

Immigration Detention and the Rule of Law: Checklist

This checklist is intended to provide users with a brief snapshot of some of the questions to consider when seeking to apply the Immigration Detention and the Rule of Law Safeguarding Principles. It is not intended to cover every minute detail or to cover the overall assessment process that individuals and organisations will want to undertake of a particular new piece of legislation or policy but we hope it will inform those processes.

The detailed Safeguarding Principles with the related commentary are available [here](#).

I. Overarching Safeguarding Principles			
1	Is the presumption of individual liberty guaranteed?	SP1: Liberty	Notes/Comments
2	Are any restrictions on liberty considered as exceptions and justified against set legitimate criteria?	SP1: Liberty	
3	Is the legal basis providing for the restriction on liberty in line with international standards?	SP1: Liberty	
4	Does the law/policy adhere to the prohibition of discrimination, including on the basis of immigration status and/or nationality?	SP2: Equality	
Legality			
5	Are the rules governing and justifying detention legislated (provided for in law)? Are those rules clear and accessible?	SP3: Prescription	
6	Do they clearly set out the grounds on which detention can be justified?	SP3: Prescription	

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7	Are detention orders (and orders resulting in detention or other restrictions on liberty) made by a duly authorised official of the state?	SP4: Authority	
8	Do the new measures/rules/policies abide by existing law and policy regarding safeguards in the context of detention?	SP5: Adherence	
Non-arbitrariness			
9	Are detention orders individual—are they based on an effective assessment of the individual circumstances requiring such detention?	SP6: Individualisation	
10	Do the rules clearly require a consideration of special needs especially with regards to vulnerable individuals?	SP6: Individualisation	
11	Do the grounds for detention go beyond legitimate reasons for such detention (namely: for facilitating examination on entry and with a view of enforcing removal)?	SP7: Legitimate Aim	
12	Is the detention strictly necessary in the circumstances to achieve a legitimate aim?	SP7: Legitimate Aim, SP8: Necessity	
13	Is that necessity justified for each individual situation or is it simply covered by generalised assessments?	SP8: Necessity	
14	Is detention applied only as a last resort? Are all other options adequately considered or is detention considered the default position?	SP8: Necessity	
15	Is the principle of minimum intervention applied in the context of determining whether alternatives to detention are appropriate in the specific circumstances?	SP9: Alternatives	
16	Is the legitimate aim achievable within a reasonable timeframe? Does the law/policy require release from detention when it is clear that the aim cannot be achieved within a reasonable timeframe?	SP10: Achievability	
17	Are all involved required to pursue the legitimate aim diligently and expeditiously?	SP11: Diligence	

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18	Is detention imposed for the shortest time that is reasonably practicable?	SP11: Diligence	
19	Are safeguards in place to ensure that detention cannot exceed what is reasonably necessary?	SP12: Maximum	
20	Is a statutory time limit on detention (resulting in immediate release) guaranteed by law?	SP12: Maximum	
Treatment			
21	Is immigration detention only permitted in facilities expressly designed for that purpose? Do those facilities avoid reproducing elements of carceral institutions?	SP13: Environment	
22	Are the conditions of detention in line with international standards?	SP14: Conditions	
23	Are adequate measures in place to ensure that conditions in detention are humane and dignified?	SP14: Conditions	
24	Is there appropriate separation (e.g., based on age, gender and sexual orientation) in the context of detention centres and other premises used for immigration detention?	SP14: Conditions	
25	Are effective arrangements in place to ensure access to timely and appropriate medical treatment?	SP15: Healthcare	
26	Are detained persons able to maintain contact with the outside world?	SP16: Contact	
27	In the context of privatisation of detention management—are adequate measures in place to ensure monitoring of human rights standards and the protection and remedy of violations if/when they occur?	SP17: Privatisation	
28	Is independent monitoring of detention facilities allowed and facilitated at all times?	SP18: Monitoring	
29	Are adequate measures in place to ensure that detained persons, their family members and/or other representatives can complain about the conditions of detention?	SP18: Monitoring	

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Judicial Oversight and Remedies

30	Is there a requirement to issue the individual with the reasons for their detention?	SP19: Reasons	
31	Are measures to ensure that detained persons are informed of the reasons for their detention adequate (for instance, by guaranteeing access to interpreters)?	SP19: Reasons	
32	Is access to prompt, quality legal advice and assistance guaranteed for every detained person? Is legal assistance funded by the State?	SP20: Legal Representation	
33	Is the right to challenge the lawfulness of detention guaranteed?	SP21: Judicial Review	
34	Is that review undertaken by a court empowered to order immediate release?	SP21: Judicial Review	
35	Is the lawfulness of detention reviewed automatically by a court?	SP22: Automatic Court Control	
36	Is this review conducted both initially (when detention is imposed) and periodically over time?	SP22: Automatic Court Control	
37	In case of violations relating to the lawfulness of detention, is compensation accessible?	SP23: Compensation	
38	In case of violations relating to the conditions of detention, is compensation accessible?	SP23: Compensation	

Additional Notes: