

European Group of National Human Rights Institutions (ENNHRI):

Statement on Immigration Detention

The European Network of National Human Rights Institutions (ENNHRI) brings together National Human Rights Institutions (NHRIs) from across wider Europe. NHRIs are state bodies, independent of government, mandated to promote and protect human rights. They are accredited by reference to the UN Paris Principles to ensure their independence, effectiveness and pluralism. ENNHRI supports European NHRIs through building capacity, information sharing, engaging with regional human rights mechanisms and intervening in human rights developments in Europe.

Acknowledging that safeguarding the human rights of asylum seekers and migrants is currently one of the most urgent human rights challenges in Europe, ENNHRI established a Working Group on Asylum and Migration (the WG') in 2007. The ENNHRI WG shares knowledge and experience in order to strengthen regional and international cooperation in the field of asylum and migration. During its last meeting in December 2013, the Working Group discussed the issue of detention of asylum seekers and irregular migrants in Europe.

ENNHRI is concerned that in many European countries, asylum seekers and irregular migrants are detained to a large scale and for unjustified periods of time, and without due respect to the special vulnerability and status of the persons concerned. In some countries, immigration detention has even become the standard procedure after arrival.

ENNHRI emphasizes that deprivation of liberty constitutes a serious human rights intrusion and, whether it is for the purpose of border control or a return procedure, must be subject to a strict necessity, legality, and proportionality test in every single case, including taking into due account the rights of children enshrined in the UN Convention on the Rights of the Child ('CRC'). The necessity test must be judged by the principle that detention is a measure of very last resort. This means that a set of applicable and suitable alternatives to detention must be developed and taken into account on a case by case basis.

ENNHRI

Permanent Secretariat
Rue Royale 138, B-1000 Brussels, Belgium

T + 32 (0)2 212 3158 **M** + 32 (0)475 914 904 **E** ENNHRI@cntr.be

ENNHRI AISBL

Company No. 0541.593.956

When detention is necessary in an individual case, it can only be justified for a legitimate purpose clearly defined by law. In any case, asylum seekers and irregular migrants should not be held in detention for any longer than necessary and a strict maximum period of detention should be set in national legislation. Also, states should completely refrain from holding children in immigration detention. In relation to migrants who are obliged to leave a country, the promotion and organization of sustainable voluntary return programs should be a priority for all states.

Furthermore, many European NHRIs have been accorded with independent monitoring functions for immigration detention facilities in their respective countries. In executing this mandate, they repeatedly witness detention conditions and regimes for refugees and migrants that do not live up to human rights standards enshrined in binding European and international human rights treaties, such as the European Convention on Human Rights, the International Covenant on Civil and Political Rights, the UN Convention Against Torture, the UN Convention on the Rights of Persons with Disabilities and CRC. They also notice the absence of a consolidated set of specific safeguards and protection for immigration detainees, resulting in a lack of guidance both for detention authorities and monitors.

Many NHRIs also have the mandate of National Preventative Mechanism ('NPM') under the Optional Protocol of the Convention against Torture. ENNHRI acknowledges and endorses the Strasbourg Declaration of European NPMs of November 2013.

ENNHRI calls for the codification of a set of targeted immigration detention rules, reflecting binding general human rights obligations as well as specific standards and guidelines for immigration detention developed inter alia by European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the UN High Commissioner for Refugees and the Parliamentary Assembly of the Council of Europe. Taking into account the fundamental distinction between criminal and administrative detention, ENNHRI encourages the Council of Europe to build upon the precedent of the European Prison Rules to codify such a set of rules.

ENNHRI therefore urges the Committee of Ministers to mandate in due time a drafting group to develop European Immigration Detention Rules.

This statement was published on the occasion of the first Council of Europe-FRA-ENNHRI-Euinet Platform meeting on Asylum and Migration.

Vienna, 24 September 2014

ANNEX 1 – Strasbourg Declaration

The need for Council of Europe rules on immigration detention: A Declaration by European National Preventive Mechanisms against torture

Conference on Immigration Detention in Europe, 21-22 November 2013, Strasbourg

Building on Resolution 1707 (2010) of the Parliamentary Assembly on detention of asylum seekers and irregular migrants, and the work and recommendations of the Committee for the Prevention of Torture of the Council of Europe on immigration detention

Taking into account the fundamental distinction between criminal and administrative detention

1. The European National Preventive Mechanisms¹ (NPMs) gathered in Strasbourg support work to develop the codification of a set of *Immigration Detention Rules* applicable to Council of Europe member States, which are based on the precedent of the European Prison Rules. The NPMs are ready to participate in the development of this codification.
2. The support of the existing European NPMs reflects the absence of consolidated rules in the area of immigration detention, the development of which is agreed to be both necessary and feasible.
3. Such rules will help NPMs fulfil their mandates as detention monitoring bodies, in order to prevent torture and ill treatment.
4. Such rules will also provide clear guidance to detention authorities and persons working with immigration detainees.
5. The *Immigration Detention Rules* should:
 - codify existing international and regional human rights standards applicable to all forms of deprivation of liberty on the grounds of immigration status;
 - be of equivalent status to the European Prison Rules;
 - cover, among others, the following areas: conditions of detention and treatment of detainees; health care; information about rights; access to legal representation and procedures; exercise of the right of asylum; communication with the outside world; appropriate measures for safety and order; effective complaints mechanisms; access to interpreters; due consideration for diversity of personal situations and origins, with special attention to women and especially vulnerable groups; purposeful activities for detainees; procedures and preparation for release and removal.
6. We consider that the Council of Europe is the organization that is best placed to realize this endeavour, which should take into account existing European Union legislation in this area.

¹ National Preventive Mechanisms are independent bodies that have been established by States in line with the Optional Protocol to the UN Convention against Torture, as a means to prevent torture and ill treatment in all places of detention.