encountered by migrant domestic workers in their workplaces, including poor working and living conditions, psychological and physical abuse, forced labour, sexual aggression, withholding of identity and travel documents, low or no wages and excessive working hours sometimes without meal or rest breaks. Allegations of threats and intimidation or physical violence and threats not to renew the workers’ visa, to have the worker deported, to make spurious allegations to the police about a domestic worker stealing or to throw domestic workers out onto the streets were also mentioned during the visit.

60. The Special Rapporteur notes with appreciation that the right to change employer has been instrumental in facilitating the escape of migrant domestic workers from

<sup>42</sup> Ibid., p. 46.

<sup>43</sup> House of Commons, “The Detention of Children in the Immigration System”, first report of session 2009–10, November 2009, p. 3.

<sup>44</sup> See David Behan and others, “Safeguarding Children: The Second Joint Chief Inspector’s Report on Arrangements to Safeguard Children”, 2005, p. 71.

<sup>45</sup> See Vanina Wittenberg, *The New Bonded Labour? The impact of proposed changes to the UK immigration system of migrant domestic workers* (Kalayaan and Oxfam, 2008).

exploitative and abusive situations. This is because they know they can receive support and assistance and still seek work with another employer without facing the risk of being removed from the United Kingdom.

61. The Special Rapporteur welcomes the decision of the Government to continue this visa scheme for migrant domestic workers for at least two years, notwithstanding the introduction of the points-based system for nationals who apply to work in the United Kingdom from outside the European Economic Area. As highlighted by certain stakeholders and the Home Affairs Committee, migrant domestic workers warrant the special status afforded by the current scheme, so that they have access to labour rights recognized as for all workers and may change employers in case of abuse or exploitation.

62. According to information received, migrant domestic workers who accompany diplomats to the United Kingdom encounter the same level of abuse and exploitation as those suffered by migrant domestic workers who work for other employers. However, migrant domestic workers who accompany diplomats are currently not able to change employers outside of the diplomatic mission with which they came. This situation places them in a more vulnerable situation; hence they often feel unable to leave exploitative and abusive situations as usually their families are reliant on their remittances. These workers also often feel unable to seek redress and access justice because their immigration status is linked to that of their employers, who enjoy diplomatic status.

## **E. The protection and assistance for victims of human trafficking**

63. The Special Rapporteur notes with appreciation the commitment of the Government in this area and commends its decision to provide additional funds over the next two years to strengthen the assistance framework for trafficked victims, including the appointment of a Poppy Project national coordinator, special support for victims trafficked for labour exploitation<sup>46</sup> and the expansion of services to victims of domestic servitude.

64. The Special Rapporteur regrets that the Poppy Project remains marginal, with a low accommodation capacity (54 beds). He is also concerned about allegations that the accommodation of victims benefiting from the Poppy Project is conditional on their cooperation in the prosecution of their traffickers and wishes to draw the Government's attention to the Recommended Principles and Guidelines on Human Rights and Human Trafficking, particularly, to principle 8, which highlights that trafficked victims' adequate protection from further harm and access to physical and psychological care "... shall not be made conditional upon the capacity or willingness of the trafficked person to cooperate in legal proceedings".<sup>47</sup> He also notes with concern that victims of internal trafficking are denied access to assistance under this project.

65. The Special Rapporteur praises the Government's decision to strengthen the support mechanisms for victims of forced labour, including through the establishment of the Pay and Work Rights Helpline, which renders the five enforcement agencies (the Gangmasters Licensing Authority, the Employment Agency Standards Inspectorate, Her Majesty's Revenue and Customs Office, the Department for Environment, Food and Rural Affairs and the Health and Safety Executive) co-responsible in addressing complaints on the rights of vulnerable workers. This helpline helped 169 victims between June 2008 and September 2009.<sup>48</sup>

<sup>46</sup> See "Update to the UK Action Plan on Tackling Human Trafficking", p. 19.

<sup>47</sup> See E/2002/68/Add.1.

<sup>48</sup> See "Update to the UK Action Plan on Tackling Human Trafficking", p. 22.



66. The Special Rapporteur also commends governmental efforts to address the phenomenon of child trafficking, *inter alia*, through the provision of specialized training for immigration officers and other UKBA staff and the publication of various guidance notes on protecting children. However, he is concerned about reports of a significant number of possible child victims of trafficking who may become unaccounted for by the local authority of children's services and who are allegedly often re-trafficked or subjected to further abuse or exploitation.<sup>49</sup> He is also concerned about the capacity of the existing agencies to provide comprehensive protection and assistance to child victims of trafficking, including safe accommodation, particularly in the light of information indicating that trafficked child victims are rarely provided with a full needs assessment, unlike in the case of British children, and that they are routinely accommodated in hostels rather than in specialized shelters or foster care, even when they are severely traumatized and still at risk.<sup>50</sup>

## **F. Access to health care, regardless of immigration status**

67. The Special Rapporteur welcomes the adoption of interim guidance in April 2009 by the Department of Health to clarify the scope of emergency treatment for refused asylum-seekers and migrants in irregular situations, who, according to the law, do not benefit from free health-care services except in case of emergency. He notes with appreciation that this guidance indicates that immediately necessary treatment, including maternity care, must never be withheld; urgent treatment for conditions such as cancer, which would deteriorate significantly if untreated, should not be withheld or delayed if the person cannot pay and is unable to return to his/her country; primary health-care trusts should not pursue charges beyond what is reasonable and have the option to write off debts where it would be impossible or futile to pursue them. Nevertheless, the Special Rapporteur is concerned by the element of the guidance which states that "non-urgent treatment, which can wait until the person returns home, should not be started until payment has been made". In the Special Rapporteur's view, this guidance regrettably does not address the fundamental issue, which is not to make health care conditional on a person's immigration status.

68. Information received suggests that the great majority of separated asylum-seeking children are registered with a general practitioner. However, an overwhelming concern among nearly all stakeholders was the issue of interpreters and how the lack thereof and the reluctance of health services to use them affected children's access and ability to understand and continue with treatment. This seems to be the case across a range of different services including general practitioners, hospitals and counselling and specialist mental health services. In view of the above, the Special Rapporteur welcomes the findings from a joint review carried out by the Department of Health and the Home Office on access to the National Health Service by foreign nationals in July 2009, which recommends, *inter alia*, that refused asylum-seekers or unaccompanied asylum-seeking children should not be charged for access to secondary health care.<sup>51</sup>

<sup>49</sup> See "The Trade in Human Beings: Human Trafficking in the UK", p. 56–57.

<sup>50</sup> *Ibid.*, p. 55.

<sup>51</sup> See Joint Department of Health and Home Office review, "Access to NHS Services for foreign nationals", July 2009.

## G. Other concerns

69. The Special Rapporteur acknowledges the threat posed by international terrorism and is aware of the long-term strategy for countering international terrorism (CONTEST) established in 2003. He welcomes the strategy's revisions undertaken in 2006<sup>52</sup> and 2009,<sup>53</sup> by virtue of which the observance of international law and human rights standards and the promotion of good governance were included as guiding principles in all counter-terrorism efforts. However, he remains concerned about the human rights implications of the use of the grounds of "national security" and the "terrorism threat" to deprive non-nationals legally married to British nationals of the right to stay in the territory of the United Kingdom. In this connection, concern is expressed about section 56 of the Immigration, Asylum and Nationality Act 2006, in force as of 16 June 2006, which lowers the threshold for withdrawal of British citizenship by recognizing a new power of the Secretary of State who may order that a person be deprived of a citizenship status if the Secretary of State is satisfied that deprivation is "conducive to the public good".

70. The Special Rapporteur heard allegations of disproportionate scrutiny and instances of psychological mistreatment of persons entering the United Kingdom with valid documentation. For example, a non-national holding a valid post-study work permit<sup>54</sup> reported having been given a "warning" on her national passport when re-entering the United Kingdom after spending a couple of months abroad and having been informed that next time she leaves the United Kingdom her permit will expire, despite the fact it has still about a year of validity. The Special Rapporteur regrets that this kind of situation fuels a climate of mistrust and intolerance at entry checkpoints.

71. The Special Rapporteur also received information about interrogation and excessive delays at airports, which in some instances have caused financial or other harm to persons in transit or entering the country, sometimes for short-term visits. According to those who report having been affected, these practices are based on race, colour, descent or national or ethnic origin and, in some instances, on pregnancy status.

72. The Special Rapporteur regrets that these allegations contrast with principles of human dignity and appear inconsistent with the *jus cogens* prohibition of discrimination. As noted by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, profiling may violate the right to equality and non-discrimination when intelligence and law enforcement agents use profiles that reflect unexamined generalizations. This will likely be the case if profiling is based on ethnic or national origin (racial profiling) or religion (religious profiling), or if profiling solely or disproportionately affects a specific part of the population.<sup>55</sup> Profiling may also be prohibited where it is based on a person's country of origin if this is used as a proxy for racial or religious profiling.<sup>56</sup>

<sup>52</sup> HM Government, "Countering International Terrorism: The United Kingdom's Strategy", July 2006, p. 9.

<sup>53</sup> HM Government, "Pursue, Prevent, Protect, Prepare – Countering the terrorist threat. The UK Government's strategy", 2009.

<sup>54</sup> A visa type allowing former graduate students to seek a job and work regularly in the territory of the United Kingdom for a post-studies period of two years.

<sup>55</sup> See A/HRC/4/26, paras. 36, 40–42. See also Alex Conte, *Human Rights in the Prevention and Punishment of Terrorism. Commonwealth Approaches: The United Kingdom, Canada, Australia and New Zealand* (Berlin and New York, Springer Verlag, 2010), pp. 657–661; 713.

<sup>56</sup> A/HRC/4/26, para. 36.

## VI. Conclusions and recommendations

73. The United Kingdom has shown genuine efforts to deliver a migration policy which determines the conditions of admission, stay and removal of non-nationals while aiming at complying with human rights obligations. Migration management aims at contributing to meet world security challenges and immigration and asylum-seeking standards and currently focuses on the forcible return of persons in irregular situations, strengthening the screening of asylum-seekers and enhancing international cooperation with countries affected by conflict as a means of reducing immigration flows. Despite progress made, in the Special Rapporteur's view, a number of challenges remain and he accordingly wishes to make the following recommendations.

74. In relation to the protection of migrant workers, the Special Rapporteur recommends that the Government:

(a) Consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the ILO Convention No. 143 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, adopted by the ILO in 1975, with the aim of further strengthening efforts to protect all migrant workers, regardless of their immigration status, from abusive practices;

(b) Implement the recommendation made by the House of Lords' European Union Select Committee in its fourteenth report, according to which, the Government should commission research into the likely costs and consequences of acceding to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and seek to develop a political consensus for its adoption, both within the United Kingdom and across the European Union;<sup>57</sup>

(c) Establish effective and accessible channels which allow all migrant workers, including irregular migrant workers, to lodge complaints of violations of their rights without fear of retaliation on the grounds that they may be in an irregular situation.

75. In relation to the administrative detention of migrants, the Special Rapporteur recommends that the Government:

(a) Consider the recommendations made by the Working Group on Arbitrary Detention in a 2009 report to the Human Rights Council,<sup>58</sup> particularly the call upon States to restrict the use of detention for immigration purposes, ensuring that it is a measure of last resort, only permissible for the shortest period of time and when no less restrictive measure is available and therefore, to use and make available alternative measures to detention both in law and in practice;

(b) Take measures to review the implementation of national laws applicable to the detention of migrants to ensure that they are harmonized with international human rights norms that prohibit arbitrary detention and inhumane treatment;

(c) Take all necessary steps to prevent cases of de facto indefinite detention and grant to migrants in detention all judicial guarantees, including keeping them informed of their cases' status.

<sup>57</sup> House of Lords, European Union – Fourteenth Report, session 2005–06, November 2005, para. 97.

<sup>58</sup> A/HRC/10/21, para. 82.

76. In relation to the protection of migrant domestic workers, the Special Rapporteur recommends that the Government:

(a) Consider affording to migrant domestic workers who accompany diplomats, the same protection granted to migrant domestic workers who work for other employers, including the right to change employer, as a measure to protect them from abusive practices;

(b) Consider continuing to recognize migrant domestic workers as workers and, as such, ensure that they are protected by labour law, including that they are entitled to the national minimum wage, to change employers and have the possibility of renewing their visas on an annual basis provided that they remain in full-time employment in the same sector, even if the employment is not continuous;

(c) Address the legislative barriers currently faced by migrant domestic workers to accessing compensation and redress under employment legislation, including the family worker exemption established in national minimum wage regulations and the Race Relations Act 1976;

(d) Strengthen training programmes to combat prejudice against migrant domestic workers, especially among staff at embassies, immigration officials and police officers, so as to help such workers report or escape abusive situations and receive the appropriate assistance and counselling, when required; and increase awareness-raising efforts to prevent abusive practices by employers in respect of prospective migrant domestic workers before they enter the United Kingdom;

(e) Strengthen efforts to ensure compliance with the national minimum wage and enforce the registration of new employers with the Inland Revenue whenever a new domestic worker visa is issued, as a measure to address the alleged invisibility of employment in private households and ensure accountability of employers in cases of abuse and exploitation;

(f) Consider the difficulties that migrant domestic workers and other migrant workers encounter in securing “continuous employment” and, accordingly, remove the barriers in the law, notably in the Border, Citizenship and Immigration Bill, that increase the vulnerability of migrant workers.

77. In relation to the protection of children in the context of migration, the Special Rapporteur recommends that the Government:

(a) Ensure the protection of migrant children accompanied by their families from detention and guarantee that migration laws include actual regulations that realize children’s rights and needs in such circumstances;

(b) Take all necessary steps to ensure the proscription of deportation of unaccompanied children and disputed-age cases as a punishment for irregular migration status and accordingly consider repatriation of children only if this is in their best interest, affording them, in any case, all judicial guarantees;

(c) Continue to take measures to bring its legislation into line with the Convention on the Rights of the Child and consider fully implementing the recommendations made by the Committee on the Rights of the Child,<sup>59</sup> including by both ensuring that the independence of all four children’s commissioners is not limited by their mandate and that the posts are established in full compliance with the Paris Principles and considering the establishment of an independent oversight

---

<sup>59</sup> CRC/C/GBR/CO/4, inter alia, paras. 16–17; 25–26; 66–67; 70–71.

mechanism for assessing reception conditions for unaccompanied children, including those who have to be returned;

(d) Consider mainstreaming into its policies the Guidelines on International Protection: Child Asylum Claims under Articles 1A (2) and 1 (F) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees, adopted by UNHCR on 22 December 2009;<sup>60</sup>

(e) Increase efforts to integrate migrant children and children from a migrant background and their families into early childhood and language command programmes;

(f) Strengthen efforts to raise awareness on child protection measures and welfare services available to separated and unaccompanied children;

(g) Consider regularization and naturalization alternatives for failed unaccompanied asylum-seeking children who have been granted discretionary leave to remain until the age of 17 and a half;<sup>61</sup>

(h) Compile and share with host countries within and outside Europe good practices in addressing the situation of unaccompanied and separated children through a comprehensive welfare system including the rights to health and education.

78. In relation to age-assessment processes in disputed-age cases of allegedly separated children who seek asylum, the Special Rapporteur recommends that the Government:

(a) Elaborate statutory guidance on a holistic and multiagency approach to age assessment to be applied in disputed cases of allegedly separated children who seek asylum; ensure that such children are able to access formal age assessment procedures and, accordingly, take all necessary steps to ensure that appropriate referrals are made;

(b) Provide adequate support to social workers and other officials carrying out age assessment and training on issues such as cultural and religious sensitivity, child protection and post-traumatic treatment;

(c) Recognize the benefit of the doubt in disputed cases of allegedly separated and unaccompanied children who seek asylum and, accordingly, apply the principle in *dubio pro infante*, recognize that in disputed-age cases the burden of proof is on the Government and accordingly suspend the application of UKBA asylum instruction 2.2 on age assessment, which instructs that “the claimant should be treated as an adult if their physical appearance/demeanour very strongly suggests that they are significantly over 18 years of age”;

(d) Provide specific guidance and training at ports and screening units for the treatment of disputed-age cases and ensure that age is not assessed in screening units or at ports but by specialized units specifically created for that purpose.

79. In relation to the protection and assistance of victims of trafficking in persons, the Special Rapporteur recommends that the Government:

<sup>60</sup> HCR/GIP/09/08.

<sup>61</sup> Changes introduced by the new asylum model include timing any granting of limited leave to expire when children reach 17 and a half years. See, inter alia, Home Office, “Planning Better Outcomes and Support for Unaccompanied Asylum Seeking Children”, 2007, para. 41.

(a) Incorporate into national policies, plans and programmes and effectively implement the Recommended Principles and Guidelines on Human Rights and Human Trafficking;<sup>62</sup>

(b) Ensure that appropriate training is given to law enforcement officials on human trafficking and the protection of trafficked victims;

(c) Take all necessary steps to grant specialized support and assistance to all victims of trafficking for sexual exploitation and forced labour, regardless of their immigration status;

(d) Strengthen efforts to ensure that victims of trafficking and/or forced labour have access to effective remedies, including the possibility of pursuing compensation claims regardless of their immigration status;

(e) Ensure that access to social services and the granting of temporary or permanent residency status to victims of trafficking are not made conditional in practice upon their cooperation in criminal proceedings.

80. In relation to the protection of women in the context of migration, the Special Rapporteur recommends that the Government:

(a) Implement the recommendations made by the Committee on the Elimination of Discrimination against Women<sup>63</sup> in particular, to keep under review and carefully monitor the impact of its laws and policies on women migrants, refugees and asylum-seekers with a view to taking remedial measures that effectively respond to the needs of those women;

(b) Consider implementing Committee's general recommendation No. 26 on women migrant workers and fully mainstreaming gender into migration governance;

(c) Take all necessary steps to ensure the lifting of discriminatory restrictions on women's migration on the basis of age, marital status, pregnancy or maternity status, including by increasing awareness-raising and training programmes to border police and immigration authorities;

(d) Ensure protection on the grounds of gender-related persecution, including violence against women and consider granting access to public services, particularly health-care services, public housing and social security benefits to migrant women with an insecure immigration status who are victims of violence;

(e) Refrain from introducing pre-entry English-language tests for individuals applying for spouse visas so as to avoid disproportionate restrictions on the right to family life or ensure that non-English speaking individuals with legitimate claims to apply for a spouse visa are granted free access to basic English-language courses once their applications have been decided favourably.

81. In connection with the protection of refused asylum-seekers and migrants in an irregular situation, the Special Rapporteur recommends that the Government:

(a) Follow the several country-specific guidelines issued by UNHCR, in order to avoid returning refused asylum-seekers whose appeals have been exhausted to countries where they may be at high risk of human rights violations;

---

<sup>62</sup> E/2002/68/Add.1.

<sup>63</sup> A/63/38, paras. 295–296.

(b) Address the concerns expressed by the Committee on Economic, Social and Cultural Rights regarding the low level of support and difficult access to health care for rejected asylum-seekers<sup>64</sup> by fully implementing the recommendations from the joint review carried out by the Department of Health and the Home Office on access to the National Health Service by foreign nationals,<sup>65</sup> and by ensuring that refused asylum-seekers are not left destitute while they remain in the United Kingdom.

82. Concerning data collection, the Special Rapporteur wishes to stress the importance of the availability of data on the international migrant stock disaggregated, inter alia, by age, country of origin, sex, educational attainment and occupation and encourages the Government to strengthen efforts to:

(a) Determine the number of victims of trafficking in persons, including for sexual exploitation and forced labour;

(b) Determine the number of children subject to immigration control and detention;

(c) Record the number of women entering and leaving immigration detention centres;

(d) Make available data on the channels of migration;

(e) Improve data collection efforts on return migration.

83. Concerning independent bodies, such as the national human rights institutions and the children's commissioners, the Special Rapporteur encourages them to operate within the framework of the Paris Principles and to continue cooperating among themselves, as well as to adopt a coordinated approach based, inter alia, on the Santa Cruz Declaration on the role of national human rights institutions in dealing with migration and the Seoul Declaration on upholding human rights during conflict and while countering terrorism.

84. The Special Rapporteur recommends that the Government ensure in law and practice respect for the prohibition of discrimination and establish monitoring mechanisms to avoid disproportionate scrutiny and psychological mistreatment of persons entering the United Kingdom with valid documentation, as well as take all necessary measures to prohibit in law and practice the use of profiles that reflect unexamined generalizations, such as profiling based on ethnic or national origin or religion.

85. The Special Rapporteur encourages the Government to establish programmes that promote a human rights-based approach to migration and the protection of the human rights of migrants, regardless of their immigration status, as good practices in migration governance.

---

<sup>64</sup> E/C.12/GBR/CO/5, para. 27.

<sup>65</sup> See "Access to NHS Services for foreign nationals".