EDMUND RICE NETWORK

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SUBMISSION TO THE PARLIAMENTARY INQUIRY ON IMMIGRATION DETENTION 28/09/2014

The Edmund Rice Network is a global network of religious communities, ministries, schools (12 in UK), and lay associates, formed by two Roman Catholic religious congregations , the Christian Brothers and the Presentation Brothers. The Network website is www.edmundrice.net

Christian Brothers and lay associates are involved in the support of asylum-seekers in Liverpool , working with the charity ASYLUM LINK MERSEYSIDE (www.asylumlink.org.uk), and in Manchester, working with the charity REVIVE (www.revive-uk.org) .

The Network also works through Edmund Rice International (ERI), based in Geneva, a human rights NGO with ECOSOC consultative status within the United Nations: www.edmundriceinternational.org

In July 2014, through ERI, the Network made a submission on UK immigration detention to the UN Human Rights Committee. This submission will feed into the 2014-5 Treaty Body review of the UK's compliance with the International Covenant on Civil and Political Rights (ICCPR). Issues will be listed in October 2014 for the UK government's response in a process continuing until July 2015. Other UK ngos, including Detention Action, Bail for Immigration Detainees, Medical Justice, and Refugee Action, have also made submissions.

1. PREFACE : ENGAGEMENT WITH INTERNATIONAL INSTRUMENTS

The current practice of UK immigration detention engages the **following Articles of the International Convention on Civil and Political Rights**, and the corresponding articles of the Universal Declaration of Human Rights and the European Convention on Human Rights:

ICCPR Article 9.1 Everyone has the 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.

ICCPR Article 7 No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

ICCPR Article 10.1 All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

The submissions also relate to the relevant **sections 714 – 721 of the UK's current Section 40 Report** to the Human Rights Committee. Immigration detention is a deprivation of liberty falling within the scope of Article 9.1. Treatment and conditions within detention fall within the scope of Articles 7 and 10.1

The notion of 'arbitrariness' in Article 9 cannot be simply equated with 'against the law', but includes elements of inappropriateness, disproportion, injustice, and unpredictability. [1] UK statute permits the detention of asylum-seekers and other migrants is a form of administrative, rather than judicially- determined , detention. Under existing domestic law , the decision to detain is not made by a court, is not subject to a time limit, and individuals in detention are not entitled to an automatic bail hearing.

The Working Group on Arbitrary Detention has affirmed that administrative detention is not *per se* in contravention of international human rights instruments .It can be argued that a short, last resort, clearly defined, period of detention may be necessary, in certain circumstances, pending imminent immigration removal. [2] Conversely, it can be argued that asylum-seekers have a right to liberty and access to justice, and should not be subjected to immigration detention at all.[3] The common starting point here is that immigration detention *exists* in the UK and *while it exists* it should conform to the principles enshrined in the International Convention on Civil and Political Rights and other UN and European Human Rights conventions and instruments to which UK is signatory.

The application of ICCPR Articles 7, 9, and 10 to immigration detention has been elaborated in ,for example, the EU Return Directive and the norms developed by the Working Group on Arbitrary Detention. The 2011 statement of international standards produced by the International Organisation for Migration (IOM) provides a useful summary of the norms derived from ICCPR which inform our submission. [4]

In the ensuing sections of this paper the following broad standards are referred to as ***developing standards 1-3***

1. *For detention, of any sort, not to be arbitrary (Article 9*) *it must not be unlimited or of excessive or disproportionate length but have a maximum period established by law*. On the expiry of this period the detainee must be released. Every decision to keep a person in detention should be open to periodic review and should not continue beyond the period for which the state can provide adequate justification. In the case of immigration detention, the limits imposed on the detention of criminals apply *a fortiori* to aliens who, often fearing for their lives, have fled from their own country and have committed no crime in this country. Where, an asylum claim having been refused after due process, obstacles to removal cannot be resolved the detainee should be released to avoid the occurrence of indefinite detention, which would be arbitrary. In the absence of adequate justification and time limit, immigration detention may be considered arbitrary even if the migrant's entry into the territory of the state is considered illegal.

2. *Detention is a deprivation of liberty which should be ordered and approved by a judge and subject to regular judicial (not merely administrative) review*. Everyone should have the right to challenge the legality of his or her detention before a court and have access to a lawyer. The lawfulness of detention must include the possibility of ordering release if the detention is incompatible with the requirements of the Covenant on Civil and Political Rights**.**

3. *If detention is used, conditions must conform to Article 10 of ICCPR and its principles of humanity, respect, and dignity*. States may not treat a person inhumanely and are obliged to take positive measures to ensure a minimum standard for humane conditions of detention:

- Such standards must take into account the special status and needs of migrants.
- Custody should take place in public premises intended for the detention of migrants, otherwise the detainee should be separated from persons imprisoned under the criminal law. Disciplinary rules should be markedly different from those in place in prison facilities.
- Migration-related detention centres should not bear similarities to prisons. The officials working in them should be trained in human rights, cultural sensitivity, and age and gender considerations, and especially with respect to the needs of the most vulnerable.
- Detention of migrants affects their mental and physical health. Consequently, states are obliged to adequately secure the health and well-being of detainees by providing regular medical attention and adequate specialised care. In the most serious cases of health concern the detainee should be released. In case of failure in this respect, the state may be held responsible for violation of Article 7 of the ICCPR, which prohibits torture and cruel, inhumane and degrading treatment. In deciding whether to detain or continue detention due weight must be given to personal characteristics and circumstances: for example, physical and mental health, a history of torture, age, pregnancy. Given the particular negative effects of detention on vulnerable persons, including victims of trafficking, elderly persons, victims of torture and trauma, persons with disability, pregnant women, victims of sexual violence, should not be detained. Where vulnerable persons are detained, there should be an enhanced requirement to ensure that conditions of detention are appropriate and that they are provided with the health care and skilled professional support needed.

The thrust of this submission is that UK practice on immigration detention fails to comply with Articles 7,9, and 10 and with the international standards derived and developed from them

2. INTRODUCTION : UK IMMIGRATION DETENTION

While in recent years the number of asylum seekers in UK has steadily decreased, the political imperative to be tough on immigration has intensified and the Home Office's detention estate has greatly expanded. The UK immigration detention estate is one of the largest in Europe.[5]

According to the UK government website[6], there are currently 12 Immigration Removal Centres,i.e long-term facilities : Brook House (Gatwick, West Sussex) ; Campsfield House (Oxfordshire) ; Colnbrook (Middlesex); Dover (Kent) ; Dungavel (South Lanarkshire) ; Harmondsworth (Middlesex); Haslar (Hampshire) ; Larne (Antrim) ; Pennine House (Manchester) ; Tinsley House (Gatwick) ; Yarl's Wood (Bedforshire). In addition there are "residential" Short-Term Holding Facilities (STHFs) that can be used to confine people for up to seven days, and one ' pre-departure accommodation centre' ,The Cedars (Gatwick), for families. There are also more than 30 non-residential holding centres at airports and ports , in which the typical stay is under 12 hours.

In addition, in March 2014 it was announced that Her Majesty's Prison, The Verne , at Portland in Dorset, closed in 2013 as a mainline prison, is now functioning as a prison for immigration detainees, with a capacity of 580 by September.

The UK government uses mainstream HM prisons to detain non-citizen criminal offenders *after* the completion of their criminal sentences and prior to deportation. The recent report of John Vine (March 2014), the independent inspector of borders and immigration, found that foreign national offenders (FNO's) were locked up, on average, for a period of 563 days – more than 18 months- *after* the end of their judicially determined sentences . The shortest period spent in immigration detention was 176 days, and the longest 1288 days (3 ½ years) at a cost of £211,232 to the taxpayer. [7]FNO's are not the subject of this submission.

In relation to mere asylum-seekers, the official change of name from ' Immigration Detention Centres' to 'Immigration Removal Centres' does nothing to alter the fact of imprisonment. 'Removal Centres' are prison environments run according to Category B Prison Standard in a range of A-D. Category A are maximum security prisons for criminals whose escape would be highly dangerous to the public or to national security. Category B are closed prisons for those who do not require maximum security but for whom escape needs to be made very difficult. Category C is for those who cannot be trusted in open conditions but are unlikely to try to escape.

Most of the IRCs are run by private contractors: G4S, Serco, Mitie PLC, or GEO Group. Some are run by the Prison Service, HMP. All IRCs are monitored by HM Inspector of Prisons (HMIP). In an effort to set standards for the private contractors in 2005, the UK Border Agency issued *Detention Services Operating Standards Manual for Immigration Service Removal Centres.* Despite the standards, the performance of privately-run immigration detention centres has continued to be the subject of considerable criticism, including from HMIP.

Immigration Removal Centres are subject to inspections by HM Prison Inspectorate, whose inspection reports provide some of the most objective commentary on the detention regime and are available online on www.justiceinspectorates.gov.uk/ .They usually include a *caveat* to the effect that though IRCs are custodial establishments, 'we were mindful that detainees were not held because they had been charged with a criminal offence and had not been detained through normal judicial processes'.

According to the latest available official statistics www.gov.uk in the year ending March 2014 the number of people entering immigration detention in the course of the year increased to 30,113 , an increase of 5% on the previous year (28,733) , the highest figure on data available since 2009. As at the end of March 2014, 2,991 people were in immigration detention, 5 % higher than the number recorded at the end of March 2013 (2,853).

Detention for purposes of immigration control includes the detention of :

- new arrivals refused entry or awaiting determination of their right to entry (including so-called 'fast tracked' asylum-seekers)
- visa overstayers and holders of false visas
- 'failed asylum seekers' selected for removal.

The concern in these submissions is **the detention of asylum-seekers**, that is the detention of people who have committed no criminal offence, simply claimed asylum and been refused .

Asylum-seekers constitute the largest category of immigration detainees (48% of immigration detainees in UK Home Office Immigration Statistics 2013). 'Failed' asylum-seekers should not be equated with 'bogus asylum seekers' or 'illegal immigrants'. Technically clandestine entry concealed in (or under) a lorry with no valid papers is illegal entry, but typically asylum seekers are not persons able to purchase or obtain passports and visas for entry into the UK. To expect asylum-seekers to enter 'legally' is to say UK is closed to asylum-seekers, or at least to asylum-seekers from among the world's poor. Article 31 of the *Refugee Convention,* which Britain has signed, states that countries must not penalise those arriving , in ways that would normally be illegal, from territories where their life or freedom was threatened.

Once in the UK such refugees have the legal right to have their asylum claim considered. An ' illegal immigrant' is a person who has either NOT made themselves known to the authorities OR has stayed in the country longer than authorised. Asylum seekers are persons making themselves known to the authorities, who have been fingerprinted, photographed and security checked, and remain subject to regular reporting at UKBA reporting centres. In our experience, the refusal of as many as 70% of asylum applications fail is a function not of intrinsic cases but of the difficulty of providing credible evidence, the often absurd credibility tests applied , linguistic and cultural difficulties, and the lack of effective legal representation.

Although Section 35 of the *Asylum and Immigration Act* of 2004 introduced criminal penalties and imprisonment for non-citizens who do not cooperate with efforts to provide or obtain travel documents necessary for removal procedures, in practice UKBA does not charge detainees under this provision. Rather than burden the criminal justice system and prison estate with such cases it uses administrative detention , but this bypasses due legal process.

The Detention Centre Rules 2001 define the purpose of immigration detention centres as *to provide for the secure but humane accommodation of detained persons in a relaxed regime with as much freedom of movement and association as possible, consistent with maintaining a safe and secure environment, and to encourage and assist detained persons to make the most productive use of their time, whilst respecting in particular their dignity and the right to individual expression."*

Despite the UKBA's own guidance that detention 'must be used sparingly and for the shortest period necessary' to effect removal[8], in practice many asylum-seekers are locked up for weeks, months, or even years before removal arrangements are effected or abandoned. According to an earlier survey by Bail for Immigration Detainees (BID), 42 % of detained asylum seekers are subsequently released , their detention having served no purpose other than wasting human lives and taxpayers' money' .[9] In a study by the London Detainee Support Group (LDSG) only 18% of the cases observed issued in deportation, with 57% remaining in detention and 25% released. Those who were deported spent an average of two years and two months in detention.[10] According to Home Office statistics, in 2012 about 62% of immigation detainees are held for under two months, a large percentage for two to six months, and a 'small consistent minority' of about 5% for more than one year.[11]

The recent comments of the Independent Chief Inspector on Borders and Immigration, John Vine, on the excessive detention of FNOs apply *a fortiori* even more strongly to the lengthy detention of asylum seekers whose re-documentation for removal proves similarly impossible: : 'Given the legal requirement only to detain individuals when there is a realistic prospect of removal, this is potentially a breach of their human rights. It is also very costly to the taxpayer'. [12]

3. KEY ISSUES IN THE POLICY AND PRACTICE OF UK IMMIGRATION DETENTION

3.1 INDEFINITE DETENTION/ DETENTION WITHOUT TIME LIMIT

Although immigration detention was intended to be used only when removal was 'imminent', in practice it is imprisonment *sine die.* UK appears to be the only Western democracy which sets no statutory limit on the length of time a person can be detained for reasons of immigration control.

Immigration detention under the 1971 *Immigration Act* is administrative detention, the deprivation of liberty without charge for administrative rather than for judicially determined reasons, an executive decision taken by the Home Office, not a decision of the judiciary after due process.

Citing the 1971 Act, the relevant clauses of the European Convention on Human Rights, and domestic case law, the UKBA's Enforcement *Instructions and Guidance* state : 'Detention must be used sparingly, and for the shortest period necessary' , and is lawful only when there is a' realistic prospect of removal within a reasonable period'.[13] However, there is nothing in the 1971 or subsequent legislation or regulations limiting the time a person can be detained in Immigration Removal Centres. UK has opted out of the European Union Common Standards on Return – the so-called Return Directive- which was agreed in 2008 and came into force in 2010. Article 15 of the Return Directive limits detention to 'as short a period as possible, and only as long as removal arrangments are in progress and executed with due diligence', requires provision for speedy judicial review and immediate release as soon as there is no reasonable prospect of removal, and commits member states to set a time limit to detention which may not exceed six months. [14]

As far back as 2008 the Council of Europe Commissioner for Human Rights, raised concerns about the UK's practice of detention without time limits and called for a maximum time limit to to be introduced into doemstic law. [15] The UK government appears to have ignored the recommendations of the UN Special Rapporteur on the human rights of migrants in his report to the Human Rights Council after his June 2009 mission to the UK[16] :

75 (a) that the UK government consider the recommedations of the Working Group on Arbitrary Detention calling on states to restrict the use of immigration detention, ensuring it is used only as a measure of last resort, permissible only for the shortest period of time when no less restrictive measure is available.
75 (b) that the UK government harmonise national laws with international human rights norms that prohibit arbitrary detention and inhumane treatment
75 (c) that the UK government take all necessary steps to end *de facto* indefinite detention

UK caselaw on using the power to detain follows the so-called Hardial Singh principles, reiterated by the Supreme Court in Walumba Lumba (Congo) v SSHD [2011] UKSC 12 :

(i) The Secretary of State must intend to deport the person and can only use the power to detain for that purpose
(ii) The deportee may only be detained for a period that is reasonable in all the circumstances
(iii) If, before the expiry of the reasonable period, it becomes apparent that the Secretary of State will not be able to effect deportation within a reasonable period, he should not seek to exercise the power of detention
(iv) The Secretary of State should act with reasonable diligence and expedition to effect removal.

2013-2014 Inspection reports by Her Majesty's Prison Inspectorate indicate that asylum seekers are in fact detained *beyond* any reasonable period. At Harmondsworth IRC 11 detainees were found to have been held for more than a year, with the longest held for more than two and half years. In one review for a detainee held for more than a year, the Home Office conceded that 'removal is not a realistic prospect within a reasonable timescale' yet had authorised detention for a further 28 days. The Inspectors concluded: some decisions to maintain detention were clearly not in accordance with the law. [17] At Colnbrook IRC, the Inspectors found that many detainees had been held for lengthy periods: 49 for between six and 12 months; 29 between 12 and 24 months; five for more than 24 months. The longest period of detention was for more than **four and half years.** [18]

Conclusion: UK practice does not comply with Article 9 and developing standards 1 and 2. The Article 40 report ignores the fact of unlimited and disproportionate detention and provides no defence of it. Its claim that immigration detention is used 'for the shortest time necessary' is countered by the findings of the Prisons Inspectorate.

3.2 MMIGRATION DETENTION EFFECTIVELY CRIMINALISES FAILED ASYLUM SEEKERS

Persons exercising their rights under the 1951 Refugee Convention whose claims are refused face administrative detention, i.e. imprisonment not for a criminal offence but for executive convenience. Under the Refugee Convention and the Universal Declaration for Human Rights there is a legal right to come to the UK to escape persecution and seek asylum, yet persons exercising this right, who have committed no crime, whose only 'offence' is [within a 'culture of disbelief'] to convince the Home Office of their asylum claim, are routinely imprisoned. 'Failed asylum seekers', often vulnerable and traumatised, are subjected to many of the intimidating concomitants of criminal arrest - dawn raids, forcible entry by enforcement agents equipped with stab vests and batons, physical restraint , handcuffing (and in some cases chaining), transport in prison vans (often at night) – and are then subjected to category B prison conditions without the determinate time limits accorded to actual criminals.

Conditions of arrest, transport, reception, and detention are fully documented in HM Prison Inspectorate reports for all the Immigration Removal Centres: www.justiceinspectorates.gov.uk . The most recent report, the 2014 Prison Inspectorate report on Dover IRC, has the 'recurring theme that Dover looked like and felt like a prison and was too often run like one….Some aspects of physical security were excessive…probably the last custodial facility in Britain that is still surrounded by a moat…Procedural security sometimes lacked proportionality…The reward system was inappropriate and worse, its application punitive.' [19]

With the criminalisation or quasi-criminalisation of asylum seekers comes concern at rough, intimidating, and disproportionate methods of arrest and escort, and detention practices incompatible with the human rights and dignity of migrants.

The case of the Angolan refugee **Jimmy Mubenga,** who died in Oct. 2010 after being restrained by G4S deportation staff, has attracted significant media attention and become a touchstone for campaigns for reform.

Following a Prison Inspectorate observation of the removal of 66 detainees from Colnbrook,Brook House,Harmondsworth, and Yarl's Wood in December 2013, Nick Hardwick, HM Chief Inspector of Prisons, has described removal processes as 'lacking humanity' and concludes that, despite impressive care and concern shown by some staff, overall detainees were not treated with sufficient human decency: 'Generally efficient procedures did not amount to respect for detainees, who,it seemed to us, were seen as commodities to be delivered rather than as vulnerable individuals deserving of individual attention' .... 'Our overriding impression was that the vulnerabilities of detainees were not sufficiently central to the removal operation'. [20] Findings included :

- Unacceptable behaviour by security staff : juvenile behaviour, including loud animal noises ; loud swearing in front of deportees; falling asleep when responsible for detaineed identified as at risk of self-harm and suicide
- Some detainees handcuffed for too long. Throughout detainees were referred to by their ' manifest number' rather than by name. When they used the toilet the door was wedged open.
- Lack of staff awareness of the issues raised by the inquiry into the death of Jimmy Mubenga and failure to provide the improved training that inquiry showed to be necessary

In the light of the Chief Inspector's report and consequent media coverage, the Immigration Minister, James Brokenshire, announced that escort staff are to received training in a' new, safer, system of restraint' .Three G4S staff have belatedly been charged with the manslaughter of Jimmy Mubenga .[21]

The current report on Harmondsworth IRC illustrates and substantiates related concerns[22]:

- Detainees transferred from other centres during the night for reasons of administrative convenience, combined with poor reception procedures, keeping detainees in vehicles for hours
- Inhumane and disproportionate security procedures,involving a lack of intelligent individual risk assessment and separation and restraint out of line with Detention Centre Rules . Especially troubling was the needless and 'grossly excessive' handcuffing of detainees in no way resistant or posing any individual risk: : a dying man kept handcuffed while sedated and undergoing an angioplasty procedure in hospital , his restraints removed only seven hours before his death , and a detainee who was wheelchair -bound following a stroke handcuffed on a journey to hospital. In another case, a frail 84-year-old man suffering from dementia died while still in handcuffs. 'These are shocking cases where a sense of humanity was lost'.

Inspectorate concerns at Colnbrook IRC highlighted conditions in the so-called First Night Last Night Unit (FNLNU), which was in fact used to detain new arrivals for three to four days, and in some cases for more than a week. All detainees due for deportation were also locked in rooms in the FNLNU the day before they were due to leave. Conditions were found to be 'grim', with dirty rooms, poor ventilation, filthy toilets, and lime-scaled showers. Detainees spent nearly the whole day locked in their rooms. 'We estimated that, at most, they received about three hours out of their room every day'. Most detainees reported feeling unsafe and insecure, with widespread anxieties about issues ranging from the behaviour of other detainees to the availability of drugs.[23]

Conclusion: UK practice does not comply with Articles 7 and 10 and developing standard 3 . Aspects of the current practice of immigration detention are criminalising, inhumane, and degrading. There are respects in which detained asylum seekers are not treated with the humanity and respect for their dignity to which they are entitled. The claim in the Article 40 report S721 that the routine use of prison accommodation to hold immigration detainees ceased in 2002 is disingenuous. 'Immigration removal centres' are run, experienced, and inspected as prisons.

3.3. LACK OF JUDICIAL OVERSIGHT : THE INADEQUACIES OF THE BAIL PROCESS

The decision to detain is not automatically subject to independent review. After seven days detained persons have the right to apply for bail to the Asylum and Immigration Tribunal (AIT), requesting a judge to review his or her detention. In theory the judge is required to presume in favour of defence, and the Home Office is required to justify the detention. However,

- Many detainees, lacking sufficient command of English, are unaware of their rights and of the procedures required
- Insufficient information on the bail process is provided to detainees
- Access to professional legal advice and assistance is limited and difficult
- Video is used in bail hearings, with the detainee remaining attending the hearing remotely from within prison conditions, which presents both technical and human difficulties
- Detainees interviewed by civil society groups feel the bail courts to be hostile, and their claims determined in advance

In Harmondsorth, for example, HM Inspectors reported only 20% of detainess found it easy to access information on the bail process : detainees were not routinely informed of their bail rights or given application forms and too many were unable to access legal advice. [24] At Yarl's Wood, though there were detention advice surgeries and solicitors contracted to provide advice, detainees could wait up to 10 days for an appointment.[25]

Conclusion: UK practice does not comply with Article 9 and developing standards 1 and 2. The claims in the Article 40 Report S720 on the ready availability of legal advice within Immigration Removal Centres do not correspond to the realities on the ground.

3.4 DETAINED FAST TRACK

Most asylum seekers are granted temporary admission pending submission and determination of their claim. However, certain asylum seekers are selected for 'fast-tracking', immediately detained, and held in detention for the duration of their application. Under DFT (Detained Fast Track) cases are to be decided within three days with all appeals finalised within 21 days. Under DNSA (Detained Non-Suspensive Appeals) cases are to be decided within seven days with no right of appeal in the UK. As there is no direct judicial oversight of the detention process, detainees can only challenge the lawfulness of their detention through judicial review and writs of habeas corpus. In practice fast-track detainees do not have access to publicly funded legal representation at their appeal hearing, do not have sufficient time to prepare, and may not understand the process. High quality legal advice is in reality inaccessible for the great majority of detainees

As a principle, UNHCR opposes the detention of people seeking asylum and has expressed concern that inappropriate cases are routed to and remain within the detained fast track . Detention Action had frequently encountered cases in which vulnerable people with complex cases have been selected for detained fast-tracking. It has also found that DFT asylum –seekers usually spend substantially longer in detention that the 22 days allocated indeed that the average overall detention for unsuccessful cases was 58 days for DFT cases and 54 days for DNSA cases.

Conclusion : Fast-track processes are not in conformity with Articles 9 or 10 and developing standards 1-3. The Article 40 report does not address this issue.

3.5 THE DETENTION OF CHILDREN.

In its global camapign to end child immigration detention, launched in March 2012 at its 19th session, the UN Human Rights Council , in conformity with the UN Convention on the Rights of the Child, urges all states to end the practice of detaining children and families as a matter of priority. The key principle is that the detention of a child because of his or her parents' migration status is a violation of the child's rights and always contravenes the paramount interests of the child.

In March 2010, following an unannounced visit to Yarl's Wood Detention Centre, Anne Owers, then Chief Inspector of Prisons, published a report concluding that many children were held unnecessarily, often for long periods of time, and that this was having a noticeable adverse effect on their long-term well-being.

The progress made in 'family returns policy' since 2011 forms the centerpiece (paras 714-719) of the current UK Article 40 report. The present Coalition Government, entering office in 2010, promised 'a big culture shift within the immigration system, one that puts our values above paranoia over our borders', and made a commitment to end child immigration detention. Accordingly, the 'family wing' within the Yarl's Wood Detention Centre was closed and replaced from August 2011 by the CEDARS 'Pre-Departure Accommodation Centre', Pease Pottage, near Gatwick airport . This is run by the private security contractor G4S, with Barnardo's , the child protection charity, providing internal child welfare services. Detention is here, in principle, time-limited : a limit of 72 hours or up to a week in 'exceptional circumstances' with ministerial authority. CEDARS is a management-speak acronym for Compassion, Empathy, Dignity, Approachability, Respect, and Support.

A family of service-users with REVIVE in Manchester were detained last year in the Cedars. The parents report a positive ethos of care among the Barnardo's staff but are unwilling to write a full testimony for fear of displeasing UKBA.

Inspection reports confirm that the Cedars PDA is a significant advance on the conditions which prevailed in the family unit at Yarl's Wood. However, it remains a form of child detention. The current report describes Cedars as 'a high quality, well-managed, institution' but concludes 'the distress of the families passing through the centre and its potential impact on the children involved is disturbing'. Among 42 families held in 2013, force (mostly low level) had been used on 10 occasions, suicide and self-harm procedures initiated 25 times , and detained families placed on constant watch on 12 occasions. Inspectors witnessed an arrest in which 'extreme force was used for several minutes to batter down a family's door early in the morning': 'this would have been terrifying for the children had they been in the property'. The Inspectors found that the arrest team's tactics, not preceded by any attempt to knock on the door, lacked credibility and judged that the needs of children were not central enough to the arrest process. Though they concluded the Cedars is an example of best practice,' the distress experienced by parents and children who are subject to enforced removals is palpable for anyone who spends time in their company, and this is no less true for the staff who work there'.[26]

Our concerns on child detention are :

i. Though re-packaged, softened, and shortened as 'pre-departure accommodation' the Cedars involves loss of liberty ,is experienced as imprisonment, and accommodates child detention. G4S, the company which runs it, runs prisons. It has a 2.3m perimeter fence, floodlighting, CCTV, internal and external room locks, and a new internal fenced 'buffer area to prevent the opportunity for people with access to the boundary fence from having contact with the occupants'.

ii. However short the experience, the practice of child detention has been shown to have profound and negative impacts on child mental health and development. In the case of the REVIVE family which reported high levels of care , their teenage daughter was traumatised by the experience of detention. She attempted suicide while detained , lives in permanent fear of incarceration, and , while currently returned to the school system, is in continuing need of psychological support. The UK charity Medical Justice is able to give detailed first-hand commentary on the psychological harm suffered by children in UK immigration detention.

iii. The refurbishing of the family unit at IRC Tinsley House , near Gatwick airport, as a 'high security detention facility' to accommodate families deemed too 'disruptive' for the Cedars indicates further provision fo child detention

iv. The further issue of the detention of "hidden children" , i.e. children whose claim to be under 18 is rejected by UKBA but are subsequently found to be under 18.

According to Home Office statistics, in 2012, **222 children** were detained in immigration removal centres, with **156** being under the age of 11. In the fourth quarter of 2013, 63 children entered detention in immigration removal centres, short-term holding facilities and pre-departure accommodation.

Conclusion : Child detention, however softened or shortened, is not in conformity with Articles 7,9, and 10, breaches UN Conventions on the Rights of the Child , and is not in conformity with developing standard 3. The claimed improvements in 'the family returns policy' set out in the Article 40 Report S715-719 do not alter the fact that child detention has not been ended.

3.6 THE TREATMENT OF SPECIALLY VULNERABLE DETAINEES : BREACH OF RULE 35 .

Rule 35 of the Detention Centre Rules 2001 lists groups of people who should be detained only in very exceptional circumstances. Section 55.8A of the Enforcement Instructions and Guidance states the purpose of Rule 35 as 'to ensure that particularly vulnerable detainees are brought to the attention of those with direct responsibilty for authorising, maintaining and reviewing detention.' This applies to any 'whose health is likely to be injuriously affected by continued detention or any conditions of detention; suspected of having suicidal intentions; and for whom there are concerns that they may have been a victim of torture'.

Healthcare staff are required to report such cases to the centre manager and these reports are then passed, via Home Office contact management teams, to the office responsible for managing or reviewing the individual's detention. The appropriateness of continued detention is to be reviewed in the light of these reports. Section 55.10 further defines categories who 'should be considered for detention only in very exceptional circumstances'[27] :

- Unaccompanied children and people under the age of 18
- The elderly, especially where supervision is required
- Pregnant women, especially after 24 weeks of pregnancy
- Those suffering from serious medical conditions or serious mental illness 'which cannot satisfactorily be managed in detention'
- Those where there is independent evidence that they have been tortured (including rape)
- People with serious disabilities
- Persons identified as victims of trafficking

In such cases an IRC medical practitioner must carry out a full assessment and produce a Rule 35 report for the IRC manager and UKBA, with a copy for the detainee and his/her lawyer (if any) . On receipt of a Rule 35 report UKBA must respond to the detainee within 72 hours, either granting release from detention or giving reasons for refusal. Almost without exception, UKBA decides to continue detention. In practice many survivors of rape and torture, pregnant women, and those with severe mental and physical health problems remain in detention.

The current Harmondsworth IRC inspection report, for example, concludes that the Rule 35 procedure to identify victims of torture and others with special conditions, was failing , 'as we often see', to safeguard possible victims . Of the 254 Rule 35 reports submitted in 2013, only 5% had subsequently led to release. Many of the reports examined in detail, concerning torture, were of poor quality and contained no diagnostic findings….yet the Home Office used the lack of diagnostic comment to justify continued detention. In one case the Home Office maintained detention on the grounds that the torture had been committed by non-state actors rather than by officials of the state. Health services staff were not trained in torture recognition. The number of self-harm incidents had increased since the previous inspection.[28] At Colnbrook the Rule 35 reports were written by a doctor, but did not usually set out a clear clinical opinion and the replies were 'timely but dismissive'.[29] At Yarl's Wood , where 171 Rule 35 reports had been completed in the previous six months, the reports were found to be were poorly completed, with too many merely repeating what detainees had said, without adding diagnostic judgements. In one report a doctor had made unprofessional and pejorative comments which had been forwarded to immigration staff without the detainee's consent or knowledge. Case worker responses focused on maintaining detention: in one example the case worker accepted that a detainee had been tortured but, contrary to published Home Office policy, had continued detention opining that the condition could be managed satisfactorily. Overall the Inspectors concluded that Rule 35 reports were not objective professional assessments and provided little safeguard for vulnerable detainees.[30]

Conclusion: Contrary to Articles 7 and 10, and developing standard 3, there is substantial failure to recognise and respond with humanity and respect to the needs of the most vulnerable detainees . The Section 40 Report does not address the

deficits revealed by involved NGOs and medical professionals such as Medical Justice and by the reports of HM Prison Inspectorate.

3.7 WIDER HEALTH CONCERNS

All voluntary sector organisations working with detained asylum seekers report a range of overall health concerns:

- **Limited access to medical care**. Detainees routinely inform us that their health care needs are not adequately addressed. Medical problems are treated as faked to obtain release .Paracetemol is prescribed as the universal treatment.

- **For innocent people the experience of arrest and detention is itself traumatic .** Incomprehension of the legal process, frequent unexplained movement between removal centres , very short warning of movement , and expectations of imminent forced deportation add to the anxiety. People placed in immigration detention often suffer serious mental health deterioration, including increased post-traumatic stress disorder and depression.[31] Imprisonment adds to the trauma already suffered in the country of origin. A study conducted by LDSG revealed significant numbers of detainees developing mental health problems, self-harming, or attempting suicide. [32]

- **The lack of systems and training to deal with medical emergencies.** A March 2014 independent review by the Prisons and Probation Ombudsman focussed on fatal incidents and complaints by detainees. After investigating the deaths of 15 immigration detainees, the Ombudsman highlighted 'the lack of clear and effective systems' to ensure that medical emergencies are correctly communciated and managed and judged that healthcare and detention staff are insufficiently trained and equipped to deal with such emergencies. The Ombudsman concluded that though Immigration Removal Centres are run as prisons, the 'immigration detention estate' has failed to learn from the procedures developed and applied within the Prison Service for dealing with medical emergencies. The report finds the lack of progress in responding to the Ombudsman's reommendations since the first death of an immigration detainee in 2004 'unacceptable'.[33]

The current case and extensive media coverage of the death, from a heart condition, of a 40 year old woman, **Christine Chase,** in Yarl's Wood IRC in March 2014 exemplifies the failure of emergency response to detainees. The charity Medical Justice comments that its volunteer independent doctors had seen 'an alarming number of incidents of medical mistreatment : the only thing we are surprised about is that there have not been more deaths'. [34]

The current Harmondsworth inspection report indicates that though some health provision had improved , several key areas were 'unnacceptably poor':

- Significant gaps in health care remained significant risk and potential for deterioration in the service
- A clear deterioration in outcomes since the last inspection in 2011, with the inadequate focus on the needs of the most vulnerable detainees, including elderly and sick men, those at risk of self -harm through food refusal, and others whose physical or mental health made them potentially unfit for detention, now a major concern.
- Immigration enforcement requirements interfere with attempts to focus on the care needs of some very sick and vulnerable individuals, with an increase in the number of self-harm incidents.[35]

At Yarl's Wood Inspectors found health care provision positive and improving, but reported that none of the health services staff had been trained in the recognition of alleged acts of trauma or torture, and this was evident in the varied and often poor quality of Rule 35 assessment and reporting of specially vulnerable detainees.[36]

Conclusion: Contrary to the implications of Articles 7 and 10, and developing standard 3, there are respects in which medical provision in immigration detention falls short of standards compatible with principles of humanity and human dignity and welfare. The Section 40 report makes no comment on medical provision.

3.8 TREATMENT OF WOMEN.

Voluntary sector organisations raise a number of issues on the treatment of women within detention centres, including insufficient female staff ; male staff entering female rooms without warning ; room and possession searches by male staff ;

sexual abuse by male staff ; insensitivity to highly vulnerable women and histories of rape and trafficking ; detention of pregnant women; medical care failing to attend to emotional and psychological needs

The most recent report of the Prison Inspectorate on Yarl's Wood IRC , operated by the private contractor SERCO,illustrates and substantiates many of these concerns in relation to the detention of women[37] :

- Revelation of a case of sexual abuse by two male staff and further allegations of abuse led the Inspectors to return and conduct more than 50 confidential interviews with randomly selected detainees. They found no evidence of systematic abuse but the exercise 'reinforced our view that women's histories of victimisation were not sufficiently acknowledged by the authorities' and that staff were insufficiently trained in recognising and managing the particular vulnerabilities of the female population at Yarl's Wood, many of whom had experienced victimisation before being detained, for example by traffickers or in abusive relationships.
- Detainees displaying clear trafficking indicators were not always referred to the national referral mechanism.
- Insufficient female staff for a predominantly female prison with very vulnerable women
- Male staff entered rooms without waiting for a reply after knocking, and carrying out searches of rooms and personal property: given the women's previous experiences, vulnerabilities, and histories of victimisation, any insensitivity or inappropriate behaviour by detention staff amplified their feelings of insecurity. All staff should be trained in recognising and responding appropriately to the particular vulnerabilities of a female population that may have experienced victimisation before detention
- A number of women detained for very long periods, seven for more than one year, one for almost four years. It was clear that some detainees could not be removed within the reasonable period of time required by law.
- Several obviously mentally ill women detained before being sectioned and released to a more appropriate medical facility. It was difficult to understand why they had been detained at all, given their obvious health needs. Detainees with enduring mental health illnesses should not be detained
- Pregnant women (eight at the time of Inspection) were detained without any evidence on file of the exceptional circumstances required to justify their detention under Rule 35. One of the women had been detained for more than 3 ½ months and hospitalised twice because of pregnancy-related complications. They had not systematically been offered support in relation to their daily routine or emotional well-being and said they often felt stressed and their broader needs were not being met. Staff were not flexible about varying the quantities and variety of food and pregnant women who found it difficult to stand were required to queue for meals. They were not routinely provided with appropriate maternity clothing. Pregnant detainees should only be detained in the most exceptional circumstances and practice brought into line with the Home Office's published policy on the detention of pregnant women
- Rule 35 reports poorly completed and without diagnostic judgements and failing to provide safeguard for vulnerable detainees
- Key information, including bail information, not adequately explained
- Detainees' freedom of movement was too restricted. They could move freely within the central area and between the two female residential units for a total of nine hours a day but were confined between 9pm and 9am, and for two 90minute periods during the day. Although not locked in their rooms, they were expected to remain in them from 10pm until 8am.

The Inspectors found Yarl's Wood to be 'a sad place…..at best it represents the failure of hopes and ambitions, at worst a place where some detainees look to the future with real fear and concern. None of those held at Yarl's Wood were there because they had been charged with an offence or had been detained through normal judicial circumstances. '

In April 2014 the **UN Special Rapporteur Rashida Manjoo**, on a fact-finding mission into violence against women, was barred at the gates of Yarl's Wood . Under the terms of her mandate she should have been granted unrestricted access, as she had been to a number of conventional prisons. Having received a number of reports from third sector organisations, she was keen to see for herself and take an objective view. However, her visit to Yarl's Wood was refused on instructions 'from the highest levels of the Home Office.' Her deep concern at denial of access was widely reported in the British media : 'if there was nothing to hide, I should have been given access' .[38]

The REVIVE submission contains an account of the experience of a female detainee.

A former SERCO official who worked in Yarl's Wood has recently given a 'whistleblower' account of an 'endemic' anti-immigration culture among the staff, deportation of vulnerable women without proper assessment of their mental health, and allegations of repeated sexual assault against a female detainee. Parallel press investigations forced the disclosure of a secret internal report revealing evidence of failure to properly investigate allegations of sexual assault. According to the whistleblower more than half of the detainees at any time – over 200 individuals – had either self-harmed or were at risk of self-harming. He

describes a staff 'mindset' which rejects detainee concerns : 'They're only putting it on to block their removal'. He alleges that 'The lack of engagement with mental health in relation to assessment and safeguards was very concerning. They weren't doing assessments to rule out mental health, the ACDT [Assessment Care in Detention and Teamwork] documentation wasn't getting filled out properly. God knows how many people they had deported without a proper assessment'.[39] In the wake of adverse press coverage and parliamentary scrutiny SERCO has apologised after disclosing the dismissal of 10 of its staff in relation to allegations of improper sexual conduct.[40]

Conclusion : There are respects in which conditions for women, and especially vulnerable women, fall far short of Articles 7 and 10 and developing standard 3 . This is not an issue addressed in the Article 40 Report.

4. GENERAL CONCLUSIONS

1. Immigration detention *sine die* is a breach of relevant Articles of the International Convention on Civil and Political Rights , and of other UN Declarations and instruments
2. In this repsect UK practice in also out of line with the standards set out by the Council of Europe and the European Parliament and Commission and their agencies and instruments
3. In many cases UK immigration practice imposes trauma, inhumane treatment, and expense without the effect sought. Because of the impossibilty of documentation, disputed nationality, *de facto* statelesness, and destination country non co-operation, a considerable proportion of detainees are unreturnable and are detained for lengthy periods without 'delivery'. In many cases they are then released back into a situation of enforced destitution, with no right to work, benefits, or accommodation. The refusal to acknowledge the fact of unreturnability generates a regime of indefinite detention which violates human rights.
4. It is wrong to imprison people who have committed no crime, and especially those coming to UK to escape persecution and human rights violations.

As Anne Owers , previously Chief Inspector of Prisons and now Chair of the Independent Police Complaints Commission (LSE speech on Health of Our Institutions Feb.2013) has said : 'Imprisonment is the most severe punishment that can be inflicted. It is more than just the loss of liberty. It takes place in closed environments, operating out of public gaze, where power inevitably resides with the custodian, not the detainee.' [41]

Paper drafted by Wilfred Hammond, Chairman of Edmund Rice International, 27 Sept. 2014

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[1] *International Standards on Immigration Detention and Non-Custodial Measures* (IMO International Migration Law Information Note, Nov. 2011)
[2] op cit., p.3
[3] This is the position,for example, of the ngo BID, Bail for Immigration Detainees
[4] *International Standards on Immigration Detention and Non-Custodial Measures* (IMO International Migration Law Information Note, Nov. 2011)
[5] S.J. Silverman and R. Hajela, University of Oxford Migration Observatory, *Briefing on Immigration Detention in the UK* (migrationobservatory.ox.ac.uk) , Nov.2013.
[6] www.gov.uk/immigration-removal-centre/overview
[7] *Independent Inspector of Borders and Immigration: An Inspection of the Emergency Travel Document Process, May-Sept 2013,* published March 2014, 8.13
[8] UKBA Enforcement Regulations, 55.1.1 & 5.1.3
[9] BID Report 2009, p. 6
[10] LDSG Report 2009, p. 12
[11] Silverman and Hajela (2013), p. 4
[12] Independent Chief Inspector of Borders and Immigration, *Inspection of Emergency Travel Document Process,* March 2014, 1.11
[13] UK Border Agency, *Enforcement Instructions and Guidance,* 55.1.3 and 55.2
[14] eur-lex.europa.eu, Directive 2008/115/EC of European Parliament and Council, Article 15
[15] coe.int, Council of Europe, Strasbourg 18-09-2008

[16] www2.ohcr.org, Human Rights Council, A/HRC/14/30/Add 3, *Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante*
[17] *Report on unannounced inspection of Harmondsworth Immigration Removal Centre by HM Chief Inspector of Prisons,* Jan.2014, 1.78, 1.82
[18] *Report on unannounced inspection of Colnbrook Immigration Removal Centre by HM Chief Inspector of Prisons,* April 2013, HE 21 & 1.92
[19] *Report on unannounced inspection of Dover Immigration Removal Centre by HM Chief Inspector of Prisons,* July 2014, Introduction
[20] Inspection of escort and removals to Pakistan, 10-11 Dec.2013 by HM Chief Inspector of Prisons, June 2014
[21] *Guardian*, 26 June 2014
[22] *Report on unannounced inspection of Harmondsworth Immigration Removal Centre by HM Chief Inspector of Prisons,* Jan.2014, Introduction, 1.3, S3, S41
[23] *Report on unannounced inspection of Colnbrook Immigration Removal Centre by HM Chief Inspector of Prisons,* April 2013, 1.8, 1.12,1.13, 1.20, 1.22, HE 45
[24] *Report on unannounced inspection of Harmondsworth Immigration Removal Centre by HM Chief Inspector of Prisons,* Jan.2014, S13, 1.70-71, 1.77, 179, 1.85
[25] *Report on unannounced inspection of Yarl's Wood Immigration Removal Centre by HM Chief Inspector of Prisons,* Oct.2013, 1.81
[26] *Report on unannounced inspection of Cedars pre-departure accommodation and overseas family escort by HM Chief Inspector of Prisons,* May 2014, Introduction.
[27] UK Border Agency, *Enforcement Instructions and Guidance,* S55.8A- S55,10
[28] *Report on unannounced inspection of Harmondsworth Immigration Removal Centre by HM Chief Inspector of Prisons,* Jan.2014, H.1.81; 2.55; S42
[29] *Report on unannounced inspection of Colnbrook Immigration Removal Centre by HM Chief Inspector of Prisons,* April 2013, HE 21; 1.91
[30] *Report on unannounced inspection of Yarl's Wood Immigration Removal Centre by HM Chief Inspector of Prisons,* Oct.2013, S14, S40, 1.97
[31] Medical Justice Report 2010
[32] LDSG Report 2009, p. 5
[33] Prisons and Probation Ombudsman, *Learning Lessons Bulletin, PPO Investigations issue 2 : Immigration Removal Centres*, March 2014, ppo.gov.uk
[34] *Guardian* , 30 March 2014
[35] *Report on unannounced inspection of Harmondsworth Immigration Removal Centre by HM Chief Inspector of Prisons,* Jan.2014, S25 ; 1.28 ; 2,50
[36] *Report on unannounced inspection of Yarl's Wood Immigration Removal Centre by HM Chief Inspector of Prisons,* Oct.2013, 2.69
[37] *Report on unannounced inspection of Yarl's Wood Immigration Removal Centre by HM Chief Inspector of Prisons,* Oct.2013, Introduction, S14, S38, S39 , S40 , 1.93, 1,99, 2.38, 2.39 , 3.8 and *passim*
[38] ohchr.org.e-display news,15 April 2014; *The Guardian* , 17 April 2014
[39] *The Observer,* 24 May 2014
[40] *Guardian,* 24 June 2014
[41] LSE speech on *The Health of Our Institutions* ,Feb.2013