**Maat’s Commentary on** **Draft General comment No. 5 (2020) on migrants’ rights to liberty and freedom from arbitrary detention**

Within the framework of the association’s interest in human rights issues in general, and the rights of immigrants in particular, **Maat for Peace, Development and Human Rights** would like to submit this report to comment on the draft general comment No. (5) of (2020), on Migrants' Rights to Liberty and Freedom from Arbitrary Detention. At first, Maat would like to point out that some countries, especially in the Middle East Region, use the immigrants’ issue to exert pressure on the European Union despite the reported increase of Migrants’ Arbitrary Detention in those countries.

* **“Comments and Recommendations” made by Maat regarding the draft Law No. (5) of (2020) on Migrant’s Rights**

After reviewing the Draft Law No. (5) of 2020; on Migrant’s Rights to Liberty and Freedom from Arbitrary Detention, Maat noted several points, which encouraged it to make some recommendation and suggestions including the following:

1. The report prepared by the Committee on the Protection of the Rights of Migrant Workers and Members of Their Families, which came as a general comment on Draft Law No. (5) of 2020, on Migrant’s Rights to Liberty and Freedom from Arbitrary Detention, expressed its deep concern about the current trend towards the criminalization of immigration and the ongoing increase of arbitrary detention; however, it unfortunately overlooked establishing the appropriate and specific mechanisms that may applied in order to countering this crime, or at least protecting migrants from arbitrary deprivation of liberty and detention in inhuman conditions.
2. **Maat for Peace** commends the initiatives taken by the Committee regarding the rights of migrants and members of their families, such as the General Comment No. (2) of 2013, the Joint General Comment No. 3/22, issued by the Committee on the Rights of the Child in 2017, on the general principles regarding the human rights of children in the context of international migration, and the Joint General Comment No. 4/23, also issued by the Committee on the Rights of the Child in 2017, on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, as well as a large number of statements, and humanitarian and human rights contributions, all aimed to acknowledge the natural and acquired right for immigrant persons, and members of their families.
3. **Maat** is deeply concerned about the practices committed by some countries that are party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Such practices include, without limitation, the automatic or mandatory detention, the imposition of penalties during detention, and the detention of children and women, including pregnant women and other vulnerable groups. All detainees are being kept in inhuman and degrading conditions, which impacts their effective access to legal remedies and international protection. Al this proves deficiency in the application of the provisions of the convention, as states detain immigrants in accordance with the articles and texts of their internal criminal law, which is completely inconsistent with the International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families - signed by those countries – which doesn’t criminalize immigration.
4. **Maat** shares the concerns of the committee on migrant rights about the use of arbitrary detention as a general mechanism against all migrants and their family members, due to the manipulation of the internal criminal law of some countries in a way that commensurate with the political strategies of response for migration flows and their management. Hence, **Maat** suggests more binding laws be developed to ensure that all countries of the world respect the rights of migrants and their family members in accordance with the provisions of this law.
5. In light of the current exceptional circumstances imposed by the spread of the new Coronavirus (Covid-19), **Maat** would like to draw the attention of the international community to the heightened risks faced by migrants and their family members in overcrowded detention centers, as well as the serious potential consequences of such unspeakable conditions on their psychological and physical health, in addition to the greater risks of contracting the Coronavirus. Therefore, it is not just legally, but also humanely to develop a mechanism for releasing detainees, and to take alternative measures to contain the outbreak of Coronavirus in a manner that suits the conditions of migrants and their family members.
6. **Maat** commends the undeniable efforts made by the concerned committee as a comprehensive regulatory framework to protect the right to freedom of migrant workers and members of their families. However, **it** believes that although the committee addresses the measure to be implemented to ensure the full realization of the right to freedom, it overlooked discussing the mechanisms needed for this end. The articles and provisions of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families recognizes their rights and provides for treating them, in case of detention, in a humane manner fully respecting their human dignity and preserving their cultural identity.
7. By reviewing the committee’s initiatives, **Maat** stresses the need for states relevant with immigration to join hands to ensure providing adequate conditions for receiving migrants, and to consider all their stipulated rights, especially under critical circumstances triggered by the Covid-19 pandemic. This is a challenge to all countries; thus, legal procedures must be observed when dealing with immigrant detainees, and individual circumstances and necessities of each detainee must be taken into account.
8. **Maat** shares the Committee's concern about the recycling of some terms related to immigrants, especially those related to “immigration detention,” in both administrative and criminal laws, such as replacing the word “detention” with the word “deposit” or “shelter”. Indeed, these countries try to avoid the procedural measures that should be applied before and during any deprivation of liberty. Accordingly, **Maat** believes that the concept of deprivation of liberty must be manifested in accordance with the provisions of relevant international conventions, such as the The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which defined the deprivation of liberty as: “any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.” This deprivation of liberty shall begin with the arrest of this person until his release. Regardless of how this procedure is defined in the context of immigration or the reasons that led to it, if this procedure leads to restricting the freedom of migrant workers or members of their families, then the committee interprets this procedure as a form of detention.
9. **Maat** believes that it is necessary to highlight the fact that the reasons for deprivation of liberty are mostly administrative crimes, related to illegal residence or illegal border-crossing, and the like, and none of these reasons warrant legal criminalization. Even worse, as documented in the international and UN reports, migrants are suffering under inhumane and degrading living condition; accordingly, **Maat** calls on the European Union to set up urgent strategies more adapted to the current exceptional circumstances of the Covid-19 pandemic, in a manner that guarantees full protection to migrants and their family members who are at risk of contracting the virus due to the overcrowding and poor health services provided in detention centers.
10. **Maat** wishes to draw the attention of the countries responsible for managing migrant files to the urgent need for considering the situation of detainees; with the aim of releasing them, in light of the exceptional circumstances the whole world is suffering from. **Maat** also recommends the necessity of convening with the representatives of countries concerned with the issue of migrants, in an attempt to come up with alternative detention policies, with an emphasis on establishing mechanisms through which these policies and strategies can be applied on the ground, in a way that ensures the achievement of maximum safety conditions and to contain the outbreak of the virus among detainees.
11. The subcontracting of private security companies to manage detention centers has become a widespread phenomenon practiced by many countries. However, we must point out here and emphasize the legal obligation of the state before the international community about how detainees are treated by security guards and under what conditions they live. Moreover, countries are fully responsible for acts of torture, and even periodically investigating and inspecting those in charge of these centers, including setting up an integrated monitoring plan, training them on human rights standards for the treatment of detainees in accordance with international humanitarian law and human rights law. Let alone the necessity and importance of submitting periodic reports - on an ongoing basis and at predetermined periods - by the local security authorities documenting the security guards’ actions and behaviors.
12. **Maat** urges the states parties to the Convention on the Rights of Migrants and their Families to adapt legislative measures aimed at implementing all the provisions of the Convention, which calls for developing the field of human rights, raising awareness and education regarding the rights of migrants and members of their families, in addition to allocating sufficient resources to implement alternatives to detention, along with intensifying the procedures related to ensuring mental and physical health, especially in light of the exceptional circumstances triggered by the Covid-19 pandemic.
13. **Maat** wishes to emphasize that alternatives to detention must be commensurate with ensuring the rights of migrants; in order to ensure their enjoyment of all rights stipulated in international covenants and treaties. **Maat** urges the concerned authorities to review the effects of alternative measures to detention on the rights of migrants, and to make sure it doesn’t contain unnecessary restrictions. It is also important for countries to increase the efforts aimed at educating immigrants about their rights, especially with regard to "migrant workers", whose receiving countries must provide them with all means to ensure their access to justice, as well as to provide them with all legal guarantees that ensure their protection against all kinds of danger in case of they filed a complaint of abuse of ill-treatment.
14. **Maat** shares with the Committee its recommendation to all State Parties; to adopt mechanisms that allow access to public information on the rights of non-detained migrant workers. It also recommends to collect and process such information in order to develop appropriate public policies.

Eventually, **Maat for Peace, Development and Human Rights** hopes that the international community will address the file of emigration more effectively and humanely in a way that guarantees the protection of the rights of migrants and their families, and at the same time guarantees the state’s legitimate right to maintain and protect its national security, in light of full respect for human rights, and avoiding undesirable practices And that may exacerbate the situation of immigrants or their families.