

Visiting immigration detention centres



A guide
for parliamentarians



association for
the prevention
of torture



Parliamentary Assembly
Assemblée parlementaire

COUNCIL OF EUROPE



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Visiting immigration detention centres

A guide for parliamentarians

French edition:

Visites de centres de rétention pour migrants : guide à l'intention des parlementaires

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This guide has been prepared by the Committee on Migration, Refugees and Displaced Persons of the Parliamentary Assembly of the Council of Europe together with the Association for the Prevention of Torture (APT).

The APT is an independent non-governmental organisation based in Geneva, working globally to prevent torture and other ill-treatment.

The APT was founded in 1977 by the Swiss banker and lawyer Jean-Jacques Gautier. The APT has become a leading organisation in its field. Its expertise and advice is sought by international organisations, governments, human rights institutions and other actors. The APT has played a key role in establishing international and regional standards and mechanisms to prevent torture, among them the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the Optional Protocol to the UN Convention against Torture.

The APT's vision is a world without torture or any other cruel, inhuman or degrading treatment.

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<http://assembly.coe.int/immigration-detention>
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Foreword

Dear parliamentary colleagues,

Parliamentarians need to see with their eyes, listen with their ears, speak with their mouths and even smell with their noses the conditions of detention of migrants and asylum seekers in their own country.

It is an essential role of parliamentarians to keep an eye on all forms of public administration, and it is particularly important to ensure transparency and accountability in the closed and often secretive world of detention of irregular migrants and asylum seekers, where human rights issues are often at the forefront.

In Europe, parliamentarians have the right to visit places of detention in their own country. In some countries, such as in France, they can turn up unannounced and have access to all the places of detention.

The aim of this guide is to encourage you, as parliamentarians, to visit places of detention and at the same time provide you with the tools necessary to prepare, carry out and follow up on a visit.

At the end of last year, I took the opportunity of International Human Rights Day, on 10 December 2012, to encourage members of parliament from across Europe to visit places of detention in their own countries. Several of you did just this. More recently, at the beginning of this year, I visited a number of detention centres for irregular migrants and asylum seekers in

Greece. Through these and other detention visits, I have been able to see centres with my own eyes rather than just read about them. I have also listened to the stories of the detainees and spoken with the staff and the authorities about their problems. I have smelled the living conditions and even tasted the food. This hands-on experience has given me a much clearer perspective, helping me to answer fundamental questions such as: are we getting our policies in relation to detention right? Are these the persons we should be depriving of liberty and are the conditions and treatment acceptable and sufficiently humane? Should we not show greater solidarity towards countries in Europe that are under great pressure from migration simply due to their geographical situation?

Dear colleagues, I hope that this guide, prepared by parliamentarians for parliamentarians, will encourage you and help you to enter the opaque and often inaccessible world of immigration detention.

Yours sincerely,

Jean-Claude Mignon
President of the Parliamentary Assembly
of the Council of Europe

Contents

Glossary of key terms	7
1. What is the aim of this guide?	11
2. Why should parliamentarians visit places of detention?	15
2.1. The value added of visiting places of detention	15
2.2. The specific added value of parliamentarians visiting places of detention	15
2.3. Other organisations visiting places of detention	19
2.4. Visiting mandate and powers	20
2.5. Types of visit	22
3. What are the basic legal norms relating to the detention of irregular migrants and asylum seekers?	27
3.1. Legality and legitimate grounds for detention	28
3.2. Obligation to first consider non-custodial measures	29
3.3. Length of detention	29
3.4. Detention conditions	30
3.5. Particular considerations in the detention of certain groups	30

4. How to carry out visits to places where asylum seekers and irregular migrants are held	33
A. The preparation of the visit	34
4.1. Defining the objectives of the visit	34
4.2. Setting up the visiting team and organising the work	34
4.3. Collecting available information	35
B. The conduct of the visit	36
4.4. What should one pay attention to when visiting places of immigration detention?	38
4.5. The arrival and the initial talk with the head of the centre	44
4.6. Overview of the premises and observations	44
4.7. Consultation of registers and other documents	46
4.8. Talks with detainees	46
4.9. Contact and discussions with staff	50
4.10. The final talk with the head of the centre	51
C. The follow up to the visit	52
Appendices	
Annex 1: Checklist of issues that could be examined during the visit	57
Annex 2: Example of internal visit note	61
Annex 3: Working with an interpreter	63
Annex 4: Summary table of the key principles	66
Annex 5: Selection of instruments and legal norms	68
Annex 6: Additional readings and sources	73
Annex 7: Tips for parliamentarians	75

Glossary of key terms

Administrative detention: term used to describe arrest and detention without charge or trial. It is used for non-criminal purposes. In many countries, violations of the immigration law lead to administrative detention.

Asylum seeker: an individual who is seeking international protection. In countries with individualised procedures, an asylum seeker is someone whose claim has not yet been finally decided on by the country in which he or she has submitted it. Not every asylum seeker will ultimately be recognised as a refugee, but every refugee is initially an asylum seeker.¹

Alternatives to detention: not a legal term but is used as shorthand to refer to “any legislation, policy or practice that allows asylum seekers, refugees and migrants to reside in the community with [at least some] freedom of movement while their migration status is being resolved or while awaiting deportation or removal from the country”.² Some alternatives to detention may place restrictions on liberty or freedom of movement.³

1. UNHCR (2006), *UNHCR Master Glossary of Terms*, Rev. 1, www.refworld.org/docid/42ce7d444.html.

2. Sampson R., Mitchell G. and Bowring L. (2011), *There are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention*, International Detention Coalition, Melbourne, p. 2

3. UNHCR (2012), *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, www.refworld.org/docid/503489533b8.html.

Deprivation of liberty: this takes place anywhere a person is confined in a closed place and not allowed to leave of his or her own free will. This may take place in obvious places such as police cells, prisons, purpose-built detention centres, and so on, but also in less obvious places such as locked airport rooms or cells.

Immigration detention: is generally administrative in form, but it can also be judicially sanctioned. It is generally not meant to be punitive in purpose (as opposed to criminal detention). Here the term covers any person deprived of personal liberty on account of his or her immigration status or for an alleged breach of conditions of entry, stay or residence in a territory.

Irregular migrant: includes undocumented and stateless persons. The Parliamentary Assembly of the Council of Europe (PACE) highlighted the importance of the language used in its Resolution 1509 (2006): “the Assembly prefers to use the term ‘irregular migrant’ to other terms such as ‘illegal migrant’ or ‘migrant without papers’. This term is more neutral and does not carry, for example, the stigmatisation of the term ‘illegal’. It is also the term increasingly favoured by international organisations working on migration issues.”

Migrant: a person who migrates or has migrated. For the purposes of this guide, the term “migrant” is defined broadly to mean persons who are outside the territory of the state of which they are nationals or citizens. This could include particular categories of persons who have a more specific definition in international law, including refugees, trafficked persons and others. Where particular categories of people are being considered, this will be made clear in the guide.

National Preventive Mechanism (NPM): refers specifically to an independent domestic visiting body designated or created by a state party under the Optional Protocol to the United Nations Convention against Torture (OPCAT).⁴ In practice these bodies conduct systematic visits to

4. OPCAT also established an international body called the Subcommittee on the Prevention of Torture (SPT) made up of 25 members, enjoying similar powers to those of the European Committee for the Prevention of Torture (CPT), and with a supervisory role over all NPMs.

all places of detention in order to analyse the treatment, conditions and administration therein.

Place of detention: the term is used broadly to cover any place where a person is deprived of liberty: prisons, police stations, centres for migrants and/or asylum seekers, centres for juveniles, social care homes, psychiatric institutions, prisons or cells for military personnel, and any other place where people can be deprived of their liberty.⁵

Refugee: a person who meets the eligibility criteria under the applicable refugee definition, as provided for in the 1951 United Nations Convention relating to the Status of Refugees (the Refugee Convention). A refugee is defined as a person who “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country or return there because there is a fear of persecution”.

Stateless person: a person who, under national laws, does not have the legal bond of nationality with any state. Article 1 of the 1954 Convention relating to the Status of Stateless Persons indicates that a person not considered a national (or citizen) automatically under the laws of any state is stateless.⁶

5. APT (2004), *Monitoring Places of Detention. A Practical Guide*, p. 17.

6. See note 1.



1. What is the aim of this guide?

The aim of this guide is to raise awareness of the possibilities that exist for parliamentarians to visit places where irregular migrants and asylum seekers are detained, as well as to encourage and assist them in carrying out visits.

The mixed flow of migrants and asylum seekers from, into and through the 47 member states of the Council of Europe continues to be a major concern for parliamentarians across Europe.

Today there is a growing tendency to detain asylum seekers and irregular migrants, referred to as “immigration detention” across Europe, and states are increasingly criminalising irregular migration. In 2008, the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, noting that “(I)t is wrong to criminalise irregular migration”, expressed concern that this trend “corrodes established international law principles. It also causes many human tragedies without achieving its purpose of genuine control”.⁷

States are setting up a growing number of detention centres for this particular population group. The conditions in many of these centres have been criticised by international bodies, including Council of Europe bodies such as the European Committee for the Prevention of Torture (CPT), the Commissioner for Human Rights and the Parliamentary Assembly, of being

7. Viewpoint, 29 September 2008, www.coe.int/t/commissioner/Viewpoints/080929_en.asp

in some cases worse than those faced by persons detained under criminal legislation in the same country. In addition, many governments do not take proper or adequate account of the special or particular protection needs and individual vulnerabilities of certain categories of immigration detainees such as pregnant women, children (including unaccompanied minors), people with physical and mental disabilities, LGBTI,⁸ the elderly and victims of trafficking or torture. This is a crucial issue to look at when visiting any place of detention.

This use of detention has become widespread despite detention only being permitted as a matter of international law where it is necessary and proportionate to the legitimate objective to be achieved and only after less coercive alternatives have been found not to be suitable in an individual case.

The closed nature of places of detention infers that individuals are vulnerable and may be at risk of human rights violations. Opening up places of detention to outside scrutiny is thus essential to ensure that the rights of detainees are upheld. These places need the scrutiny of parliamentarians and parliamentarians need to know what is happening, and to whom, behind these closed doors.

Many parliamentarians across Europe have a right to visit these places of detention as part of their mandate as national parliamentarians. Yet a survey conducted by the Parliamentary Assembly in December 2011 has shown that this right is not always known to parliamentarians or used to its full capacity.

This guide therefore aims to raise awareness of this right and encourage and assist parliamentarians in carrying out visits to places of detention where irregular migrants and asylum seekers are held by:

- clarifying the right of parliamentarians to undertake such visits and explaining why it is important for parliamentarians to carry out these visits;

8. LGBTI: Lesbian, gay, bisexual, transgender/transsexual and intersex.

- introducing some of the basic monitoring principles and methodology to be followed in visiting places of detention. This will include the steps for carrying out visits (preparation, conduct and follow up of a visit);
- introducing some of the key issues and areas that should be examined during monitoring visits to places of immigration detention.



2. Why should parliamentarians visit places of detention?

2.1. The value added of visiting places of detention

Places of detention are by definition closed and keep those detained out of sight of society. In some countries, immigration detention has historically been one of the most opaque areas of public administration.

The mere fact of visits by parliamentarians or other bodies to places of detention can open up the closed world of custody and contribute to increasing transparency and accountability and strengthening public confidence. These visits also have an important deterrent effect and reduce the risk of human rights violations.

2.2. The specific added value of parliamentarians visiting places of detention

Being that parliamentarians are responsible for scrutinising the government, legislating and approving budgets, the reasons for them to visit places of detention are various:

- to have first-hand information: a vital task of any parliamentarian is to scrutinise the actions of the executive body. Visiting places of detention is a unique means to observe (see, smell, taste, touch and hear)

the realities of detention and have access to first-hand information on the treatment of detainees, their conditions and the functioning of the places of detention. This also avoids only relying on information from external sources;

- to check the application of national laws and practices, to ensure they are being applied and are appropriate and to propose changes where relevant;
- to examine whether detention is appropriate, taking into account the human and financial costs for the persons in detention and for the state as well as the appropriateness of alternatives to detention;
- to sensitise parliamentarians to the reality of detention: this may be important not only as part of the general responsibility of parliamentarians, but also for their specific responsibilities and interests (for example where a parliamentarian has a detention centre in his or her constituency, or has received specific complaints of conditions of detention, or is dealing with detention implications);
- to monitor respect for international, European and national standards of detention.

Some examples of parliamentarians using their mandate to visit places of detention:

In France, the French NGO GENEPI (National student group for the teaching of imprisoned persons) regularly organises “Visit days by parliamentarians to places of detention”.⁹

Daphné Dumery (Belgium, NR)

“I have visited detention centres both as a private lawyer and as a parliamentarian. Having a first-hand view of detention has helped me understand the distress of those who are about to be deported and the need to introduce measures to bring down the levels of stress for the benefit of all. As a result I have been able to support new legislation introducing so called “coaches”. These are persons who work with the detainees to help them prepare psychologically and physically for their return from the detention centres.”

Annette Groth (Germany, UEL)

“In Germany, many detention centres for asylum seekers and irregular migrants have been heavily criticised by certain NGOs, churches and politicians for being dirty and unsuitable for families, minors, single women and mothers. In some instances, visits by parliamentarians, and the resulting criticism, have brought about improvements in the living conditions at these centres. To date, not many parliamentarians visit detention centres and it is my hope that the guide will encourage more parliamentarians to do so. I will certainly disseminate the guide to raise awareness of our rights as parliamentarians. I would also welcome visits by parliamentarians from other countries to detention centres in Germany. Sometimes ‘foreign intervention’ facilitates the improvement of standards at centres, bringing them into line with the human rights standards of the Council of Europe.”

9. For more information on this initiative, see the web site of GENEPI: www.genepi.fr/medias/actualites/fichier_353.pdf, available in French only.

Alev Korun (Austria, SOC)

“In Austria I have visited detention centres and certain issues have disturbed me, such as detainees only having access to fresh air for an hour a day, complaints about medical treatment and the issue of children being held in detention. The intervention of parliamentarians and also international monitoring mechanisms such as the European Committee for the Prevention of Torture (CPT) have certainly helped solve some of the problems. For example in Vienna, there is now a separate centre for families, which is much more child and family friendly and the option of more open centres is being looked at.”

Giacomo Santini (Italy EPP/CD)

“In Italy all parliamentarians have the right to knock on the door of a detention centre and to enter, unannounced. I have chosen to use this right, in particular on public holidays, including at Christmas. This is not just a symbolic gesture. It allows me to see places at times when people are least expecting a visit. What I find most interesting is to speak to the people, and not just the detainees but also the guards. Surprisingly, it is often the guards who have the most complaints vis-à-vis the authorities. I never promise things I cannot deliver, but I always consider it important to meet with the heads of the centre at the end of the visit and I usually make a small press conference at the end to throw a bit more light on what are very closed institutions.”

Tineke Strik (Netherlands, SOC)

“In the Netherlands there have been discussions in Parliament about making detention centres for irregular migrants and asylum seekers less prison-like and improving the activities/regimes in these places. In order to have a better idea of what could be done a group of Dutch Parliamentarians visited Sweden to see alternative models in operation. It is thus interesting for parliamentarians not only to see their own detention centres but also examine, where possible, the situation in other countries.”

2.3. Other organisations visiting places of detention

Apart from parliamentarians there are a variety of other bodies at the national level that visit places of detention. Parliamentarians should be

aware of these and may wish to be in contact with them. They include:¹⁰

- National Preventive Mechanisms (NPMs):¹¹ these are independent domestic visiting bodies, designated or created by a state, with a mandate to conduct regular visits to all places of detention. They can present observations on draft or existing legislation relevant to the prevention of torture, and they are required to prepare an annual report of their activities, which should be made public and disseminated by the authorities;
- Ombudsman offices and national human rights institutions (NHRI):¹² often they have a broad human rights mandate combined with the power to examine individual complaints. Their mandate often includes the possibility of visiting and monitoring places of detention. The depth and frequency of the visits may, however, vary. An advantageous feature of the Ombudsman and national human rights institutions is that they usually report publicly to parliament and their recommendations are viewed as authoritative;
- National human rights NGOs and other civil society organisations: they sometimes manage to get authorisation to regularly monitor places of detention based on a written agreement with the authorities. Monitoring by civil society tends to be accompanied by an extra level of independence, frankness and publicity.

The Parliamentary Assembly of the Council of Europe has itself recognised that states should “allow, when applicable, the monitoring of reception centres and detention centres by ombudspersons and national human rights commissions, parliamentarians and other national or

10. The list excludes at the domestic level internal administrative bodies and focuses on bodies totally independent from the detaining authorities.

11. They are designated or created by a state party under the Optional Protocol to the United Nations Convention against Torture (OPCAT).

12. Note that in some countries the NHRI performs Ombudsman functions.

international monitoring bodies. Where specialised monitoring bodies do not exist, they should be created. Where they do exist, their members should be selected and appointed carefully and should be trained in carrying out their functions. The media should also be granted reasonable access to detention centres from time to time to ensure transparency and accountability, without encroaching, however, on detainees' right to privacy".¹³

2.4. Visiting mandate and powers

A questionnaire was sent to all the 47 Council of Europe member states to clarify whether parliamentarians had a right to visit places of detention. Thirty-six responses¹⁴ were received.

The results clearly show that many possibilities exist for parliamentarians to play an essential role in carrying out immigration detention visits. In a number of countries parliamentarians have an express or implicit right to visit places of detention, and in other countries they can do so but need to seek permission in advance.

- In 10 countries, parliamentarians have the right to visit all places of detention: This is either expressed (Belgium, Italy, France, Lithuania and Poland) or implicit in law or regulations (such as in Austria and Norway¹⁵) or a right that simply derives from the general status of members of parliament (Hungary, Moldova and Portugal). In some countries such as Romania or Finland, the possibility to visit places of detention is granted by the broad right of the parliamentarians to be informed, as guaranteed in the constitution.

13. Parliamentary Assembly of the Council of Europe, Resolution 1637 (2008), "Europe's boat people: mixed migration flows by sea into southern Europe".

14. These questionnaires were sent via the European Centre for Parliamentary Research and Documentation (ECPRD).

15. "By virtue of being an open and transparent society and the absence of imposed restrictions", questionnaire answer.

- In the large majority of countries, the right is not specified in the law but the possibility exists. Parliamentarians thus have to do this on their own initiative. This means that parliamentarians have to seek permission in advance to visit. This may even be specified in internal regulations.¹⁶
- Rights of parliamentary committees, commissions or working groups: it is important to note the distinction between an individual member of parliament's right to visit and that of a parliamentary committee, commission or working group. Some countries such as Latvia, "the former Yugoslav Republic of Macedonia" and Switzerland (at the cantonal level) grant the right to a specific parliamentary committee, commission or working group to visit places of detention on a regular basis.
- In some countries, parliamentary committees also have the right to institute an inquiry or petition, which can shed light on certain issues relating to detention.

Two country examples

In Italy, parliamentarians have the right to visit places without authorisation.¹⁷

In Germany, the situation is more complicated:

- Members of the Bundestag do not have an individual right to visit places of detention, but may be granted access. Nonetheless, the committees for petitions and committees of inquiry may visit such

16. In a few countries (Albania, Bulgaria, Georgia and Montenegro), nothing is specified or defined in the law. There is simply no information.

17. This is according to Article 67 of the law of 26 July 1975, No. 354, which fixes prison rules and provisions on the enforcement of prison sentences and measures restricting freedom. The same right is applied for detention centres for irregular migrants (Article 67, paragraph 1), to Centres for Identification and Deportation (CIE) and the reception centres for asylum applicants and migrants (respectively CARA, Reception Centres for Asylum Applicants, and CDA, Reception Centres).

places under jurisdiction of the federal state (federal police, customs, armed forces);¹⁸

- Committees of inquiry may take evidence (that is, also conduct visits) according to the Code of Criminal Proceedings in relation to the object of its inquiry;
- The parliaments in each *Land* have committees for petitions and may create committees of inquiry. These committees have similar rights as the federal committees; they are in particular entitled to conduct visits to places of detention under the control of the *Land* if this is necessary for the investigation or the decision-making process. All types of places of detention fall under the control of the *Länder*, including detention centres for the expulsion of foreigners.

2.5. Types of visit

It is important to be clear on the different types of visits and their purpose as this affects the way in which they need to be carried out. In particular, one can distinguish between preventive visits and investigative visits.

Preventive visits, as opposed to investigative, can take place before, rather than in response to, a specific event or a complaint from a detainee. They can take place at any time, even when there is no apparent problem.

Preventive visits do not attempt to respond to individual cases whereas investigative visits do. Instead the focus is to analyse the place of detention as a system and assess all aspects related to the deprivation of liberty. The aim is to identify those aspects of detention that could lead to a violation of human rights and other affronts to human dignity in detention. The following chart shows some of the differences between these two types of visits.

PREVENTION	↔	INVESTIGATION
At any time		In response to an allegation
Human rights based		Based on claimed violations
Forward looking		Looking backwards (past acts and omissions)
Focus on system		Focus on individual
Collaborative		Resolving a case/situation
Holistic		Individualised
Long term		Short term

In addition, during preventive visits a distinction needs to be drawn between:

- **in-depth visits:** these will usually last days or weeks and involve a large professional multidisciplinary team that looks at all aspects of the functioning of a place of detention. Their main objective is to document the situation thoroughly, analyse risk factors and identify both problems and good practice. These visits are carried out regularly by monitoring bodies such as the NPMs and to a lesser extent the regional body, namely the CPT;
- **“photographic” visits:** these are short visits that might last anywhere from a few hours to half a day and involve an individual or a small team. The main objective is to get an overall picture/photograph of the place of detention. These visits also aim at having a deterrent effect and contributing to the transparency and accountability of places of detention. They may be undertaken on an unannounced basis (the unpredictability has the advantage of keeping persons on their toes and also ensuring that when the visit is undertaken, special steps have not been taken to mask any existing problems). Alternatively they may

18. Article 44 of the Basic Law, read together with Section 19 of the *Untersuchungsausschussgesetz* for committees of inquiry and Article 45c of the Basic Law, read together with Sections 108 to 112 of the Rules of Procedure of the Bundestag and Section 1 of the *Petitionsausschuss-Befugnisse-Gesetz*.

be announced, with the aim to follow up on previous recommendations or to examine a specific issue.

A parliamentarian is much more likely to conduct “photographic visits” though more regular in-depth visits are not excluded. Some parliamentary commissions conduct more regular in-depth visits, such as the Commission des Visiteurs in Geneva, Switzerland. This guide is therefore primarily designed to address these “photographic” visits while a range of much more detailed material is available for the more “in-depth monitoring” and is referred to in Annex 6.

Basic principles of monitoring places of detention

Monitoring places of detention through visits is a delicate and sensitive task. For reasons both of ethics and efficiency, it is important that those conducting visits keep in mind and respect a number of basic principles that are listed below:¹⁹

- Do no harm²⁰
- Exercise good judgment
- Respect the authorities and the staff in charge
- Respect the persons deprived of liberty
- Be credible
- Respect confidentiality
- Respect security

19. These principles were mainly inspired by the 18 basic principles of monitoring identified in Chapter V of OHCHR (2001), *Training Manual on Human Rights Monitoring*, Professional Training Series No. 7, United Nations, New York and Geneva, and more details were drawn from APT (2004), *supra* 5, pp. 27-31.

20. This is the overarching principle of any monitoring visit. Detainees are particularly vulnerable and their safety should always be kept in mind by visitors, who should not take any action or measure that could endanger an individual or a group. In particular, in cases of allegations of torture or ill-treatment, the principle of confidentiality, security and sensitivity should be kept in mind. Visitors should also seek to mitigate any possible risk of sanctions or reprisals against persons they meet during their visits.

- Be consistent, persistent and patient
- Be accurate and precise
- Be sensitive
- Be objective
- Behave with integrity
- Be visible



3. What are the basic legal norms relating to the detention of irregular migrants and asylum seekers?

While it is important to be aware of the general international legal principles governing immigration detention (see Annex 4), parliamentarians will often not be experts on the issue. The basic information contained in this guide combined with a common sense approach should however provide a starting point.

The applicable international legal framework includes international human rights law and international refugee law. Whilst all sources can be useful, it is important to recognise the different standards²¹ and weighting accorded to each type in the context of international law.

The following presents a few of the basic norms a parliamentarian should be aware of, starting with a recognition that detention is in itself a major limitation on the rights of the individual and thus its legality, legitimacy,

21. "Hard law": treaties and conventions; "soft law": non-treaty standards such as United Nations General Assembly resolutions, reports of special rapporteurs or advisory opinions.

necessity and length should always be under close scrutiny. The conditions of detention and the situation of vulnerable groups will however often be the issue that parliamentarians will be particularly concerned with.

3.1. Legality and legitimate grounds for detention

There should be a presumption against detention of refugees, asylum seekers and migrants, as it is inherently undesirable: international human rights law provides that “everyone has a right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”²²

An essential safeguard against arbitrary detention is that all forms of detention must be adequately described in national law.²³

Detention of migrants should only be used as a last resort. When used it must be necessary and proportionate to the legitimate objective to be achieved²⁴ and only after less restrictive alternatives have been found to be unsuitable in the individual case considered. It may be important for a parliamentarian to consider whether detention is being used as a last resort, or if it is being used in a knee-jerk fashion. What is always important is to examine not just the law and the policy, but also what happens in practice.

22. Article 9(1), International Covenant on Civil and Political Rights (ICCPR), 1966; Article 5(1), European Convention on Human Rights, 1950; UNHCR (1999), *Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers*, www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=3c2b3f844. The detention of asylum seekers, in the view of UNHCR, is inherently undesirable.

23. ICJ (2011), *Migration and International Human Rights Law, Practitioners Guide No. 6*, International Commission of Jurists, Geneva, p. 150.

24. The principle of proportionality means that any measure taken by a governmental authority – such as the decision to detain – must be appropriate in order to achieve the objective desired, necessary in order to achieve the objective (or in other words, there are no alternative measures) and reasonable.

3.2. Obligation to first consider non-custodial measures

Alternatives to detention should first be pursued. Governments should implement alternatives that ensure the protection of the rights, dignity and well-being of individuals.

Many states have established this presumption in their national laws or in their immigration policies or practices.²⁵

3.3. Length of detention

No one should be subject to indefinite detention. Detention should be for the shortest possible time with limits on the length of detention that are strictly adhered to. Indefinite detention is inhumane and contrary to human rights law. In the case of asylum seekers, it amounts to a penalty contrary to refugee law.²⁶

The European Union Directive 2008/115/EC (“Return Directive”) states that each member state should set a limited period for detention. This period should not exceed six months.²⁷ Although this is supposed to be a maximum, states have the possibility of extending this by a further 12-month period in limited circumstances.²⁸

25. Such as Austria, Germany, Denmark, the Netherlands, Slovenia and the United Kingdom. See Sampson R. et al. (2011), above at note 2, p. 21.

26. UNHCR (1999), above at note 22. Under the guidelines, detention of asylum seekers can only be used: 1) to verify identity; 2) to determine the elements on which the claim for refugee status or asylum is based; 3) in cases where asylum seekers have destroyed their travel and/or identity documents, or have fraudulent documents in order to mislead the authorities of the state in which they intend to claim asylum; or 4) to protect national security and order.

27. Article 15.5, Directive 2008/115/EC of the European Parliament and Council on common standards and procedures in Member States for returning illegally staying third-country nationals.

28. The two circumstances allowed for under Article 15.6 of Directive 2008/115/EC are: (a) a lack of co-operation by the third-country national concerned, or (b) delays in obtaining the necessary documentation from third countries. A further limitation should also be taken into account, namely that asylum seekers should be granted the right to work after 12 months, so this precludes their detention for a period longer than 12 months.

Parliamentarians may thus wish to keep the issue of length of detention in mind during any visit.

3.4. Detention conditions

When detention is used, it should be under conditions that reflect the non-criminal status of the persons and their needs. In other words these detention centres should not be prisons and should not resemble prisons as the detainees are not criminals. International guidance stipulates that detained migrants should be “held in specifically designed centres in conditions tailored to their legal status and catering for their particular needs”.²⁹ Detainees should not be housed in overcrowded conditions or with convicted criminals.

3.5. Particular considerations in the detention of certain groups

Certain categories of person deprived of their liberty are particularly vulnerable. The special needs of groups of migrants in situations of vulnerability – including children, pregnant women, nursing mothers, persons with mental health disorders and/or specific health needs,³⁰ victims of trafficking or torture, LGBTI and the elderly – must therefore be taken into account and appropriate safeguards must be in place. Ultimately, governments should create appropriate mechanisms to respond to their needs, including placing them in open accommodation rather than jail-like facilities.

Children should only be detained in exceptional circumstances as a last resort and for the shortest appropriate period of time in accordance with the principle of the best interest of the child as stipulated in the United

29. *CPT Standards*, Extract from 7th General Report, p. 54.

30. The Convention on the Rights of Persons with Disabilities specifically recognises that persons with disabilities have a right to liberty and security of person and that “reasonable accommodation” must be provided to ensure that they are treated in accordance with international human rights law. In case detention facilities do not satisfy the requirements of “reasonable accommodation”, persons with disabilities should not be detained.

Nations Convention on the Rights of the Child. As a principle, migrant children should not be subjected to detention. The underlying approach should be “care” and not “detention”.³¹ Similarly all efforts should be made not to detain families in view of the impact this has on the children.

Separated and unaccompanied minors should never be detained. States should provide them with care, accommodation and competent custodians with powers to act in their best interest. States must recognise the vulnerability of separated children and take measures to strengthen their protection.³²

Asylum seekers in principle should not be detained. They should not be penalised because they have been compelled to enter a country irregularly or without proper documentation.³³ In practice, however, many asylum seekers are detained while their asylum requests are being dealt with. In these cases it is important to monitor whether the detention is justified and to ensure that these persons have full access to asylum procedures and that they are not at risk of being sent back to their country of origin before their asylum case has been heard. This is the basic principle of what is known as *non-refoulement*.

Notwithstanding the specific categories mentioned above, parliamentarians need to ask themselves if the persons they find in detention are those that they would expect to find in detention. If they are not, then this is almost certainly an indication that the system is not functioning properly.

The principle of *non-refoulement* is key to assessing state decisions about entry and stay. This principle bars states from returning any person, regardless of nationality, status or other grounds, to a place where

31. Thomas Hammarberg, Council of Europe Commissioner for Human Rights, Position Paper, *Positions on the Rights of Minor children in an irregular situation*, 25 June 2010, p. 2.

32. *Ibid.*

33. This principle is derived from Article 31, Convention relating to the Status of Refugees, United Nations, 1951.

they would be at risk of torture.³⁴ This principle is widely recognised as a rule of customary international law, and is equally applicable to all places where the intercepting state exercises jurisdiction and control, including on the high seas.



4. How to carry out visits to places where asylum seekers and irregular migrants are held

Opening up places of detention to outside scrutiny is essential to ensure that detainees' rights are upheld. But how do we carry out visits in practice? Based on the practices of monitoring bodies working at international, regional and national level, we can say that carrying out visits is a three-step process that includes:

- the preparation of the visit;
- the conduct of the visit;
- the follow up to the visit.

34. Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, United Nations and, in the case of refugees, Article 33 of the Convention relating to the Status of Refugees, United Nations, 1951.

A. The preparation of the visit

4.1. Defining the objectives of the visit

It is not realistic or reasonable to expect that a parliamentarian or a group of parliamentarians can examine all aspects of detention systematically through a single short visit. Therefore, it is crucial to be clear from the outset as to the purpose of the visit, such as:

- understanding how an immigration detention facility operates;
- focusing on a specific theme (parliamentarians may have received or heard of complaints on a particular issue, such as the length of immigration detention and its impact on individual persons);
- following up on a previous visit to check on a specific aspect of detention, individual cases or implementation of previous recommendations by parliamentarians or other bodies.

4.2. Setting up the visiting team and organising the work

If the visit is being carried out by one member of parliament, he or she should ensure that they are accompanied by at least one other person (assistant, adviser or expert) as it is important that all information/findings be corroborated by another person, and it also facilitates the task of holding a conversation and taking notes (see Annex 2 – Example of internal visit note).

When the visit is being carried out by several parliamentarians, for example as part of a commission, they should ensure that they work as a team and proceed as follows:

- identify one person to head the team and be responsible for coordinating the visit;
- ensure that all team members have the same information on the place to be visited, the objectives and the format of the visit;
- divide the different tasks among the team members according to their skills, the size and nature of the place to be visited and the intended length of the visit.

The size of the visiting team depends on a number of factors, such as:

- the size of the place visited: some immigration centres are relatively small and a large group of strangers walking around can be overwhelming and intimidating for the detainees and staff alike, as well as unnecessarily disruptive;
- the type of expertise needed, based on the objectives of the visit (the participation of a medical practitioner is often useful but this may not be feasible);
- the cultural considerations and the need for an independent interpreter (see Annex 3: Working with an interpreter);
- gender considerations: it is always good to have both genders represented in a visiting team, and this also allows for gender-sensitive questions to be asked;
- constraints laid down by the detaining authorities, such as the maximum number of visitors allowed.

Whether or not it is an individual visit or a team visit, preparing a form/checklist on detention conditions, as a means of guaranteeing standardised collection of information, can be very helpful.

Last but not least, it is recommended to keep in mind that:

- you may be the first external visitor that the migrant is seeing and speaking to;
- external visits can be perceived as very intrusive and the authorities in charge of the centre may be suspicious of outsiders even if they have nothing to hide;
- it is important to keep an open mind and to remain alert.

4.3. Collecting available information

Before a visit, the visiting parliamentarian(s) should gather available internal and external information about the particular immigration centre to be visited, including:

- laws and regulations relating to the specific place (including any specific regulations accorded to vulnerable groups such as women, children, persons with disabilities and religious and ethnic groups);
- information obtained during earlier visits or from other sources (other national, regional and international visiting bodies, NGOs, media, released detainees, families of detainees, lawyers, charity associations, volunteers working in places of detention, and so on);
- the authorities directly responsible and the higher authorities;
- the capacity of the place, the number and the breakdown of detainees by gender, age and reason for detention;
- all known or alleged problems.

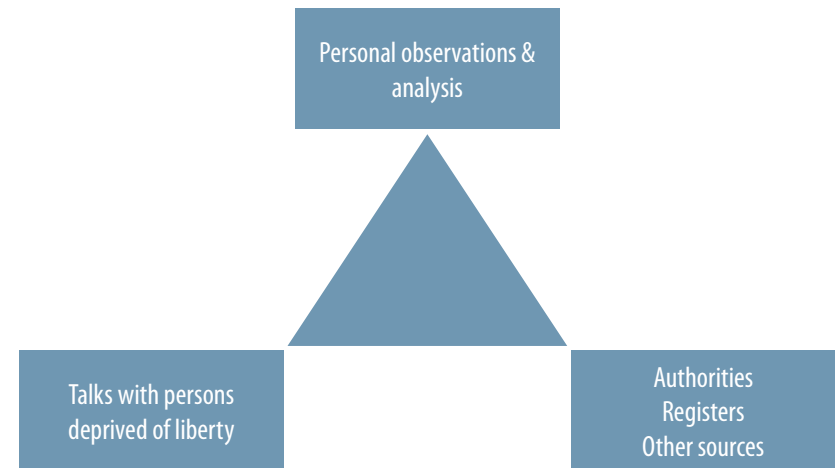
In addition, it can be very useful to meet with other actors such as NPMs, NGOs, lawyers who represent detainees, judges, medical practitioners – in fact, anyone who has regular dealings with the persons in detention and who will therefore have useful information to share.

B. The conduct of the visit

Whether a “photographic” or “regular in-depth” visit, in order to properly evaluate the conditions of detention and treatment of detainees, the visitor(s) need(s) to cross-check different sources of information (a process known as “triangulation”, see Figure 1) including:

- the point of view of the detainees themselves;
- the point of view of the authorities, the staff, and the different professionals taking care of the detainees, including by checking the registers and other documents;
- their own observations (what they can see, smell, taste, touch and hear).

Figure 1: Collecting information



A visit usually includes the following steps, some of them interchangeable depending on the objectives of the visit:

- the arrival and the initial talk with the head of the centre;
- a tour of the detention facility;
- consultation of registers and other documents (only likely to take place during an in-depth visit);
- talks with detainees;
- talks with staff;
- the final talk with the head of the centre.

The importance given to each step will of course depend on the type of visit (photographic v. in depth). In any case, parliamentarians should not take this sequence as a rigid model and should always be prepared to be flexible and to react to whatever situation they find, changing their plans and usual order of activity accordingly if deemed necessary.

4.4. What should one pay attention to when visiting places of immigration detention?

As stressed above, parliamentarians will need to be selective, especially during a short visit.

Below is an aide-mémoire that outlines broad areas that could be considered during visits to places of immigration detention. The list contains a series of prompts grouped in terms of key issues for the visitor, drawn from the standards and the experience of international monitoring visits,³⁵ as well as boxes with suggested questions. It is not intended to be prescriptive or exhaustive. See also checklist in Annex 1.

4.4.1. Material conditions

- Capacity and occupancy of the detention centre: number of detainees by nationality, age and gender.
- Food and water: access, quality, quantity, frequency, cost, diversity, special dietary regimes (for medical, cultural, religious and health reasons), availability of clean water.
- Lighting and ventilation.
- Sanitation facilities: inside rooms, outside, access, cleanliness.
- Personal hygiene, showers: number, cleanliness, state of repair, frequency of use.
- Clothing and bedding: quality, frequency of change, possibility of laundry.

TIPS

- Are the overall conditions similar to prison conditions (fences/barbed wires, confining walls, cells locked at night)?
- Can detainees wear their own clothes or do they have to wear a uniform?

35. For more details please refer to the new *Practical Guide on Monitoring Places of Immigration Detention* by APT, IDC and UNHCR, due in 2014.

- Does each detainee have a separate bed and adequate bedding?
- Are detainees given food, a hot meal? Or can they make their own food? If so, when can they cook? How do they get food? What is the annual budget for food (and the amount allowed per detainee per day)?
- Do the detainees have direct access to drinking water?
- How often do the detainees have access to shower facilities? Are they supplied with toiletries?

4.4.2. Access to the outside world and activities

- Contact with family and others: visitor access, frequency, conditions, duration.
- Contact with the outside world and information: access to radio, television, telephone (including mobile phones), newspapers, written correspondence and parcels.
- Access to outdoor exercise.
- Organised purposeful activity: work, education.
- Leisure and cultural activities.
- Religious practice and worship.

TIPS

- How often are visits from outside persons authorised? What is the length of such visits?
- Can detainees make phone calls? How often? What is the system for payment?
- What access do detainees have to the media? Are there any restrictions and, if so, what are the criteria?
- What are the opportunities to work inside and/or outside the immigration centre? Is the work voluntary? Is the remuneration fair?

- What type of education is offered? Are there classes in different languages? Does the library contain materials in various languages?
- Is the minimum rule³⁶ of one hour of physical exercise in fresh air per day respected?
- What organised activities are offered to detainees (work, education, sport, culture, and so on) and what other activities are available (access to books, magazines, television, Internet, and so on)?
- Are the religious needs of the immigration detainee population met?

4.4.3. Protection measures

- Access to asylum procedures.
- Access to UNHCR (for asylum seekers).
- Legal counsel and consular access (other migration procedures).
- Length of detention.
- Detention registers.
- Arrival and reception (information provided to detainees upon arrival, language and format, accessibility of internal rules and procedures).
- Disciplinary procedures and sanctions.
- Complaints procedures.
- Separation of categories (such as women, children, nationalities, ethnic groups) of detainees.

TIPS

- Are detainees fully informed on arrival of the asylum procedures in a language that they can understand? Are there any special provisions in place for persons who are illiterate?

36. Rule 27, *European Prison Rules*. Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, 11.01.2006.

- Is UNHCR systematically informed about new arrivals and are persons able to communicate freely and confidentially with a UNHCR representative?
- Are all migrants (those who have given their consent) in contact with their consulate? What happens if a consulate does not respond to a demand? What happens with stateless persons?
- Are the migrants in administrative detention separated from persons imprisoned for a criminal offence?

4.4.4. Procedural and legal safeguards

- Legal basis for detention.
- Decision to detain (prompt and full communication of the reasons).
- Access to interpretation/translation services.
- Access to free legal counsel.
- Right to challenge detention.
- Right to apply for release.

TIPS

- Are the detainees systematically informed of the reasons for detention?
- Do they have the right to challenge their detention and appeal for release?
- Do they automatically get access to free legal counsel?
- Are they informed in a language they can understand (is an interpreter always available)?

4.4.5. Treatment

- Allegations of torture and ill-treatment.
- Use of force or other means of restraint.
- Use of solitary confinement and other disciplinary measures.
- Incidents of violence or peaceful protest, hunger strikes, self-harm.

- Transport of detainees.
- *Non-refoulement*.
- Deportation procedures.

TIPS

- Are there regulations specifying under what circumstances the authorities are authorised to use force?
- How frequent are incidents involving use of force (according to detainees, registers, staff and other sources)?
- Is there evidence that force is used disproportionately in relation to a particular group?
- Are the deportation procedures transparent and fairly applied?
- Are the staff working in the immigration centre clearly informed about the deportation procedures?
- Are the detainees informed in due time about when they will be deported?

4.4.6. Health care

- Access to medical care including dental services.
- Medical examination on arrival.
- Medical staff.
- Mental health care (access to counsellors/psychologists/psychiatrists).
- Specialised health care (women, children, the elderly, and so on).

TIPS

- Has the person been examined in private by a medical practitioner on arrival?
- Was an interpreter available if needed?
- Did the person receive medical care? If yes, was it provided free of charge?
- Is there a separate medical register or note made for each individual case?

- Is there a procedure that enables detainees with mental illness to be identified and diverted to appropriate mental health services?
- What are the safeguards in place regarding suicide and self-harm?
- How many doctors, nurses, psychiatrists and/or psychologists work with/for the institution, and how often are they present?

4.4.7. Vulnerable groups

- Children and babies.
- Unaccompanied minors.
- Women.
- Elderly.
- Persons with disabilities.

TIPS

- Are there any special provisions for vulnerable groups?
- Are the special needs of unaccompanied minors addressed?
- Are the special needs of pregnant women and women with babies addressed?
- Are women offered hygiene kits?
- Has accommodation been adapted to the needs of persons with disabilities?

4.4.8. Personnel

- Staffing levels: numbers, ratio, gender balance, recruitment criteria, average salary.
- Qualifications and training: type, length, subject areas.
- Cultural awareness.
- Attitudes.

TIPS

- What is the staff ratio in direct contact with detainees?
- Have they received training on working with migrants and asylum seekers? Did it include sessions on cultural sensitivity/awareness?
- Have staff working with specific categories, for example children, been given specific training?

4.5. The arrival and the initial talk with the head of the centre

Time will often be limited and it is therefore essential to keep track of time and not be side-tracked from whatever your goal is. A visit usually begins with an initial talk with the person in charge of the centre or if s/he is not present, the person next in charge.

The initial talk is a source of information (among others). This discussion provides an important opportunity to:

- explain the objective(s) of the visit;
- explain the need to have talks with the detainees;
- explain how information collected during the visit will be used;
- ask for recent and specific information (such as whether there have been any notable changes and whether there are any detainees with special needs);
- ask the person in charge for their opinion about the challenges they encounter in their work and possible solutions;
- set an appointment for the end of the visit.

4.6. Overview of the premises and observations

During the first visit to an immigration centre, it is particularly important to see all areas of the premises used. A short general tour of the entire facility should be done systematically.

After the general tour, or in subsequent visits, the visitor(s) should be in a position to choose the facilities they wish to visit (for example if a team

is visiting, it could split into smaller groups, each with its own area of responsibility).

Visiting the premises makes it possible to:

- visualise the premises and its layout: the importance of this point must not be overlooked. The architecture of the place of detention and the physical security arrangements (fences, confining walls, and so on) have a very direct influence on the daily life of the detainees;
- locate the detainees' living quarters (cells, dormitories, courtyards, refectories, study and leisure areas, sports rooms and fields, workshops, visiting rooms, and so on) as well as the various services and installations provided for them (kitchen, religious facilities, sanitary installations, laundry, and so on);
- observe the conditions of detention;
- obtain a first impression of the atmosphere and mood in the place.

While all the premises should be seen, some should have absolute priority, as they serve as a particular measure of the level of respect accorded to the detainees. These are the:

- isolation cells and disciplinary cells (if they exist);
- the kitchens;
- the visitors' room;
- the medical facilities;
- the sanitary installations;
- the religious facilities;
- the cells and dormitories.

The visitor(s) can also ask the detainees what area they think should be visited. It is important to be aware that in some detention centres the management may not want visitors to see certain parts of the facility. The visitor(s) should cross-check their information during private talks. It is helpful to consult previous visitors.

The facilities provided for staff should also be visited.

4.7. Consultation of registers and other documents

Consulting the registers and other documents at the beginning of a visit can be useful. Even if the visit is short, it is worth using registers either as a way to double-check the information obtained during the course of the visit, or to help select detainees for individual interviews (see below). There are a number of different types of registers kept in places of detention, but in the context of immigration detention, those most relevant are:

- entry and exit registers of detainees (one can see how long the person has been held in detention);
- if they exist, registers of disciplinary measures/or possibly solitary confinement;
- medical registers;³⁷
- registers of incidents and/or events (such as the use of force).

Visitors should also ask to consult other documents of importance, in particular:

- internal rules – are they available in several languages?;
- staff lists;
- working schedules of the staff.

4.8. Talks with detainees

The most important part of the visit is the time spent talking with the migrants and asylum seekers and hearing directly from them about their experience of the conditions and treatment in detention. It is the only way for parliamentarians to grasp the reality of immigration detention.

However it is vital to always be aware that talking to detainees is a delicate process and that it is essential to establish a relationship of trust between the visitor and the detainee.

37. Due to the right to privacy and medical confidentiality, these may be impossible to consult unless there is a doctor in the group who is allowed access.

Respect the “do no harm” principle

Detainees are particularly vulnerable and their safety should always be kept in mind by visitor(s), who should not take any action or measure that could endanger an individual or a group. Particularly in cases of allegations of torture or ill-treatment, the principle of confidentiality, security and sensitivity should be kept in mind.

Conducting group discussions

Conducting individual talks can be a time-consuming process. In order to optimise the time available, it may be useful to hold a combination of individual talks and group discussions with detainees.

Group discussions allow contact with more detainees and are useful to hear about common concerns, and get a sense of the mood or culture within the place. However since there is no confidentiality, group discussions exclude the possibility of discussing more sensitive issues (such as treatment, relations with staff and other detainees). It is important to ensure that there is no disclosure during group discussions of any information that may pose a risk of harm to an individual.

Conducting individual interviews

Parliamentarians should consider the following:³⁸

- if possible, having a talk in private is paramount. The talk should be kept out of hearing and preferably out of sight of staff and other detainees;
- the choice of location for the talk is also crucial, both for confidentiality and to build trust. Ideally the choice of location should be up to the detainee;

38. Note that some of the points listed in this section may be unrealistic for short visits, but parliamentarians should be guided at all times by the “do no harm” principle when selecting detainees.

- it is crucial that the visitors and not the authorities choose the detainees with whom they wish to conduct individual interviews. In addition:
 - visitor(s) should make sure that they do not only speak with those detainees who seek to make contact with them;
 - ideally, in order to have a representative sample of detainees in the centre, a significant number of talks should be conducted (for example 10% of all detainees);
 - enough detainees should be talked to so that the source of information on problems cannot easily be identified, thereby mitigating the risk of sanctions or reprisals;
 - those selected should be as representative as possible of the different categories of detainees (for example most recently arrived migrants, specific minority groups, disabled persons);
 - if it is a small immigration centre, then talk with all the detainees.

Conducting talks with a detainee

The following considerations should be kept in mind:

- when there is more than one person talking to the detainee, a clear division of tasks (such as one person leading the talks and the other taking notes) brings more clarity and offers a calmer setting;
- it is recommended that there should not be more than two interviewing a detainee;
- it is crucial to introduce yourself and your interpreter (if present) and explain the purpose of your visit, specifying what you can and cannot do, in order to avoid raising any false expectations;
- visitor(s) should be prepared to be patient. For any number of reasons
 - experience or emotional state, prolonged deprivation of liberty

- leading to loss of the notion of time, memory blackouts, and obsessive thoughts, being in a foreign place, and so on – the way migrants express themselves may be confused; visitor(s) should express themselves in a clear, simple and understandable way. Comments or questions should not be formulated in a manner that could limit or influence how the person responds to them. Visitors should use open-ended questions (such as “What would you like to tell me about?” “What happened next?”) rather than leading questions (such as “Was access to an interpreter denied?”);
- the art of listening is crucial in talking with detainees. It is recommended to let the person narrate his or her story and not dominate the conversation, talk too much, or conduct what might resemble an interrogation;
- in this context it is vital to be sensitive to cultural differences in asking questions and in responding to their questions;
- before bringing the talk to a close, take the time to explain what will happen next and what you will do with the information. Detainees need to give informed consent if their details are later discussed (for example with the authorities, using the information provided).

Open questions give control to the detainee, as it allows him or her to choose how the information is shared. A leading question is one where the suggested answer is contained within the question. For example, instead of asking, “Have you been ill-treated?” you should ask, “How have you been treated?”

How to react to allegations of torture and ill-treatment inside the place of detention

General medical services in any country should include an independent expert body to assess allegations of torture and ill-treatment in

accordance with the Istanbul Protocol.³⁹ Health professionals are under a professional and ethical obligation to note any physical or psychological signs or symptoms of ill-treatment and torture, and to report them. The results of any medical documentation may be used in any future criminal proceedings.

The medical staff working in the immigration centres and the external visitor(s) (including parliamentarians) should refer to such a body, persons who allege (in a credible manner) that they have been exposed to torture or ill-treatment, provided that the detainee consents to the referral.

Parliamentarians should enquire whether there are confidential procedures in place for the documentation and reporting of such allegations, and ask when the procedures were last used.

4.9. Contact and discussions with staff

Staff represent a valuable source of information in any place of detention and it is important to speak to different members (such as security staff, social workers, doctors, guards and also representatives of NGOs who may be present in the centres). They can raise issues for further investigation, as well as contribute with their own suggestions or opinions about problems noted in the centre. It is also important to understand whether staff are connected to the civil administration, police services, military services or civil society, among others.

Nevertheless, it is important at all times to maintain a professional distance from staff of the facilities visited, particularly when in the presence of detainees but also when engaging with those in charge in front of

39. This document “is intended to serve as international guidelines for the assessment of persons who allege torture and ill-treatment, for investigating cases of alleged torture and for reporting findings to the judiciary or any other investigative body” (United Nations (2005), *The Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, p. 1).

lower-ranking staff. Junior staff should also be talked to as there may be some discrepancies between the vision of the management and the daily reality of junior staff.

On some occasions, informal talks with staff can also be effective. However, this approach should not be used in the presence of detainees, in order not to jeopardise the authority of the staff and the hierarchy of power inside the system.

Consider posing the same questions to different staff members so as to cross-check information.

TIPS

Key questions to ask staff

- What is the number of staff and usual ratio to detainees? What is the average salary?
- Are trainings provided?
- What are the most challenging problems?
- How would you describe your contact with detainees? How do you communicate with them?
- Is an interpreter always available?
- What are the procedures when there is a change in shifts? How is the information exchanged between teams? (for example, is a briefing given about any detainee who might require additional protection or different treatment – for example, a person who has special dietary needs?)
- What are the standard rules related to the use of force?
- How do you handle deportation procedures and how do you prepare detainees for return?

4.10. The final talk with the head of the centre

It is important to have a final meeting with the person in charge of the centre in order to give some indications of the impressions received and

formally end the visit. Equally, this final talk is an opportunity to strengthen relations with the person in charge, especially if there are plans for future visits.

If the main findings and recommendations are to be addressed at a later stage to the detaining authorities in a formal letter, for instance, the final talk is an opportunity to raise the most pressing issues.

At all times during the final talk, visitor(s) must keep in mind the “do no harm” principle and be very cautious when discussing any information that could identify a particular detainee. Possible sanctions against detainees are to be avoided at all costs.

C. The follow up to the visit

The form of follow up to the visit will very much depend on the type of visit conducted and objective(s) (photographic or regular in-depth visit). Whatever the type of visit, it is not an end in itself: it is a process aimed at improving the treatment and conditions of detention of asylum seekers and migrant persons deprived of their liberty. The phase that follows the visit is thus as important as the visit itself, if not more so. In essence it needs to be a form of gap analysis between what is expected and what the actual situation is. It is this gap that needs to be looked at further.

Some suggestions of strategies that can be used are as follows:

Provide written feedback to the relevant authorities (minister, immigration detention service and/or person in charge of the place visited)

Depending on the type of visit and time, three possible options are:

- at a minimum, sending a letter summarising the main observations with possibly some concrete suggestions for improvement;
- drafting a “visit report” that details the findings of the visit, together with analysis, feedback and concrete recommendations for improvement. Visit reports are usually confidential but can eventually be made public if deemed strategic. Good practice suggests that visit reports

should be sent confidentially to the authorities first for comments and factual checking. This practice allows the flexibility needed to encourage co-operative relations while at the same time promoting transparency and accountability;

- drafting a global/annual report (based on a series of visits and broader activities): this is mainly relevant for parliamentary commissions conducting regular visits and the idea is to produce a global and/or annual report on the activities carried out, including the series of visits that have taken place. Annual reports can be in the form of a compilation of visit reports, presenting in detail the facts found in the different places visited and the recommendations made. The reports can be more analytical and underline the main issues identified in the course of the year. Annual reports can also focus on one or a limited number of priority thematic issues, and propose relevant recommendations.

Examples:

- Annual report of the Commission des visiteurs officiels du Grand Conseil, Geneva, Switzerland: www.ge.ch/grandconseil/data/texte/RD00866.pdf
- Annual reports by Independent Monitoring Boards of Immigration Removal Centres in the United Kingdom: www.justice.gov.uk/publications/corporate-reports/imb/annual-reports-2012

In making decisions about publications of reports, parliamentarians are advised to always keep in mind the need for transparency and accountability of places where migrants and asylum seekers are detained. When reports are made public, they should be easily accessible and widely disseminated.

It is vital to ensure that the reports do not disclose confidential and personal data or any information that may result in a risk of harm to the person who provided the information.

Conduct follow-up visits and check the implementation of recommendations

Parliamentarian(s) can check during subsequent visits whether the official responses correspond to the situation on the ground, and whether any measures or actions have been taken.

Example of a follow up by the Commission des visiteurs, Geneva, Switzerland

8. The Commission's recommendations

Reminder of the recommendations made in the 2008-2009 report

09-03 Setting up of administrative detention in Frambois

The Commission notes that those persons held at Frambois did not correspond to the population originally conceived of nor to the objectives of the project. This reality should force the state to act on behalf of the Foundation LMC (Federal Law on coercive measures) to re-evaluate the allocation of personnel.

2010 Report

The Commission notes that the allocation of personnel has improved, with two employees now working full-time. However, it is noted that the on-going problems appear to be far from resolved.

In the case of a serious incident or situation, institute an inquiry and/or a petition

Draft and propose a change in the legislation and/or regulations

The capacity to draft and propose changes to existing legislation constitutes the heart of the mandate of parliamentarians and represents a key complement to visits: problems identified during visits to places where migrants and asylum seekers are detained may be the result of inadequate laws or regulations. The capacity to make revisions to respond to gaps in legal protections, and/or to propose legal safeguards, constitutes a vital tool for parliamentarians.

Propose revised budgetary allocations

One of the greatest powers granted to parliaments is control – or oversight – of the national budget. Having visited places of detention, parliamentarians can be in an ideal position to assess whether the resources allocated to places of immigration detention fulfil the requirements for appropriate management of the centres and whether the funds have been spent correctly in practice. Parliamentarians are well placed to ask the government to justify the effectiveness of any current programme and whether the use of resources is effective and designed to progressively realise higher standards within the limits of the budget available.⁴⁰ This role could include for instance suggesting a reallocation of funds to develop alternatives to detention, or concluding that there is an overuse of detention, with important financial and human consequences.

Facilitate meetings and roundtables with key authorities

Engage with the media

Particular care should be given to the relationship with the media, as they can be a powerful medium of key messages, but at the same time can undermine the credibility of parliamentarians engaged in detention monitoring or affect their dialogue with governmental authorities. Their role, whether positive or negative, should not be underestimated.

Engage and forge partnerships with key monitoring bodies such as NPMs and NHRIs (national human rights institutions)

Example, United Kingdom: Effective protection of human rights by executive and administrative bodies

Parliamentary scrutiny can also be supportive, ensuring that Her Majesty's Inspectorate of Prisons (HMIP)⁴¹ has the appropriate powers

40. TWC (2011), *Human Rights and Parliaments: Handbook for Members and Staff*, The Westminster Consortium, London, p. 199.

41. HMIP is the co-ordinating body of the United Kingdom's NPM established under the OPCAT.

and resources to meet its functions. In the past, for example, the UK Joint Committee on Human Rights (JCHR) criticised proposals to amalgamate HMIP with other bodies to create a single inspectorate with multiple powers of inspection. The JCHR and others raised concerns that this change would endanger the ability of HMIP to function with independence. The proposals were dropped.⁴²

Engage with other key actors such as NGOs working in the refugee and migrant sector and international organisations (such as UNHCR)

These organisations are not only valuable sources of information before a visit, but they are also actors of change after a visit. They can create multiplier effects through their networks and support the message the parliamentarian is seeking to put out.

42. See note 40 p. 191.

Appendices

Annex 1 – Checklist of issues that could be examined during the visit

This checklist is based on section 4.4., *What should one pay attention to when visiting places of immigration detention?*

Material conditions

Capacity and occupancy of the detention centre

- Number of detainees by status
- Number of detainees by nationality
- Breakdown by gender and age

Accommodation

- Size of room, equipment
- Clothing and bedding: quality, frequency of change, possibility of laundry
- Lighting and ventilation

Food and water

- Access to food: quality, quantity, frequency, budget, diversity, special dietary regimes (for medical, cultural, religious and health reasons)
- Availability of clean water

Sanitation facilities and personal hygiene

- Facilities inside rooms, outside, access, cleanliness
- Showers: number, cleanliness, state of repair, frequency for detainees

Regime and activities**Access to the outside world**

- Contact with family and others: visitor access, frequency, conditions, duration, telephone
- Contact with the outside world and information: access to radio, television, telephone, newspaper, written correspondence and parcels

Activities

- Access to outdoor exercise
- Organised purposeful activity: work, education
- Leisure and cultural activities
- Religious practice and worship

Protection measures**Arrival and reception**

- Information provided to detainees upon arrival, language and format
- Accessibility of internal rules and procedures

Access to information

- Access to asylum procedures
- Access to UNHCR (for asylum seekers)

- Consular access

Length of detention**Detention registers****Separation of categories**

such as women, children, nationalities, ethnic groups of detainees

Complaints procedures**Procedural and legal safeguards**

- Legal basis for detention
- Decision to detain (prompt and full communication of the reasons)
- Access to interpretation/translation services
- Access to free legal counsel
- Right to challenge detention
- Right to apply for release

Treatment

- Allegations of torture and ill-treatment
- Use of force or other means of restraint
- Use of solitary confinement and other disciplinary measures
- Incidents of violence or peaceful protest; hunger strikes; self-harm
- Transport of detainees
- *Non-refoulement*
- Deportation procedures

Health care

- Access to medical care including dental services
- Medical examination on arrival
- Medical staff

- Mental health care (access to counsellors/psychologists/psychiatrists)
- Specialised health care (women, children, the elderly, and so on)

Vulnerable groups

- Children and babies
- Unaccompanied minors
- Women
- Elderly
- Persons with disabilities

Personnel

- Institutional management
- Staffing levels: numbers, ratio, gender balance, recruitment criteria, average salary
- Qualifications and training: type, length, subject areas
- Cultural awareness, languages
- Attitudes/behaviour
- Other staff such as social workers

Annex 2 – Example of internal visit note

General information about the establishment

- Name of the establishment
- Type of establishment
- Address

Authorities on which the establishment depends

- Name of the person in charge of the place
- Name of the deputy or deputies

General information on the visit

- Date of the visit
- Type and/or objective of visit
- Date of the previous visit
- Names of the members of the visiting team

Information on the establishment

Capacity of the establishment

- Administrative capacity
- Average capacity
- Number of persons in detention on the first day of the visit (by category/sex/nationality)
- Origin of detainees
- Distribution according to sex
- Minor detainees
- Elderly detainees

Structure of the establishment

- Description of the building (number of buildings, age, state, maintenance, security conditions)
- Description of the cells and common facilities

Information on the visit

Talk at the start of the visit – issues discussed

Aspects of detention and recommendations

- According to the persons deprived of their liberty
- According to the director and personnel
- According to the facts observed by the visiting team

Talk at the end of the visit

- Issues discussed
- Answers received

Actions to undertake

- Short term
- Mid term

Contacts to be made

Frequency of visits

Points to check on a subsequent visit

Annex 3 – Working with an interpreter

Visitor(s) guidelines for working with interpreters⁴³

	DO	DO NOT
Before the visit	<ul style="list-style-type: none"> • Brief the interpreter beforehand on your expectations for the talk. • Invite the interpreter to advise you on cultural or other issues. • Ensure that interpersonal issues between yourself and the interpreter are put aside before the talk. • Give consideration as to how many persons should be involved in the talk in order to avoid intimidating the detainee. 	<ul style="list-style-type: none"> • Begin the interview without familiarising yourself with the interpreter first.
During the visit	<ul style="list-style-type: none"> • Introduce yourself. If you know a few words in the detainee’s language, introduce yourself directly before handing over to the interpreter. • Introduce the interpreter and explain his/her role. • Ask the detainee if s/he would prefer not to use the interpreter. • Pay close attention to the non-verbal clues that may indicate the interviewee’s discomfort with the interpreter or other factors. 	<ul style="list-style-type: none"> • Speak unnecessarily loudly. • Ask multiple questions. (For example, “What happened when you arrived; did they take your name, or search you, and what did they say?”). • Try to save time by asking the interpreter to summarise unless absolutely necessary.

43. The issue of how monitors and interpreters should work together is discussed in depth in *APT Detention Monitoring Briefing, No. 3: Using Interpreters in Detention Monitoring*, available on APT’s website, (www.apr.ch).

	DO	DO NOT
During the visit	<ul style="list-style-type: none"> • Sit directly facing the detainee with the interpreter to one side and in full, comfortable view of both of you. Alternatively, sit in an equilateral triangle or in a circle if there are more of you. • Look at the detainee while speaking to him/her or listening to the interpretation. • Use appropriate eye contact and be aware of your body language. • Speak more slowly and clearly than usual to assist the interpreter and reassure the detainee. • Keep your language simple and provide plain, accurate information. Keep questions short by formulating them in your head prior to speaking. • Pause every two or three sentences to allow the interpreter to relay your message. • Use direct questions and statements, for example, "Do you remember what colour the walls were?" and not, "Ask him if he remembers what colour the walls were." • Be prepared to reformulate your questions. • Be patient. Interpreted talks take longer than direct interviews. • Wait for the interpretation to finish before responding even if you think you have understood the interviewee's response. 	<ul style="list-style-type: none"> • Allow the interpreter to take over the interview.

	DO	DO NOT
During the visit	<ul style="list-style-type: none"> • Summarise periodically when complex issues are involved or the detainee finds it difficult to relate in a structured manner. • Before completing the interview, ask the interpreter if he/she perceived or observed anything that needs to be addressed. • Keep asides with the interpreter to a minimum and give some explanation to the interviewee if they last more than a few seconds. • Be cautious in using jokes. Humour may not translate well. 	
After the visit	<ul style="list-style-type: none"> • Debrief with the interpreter on the substance of the talk in case you need clarification, information and, if appropriate, an additional opinion. • Debrief constructively with the interpreter on your joint work methods in order to improve in the future. • Treat the interpreter with respect and recognise his/her work. 	

Annex 4 – Summary table of the key principles⁴⁴

General principles relating to:		
Deprivation of liberty (Detention)	↔	Restriction of liberty (Non-custodial measures)
<p>Principle 1 ▷ Grounds for detention, including restrictions on liberty, must be established by law and exhaustively enumerated in legislation.</p> <p>Principle 2 ▷ Detention is a measure of last resort, which must have a legitimate aim, be proportionate to the aim pursued and strike a fair balance between the conflicting interests.</p> <p>Principle 3 ▷ Detention must be ordered and approved by a judge and subject to automatic and regular judicial review in each individual case.</p>		
<p>Deprivation of liberty:</p> <p>Specific rights and standards applicable to migrants in detention</p> <ol style="list-style-type: none"> 1. Right to be informed upon entry in the territory and while in detention 2. Right to communicate with the outside world 3. Obligation to register the presence of all migrants placed either in custody or in detention 4. Obligation to establish a maximum period of detention in national legislation 		<p>Restriction of liberty:</p> <p>Specific standards applicable to non-custodial measures</p> <ol style="list-style-type: none"> 1. Obligation to establish a presumption in favour of liberty in national law 2. Obligation to first consider non-custodial measures for migrants in national legislation 3. Obligation to proceed to an individual assessment 4. Prohibition of discrimination in the application of non-custodial measures

5. Right to humane detention conditions and obligation to respect the inherent dignity of every human being	5. Obligation to choose the least intrusive or restrictive measure
6. Obligation to allow monitoring of reception centres	
7. Prohibition to detain vulnerable individuals	

44. IOM (2011), "International standards on immigration detention and non-custodial measures", Information Note, International Organization for Migration.

Annex 5 – Selection of instruments and legal norms

This Annex is intended for reference purposes only. It provides a list of Council of Europe and UN legal instruments and standards. It separates instruments that are binding on states (hard law) from those which are not binding (soft law).

Most of these documents can be found on the site of the Association for the Prevention of Torture (APT), www.apr.ch.

1. Council of Europe

1.1. Binding instruments within the Council of Europe: conventions

Convention on the Protection of Human Rights and Fundamental Freedoms, ETS No. 5, 1950

See: www.coe.int

European Convention for the Prevention of Torture and other Inhuman or Degrading Treatment or Punishment, ETS No. 126, 1987

See: www.cpt.coe.int → Documents → Reference Documents

1.2. Council of Europe non-binding documents

European Prison Rules, 2006 (only apply to those irregular migrants who are detained in prisons)

CPT Standards (CPT/Inf/E (2002) 1 – Rev. 2011) See www.cpt.coe.int – in particular section IV. Immigration detention

Committee of Ministers, for all recommendations concerning migrants, see: www.coe.int

Council of Europe Commissioner for Human Rights: for all issue papers and positions on the human rights of immigrants, refugees and asylum seekers see: www.coe.int/t/commissioner/activities/themes/Migrants/rightsofmigrants_en.asp

PACE resolutions related to asylum seekers and irregular migrants at http://assembly.coe.int/Main.asp?link=/committee/MIG/Role_E.htm

2. United Nations (UN)

2.1. Binding instruments under the UN: conventions and their treaty bodies

See: www2.ohchr.org/english/

<http://research.un.org/en/docs/humanrights>

International human rights law

International Covenant on Civil and Political Rights (ICCPR), 1966

Treaty body: Human Rights Committee (CCPR)

International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966

Treaty body: Committee on Economic, Social and Cultural Rights (CESCR)

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1965

Treaty body: Committee on the Elimination of Racial Discrimination (CERD)

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984

Treaty body: Committee against Torture (CAT)

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), 2002

Treaty body: Subcommittee on Prevention of Torture (SPT)

For additional information see: www.apr.ch → OPCAT

Convention on the Rights of the Child, 1989

Treaty body: Committee on the Rights of the Child (CRC)

Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), 1979

Treaty body: Committee on the Elimination of Discrimination against Women

Convention on the Rights of Persons with Disabilities, 2006

Treaty body: Committee on the Rights of Persons with Disabilities (CRPD)

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990

Treaty body: Committee on Migrant Workers (CMW)

International refugee law

Convention relating to the Status of Refugees (Refugee Convention), 1951

Protocol Relating to the Status of Refugees, 1967

2.2. UN non-binding documents

See: www2.ohchr.org/english/

www.un.org/Depts/dhl/resguide/spechr.htm

Human rights

Special procedures

UN Special Rapporteur on the human rights of migrants, Jorge Bustamante, Report to the General Assembly, UN Doc. A/65/222, 3 August 2010

UN Special Rapporteur on the human rights of migrants, François Crépeau, UN Doc. A/HRC/20/24, 2 April 2012

Working Group on Arbitrary Detention, Annual Report of 18 January 2010, UN Doc. A/HCR/13/30

Working Group on Arbitrary Detention, Annual Report of 16 February 2009, UN Doc. A/HRC/10/21

Working Group on Arbitrary Detention, Annual Report of 10 January 2008, UN Doc. A/HRC/7/4

Working Group on Arbitrary Detention, Annual Report of 28 December 1999, UN Doc. E/CN.4/2000/4

Working Group on Arbitrary Detention, Annual Report of 18 December 1998, UN Doc. E/CN.4/1999/63

Standards (or non-binding documents)

Standard Minimum Rules for the Treatment of Prisoners. Approved by the Economic and Social Council in its resolutions 633 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by UN General Assembly resolution 43/173 of 9 December 1988

Basic Principles for the Treatment of Prisoners, adopted by UN General Assembly resolution 45/111 of 14 December 1990

Standard Minimum Rules for Non-custodial Measures ("The Tokyo Rules"), adopted by UN General Assembly resolution 45/110 of 14 December 1990

Vulnerable groups

UN Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), adopted by the UN General Assembly resolution 40/33 of 29 November 1985

UN Principles for the protection of persons with mental illness and the improvement of mental health care, adopted by UN General Assembly resolution 46/119 on 17 December 1991

UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ("the Bangkok Rules"), Resolution 2010/16 on 6 October 2010.

Refugees

UNHCR (2012), *UNHCR's Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers*, available at www.refworld.org/docid/3c2b3f844.html

UNHCR (2011), *A Thematic Compilation of Executive Committee Conclusions*, 6th edition, available at www.unhcr.org/3d4ab3ff2.html

ExCom Conclusion No. 106 – 2006, Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons

ExCom Conclusion No. 107 – 2007, Children at Risk

ExCom Conclusion No. 97 – 2003, Protection Safeguards in Interception Measures

ExCom Conclusion No. 85 – 1998, Conclusion on International Protection

ExCom Conclusion No. 55 – 1989, General

ExCom Conclusion No. 44 – 1986, Detention of Refugees and Asylum-Seekers

ExCom Conclusion No. 22 – 1981, Protection of Asylum-Seekers in Situations of Large-Scale influx

Annex 6 – Additional readings and sources

1. General (standards included)

UNHCR (2012), *Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*. ICJ (2011), *Migration and International Human Rights Law*, Practitioners Guide No.6, International Commission of Jurists, Geneva.

TWC (2011), *Human Rights and Parliaments: Handbook for Members and Staff*, The Westminster Consortium, London

2. On the Inter-Parliamentary Union and its activities

IPU website: www.ipu.org (includes the full texts of IPU resolutions)

3. On monitoring places of detention

APT (2004), *Monitoring Places of Detention: a practical guide*, APT

APT, IDC and UNHCR (forthcoming), *Practical Guide on Monitoring Places of immigration detention*

4. On OPCAT

APT and IIHR⁴⁵ (2010), *Optional Protocol to the UN Convention against Torture, Implementation Manual*, available at www.apr.ch in English, French, Spanish, Portuguese, Russian, Bulgarian, and so on.

APT (2004), *The Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: A Manual for Prevention*, Geneva, available in English, French, Spanish and Portuguese, Russian, Turkish, and so on.

APT (2003), *Implementation of the Optional Protocol to the UN Convention against Torture. The Establishment and Designation of National Preventive*

45. Inter-American Institute of Human Rights (IIHR).

Mechanisms, Geneva, available at www.apt.ch in English, French, Spanish, Portuguese, Russian, Serb, Turkish, Polish, Macedonian, and so on.

5. On alternatives to detention

Sampson R., Mitchell G. and Bowring L. (2011), *There are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention*, Melbourne, International Detention Coalition.

Annex 7 – Tips for parliamentarians

Before the visit

Know your rights as a parliamentarian.

Gather basic information (facts and figures).

Define the objective of your visit.

During the visit

Do no harm.

What to look at when visiting a place?

Choose one or a few key issue(s) of most concern:

- Material conditions
- Access to the outside world and activities
- Protection measures
- Procedural and legal safeguards
- Treatment
- Health care
- Special groups (children, women, elderly, etc.)
- Personnel

Remember the steps of a visit:

- The arrival and the initial talk with the head of the centre
- A tour of the detention facility
- Consultation of registers and other documents
- Talks with detainees
- Talks with staff
- The final talk with the head of the centre

Allow enough time, it flies.

Speak to a variety of sources.

Visit all of the premises and use all your senses.

Dig deeper into issues.

Look at the records/registers.

Respect confidentiality and mitigate sanctions.

Final talk. It is important to have a final meeting with the person in charge in order to give some indications of the impressions and formally end the visit.

After the visit

Follow up. At a minimum follow up with a letter or a report to the person in charge of the place visited and/or the Minister, Immigration Detention Service.

Many parliamentarians across Europe have a right to visit detention centres for irregular migrants and asylum seekers as part of their mandate as national parliamentarians. Yet a survey conducted by the Parliamentary Assembly has shown that this right is not always known to parliamentarians or used to its full capacity.

This guide therefore aims to raise awareness of this right and encourage and assist parliamentarians in carrying out visits to detention centres by:

- ▶ clarifying the right of parliamentarians to undertake such visits and explaining why it is important for them to do so;
- ▶ introducing some of the basic monitoring principles and methodology to be followed in visiting places of detention. This will include the steps for carrying out visits (preparation, conduct and follow-up);
- ▶ introducing some of the key issues and areas that should be examined during monitoring visits to places of immigration detention.

The Council of Europe has 47 member states, covering virtually the entire continent of Europe. It seeks to develop common democratic and legal principles based on the European Convention on Human Rights and other reference texts on the protection of individuals. Ever since it was founded in 1949, in the aftermath of the Second World War, the Council of Europe has symbolised reconciliation.