

Submission to the Parliamentary Inquiry into the use of Immigration Detention

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Introduction

1. I am a researcher who has been called to provide expert testimony to the courts on the risks facing an Arab migrant population since 2000.
2. I volunteer as a visitor with Kent Refugee Help's Prison Project, which provides sureties to secure the release on bail of Foreign National Prisoners.
3. I suggest that the panel consider setting up a **parliamentary mechanism to monitor implementation** of any recommendations the panel makes.

Survivors of torture detained under the immigration regulations in prisons

Recommendation: the rigorous implementation of Rule 35 in clinical screening those held under the immigration regulations in prisons, and the provision of specialised clinical services to those suffering sequelae of violent trauma;

4. The High Court found in *Detention Action v SSHD* (CO/6966/2013) of 9/7/2014 that Detention in Fast-Track in its present form is unlawful. An effect of this crucial decision will be the transfer of many immigration detainees, including those who have survived torture and other forms of violence, to **longer term detention, both in Immigration Removal Centres and in Prisons.**
5. **Rule 35** permits those who have survived violence in the detention system to identify themselves to the clinical staff employed by the detention contractor, who then inform the Home Office.¹ This process does not yield forensic evidence of torture compliant with the Istanbul Protocol, and rarely secures release from detention without other intervention by NGOs.
6. Detention Services Order (DSO) 17/2012 reiterates Section 55.10 of the Home Office's Enforcement Instructions states that: "The following are normally considered **suitable for detention in only very exceptional circumstances**, whether in immigration detention accommodation or prisons:...those where there is independent evidence that they have been tortured"² The indefinite detention of survivors of torture in prison ensures that such independent evidence is almost never collated. With respect to immigration detainees held in prison, HM Inspector of Prisons goes further in his most recent report (on HMP Wormwood Scrubs) in recommending that:

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257437/rule35reports.pdf
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300366/17.2012_v2.0_-_Application_of_Detention_Centre_Rule_35_ext.pdf
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/

“Immigration detainees should not be held in prisons other than in exceptional circumstances following risk assessment.”³

7. Administrative detention is of unlimited period. Rigorous screening, independent of the Home Office, of all Foreign National Prisoners (FNPs) including immigration detainees, should be essential, to identify those who have survived torture. **Rule 35 has never been applied to FNPs held in prisons**, whether serving sentences or under the immigration regulations, although DSO 17/2012 makes it clear that survivors of torture may only be detained under “exceptional [but undefined] circumstances”.
8. The *indefinite incarceration of survivors of torture without access to specialised medical intervention* is intolerable, although this regularly lasts more than two years in the UK. Those detained under the immigration regulations in prison are frequently confined to their cells for twenty-three hours a day.
9. Primary **healthcare in prisons** is provided by the NHS, whereas in Immigration Removal Centres (IRCs), rudimentary care is provided by the detention contractor. HMPS is thus much less likely than the detention system to permit an external consultant, for instance a specialist in scarring, to examine a prisoner who had survived torture. The inability of detention contractors to provide adequate healthcare in IRCs provides opportunities to external clinicians to gain limited access to FNPs in IRCs. In prisons on the other hand, Sections 47/49 of the Mental Health Act in theory permits NHS clinical staff to transfer a prisoner to a secure external hospital mental health facility. Even when consultant psychiatrists diagnose psychosis in FNPs however, transfer is not an NHS priority because the psychotic prisoner is not perceived as a risk to the public, as a psychotic patient in the community could become. NHS clinicians in prisons are moreover wary of permitting mental health to become a pretext for affect sentencing. Finally, an FNP who has claimed asylum is generally entitled only to primary medical care, and is therefore in general excluded from specialist secondary care appropriate to the sequelae of torture, such as Post-Traumatic Stress Disorder. The application of Section 47/49 to FNPs in prison, to effect their transfer to hospital, is thus extremely rare, unless clinicians determine that the courts may establish that there was a risk to life. One result is that prison budgets are burdened with the needs of FNPs who have survived torture in their countries of origin and, indefinitely detained and deprived of any familiar context, suffer increasingly severe psychosis. HM Inspector of Prisons Scrubs saw five suicides in 2013. A parliamentary question on the subject would be useful: How many of these were committed by foreigners?

³ <http://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2014/09/Wormwood-scrubs-Web-2014.pdf>, page 36, 2.44.

10. The Inspector's most recent report on HMP Wormwood Scrubs highlights the **treatment of foreign nationals** as the most important challenge facing the prison. Among numerous insights he refers to FNPs unawareness that they could request free overseas letters, the very limited availability of translated material, the deficiencies of interpreting facilities, including a lack of professional interpretation in confidential and sensitive situations, for instance by immigration officers, much lower levels of prison employment (12% of FNPs, 35% of British nationals). Of particular importance to survivors of torture, is the Inspector's conclusion that the prison had failed to act on his earlier recommendation that "there should be more identification of and focus on the needs of foreign national prisoners at risk of self-harm and the resources to support them."
11. I have heard three corroborated accounts (including one by a contract medical worker) of prison officers violently assaulting an FNP in the mental health unit of a prison, although the officers may well confirm each others' accounts of lawful restraint. The conviction of six prison officers for assault of prisoners in the 1990s demonstrates at least that the distinction between lawful restraint and assault has not always been clear to prison officers,⁴ who work at present **under the unprecedented pressures of 30% cuts in staffing levels**. I have little doubt that the majority of prison officers in London prisons at least (where I have been able to observe interactions) treat prisoners, including FNPs, with humanity, even under current extreme conditions, although this conclusion is certainly as odds with the perception of many FNPs.
12. One prison governor responded to my explanation of the implications of DSO 17/2012 for one FNP who had survived torture in North Africa that a prisoner's references to torture were too "vague" for the NHS or HMPS to respond. The governor's observation that the prisoner "did not mention torture at all to Immigration" was incorrect, since the asylum application is based on account of torture -- although the governor must have liaised with the HO's permanent reps in the Scrubs. His response demonstrates however **HMPS' inability, even at the most senior level, to obtain information of relevant details of an FNP's asylum application** -- for instance histories of torture. When the prisoner concerned recovered sufficient mental health to authorise me to obtain his medical reports, they contained references to fourteen separate suicide attempts, and frequent flashbacks, but no consideration of possible PTSD.
13. **Crown Courts** display posters advertising an Early Plea Scheme.⁵ Legal representatives frequently advise FNPs on remand to plead guilty to secure a reduced sentence -- even on occasion when their clients continue to maintain that they have committed no crime. Sentences over twelve months carry a mandatory deportation order, with the implications of which for asylum cases representatives specialising in criminal law may be unfa-

⁴ <http://news.bbc.co.uk/1/hi/uk/1525735.stm>
<http://news.bbc.co.uk/1/hi/uk/370605.stm>

⁵ http://www.cps.gov.uk/london/about_us/early_guilty_plea_scheme/

miliar. The combined effects of the Early Plea Scheme, the absence from prison of clinicians and legal representatives specialising in the sequelae of torture, and the Early Removal Scheme for Foreign Offenders⁶ is to prevent evidence of violence inflicted on FNPs in their countries of origin, before they are re-traumatised by indefinite detention, coming to the attention of the courts.

14. HM Inspector correctly identifies the virtual **absence of immigration and asylum solicitors** in prison.⁷ No firms are contracted, as in IRCs, to assess the merits of FNPs' applications for protection; legally aided firms are extremely restricted in the assistance they can extend to those residing beyond their regions. So, unless FNPs were represented by legally aided asylum solicitors before arrest, foreigners' only realistic chance of representation or release from immigration detention in prison is to find money, as in debtors' prisons of yore, to pay a private solicitor. The possibility of an FNP seeking redress for low standards of representation are of course minimal.
15. Calls from a prison payphone to an external mobile cost £0.375 per minute. Post remains the most effective means of **communication** of FNPs, but many are illiterate in their own languages and, of course, in English. Prisoners, including immigration detainees, are not permitted mobile phones like those held in IRCs, and may not receive calls, even from lawyers. Transferring money to any prisoner is prohibitively expensive, since the only permitted means, a postal order, now costs £12.50, in addition to the amount transferred, and registered postal delivery. The cheaper SPS system⁸ may spread, but is at present only available in the South-East at HMPs Thameside and Bronzefield. Convicted prisoners may receive, in general, 3 visits a month, since each takes 8 days for the prisoner to arrange, although this depends on privilege incentives, and HMPS frequently refuses permission to visit. Remand conditions apply to prisoners held under immigration regs, and these are hypothetically unlimited, but generally take 10 days for the visitor to arrange by email. Impromptu visits, as in IRCs, are not permitted.
16. The Howard League for Penal Reform's brief, well-informed commentary on HM Inspector's report on HMP Wormwood Scrubs is useful⁹: it points out that the Government's so-called 'pool' of **prison officers deployable nationwide** between prisons in fact simply reduces staff levels at one prison to increase them to meet a crisis at another, precipitating a new crisis at the first -- which then has to find an *ad hoc* solution at great unforeseen expense to the taxpayer. A prison guard brought from Manchester to cover

⁶ <https://www.gov.uk/government/publications/the-early-removal-scheme-for-foreign-offenders>

⁷ <http://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2014/09/Wormwood-scrubs-Web-2014.pdf>, Paragraph 2.36.

⁸ <http://sps.prison-technology-services.com/faq.cfm>

⁹ <http://www.howardleague.org/wormwood-scrubs/>

for staff in the Scrubs while staying in an hotel confirmed the inefficiencies of this policy to me on our last visit, while he was accommodated in London. This example of policy 'penny-wise and pound foolish' is really at the heart of the Government's vulnerability both in the present referendum, and in next year's election.

17. I have worked on one case that illustrated the beginnings of a policy of **deporting FNPs who have spent all their adult lives in the UK**, who know no culture other than that of Britain, and whose only relatives are British, to countries of origin with which they have no substantive connection. It is extremely difficult to prove Article 2 or 3 risks to life or limb in a country someone of British culture left decades ago -- particularly if political violence there is expressed in new ways -- and thereby to prevent deportation. Moreover, HMG has suspended legal aid to impoverished prisoners who wish to prove either unlawful imprisonment, or their right to family life. It interests me both that this development: a) seems to echo policies of deportation between the 16th and the 19th centuries; and b) is an important aspect of a new stratification of Britain's population, as complex as caste or apartheid, with British holders of several nationalities born in the UK at the top, and FNPs liable to deportation, or stateless FNPs indefinitely detained, at the bottom.
18. The prison system is more efficient than the detention system at preventing evidence of violence in countries of origin (and in the UK) from coming to the attention of the courts; this is undoubtedly among the Government's reasons for keeping increasing numbers of FNPs in prison, instead of in IRCs. Imprisoning foreigners was planned to **facilitate their deportation**, but policy makers failed to account for the extra costs this incurs. I suspect that prison governors and staff are increasingly at a loss on how to deal with survivors of extreme violence driven insane by indefinite 'administrative' imprisonment without any effective right of *habeas corpus*.
19. HM Inspector of Prisons prioritises finding a solution to HMG's disgraceful treatment of foreign nationals in prisons. It seems to raise questions about how a British government would respond if foreign authorities were to detain British citizens with extreme mental health problems indefinitely after completion of long sentences for minor offences, without access to adequate medical care or interpreters, in insect-infested cells exposed to the elements, for 23 hours a day -- on explicit grounds that HMG treats their citizens thus.

Contact and further information

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