



The Forum

Migrant and Refugee Communities Forum

Written Submission to the Parliamentary Inquiry into the use of Immigration Detention

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1. About The Forum

- 1.1. The Migrant and Refugee Communities Forum (The Forum) was set up in 1993 by migrant and refugee community leaders to address their communities' integration needs – ranging from lack of services to institutional discrimination. Twenty years on, The Forum continues to work across the UK to promote the rights of migrants and refugees, ensure equality of access to services and campaign to end racism, xenophobia and discrimination.
- 1.2. The Forum's individual members are vulnerable, isolated asylum seekers, refugees and migrants who struggle to access mainstream support and are managing mental health issues. At present, 11% of our referrals come from organisations working with those in immigration detention centres (such as Samphire). One third of our individual members have experienced immigration detention.
- 1.3. The Forum also works with migrant and refugee community organisations, who experience the longer-term and community impacts of immigration detention.

2. The Forum's submissions

- 2.1. The Forum welcomes this Inquiry into the use of Immigration Detention as an opportunity to review and reform Immigration Detention.
- 2.2. Our staff have supported 12 former detainees to submit written evidence for the Inquiry, alongside this organisational submission. This submission synthesises the common issues arising from this evidence alongside expert evidence from our experienced staff, and contains input from staff and members who have not otherwise contributed to the Inquiry.

3. Overview

- 3.1. Reform of the administrative immigration detention system (hereafter detention) is long overdue, and there has been a systematic failure to implement recommendations for improvement.
 - 3.1.1. In 2008 the Independent Asylum Commission (IAC), the largest independent review of the asylum system undertaken, whose commissioners included our Executive Director, Zrinka Bralo, found that, 'administrative detention is not necessary for most people seeking sanctuary, is hugely costly and should never be used for children or pregnant women'¹.
 - 3.1.2. The IAC report, 'Deserving Dignity: How we treat people seeking sanctuary'² identified 27 areas of concern that needed to be addressed – from cost, to levels of self-harm to limited access to legal aid or appropriate medical support, to the failings of the complaints systems – and set out 22 recommendations that included better safeguards, more accountability and improvements in practice. All of these concerns remain pressing, six years later; few of the recommendations have been put into practice.

¹ <http://www.independentasylumcommission.org.uk/>

² <http://www.independentasylumcommission.org.uk/files/10.07.08.pdf>

- 3.1.3. The Chief Inspector of Prisons and Chief Inspector of Borders and Immigration have frequently made recommendations about detention that are not implemented. A December 2012 report highlighted the poor casework of immigration detention, which meant that insufficient progress had been made in a quarter of cases³. In addition, the report described difficulties obtaining good quality legal advice, the failure to consider evidence of post-traumatic stress and mental disorders, the failure to take factors such as people having been a victim of trafficking or torture into account and the lack of safeguards for some of the most vulnerable detainees, and made ten recommendations for improvements. As yet, these recommendations have not been fully implemented.
- 3.1.4. In that same report, it was emphasised that the HM Inspectorate of Prisons (HMI Prisons) 'consistently finds that detainees experience heightened levels of anxiety and distress as a result of their uncertain futures', yet there has been no move to put a time limit on how long someone can be held in detention⁴.
- 3.1.5. The HMI Prisons report for 2012-13 found that immigration detention was 'degrading for some', and that, 'as in previous years, too many detainees underwent exhausting and disruptive night-time transfers between centres without any obvious need'⁵. The use of handcuffs for outpatient appointments and mental health services provision that was 'generally insufficient to meet need' were both highlighted – from conversations with our members, we know that all these issues remain.
- 3.2. The Forum stands by the IAC's starting point for administrative detention, 'that it is appropriate only for those who pose a threat to national security or where there is absolutely no alternative to effect return'⁶.
- 3.2.1. In our experience and the experience of our members, detention is too often used for people who are later released and who are eventually granted leave to remain – a waste of taxpayers' money with no benefit at all to immigration control.
- 3.3. The way that immigration detention is currently administered runs counter to rule of law principles and fails to safeguard the interests of vulnerable people.
- 3.3.1. The Bingham Centre for the Rule of Law in June 2013 published a report led by Michael Fordham QC, 'Immigration Detention and the Rule of Law: Safeguarding Principles'⁷. The report found that, '[t]here is a great deal of evidence that... in the UK... immigration detainees are deprived of their liberty in accordance with procedures and under criteria and conditions which fall short of rule of law standards'⁸.

³ <http://icinspector.independent.gov.uk/wp-content/uploads/2012/12/Immigration-detention-casework-2012-FINAL.pdf>

⁴ <http://icinspector.independent.gov.uk/immigration-detention-casework-poor-casework-must-be-addressed-say-chief-inspectors/>

⁵ <http://www.justice.gov.uk/downloads/publications/corporate-reports/hmi-prisons/hm-inspectorate-prisons-annual-report-2012-13.pdf>

⁶ <http://www.independentasylumcommission.org.uk/files/10.07.08.pdf>

⁷ http://www.biicl.org/files/6559_immigration_detention_and_the_rol_-_web_version.pdf

⁸ <http://binghamcentre.biicl.org/binghamcentre/news/immigrationdetention>

3.3.2. The report sets out 25 ‘Safeguarding Principles’, which identify the necessary standards for detention in accordance with UK and international law, based on case law and international standards⁹. We believe that these ‘principled, practical and effective standards’ offer a guideline for rebuilding an effective system where detention is used only as a last resort.

3.4. Viable alternatives to detention exist, and should be actively pursued.

3.4.1. In June 2010, the UNHCR Executive Committee stated that, ‘to address unjustified detention, UNHCR advocates strongly for the use of effective alternatives to detention’¹⁰. There is a conspicuous failing on the part of the Home Office to seriously consider alternatives to detention, both in individual cases in accordance with international guidelines and in general. Having failed to explore alternatives to detention, an absence of reasonable alternatives is often cited as a reason to continue current detention practices.

3.4.2. UK-based explorations of alternatives to detention that do exist, such as the new Family Returns Process, Glasgow Family Return project or Liverpool Key Worker project have demonstrated that trust is needed in the system before any enforcement or removal programme can be effective. A UNHCR report sets out the factors that affect compliance, such as provision of legal advice, understanding and trust in the system, and provision of adequate support¹¹. Our members express frustration at a system where casework mistakes are frequently made, which is not transparent and where they have little trust in figures of authority. This is echoed in evaluation of the new Family Returns Process¹².

3.4.3. ‘Immigration Detention and the Rule of Law’, cited above, draws attention to the following alternatives which could be considered: (i) Monitoring Requirements [Reporting and Residency Requirements]; (ii) Provision of a Guarantor/Surety; (iii) Release on Bail/Bond; (iv) Open Centres (residence at open or semi-open reception or asylum centres); (v) Deposit or surrender of documentation; (vi) Directed residence; and (vii) Community supervision arrangements.

3.4.4. Organisations such as UNHCR¹³ and Detention Action¹⁴ have highlighted a number of best practice models, including release on bail (Canada), improved case management (Australia, Sweden) and community-based detention (Belgium, Sweden, USA, Hong Kong). Evidence from International Detention Coalition suggests that keeping people engaged in immigration processes is more effective in removals than focusing on enforcement of removal decisions¹⁵. UNHCR has emphasised that, ‘[t]he ultimate alternative is freedom

⁹ http://www.biicl.org/files/6559_immigration_detention_and_the_rol_-_web_version.pdf

¹⁰ ExCom UNHCR, Note on international protection, 61st sess, 30 June 2010, §40. UNHCR: ‘Report of the Working Group on Arbitrary Detention to the Human Rights Council’, Geneva, January 2010 p.2

¹¹ http://www.unhcr.org/4dc949c49.html#_ga=1.186025322.2140519270.1412008727. See also, Field and Edwards (2006), Alternatives to Detention, <http://www.refworld.org/pdfid/4472e8b84.pdf>.

¹² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264658/horr78.pdf

¹³ http://www.unhcr.org/4dc949c49.html#_ga=1.186025322.2140519270.1412008727

¹⁴ See oral evidence already submitted to the inquiry:

<https://detentioninquiry.files.wordpress.com/2014/07/first-evidence-session-transcript1.pdf>

¹⁵ <http://www.ohchr.org/Documents/Issues/Migration/Events/IDC.pdf>

from detention in the first place, or release with no conditions¹⁶, for example as in the Philippines.

3.4.5. Alternatives to detention not only are a more just, more humane and less harmful, they also present significant cost savings, as research from Matrix Evidence outlines¹⁷. Detention Action estimates that the Home Office is currently wasting £75 million each year on poor decisions related to detention¹⁸. In addition, the Home Office paid out £3 million in 2008-09 and £12 million in 2009-10 in compensation and legal costs arising from unlawful detention actions¹⁹.

4. Our members' evidence

- 4.1. The evidence provided by The Forum's individual members who had experienced detention echoed the findings of the Independent Asylum Commission, the reports of the Chief Inspector of Prisons and the Chief Inspector of Borders and Immigration and evidence raised by organisations such as UNHCR, Detention Action or the Helen Bamber Foundation.
- 4.2. Twelve of our members have put individual submissions, so their experiences will not be explored here in detail. In brief, their common experiences of detention cover:
 - 4.2.1. Unnecessary humiliation and lack of dignity in treatment: for example, in being handcuffed to hospital beds for outside appointments, or forced to beg for access to a fax machine, telephone or clean underwear.
 - 4.2.2. Failure to provide adequate medical care: for example, struggling to access appropriate support for mental or physical health issues, or being prevented from taking their prescribed medication with subsequent serious and long-term impacts on their health.
 - 4.2.3. Difficulties in accessing legal advice or support: including poor information given to detainees about available legal advice, poor or unavailable translators, and problems accessing the internet or phones to communicate with lawyers.
 - 4.2.4. Failure to take people's experiences of trauma into account: including where their experience of torture and/or trafficking was not taken into account in assessments so that they were continued to be detained, at great cost to their mental well-being.
 - 4.2.5. A culture of disbelief and failure to support the vulnerable: for example, pregnant women whose health needs weren't taken into account, others who were told they were deliberately frustrating the removal process by their mental ill health, or failure to respect gender sensitivities.

¹⁶ <http://www.unhcr.org.uk/resources/monthly-updates/june-update/alternatives-to-detention.html>

¹⁷ <http://detentionaction.org.uk/wordpress/wp-content/uploads/2011/10/Matrix-Detention-Action-Economic-Analysis-0912.pdf>

¹⁸ <http://detentionaction.org.uk/wordpress/wp-content/uploads/2011/10/costs-briefing-03131.docx>

¹⁹ <http://detentionaction.org.uk/wordpress/wp-content/uploads/2011/10/costs-briefing-03131.docx>

4.2.6. Uncertainty about release and related pressures causing self-harm or deaths in detention: for example, people who went on hunger strike or those who witnessed others cutting themselves, attempting suicide by hanging or dying in detention. All our members explained that a lack of a time limit added substantial stresses and were a contributing factor in people's deteriorating mental health.

4.3. Many of our members require specialist psychological treatment as a result of torture, trafficking or other trauma related to their migration. In all cases that The Forum documented for this Inquiry, these mental health issues were exacerbated by people's time in detention, and at no point was appropriate care given. Nor was people's experience of torture taken into account, in contravention of Rule 35 of 2001 Detention Centre Rules²⁰. A number of our members have received compensation from the Home Office for being unlawfully detained – yet the practice continues²¹.

4.4. The medical and health impacts of detention on those who have experienced torture or similar have been well documented (and shared with the Inquiry) by organisations such as the Helen Bamber Foundation²², Freedom from Torture²³ and Medical Justice²⁴. Those we support reported experiences during and after detention that echoes this evidence, including flash-backs, depression, self-harm and suicidal tendencies.

5. Broader Impact of detention

5.1. The Forum supports migrants and refugees who are unable to access mainstream services. We support people over several years and see the longer-term impact of detention on individuals and communities who already isolated and vulnerable.

5.2. Those we see who have experienced detention or who are referred from detention centres are often alone in London, coping with multiple losses including family, friends, status and income. Many face difficult situations arising from housing, family, employment and immigration problems. Post-traumatic stress affects their ability to communicate, whilst cultural perceptions of mental health can prevent some of them from accessing support services. Loneliness and isolation are the greatest challenge they face, our members tell us²⁵.

5.3. Research from MIND²⁶, British Medical Association²⁷, the Social Care Institute for Excellence²⁸ and Faculty of Public Health²⁹ suggests that refugees, especially those still seeking asylum, have significant social care and health care needs related to experiences of migration, trauma and resettlement.

²⁰https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300366/17.2012_v2.0_-_Application_of_Detention_Centre_Rule_35_ext.pdf

²¹ <http://www.theguardian.com/uk/2013/may/21/torture-victims-win-case-uk-detention>

²² <https://detentioninquiry.files.wordpress.com/2014/07/robjant-hassan-and-katona-2009.pdf>

²³ <http://freedomfromtorture.org/sites/default/files/documents/Salinsky-ProtectionNotPrison.pdf>

²⁴ <http://www.medicaljustice.org.uk/images/stories/reports/2ndtfull.pdf>

²⁵ http://migrantforum.org.uk/wp-content/uploads/2014/09/Loneliness-report_The-Forum_UPDATED.pdf

²⁶ <http://www.mind.org.uk/media/273472/a-civilised-society.pdf>

²⁷ http://www.refugeetoolkit.org.uk/sites/refugeetoolkit/files/imce_user_files/meeting-the-needs-of-asylum-seekers-bma-report.pdf

²⁸ <http://www.scie.org.uk/publications/guides/guide37/files/guide37.pdf>

²⁹ http://www.fph.org.uk/uploads/bs_aslym_seeker_health.pdf

- 5.4. All of this is exacerbated by the experience of detention, which our members tell us is shaming³⁰: ‘The stigma of being in detention, it follows you..... people think that I have been in prison. I don’t usually get the chance to be in the community, but when I do go, straight away people start to say that I’ve been in prison and start to talk. I don’t know how I’m ever going to erase that’. Mental health-related impacts of detention (such as increasing flash-backs as part of post-traumatic stress or depression) make it more difficult for people to seek help or navigate mainstream support services or legal systems.
- 5.5. We have also noted that the treatment that people receive in detention – for example delays in accessing services or negative consequences when people complain – can impact negatively on people’s interactions with health and social care services they receive outside detention. At a time when NHS changes are requiring patients to be more proactive in their care, some of our members have expressed anxieties about accessing health services in case they are challenged on their entitlements, and feel unable to feedback on services they receive. This has a long term impact on people’s health and, in requiring more substantial health interventions or treatment once an individual’s health has deteriorated, leads to higher costs for the NHS.
- 5.6. We estimate that the direct support, mentoring and group activities we offer to each refugee, asylum seeker or migrants saves the NHS roughly £800 per person every six months. These costs are greater for those with more severe mental health issues, particularly people leaving detention, which gives a low estimate for the financial burden that the NHS has to pick up as a result of immigration detention. This is in addition to the costs of detention itself, estimated to be £47,000 per detainee per year³¹.

6. Recommendations on improving Immigration Detention

- 6.1. The government should introduce a time limit of 28 days on immigration detention, with an automatic bail hearing and independent review after 72 hours, in line with global and EU best practice.
- 6.1.1. In May 2013, the UN Committee against Torture urged the UK to ‘(i)ntroduce a limit for immigration detention and take all necessary steps to prevent cases of de facto indefinite detention³².
- 6.1.2. Medical evidence suggests that the negative health impacts of detention significantly increase after a month³³. In 2012, about 62% of total immigration detainees were held for less than two months and roughly 35% were held for less than one month, according to Migration Observatory³⁴. A 28 day time limit would not be a significant disruption to the detention estate, but would prevent both those cases where people are held for years and the negative health impacts of the uncertainties around release or deportation.

³⁰ See individual submissions from The Forum’s members

³¹ <http://detentionaction.org.uk/wordpress/wp-content/uploads/2011/10/costs-briefing-03131.docx>

³² Committee against Torture, Fifth periodic report of the United Kingdom, (6-31 May 2013)

³³ <https://detentioninquiry.files.wordpress.com/2014/07/rojjant-hassan-and-katona-2009.pdf>

³⁴ <http://www.migrationobservatory.ox.ac.uk/briefings/immigration-detention-uk>

- 6.1.3. The Home Office's own statistics demonstrate that lengthy detention does not make for more effective removals. In fact, the longer a person is detained, the less likely they are to be removed³⁵. Of migrants leaving detention after more than a year inside in 2013, only 37% were removed or deported; the majority 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 UK³⁶.
- 6.1.4. In making these changes, the government's own recommendations on the detention of children should be taken into account. These highlighted the primary role of safeguarding detainees' welfare and emphasised that 72 hours was the appropriate period prior to removal: '[s]tays will be limited to 72 hours and linked to a specific removal date but exceptionally could be extended up to a week with ministerial authorisation'³⁷. An automatic bail hearing after 72 hours would remove barriers to accessing bail that have already been highlighted in submissions to the Inquiry³⁸ and have proved to be effective in other countries such as France³⁹.
- 6.2. The government must ensure that the Home Office and those it contracts pay due regard to and implement the recommendations of Independent Chief Inspector of Borders and Immigration, the HM Inspectorate of Prisons and the courts.
- 6.2.1. This is particularly pressing in regards to proper safeguards for vulnerable individuals, access to appropriate services, support and communications, and improved casework.
- 6.2.2. The current safeguards – particularly Rule 35 of the Detention Centre Rules – that should ensure that vulnerable individuals are not subject to detention is ineffective and has been criticised by the Independent Chief Inspector of Borders and Immigration and the HM Inspectorate of Prisons⁴⁰. In *Detention Action vs Secretary of State for the Home Department [2014]* the High Court concluded that Rule 35 reports 'are not the effective safeguard they are supposed to be' and do not work as intended⁴¹.
- 6.2.3. 'The effectiveness and impact of immigration detention casework' inspectorates' report found that poor casework and failure to progress cases owing to difficulties in obtaining travel documents was a leading cause of people's ongoing detention⁴². Immigration detention must remain as a last resort where there is 'a reasonable prospect of deportation within a

³⁵ <https://detentioninquiry.files.wordpress.com/2014/07/detention-action-detention-inquiry-evidence-07141.pdf>

³⁶ Home Office, Immigration Statistics October to December 2013, Detention, table dt_06

³⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/275349/child-detention-conclusions.pdf

³⁸ <https://detentioninquiry.files.wordpress.com/2014/07/first-evidence-session-transcript1.pdf>

³⁹ <http://icinspector.independent.gov.uk/wp-content/uploads/2012/12/Immigration-detention-casework-2012-FINAL.pdf>

⁴⁰ <http://icinspector.independent.gov.uk/wp-content/uploads/2012/12/Immigration-detention-casework-2012-FINAL.pdf>

⁴¹ <http://www.bailii.org/ew/cases/EWHC/Admin/2014/2245.html>

⁴² <http://icinspector.independent.gov.uk/wp-content/uploads/2012/12/Immigration-detention-casework-2012-FINAL.pdf>

reasonable time⁴³. Detention reviews should be conducted on time and with the appropriate level of authority.

6.3. The government should set up a task force to explore alternatives to detention for the Home Office to develop.

6.3.1. This task force should draw on learning from good practice in the UK and internationally, be comprised of experts from relevant sections, cross-party representatives, and migrants and the organisations that support and represent them.

6.3.2. Any alternatives must be developed with community and voluntary organisations that support people in or after they have left detention, and with the involvement of those who have experienced or are at risk of detention.

6.3.3. Pilots run by organisations such as Detention Action⁴⁴ offer potential starting points. Expertise should also be drawn from best practice in different sectors of the UK, including social care and the prison system.

6.3.4. The involvement of The Forum, alongside other organisations, in a task force to design alternatives to the detention of children in 2010 provides a positive example of this process⁴⁵. An evaluation of the new family return process found improvements in welfare and that most families complied with the process, although an overall lack of trust in the system and difficulties of accessing legal advice continued to impact on its effectiveness⁴⁶.

6.3.5. Family return panels were introduced as a result of the work on ending detention of children, and are good example of the positive impact of engaging people facing deportation in the process rather than relying on the use of force and coercion. The Independent Family Return Panel's Annual Report emphasises the importance of involving people in decisions about their lives and the impact of this on both welfare and compliance⁴⁷.

6.3.6. The resulting Home Office pre-departure accommodation for family, The Cedars, has received more positive reports from the Chief Inspector of Prisons on account of its 72-hour time limit, the involvement of Barnardo's and the training provided to security staff by charities such as Citizens UK⁴⁸: 'families told us they felt safe in the centre and had confidence in staff. Barnardo's staff played an important role in the centre and their involvement was a major factor in securing the safety and wellbeing of children while they were held'.

⁴³ UKBA, Enforcement Instructions and Guidance, 55.2

⁴⁴ <https://detentioninquiry.files.wordpress.com/2014/07/detention-action-detention-inquiry-evidence-07141.pdf>

⁴⁵ <http://www.parliament.uk/briefing-papers/sn05591.pdf>

⁴⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264658/horr78.pdf

⁴⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257175/ifrp-report.pdf

⁴⁸ <https://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/immigration-removal-centre-inspections/cedars/cedars-2012.pdf>