

The Detention Forum



Response to the Parliamentary inquiry into the use of immigration detention in the UK, hosted by the APPG on Refugees and the APPG on Migration

Submission by the Indefinite Detention Working Group of the Detention Forum

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Main contact: Jerome Phelps, Director, Detention Action
Address: Unit 3R, Leroy House, 436 Essex Rd, London N1 3QP, UK
Tel: 020 7226 3114
jerome@detentionaction.org.uk
www.detentionforum.org.uk

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About the Detention Forum Indefinite Detention Working Group

1. The Detention Forum is a network of over 30 organisations who are working together to challenge the UK's use of immigration detention. We have three objectives:
 - To put a time limit on immigration detention
 - To end the detention of vulnerable people
 - To improve the judicial oversight of detention
2. This submission comes from the indefinite detention working group of the Detention Forum. The members of this working group include Detention Action, Asylum Welcome, Migrant Rights Network, the Campaign to Close Campsfield, the Equal Rights Trust, Gatwick Detainees Welfare Group, Rene Cassin, Women for Refugee Women and the Quaker Asylum and Refugee Network, but our work is supported by all Detention Forum members. Together, our members have regular direct contact with people detained in seven Immigration Removal Centres (IRCs) around the UK, as well as experience working in advocacy, campaigning and with political leaders.
3. The focus of the working group is to campaign for a time limit to immigration detention in the UK. We believe that the indefinite nature of immigration detention is profoundly damaging to people detained, as well as politically and financially costly, and that it must be brought to an immediate end. Introducing a time limit on immigration detention will bring the UK in line with the rest of Europe and make a significant and immediate improvement to the lives of people in detention. This submission will address the impacts of the lack of a time limit to detention, and the viability and effectiveness of alternatives to detention. Other aspects of detention will be covered in submissions we make as individual organisations. Members of the working group would be happy to give oral evidence if that was helpful.

Executive summary

4. A time limit of 28 days for immigration detention should be introduced.
5. Indefinite immigration detention is unjust and causes significant harm to individuals.
6. Long-term detention is inefficient and economically wasteful.
7. Detention must always be the last resort and for the shortest time, in practice as well as in theory.
8. A time limit will save money through reducing wasteful detention and reducing the size of the detained population.
9. A time limit will help the government's priority of an efficient system of immigration control.
10. Working with migrants in the community, rather than detaining them for long periods, can more efficiently meet immigration control and public protection objectives.

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There is currently no time limit on immigration detention – in your view what are the impacts (if any) of this?

The problem

11. According to official policy, immigration detention should be used only when absolutely necessary and for the shortest periods possible. However, this is in sharp contrast to the reality that many people experience. Those of us who work with people in IRCs often come across people who have been detained for weeks, months or even years. Currently, people held under Immigration Act powers in the UK can be held indefinitely. There is no upper time limit for their detention. This is harmful to people on two levels: because it means people can be held for extremely long periods of time, and because there is no end point that people can work towards.
12. There is considerable evidence that detention is harmful for people's mental and physical wellbeing.¹ The longer someone is detained, the greater the damage they are likely to suffer. Furthermore, academic research and our experience working with people in detention suggest that the uncertainty around lengths of detention itself causes people great stress and anxiety.²
13. Indeed, many of the people detained for long periods are detained unnecessarily, because they cannot be returned. Reasons include the refusal of embassies to issue travel documents and barriers to return to certain countries.³

The numbers

14. According to Home Office statistics, as of 30 June 2014, 251 people had been detained for over six months. However, this figure belies a huge range, with some people detained for years.
15. It is important to note that people detained under Immigration Act powers in prisons as opposed to IRCs are usually held for the longest periods. However, very little information is known about this group because they are arbitrarily excluded from the Home Office's statistics on detention lengths. This is a significant omission, given that 794 migrants were detained in prisons at 18 August 2014⁴.

The UK is an anomaly

16. The vast majority of developed countries limit the maximum period of immigration detention. The UK is unique in Europe in having no time limit and routinely detaining migrants for years. It has opted out of the EU Returns Directive, which sets a maximum time limit of 18 months. However, many EU countries have time limits of

¹ Gatwick Detainees Welfare Group. 2012. 'A Prison in the Mind: the mental health implications of detention in Brook House Immigration Removal Centre'; Robjant, K., Hassan, R. & Katona, C., 2009, 'Mental Health Implications of Detaining Asylum Seekers: Systematic Review' in *The British Journal of Psychiatry*, 194 pp306-312

² Robjant et al, op. cit.

³ Flemish Refugee Action et al, *Point of No Return*, January 2014, <http://pointofnoreturn.eu/>

⁴ <http://www.theyworkforyou.com/wrans/?id=2014-09-01b.204643.h&s=immigration+detainees+prison#g204643.r0>

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two to six months. France limits detention to a maximum of 45 days, yet nevertheless enforces 31% more removals of irregular migrants than the UK. Until two years ago France had a time limit of 28 days. Official statistics show that increasing the limit to 42 days had little or no impact on numbers of removals from detention.

The political argument: Damaging the UK's reputation for civil liberties

17. Locking people up indefinitely wastes lives, is unjust and is contrary to British values. Britain has a long tradition of legal protection for civil liberties. This tradition is undermined every day that people are detained without time limit. Many people experience long-term damage to their physical and mental health. Their families also experience the distress of separation. Detention without time limit damages the UK's international reputation for defending human rights. In May 2013, the UN Committee against Torture urged the UK to "introduce a limit for immigration detention and take all necessary steps to prevent cases of de facto indefinite detention."⁵
18. The Courts have repeatedly found the indefinite detention of migrants to be unlawful, and that the Home Office has caused inhuman or degrading treatment to vulnerable people in detention. Over the last three years, the High Court has on six occasions found that the prolonged detention of mentally disordered detainees amounted to breaches of the Article 3 prohibition on inhuman or degrading treatment of the European Convention on Human Rights.
19. There was widespread public outrage at the proposed extension of the detention of terror suspects without charge. Today, in the UK, the detention without trial of terror suspects is limited to 14 days, yet there is no such protection for migrants.

The financial argument: Wasting tax-payers' money

20. Immigration detention is expensive, indefinite detention especially so. Independent economic analysts Matrix Evidence found that the UK wastes £76 million a year on the unnecessary long-term detention of people who are ultimately released. This includes huge sums paid in compensation for unlawful detention (£12 million in 2009-10). If the Home Office identified and released unreturnable migrants earlier, the equivalent of three detention centres could be shut without reducing the number returned.⁶

The efficiency argument: Encouraging complacency and warehousing of migrants

21. Home Office decision-making fails to take into consideration prospects of removal. Without a time limit, officials have no clear deadline by which to return people. This gives under-resourced and demoralised Home Office staff carte blanche to take their time, leading to unnecessary delays and inefficient use of expensive detention spaces. Detention becomes somewhere to simply warehouse people, out of sight and out of mind.

⁵ Committee against Torture, Fifth periodic report of the United Kingdom, (6-31 May 2013)

⁶ Matrix Evidence, *An economic analysis of alternatives to long-term detention*, January 2012

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22. However, the longer a person is detained, the less likely they are to be removed. According to Home Office statistics, of migrants leaving detention after more than a year inside in 2013, only 37% were removed or deported; almost two-thirds were released back into the UK, their protracted detention having served no purpose. By contrast, 57% of migrants detained for under 28 days left the UK.
23. The dramatic increase in the scale of detention has led to no increase in the numbers or removals. Since 2008, the numbers of migrants in detention have increased by 35%, yet numbers of enforced removals have actually declined by 24%.⁷ This suggests that increasing the numbers detained and the length of detention simply allows greater inefficiency on the part of the Home Office.
24. The HM Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration also found inefficiency and poor quality decision-making in Home Office use of detention. Rather than being used as a last resort, the inspectors found in a joint report in 2012, the “detention of ex-prisoners appeared to have become the norm.”⁸

Recommendations:

25. For all the reasons listed above, we strongly believe that indefinite detention must end immediately. We recommend a time limit for detention, so that people really are only detained as a last resort and for the shortest time possible. We suggest that a time limit of 28 days would be reasonable. A time limit should mark the outer limit of reasonable use of detention, and should not justify detention up to that length. 28 days is best recent practice in the EU, in that it was the maximum length of detention in France until two years ago. Official statistics show that increasing the limit to 42 days had little or no impact on numbers of removals from detention.⁹ The Joint Committee on Human Rights also recommended a time limit on detention of 28 days in their March 2007 report *The Treatment of Asylum Seekers*. As a result of the Coalition Government agreement, there is currently a de facto 72-hour time limit on detention for families with children. We believe therefore that setting a time limit for adults is reasonable and achievable.
26. The Home Office should include migrants detained in prisons in the quarterly immigration statistics, in order to make available accurate statistics on the lengths of time that migrants are detained.

How effective are the current UK alternatives to detention (e.g. bail, reporting requirements)? Are viable alternatives to immigration detention in operation in other countries?

27. The government justifies long-term detention by migrants' risk of absconding or reoffending. These risks are often overstated: research by the Bail Observation Project has found that absconding risk is routinely asserted without evidence at bail

⁷ Enforced removals fell from 17,239 in 2008 to 13,051 in 2013.

⁸ Independent Chief Inspector of Borders and Immigration and HM Inspectorate of Prisons, *The effectiveness and impact of immigration detention casework*, December 2012

⁹ ASSFAM et al, Centres et Locaux de Retention Administrative - Rapport 2012

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hearings,¹⁰ while Bail for Immigration Detainees has demonstrated that lack of evidence behind Home Office assessments of risk.¹¹

28. However, to the extent that there are risks of absconding or reoffending, they can be managed effectively and cheaply in the community. Community and faith organisations can play an important role in supporting the reintegration of migrants leaving detention.
29. For example, Detention Action is piloting a model of community support for ex-offenders. The project aims to demonstrate that, with reintegration support, ex-offender migrants rarely abscond or reoffend, and therefore that the long-term detention of ex-offenders with barriers to removal is unnecessary. Through one-to-one case management and training, participants will develop skills and confidence that will enable them to participate in the community and meet the conditions of their release from detention.
30. The Home Office justifies detention as necessary to ensure that migrants cooperate with immigration control, including by returning if their case is refused. However, states that have tried working with migrants in the community to resolve their cases have found that most comply with immigration requirements, for a fraction of the cost of detention. Australia introduced alternatives to mandatory indefinite detention in 2006. Case managers work with people in the community to resolve their immigration cases, helping them to access welfare, legal advice and voluntary return information. The programmes had a compliance rate of 93%, with 60% of those not granted a visa returning voluntarily. The programme cost \$AU38 per day, compared to \$AU125 for detention.¹² Similarly, Sweden achieved high rates of voluntary return through emphasis on dialogue with refused asylum seekers. 80% of irregular migrants who were returned from Sweden between 2011-13 left voluntarily.

Recommendation:

31. The Home Office should develop and implement alternatives to detention in order to reduce the use of detention and the size of the detention estate. The Verne, which has just been re-roled as an IRC on 28 September 2014, has added up to 580 detention bed spaces to the estate. There is also a plan to expand the capacity of Campsfield IRC from 260 to 610 bed spaces. Instead of expanding harmful and expensive detention infrastructure, efforts should be made to consider how these migrants can be supported in the community.
32. We are happy to give oral evidence to the panel to discuss these issues further.

¹⁰ Bail Observation Project, *Still a Travesty: Justice in Immigration Bail Hearings*, 2013

¹¹ Bail for Immigration Detainees, *A nice judge on a good day: immigration bail and the right to liberty*, 2010

¹² International Detention Coalition, *There are alternatives* (2011), p40