

UNITED NATIONS

Press Release

UN experts express concern about proposed EU Return Directive

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Geneva: - -Ten independent human rights experts of the Special Procedures of the United Nations Human Rights Council have expressed, in a letter to the Presidency of the Council of the European Union (France), their concerns regarding the proposal for a so-called 'EU Return Directive'. This Directive aims to provide common standards and procedures in EU Member States for returning irregularly staying third-country nationals. The Directive was approved by the European Parliament on 18 June 2008 and is currently under consideration of the Council of the European Union, which will consider its adoption on 24/25 July 2008.

"We have sent this letter to the French Presidency, and to all pertinent EU Governments, to express our concern regarding some of the provisions of the Directive as it currently stands," said the mandate-holders. "One principal concern relates to the detention regime pending removal procedures for irregular immigrants. The Directive envisages detention periods of up to 18 months, which appear to be excessive."

The proposed set of rules would allow Member States to detain unaccompanied children, victims of human trafficking, and other vulnerable groups. In this regard, the mandate-holders recalled "that irregular immigrants are not criminals. As a rule they should not be subjected to detention at all. Member States are obliged to explore the availability of alternatives to detention and detention must only be for the shortest possible period of time."

In their letter the human rights experts further encouraged the Member States to strengthen the procedure of judicial review of the legality of detention.

"Established time limits of judicial review must stand even in 'emergency situations' when an exceptionally large number of undocumented immigrants enter the territory of a Member State," according to the experts. "Similarly, appeals of decisions related to return, including re-entry bans, should in all circumstances have suspensive effect."

"We also raised our concern regarding the possible length of entry bans of up to five years. We are afraid of the potential impact especially for vulnerable groups, such as victims of human trafficking. We believe that existing

safeguards in the proposed text should also be reinforced with a view to facilitate full compliance with the principle of non-refoulement. In our letter we also suggested that Member States enhance the protection of victims of rape and other forms of gender-based violence and sought clarification to what extent Member States will take the right to education of children into account."

The human rights experts also recognised that the Directive may be envisaged as an effort which has the potential to provide for uniform standards concerning the return of undocumented immigrants across the EU and highlighted some positive features of the Directive.

The full title of the Directive voted upon by the European Parliament is "Directive 2008/.../EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (COM(2005)0391 – C6-0266/2005 – 2005/0167(COD))".

The ten human rights experts are the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, Ms. Manuela Carmena Castrillo; the Special Rapporteur on the sale of children, child prostitution and child pornography, Ms. Najat M'jid Maala; the Special Rapporteur on the right to education, Mr. Vernor Muñoz Villalobos; the Special Rapporteur on freedom of religion or belief, Ms. Asma Jahangir; the Special Rapporteur on the independence of judges and lawyers, Mr. Leandro Despouy; the Special Rapporteur on the human rights of migrants, Mr. Jorge A. Bustamante; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Doudou Diène; the Independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights, particularly economic, social and cultural rights, Mr. Cephias Lumina; the Special Rapporteur on violence against women, its causes and consequences, Ms. Yakin Ertürk; and the Independent Expert appointed by the Secretary-General on the situation of human rights in Haiti, Mr. Louis Joinet.

For more information on the Special Procedures of the United Nations Human Rights Council see <http://www2.ohchr.org/english/bodies/chr/special/index.htm>.