



Stakeholder Submission to the United Nations Universal Periodic Review of the UK (3rd cycle)

Long-term detention of migrants without time limit

Submission by Detention Action, UK

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Summary

1. The UK continues to detain migrants indefinitely without time limit, frequently for periods of years. The courts and a series of independent reviews have repeatedly condemned the UK's use of detention. While some progress has been made in reducing the size of the detention estate, more migrants than ever are being detained. The Government continues to refuse to introduce a time limit on detention.

About Detention Action

2. Detention Action (formerly London Detainee Support Group) is a national charity established in 1993 that aims to change the way that migrants are treated by immigration detention policy in the UK. Detention Action defends the rights and improves the welfare of people in detention by combining support for individuals with campaigning for policy change. Detention Action works in Harmondsworth and Colnbrook Immigration Removal Centres (IRCs), near Heathrow Airport in London, and the Verne IRC in Portland, Dorset.

Long-term immigration detention

3. Recommendations 110.110, .111, .112, .113 and .114 remain unmet. The UK continues to detain migrants indefinitely without time limit, despite growing concern at the practice.
4. Migrants can be held in immigration detention under powers contained in the 1971 Immigration Act, "where there is a realistic prospect of removal within a reasonable period."¹ Home Office policy states that "detention must be used sparingly, and for the shortest possible period necessary."² However, UK is unique in Europe in practising immigration detention without time limit, having derogated from the EU Returns Directive that sets a maximum time limit of 18 months.
5. 32,447 migrants entered detention in an IRC in 2015, more than in any of the previous six years and a 25% increase on 2010. However, numbers of detention places have been reduced with the closure of Haslar and Dover IRCs: 2,878 migrants were detained in an IRC on 30 June 2016, a 21% reduction compared to the 2015 peak. 270 people had been detained for over six months, and 74 for over a year. The two longest-detained migrants in IRCs had each been held for 38 months.³

¹ Home Office, *Enforcement Instructions and Guidance*, 55.2

² *ibid.*, 55.1.3

³ Home Office, *Immigration Statistics – April – June 2016, Detention Tables*

6. Despite the limited reduction in detention places, it is clear that detention continues to be used unnecessarily, as only 45% of migrants leaving detention in 2015 were removed from the country; the majority were released back into the UK. For migrants detained for over a year, the removal rate drops to 39%.⁴
7. Many migrants continue to be held in prisons under immigration powers: 363 at 28 March 2016. These migrants often have difficulty in accessing legal advice or communicating with the outside world. They are also excluded from the official statistics on immigration detention, although they are frequently detained for the longest periods.
8. The Parliamentary Inquiry into the use of detention, held by the All Party Parliamentary Groups on Refugees and Migration, called in March 2015 for the UK to adopt a time limit of 28 days on immigration detention. The report of the inquiry recommended that ‘decisions to detain should be very rare and detention should be for the shortest possible time and only to effect removal. The inquiry called for a ‘wholesale change in culture, towards community models of engagement and better caseworking and decision-making.’ The inquiry found that the Home Office is failing to follow its own guidance in using detention sparingly and for the shortest possible period. Instead, the ‘enforcement-focused culture’ of the Home Office leads it to detain ‘far too many people unnecessarily and for far too long.’ The lack of time limit was ‘itself an incentive to poor case-working: the lack of any external pressure to complete cases within a set time-frame led to sloppy practice.’ The inquiry concluded that ‘the United Kingdom has a proud tradition of upholding justice and the right to liberty. However, the continued use of indefinite detention puts this proud tradition at risk.’
9. Independent scrutiny has indeed found inefficiency and poor quality of decision-making in Home Office use of detention. After repeatedly expressing concern about the lengths of time people are detained, in August 2015 the HM Chief Inspector of Prisons echoed the Parliamentary Inquiry’s call for a time limit, citing ‘the rigorously evidenced concerns we have identified’ as requiring that ‘a strict time limit must now be introduced.’⁵
10. HM Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration found in a joint report in 2012 that the “detention of ex-prisoners appeared to have become the norm rather than... a rigorously governed last resort.”⁶

⁴ Ibid.

⁵ HM Chief Inspector of Prisons, *Report on an unannounced inspection of Yar’s Wood Immigration Removal Centre, 13 April – 1 May 2015*, August 2015, p8.

⁶ Independent Chief Inspector of Borders and Immigration and HM Inspectorate of Prisons, *The effectiveness and impact of immigration detention casework*, December 2012

11. In May 2013, the UN Committee against Torture urged the UK to “(i)ntroduce a limit for immigration detention and take all necessary steps to prevent cases of de facto indefinite detention.”⁷
12. The Home Office has repeatedly been found to have caused inhuman or degrading treatment to the most vulnerable migrants in long-term detention. Over the last six years, the High Court has on six occasions found that the prolonged detention of mentally disordered detainees amounted to breaches of Article 3 of the European Convention on Human Rights.
13. *Case study: MD, a young Guinean woman of 24, arrived in the UK in April 2011 on a family reunion visa to join her refugee husband. She had no history of mental health problems. She was refused entry, and detained for 17 months. In this time, she had six episodes of acutely severe mental distress involving self-harm, was diagnosed with a major depressive disorder and was found to lack capacity to instruct a lawyer. She was eventually released and allowed to rejoin her husband. The High Court in July 2014 found that she had been detained unlawfully, and that her detention constituted inhuman and degrading treatment under Article 3 of the European Convention on Human Rights.*
14. In response to the Parliamentary Inquiry, the Government commissioned its own review into welfare in detention, led by Stephen Shaw. The Shaw Review found that ‘people with serious mental illness continue to be held in detention and that their treatment and care does not and cannot equate to good psychiatric practice... Such a situation is an affront to civilised values.’
15. The Shaw Review drew attention to the series of findings by the UK courts of breaches of Article 3 ECHR. Shaw noted that ‘No domestic court found a breach of Article 3 in the first eleven years after the passage of the Human Rights Act 1998. I was, therefore, acutely concerned to discover that there had been six recent cases involving people in immigration detention where the British courts had found the Home Office to be in breach of Article 3.’ The Shaw review made a series of recommendations, including: strengthened presumptions against detention for various categories of vulnerable people; an absolute end to the detention of pregnant women; consideration of introducing an independent element into detention decision-making; a strengthening of legal safeguards against ‘excessive length of detention’; and the application of ‘much greater energy’ to exploring alternatives to detention, including community support.
16. The Government has accepted ‘the broad thrust’ of the Shaw recommendations, but has not responded in detail. However, it has announced its own program of

⁷ Committee against Torture, Fifth periodic report of the United Kingdom, (6-31 May 2013)

detention reform, which includes a ‘new approach to the case management of those detained’, requiring ‘a clear removal plan for all those in detention’ and ‘a more rigorous assessment of who enters detention through a new gate-keeping function.’

17. The Government has laid before Parliament a new ‘Adults at Risk’ policy, designed to address the Shaw Review’s criticisms of the detention of vulnerable people. The policy provides more detailed guidance on the decision-making process for the detention of vulnerable people, but provides cause for concern in that it appears to increase the scope for detention. The new policy sets out circumstances where detention would continue even if it is established that it is causing serious harm to the individual, and could allow for further breaches of Article 3.
18. Following two defeats in the House of Lords, the Government introduced amendments to the Immigration Act 2016 that limits the detention of pregnant women to 72 hours, with the possibility of extension with ministerial approval, and introduces automatic judicial oversight of detention for the first time. The latter provision requires the Home Office to initiate a hearing before the First-Tier Tribunal to review detention four months after it began or after the most recent bail hearing. While it is a positive step, this automatic judicial oversight excludes migrants facing deportation on grounds of criminal offences or risk to the public, although this group of migrants most frequently experiences long-term detention. The Government continues to resist the introduction of a time limit, despite extensive pressure in Parliament.

Alternatives to detention

19. The UK continues to make limited use of alternatives to detention. While traditional alternatives such as designated residence and reporting restrictions are widely used, there has been little progress in developing alternatives based on engagement that can address specific drivers of the use of detention of adults.
20. The Home Office has reduced the detention of children and families through the creation of the Family Returns Process, which involves increased engagement with families to encourage return from the community without detention. This has led to a substantial reduction in the detention of children, without reducing levels of returns. However, few efforts have been made to adapt the learning and good practice from the Family Returns Process to the situations of adults in the returns process.

Recommendation 1: The UK should protect migrants from arbitrary long-term detention through adopting a maximum time limit for detention.



Recommendation 2: Community-based alternatives, involving engagement with migrants, should be developed in order further to reduce the use of detention.