

IMMIGRATION DETENTION IN THE UK

Submission to Universal Periodic Review

by

*the Campaign to Close Campsfield (CCC) and Barbed Wire Britain
Network to End Refugee and Migrant Detention*

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We concur with the Association of Visitors to Immigration Detainees:

A huge majority of those detained are ultimately released back into the UK community, their detention having served no purpose. The system is expensive, inefficient and ultimately damaging.

The UK is unique in Europe in not having a time limit on detention. Indefinite detention causes anxiety, stress and can exacerbate existing mental health issues.ⁱ

We think the practice of immigration detention, or administrative detention for the convenience of the state, should be discontinued.

Meanwhile, we support the recommendations of the Report of the Parliamentary Inquiry into the Use of Immigration Detention in the UKⁱⁱ published in March 2015, namely:

- There should be a time limit of 28 days
- Vulnerable people should never be detained
- There should be much less detention
- Non punitive alternatives to detention should be investigated and implemented
- There should be swift and meaningful judicial oversight of each individual case of detention.

Areas of special concern:

1 Our main concern is the **continuing increase in immigration detention** in the UK. In the year ending September 2015, 32,741 were held in immigration detention. **This is the highest annual figure ever recorded.** As at the end of September 2015, 3,531 people were in detention, 5% higher than the number recorded at the end of September 2014 (3,378).

These figures do not include those held in police cells and ‘short term holding facilities’, or the ‘pre-departure family accommodation unit’ at Peas Pottage, Sussex, Nor does it include prisons, where at any one time, hundreds more (409 as of 28 September 2015) are detained under Immigration Act powers. Thus, **at any one time, some 4,000 people are being held under immigration law powers.**

During 2015, two detention centres closed, those run by the UK Prison Service at Haslar near Portsmouth, and at Dover. However, these closures in July and October have not impacted as yet on reported numbers of people numbers detained.

2 We still that **private companies, motivated by personal financial gain, have largely driven this expansion.** It is matter of concern that an ever-increasing proportion (currently about 85% of places) of immigration detention centres in the UK are run by companies such as GEO (Global Expertise in Outsourcing alias Wackenhutt), Kalyx (a Sodexo subsidiary), GSL (Global Solutions Ltd), Group 4/Securicor, Premier Custodial Group Ltd (a Serco subsidiary), and Mitie.

In the past year scandals have enveloped Serco’s treatment of woman detainees at Yarl’s

Wood, and G4S over defrauding the government by overcharging for tagging migrants on bail.

3 Our main concern is based on a conviction that it is **against the human rights of those detained to lock up innocent people without charge for an indefinite period without judicial oversight and without proper reasons given in writing, and without proper access to legal representative**. The increasing use of ‘administrative detention’ is also prejudicial to the human rights of everyone in the country.

4 None of those held in detention under Immigration Act powers is in detention because they are serving time for a custodial sentence following a criminal conviction. That is, **almost all those detained are innocent of any crime**. In the small minority of cases where the immigration detainee has previously been convicted of crime and paid the penalty of a prison sentence, they have already served all their prison time and should no longer be held. Such ‘double punishment’ is unacceptable.

5 The lack of time limit on immigration detention in the UK means that **many people are detained for months, some for years**: there are cases of people being detained under Immigration Act powers for up to 8 years.ⁱⁱⁱ There are no signs of any substantial improvement in this state of affairs in recent years. However, some impetus is building for a time limit, and the parliamentary inquiry Report recommended a 28-day limit.

6 Such **detention without time limit may be argued to be, if not mental torture, then cruel and degrading treatment**. We have strongly argued this in submissions to international human rights bodies.^{iv} Medical studies by psychologists and psychiatrists support this point.^v We believe human rights organisations should pay more attention to this aspect of detention.

7 A convicted criminal in the UK knows when he/she may be released. An immigration detainee does not. This is just one example of a way in which **an immigration detainee (who is innocent of any crime) is treated worse than a convicted criminal**. This is wrong.

8 **The UK government fails even to follow its own guidelines on detention** with regard to

- a) who should not be detained (victims of torture, pregnant women, children or minors are not infrequently detained) ;
- b) detention being used only as a last resort (it is clear that in many cases alternatives to detention have not been properly considered: this frequently becomes clear in bail hearings or court action against the UK Border Agency); and
- c) detention being used only when ‘deportation is ‘imminent’’: in many cases where the Home Office argues that the person is about to be deported there is no prospect of the necessary documentation being obtained within the foreseeable future, e.g. four weeks.

9 **The prevailing ‘culture of disbelief’ and lack of respect for migrants and asylum seekers in the UK Border Agency’s dealings is manifest** in the well documented verbal and physical abuse of immigration detainees, in detention and particularly during deportation. Jimmy Mubenga, an Angolan, who died at the hands of private company G4S

guards on board a British Airways flight at Heathrow in 2011. An extensive dossier on physical abuse and assaults on deportees and detainees was published in 2008.^{vi}

10 There continues to be a **culture of impunity** with regard to individuals and organizations involved in the detention and deportation of people in the UK. Although the killers of Jimmy Mubenga were tried for unlawful killing, important evidence was not allowed by the court, and they were found not guilty. Private companies, despite numerous reported and some admitted gross failures, continue to be awarded and to run government contracts. This is not acceptable.

11 UK immigration detainees are pressurised (through boredom, financial incentive, seeking to please authorities) to work for 50 pence an hour in kitchen, cleaning and other jobs in the detention centre. **This is a cynical cost-cutting exercise by the private companies, which thus profit from the ‘slave labour’.** It flouts the spirit of UK Minimum Wage law, and is a gross exploitation of people who are in a very vulnerable situation. The practice has been condemned by trade union and other organisations in the UK.^{vii} See also the film

12 Until a detainee has his/her immigration status resolved or asylum application finalized, there is only one way he/she can obtain their natural liberty: by convincing an ‘immigration judge’ at an immigration bail hearing in one of the 12 courts across the UK of the First Tier of the Tribunals Service (Immigration and Asylum) that the Home Office is not justified in detaining him/her. **Extensive studies of immigration bail hearings have shown that they amount in many cases to no more than a travesty of justice.**^{viii}

13 In these hearings the ‘immigration judge’ (who faces much lower entrance qualification requirements than for judges in other courts of the UK) is often seen not to be impartial, the Home Office representative being treated leniently while the bail applicant (the detainee) is frequently not properly treated. This is well documented in the study *Immigration Bail Hearings: A Travesty of Justice* referred to in the note above. The following is the account of one detainee of his bail hearing:

“This judge completely ignored the ethical requirement of the profession that gives no room for any partiality between the contending parties. He addresses me uncaring of the consequences of his utterances. The hatred he has for me was so manifest. He was blunt in his approach and he was openly prejudiced towards me. I felt so humiliated by his actions.

“He reacted stating that his advice for me was to withdraw all my judicial review claims and get on the plane to Nigeria if I do not want to continue suffering myself in detention. He said I’m the one suffering myself and he could not help my situation unless I help myself by getting on the plane to Nigeria. He never commented on my medications and condition in particular but concluded that the onus is on me to save myself the pain of detention.”

(Extract of complaint from Abiola Ayobola, 28 July 2011, then a detainee at Campsfield “House”, about his bail hearing held via video link.)

14 **Children are still held in detention centres.** In June 2010 the incoming coalition government of the UK promised to end detention of children. This has not happened. It obviously should. But in September 2011 the government opened a new family and children detention centre at Pease Pottage in Sussex, naming it ‘The Cedars’.^{ix} Families with children

are still being detained at Tinsley centre near Gatwick airport. **The number of children entering detention in the year ending September 2015 increased slightly to 154 from 151 in the previous year.**

15 There are **serious concerns about the quality of medical care available to immigration detainees**. Access to health care in detention centres is subject to considerations of profit, which is not (yet) the case for the general public in the UK and should not be for those in detention. Recommendations that trained mental health nurses should be available^x have not been carried out.

16 Concerns with Rule 35

UK law stipulates that torture survivors should not be detained in UK Immigration Removal Centres (IRCs) because it re-activates the trauma of torture. However we know this regularly happens at Campsfield House IRC near Oxford.

Rule 35 of the Detention Centre Rules 2001 is meant to prevent the detention of torture survivors at UK IRCs. However, the doctors and other medical professionals at the medical centre at Campsfield House frequently refuse to give a Rule 35 report to many people who should be given one according to the Home Office's own guidance. When the medical professionals at Campsfield House do undertake a Rule 35 report, their report usually does not express a clinical opinion as recommended by experts, rendering the report ineffective.

We call on the authorities at Campsfield House, the doctors, the medical providers (The Practice), Campsfield House management, Mitie and the Home Office to ensure that :

- a) The medical centre at Campsfield House and other IRCs provides a Rule 35 report to any detained person requesting one;
- b) The medical centres operate the Home Office's own definition of torture for the purpose of Rule 35 reports; and
- c) Any Rule 35 report provides a properly informed clinical opinion consistent with the ethical and professional duties of the medical profession.

16 Wrong definition of torture used by doctors and others in immigration detention centre. This practice may occur in other centres.

Sent from the Manager of Campsfield House Immigration Removal Centre (IRC) on 17/08/2015:

“Please see below definition of torture which the Home Office use, ... The full definition of torture in the convention is:

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation

of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

BUT, different guidance was sent to asylum caseworkers and IRC doctors in Home Office emails dated 7 August 2013 and 8 August 2013 respectively. This was following the judgment by Burnett J in the case of an Executive Officer informing caseworkers and doctors that the Home Office was withdrawing the United Nations Convention Against Torture (UNCAT) definition of torture with immediate effect for the purpose of detention policy. Text of email of 7 August 2013 to asylum caseworkers:

“In January, the Rule 35 instruction was updated in a number of respects. One update was the inclusion of a definition of torture (relying on the definition laid out in the United Nations Convention Against Torture). No definition had previously been published by the Home Office, but we considered this definition to be in line with understanding and practice.

“In the recent determination of EO & Ors the court found that this definition was too narrow and not reflective of Home Office (HO) practice to date. The court considered the definition applicable to considerations under detention policy to be:

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed, or intimidating or coercing him or a third person, or for any reason based upon discrimination of any kind.

“This is the definition that we will now be applying. Until and unless a formal change to this definition is notified, officers must not apply the UNCAT definition, or any other definition of torture in matters relating to detention policy.”

So, it's not only to be torture inflicted by the state or person acting in an official capacity which counts; it is any torture suffered by a detainee including for example, gangs, family etc. By the Home Office's own rules it is only in very exceptional cases that any person who has been a victim of torture in their home country, should be held in immigration detention and/or returned to their country. It seems likely that other IRCs besides Campsfield have been or are still using the definition considered “too narrow” by the HO since August 2013.

We understand that the manager of Campsfield has now agreed that they have been using an outdated and too restricted definition until now.

(Emphasis added in quotations above.)

17 It is our belief that **the gradual creation of “Fortress Europe” not only in the UK but in the EU and buffer countries to the east and in North Africa is not only unjust but unsustainable.** Serious attention to the above concerns will show that to be the case.

18 Quite apart from the above, the Campaign to Close Campsfield also believes that the following is necessary:

- Close Campsfield, other detention centres, and detention wings in prisons;

- Stop immigration detentions and imprisonment;
- Stop racist deportations;
- Repeal immigration laws which reinforce racism.

i AVID website: <http://www.aviddetention.org.uk/immigration-detention>

ii <http://detentioninquiry.com/>

iii *Detained Lives: The real cost of indefinite immigration detention*, London Detainee Support Group, 2009.

iv *Causing Mental Illness Is Cruel and Inhuman Treatment*, submission to the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, from Barbed Wire Britain Network to End Refugee and Migrant Detention, September 2008.

v 1. *Warehousing: inventory of refugee rights*. 2005. Washington DC: US Committee for Refugees and Immigrants, 2005.

2 Silove D, Steel Z, Watters C. "Policies of deterrence and the mental health of asylum seekers". *JAMA* 2000;284: 604-11.

Sultan A, O'Sullivan K. "Psychological disturbances in asylum seekers held in long term detention: a participant-observer account". *Med J Aust* 2001;175: 593-6.

3 Mares S, Newman L, Dudley M, Gale F. "Seeking refuge, losing hope: parents and children in immigration detention". *Aust Psych* 2002;10: 91-6.

4 Steel Z, Momartin S, Bateman C, Hafshejani A, Silove D. "Psychiatric status of asylum seeker families held for a protracted period in a remote detention centre in Australia". *Aust N Z J Pub Health* 2004;28: 527-36.

5 Palmer M. *Inquiry into the circumstances of the immigration detention of Cornelia Rau*. Canberra: Commonwealth of Australia, 2005.

6 Amnesty International. *UK: Seeking asylum is not a crime: Detention of people who have sought asylum*. London: Amnesty International, 2005.

7 Fazel M, Stein A. "UK immigration law disregards the best interests of children". *Lancet* 2004;363: 1749-50.

8 McCleish J, Cutler S, Stancer C. *A crying shame: pregnant asylum seekers and their babies in detention*. London: Maternity Alliance, Bail for Immigration Detainees and London Detainee Support Group, 2002.

9 Salinsky M, Dell S. *Protection not prison: torture survivors detained in the UK*. London: Medical Foundation for the Care of Victims of Torture, 2001.

10 Porter M, Haslam N. "Predisplacement and postdisplacement factors associated with mental health of refugees and internally displaced persons: a meta-analysis". *JAMA* 2005;294: 602-12.

11 Mina Fazel and Derrick Silove (2006), "Detention of Refugees", *British Medical Journal*, 332: 251-252 (4 February)

12 Derrick Silove (2000), "Policies of Deterrence and the Mental Health of Asylum Seekers", *Journal of The American Medical Association*, 284, 5, 604-611 (2 August)

13 Derrick Silove, Patricia Austin and Zachary Steel (2007), “No Refuge from Terror: The Impact of Detention on the Mental Health of Trauma-affected Refugees Seeking Asylum in Australia”, *Transcultural Psychiatry*, 44, 3, 359-393. August 2, 2000 Vol. 284

vi *Outsourcing Abuse: The use and misuse of state-sanctioned force during thr detention and removal of asylum seekers*, Birnberg Peirce, Medical Justice, and National Coalition of Anti Deportation Campaigns, 2008.

vii *Slave wages at Campsfield – statement by Oxford Trades Union Council*, Campsfield Monitor, 2008.

viii *A Nice Judge on a Good Day: Immigration Bail and the Right to Liberty*, Bail for Immigration Detainees, 2009; *Immigration Bail Hearings: A Travesty of Justice? Observations from the Public Gallery*, Campaign to Close Campsfield Bail Observation Project, 2011.

ix

http://www.google.co.uk/search?hl=en&q=Home+Office+Pease+Pottage+Cedars&meta=&rlz=117GGLL_en-GB

x CPT, *Report to Government of the United Kingdom*, December 2009.