



*Ending Torture. Seeking Justice for Survivors*

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**Submission to the All-Party Parliamentary Group on Refugees and  
the All-Party Parliamentary Group on Migration**

**INQUIRY INTO THE USE OF IMMIGRATION DETENTION**

**October 2014**

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**Introduction**

REDRESS<sup>1</sup> welcomes the opportunity to submit evidence on the use of immigration detention in the UK (“Detention Inquiry”). Globally, states increasingly resort to repressive measures against migration in irregular situations, including criminalisation, administrative detention and expulsion. Such measures promote perceptions that migrant workers and their families, persons in irregular situations, as well as asylum seekers, are “illegal”, second-class individuals, and/or unfair competitors for jobs and social benefits. Such discourses also fuel discrimination and xenophobia.

The UK’s immigration policy should be principled, coherent and should include effective support for those fleeing torture and ill-treatment. Those held in immigration detention must not be subjected to torture or ill-treatment, and where allegations of such treatment surface, these must be effectively investigated, the perpetrators brought to justice and victims afforded reparation – consistent with the UK’s obligations under international law and its values of respect for human rights and the rule of law.

In summary, the Detention Inquiry should take note of the disproportionate use of detention of asylum seekers in the UK; the inadequate access to legal advisors in immigration removal centres (“IRCs”); the inadequate and insufficient procedures which do not prevent vulnerable individuals from being detained in detention; the inadequate handling and investigation of complaints made by detainees; and the lack of accountability (of both individuals and companies) implicated in human rights abuses.

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<sup>1</sup> REDRESS is an international human rights NGO with a mandate to assist torture survivors to seek justice and other forms of reparation. See [www.redress.org](http://www.redress.org).

## I. Decisions to detain: Need to take into account all relevant factors

1. No one (including those subject to immigration control measures) shall be subjected to arbitrary deprivation of liberty. In 2009, the UN General Assembly collectively affirmed states' obligation "to respect the human rights and inherent dignity of migrants and to put an end to arbitrary arrest and detention and, where necessary, to review detention periods in order to avoid excessive detention of irregular migrants, and to adopt, where applicable, alternative measures to detention."<sup>2</sup> Detention systematically deteriorates the physical and mental condition of nearly everyone who experiences it and prolonged detention deepens the severity of these symptoms, which are already noticeable in the first weeks of detention.<sup>3</sup>

### Disproportionate use of detention

2. REDRESS is concerned that HMG uses immigration detention in a disproportionately high manner. Detention is not a justifiable anti-immigration strategy and should be used sparingly, if at all, outside the penal context. UK directives affirm this,<sup>4</sup> but, in practice the Home Office has significantly increased its use of immigration detention.<sup>5</sup> In 1993, there was space to hold 250 such persons in detention at any one time; now there is space for 3,275.<sup>6</sup> At the same time, applications for asylum have fallen from 84,132 (in 2002) to 23,479 (year ending June 2014).<sup>7</sup> In comparison to any other European country, the UK detains asylum seekers in a disproportionately high manner.<sup>8</sup> In 2013, the UK received 23,507 new applications for asylum roughly half of whom experienced detention at some point in the asylum process. At the same time, Sweden received 54,300 applications and detained 2,550 asylum seekers.<sup>9</sup>

### Indefinite detention: incompatible with international human rights principles

3. In the UK, there is no statutory time limit on how long someone can be detained in immigration detention. The UN Working Group on Arbitrary Detention and the UN Committee against Torture have recommended that the UK impose time limits and take all necessary steps to prevent *de facto* indefinite detention.<sup>10</sup> Indefinite detention is contrary to international human rights law. The European Returns Directive<sup>11</sup> limits immigration detention to six months to achieve removal, extendable by a further twelve months if necessary. The UK has opted out of this Directive.<sup>12</sup> In contrast to the UK, other European countries have set an upper time limit on immigration detention. For example, the upper limit on immigration detention is 45 days in France;<sup>13</sup> 60 days in Spain;<sup>14</sup> 1.5 months in the Netherlands; 6 months in Italy; and 18 months in Germany and Greece.<sup>15</sup>
4. Home Office policy is that: "It is not an effective use of detention space to detain people for lengthy periods."<sup>16</sup> During 2013, of the people who left detention, 988 had been detained for between two and four months; 199 for between one and two years; and 50 for two years or longer.<sup>17</sup> In 2012, HM Inspectorate of Prisons ("HMIP") and the Independent Chief Inspector of Borders and Immigration ("ICBI") reported that a person had been held for nearly five years after spending almost eight months in prison for burglary.<sup>18</sup> Some immigration detainees are

<sup>2</sup> UN General Assembly, A/RES/63/184, 18 December 2008, para. 9.

<sup>3</sup> UN HRCouncil, Report of the Special Rapporteur on the human rights of migrants, 2 April 2012, A/HRC/20/24 ('SR Migrants 2012'), para. 48.

<sup>4</sup> UK Border Agency (UKBA), 'Enforcement Instructions and Guidance', ('EIG'); 55.1.1; 55.1.3.

<sup>5</sup> Home Office, 'Immigration statistical summary 1999-2008'; 5 January 2011, p. 2.1a; and Home Office, 'Immigration Statistics October – December 2012', 28 February 2013.

<sup>6</sup> Marchu Girma, Sophie Radice, Natasha Tsangarides, and Natasha Walter, 'Detained. Women asylum seekers locked up in the UK', Women for Refugee Women, January 2014, p.7.

<sup>7</sup> Home Office, 'Immigration statistics April – June 2014', 29 August 2014.

<sup>8</sup> Laura Padoan, 'UNHCR concerned over UK's use of detention in asylum process', UNHCR, 23 February 2012.

<sup>9</sup> UNHCR, 'The Facts: Asylum in the UK', 2014; Asylum Information Database, 'Asylum in Europe: key Asylum Indicators 16 Countries'.

<sup>10</sup> UN WGAD, 'Human Rights of all Persons subjected to any form of Detention or Imprisonment', E/CN.4/1998/44, 19 December 1997, p. 11, para 33(b); UNCAT, Concluding observations on the UK's 5<sup>th</sup> review, (6-31 May 2013), CAT/C/GBR/CO/5UN ('UNCAT, Concluding Observations'), 27 May 2013, para. 30.

<sup>11</sup> EU Returns Directive 2008/115/EC (European Parliament and of the Council), 16 December 2008, ('EU Returns Directive').

<sup>12</sup> *Ibid.*

<sup>13</sup> L'administration française, 'Rétention administrative d'un étranger en instance d'éloignement', 11 February 2013.

<sup>14</sup> Spanish Immigration Act 2009, art 62.2 (Prepared under the Organic Law 2/2009).

<sup>15</sup> HMIP, ICBI, 'Joint Thematic Review', December 2012, para. 2.7.

<sup>16</sup> EIG 55.1.3.

<sup>17</sup> Home Office, 'Immigration statistics October – December 2013', 27 February 2014.

<sup>18</sup> HMIP, ICBI, 'Immigration detention casework'. A joint thematic review by HMIP and ICBI, December 2012, para 2.15 ('HMIP, ICBI, 'Joint Thematic Review', December 2012').

being held in prisons after having served a criminal sentence (rather than being transferred to IRCs),<sup>19</sup> which is only very exceptionally appropriate.<sup>20</sup>

### Improving Decision-taking about whether to Detain

5. Immigration officers deciding to detain individuals are not uniformly considering whether an individual's vulnerability makes detention unsuitable, and whether alternatives to detention are available.<sup>21</sup> Further, while caseworkers are required to periodically assess whether detention can be maintained, they fail to do this meaningfully and with sufficient frequency. HMIP and ICIB have called on caseworkers to consider all factors that may be relevant to the decision to maintain an individual in detention and to provide an accurate and balanced summary of the relevant facts.<sup>22</sup> In *R (I) v. SSHD*, Lord Dyson found that:

"the relevance of the likelihood of absconding, if proved, should not be overstated. Carried to its logical conclusion, it could become a trump card that carried the day for the Secretary of State in every case where such a risk was made out regardless of all other considerations, not least the length of the period of detention. That would be a wholly unacceptable outcome where human liberty is at stake."<sup>23</sup>

6. In another case, a High Court (England & Wales) judge found no evidence that the claimant posed a risk to others which was the reason given to justify his continued detention. However, this fact (which was apparent to the judge on the basis of the evidence before him) "does not appear to have been considered at all" by the caseworkers who "essentially put out of mind the possibility that there might exist a caring environment into which [the claimant] could be released."<sup>24</sup> A failure to consider less coercive or intrusive measures could render immigration detention arbitrary and therefore unlawful.<sup>25</sup>

### Accessing Legal Advice: safeguarding human rights

7. IRC detainees do not have **adequate access to legal advice**, which is crucial to safeguard against unlawful detention, ill-treatment in detention, and to protect them from *refoulement*.<sup>26</sup> While IRC detainees have access to a duty advice scheme in IRCs and a right to legal representation, the meeting time with representatives is often limited (for bail applications it is limited to half an hour, including interpreting time) with no guarantee of ongoing representation, and sessions are often over-subscribed.<sup>27</sup>
8. In 2012 HMIP and ICIB found that a fifth of detainees they studied, who were held for more than six months, said they had not made a **bail application**. HMIP consistently finds that detainees experience difficulties in obtaining good quality legal advice and consequently many had not applied for bail to an immigration judge.<sup>28</sup>
9. The lack of adequate access to legal advice was the primary reason that led Mr Justice Ouseley to find that the UK's **Detained Fast Track** ("DFT") system contained an "unacceptable risk" of unfairness, raising concerns under article 5(1)(f) of the ECHR (prohibiting arbitrary detention).<sup>29</sup> As a result of his decision, it is now up to HMG to ensure that deficiencies are rectified. Mr Justice Ouseley held that if rectification requires changes to the Legal Aid Agency system then that is for the Government to organise.<sup>30</sup>

Those held in **regular detention**, not under the DFT system, are also at risk of being unable to access adequate legal advice. At Brook House IRC some detainees had to wait two weeks to see a legal advisor, "which was past

<sup>19</sup> Hansard: HC Deb, 12 December 2013, c319W, approximately 25% of all immigration detainees in the UK are held in prisons.

<sup>20</sup> HMIP, 'Report on an announced inspection of HMP Wandsworth 13-17 May 2013, 10-14 June 2013'.

<sup>21</sup> EIG 55.3.1.

<sup>22</sup> HMIP, ICIB, 'Joint Thematic Review', December 2012, para. 4.18.

<sup>23</sup> *R (I) v. SSHD* [1989] 1 QB 26 (18 November 1987) at paras. 53-54.

<sup>24</sup> *S, R (on the application of) v SSHD* [2011] EWHC 2120 (Admin) (05 August 2011), at paras. 183-4.

<sup>25</sup> UNHCR, 'Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention', 2012, ('**UNHCR Detention Guidelines**'), Guideline 4.3.

<sup>26</sup> *Detention Action v SSHD* [2014] EWHC 2245 (Admin) (09 July 2014) ('**Detention Action V SSHD**'), para. 195, Council of Europe (2013), 'CPT standards. CPT/Inf/E (2002) 1 - Rev. 2013 English', paras. 30,31; Council of Europe, 'Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 17 to 28 September 2012', CPT/Inf (2014)11, 27 March 2014.

<sup>27</sup> HMIP, ICIB, 'Joint Thematic Review', December 2012, para. 2.19.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Detention Action v SSHD*, para. 194.

<sup>30</sup> *Ibid.*, para. 198.

the removal date for some detainees.<sup>31</sup> At Colnbrook IRC, access for female detainees to legal services was found to be more restricted than it was for male detainees.<sup>32</sup> The issues with accessing legal advice are exacerbated when immigration detainees are held in prisons.<sup>33</sup>

**In summary, we encourage the Inquiry to call upon HMG to:**

- **set a maximum statutory period of immigration detention. Following this period, detainees must be automatically released;**<sup>34</sup>
- **establish a statutory independent panel to review the cases of all individuals who are held for periods greater than six months;**
- **implement changes to the Legal Aid Agency to ensure that all persons detained in IRCs have access to prompt and meaningful legal advice; and**
- **explain how it proposes to make and implement changes to the DFT system so that it is compliant with article 5(1)(f) of the ECHR.**

## **II. HMG should not detain vulnerable individuals: Rule 35**

10. Contrary to the UK's own rules,<sup>35</sup> there remain too many vulnerable individuals being unlawfully detained in immigration detention, including: victims of trafficking,<sup>36</sup> torture, rape and domestic violence<sup>37</sup> and those with serious mental health and learning difficulties.<sup>38</sup> Detaining vulnerable individuals may amount to torture.<sup>39</sup> As recognised by the High Court (England & Wales), there is a “disturbing” lack of compliance by the Home Office of its own guidelines which are supposed to prevent the detention of vulnerable individuals outside exceptional circumstances.<sup>40</sup> Upon healthcare staff identifying an individual as vulnerable, files are sent to immigration caseworkers who invariably decide that the individual should, nonetheless, be detained, even where there is independent evidence of torture (the “Rule 35 report”).<sup>41</sup> HMIP and ICIB have previously criticised the poor quality of the health-care assessment reports and the formulaic, resistant nature of the response from immigration caseworkers, as well as their tardiness.<sup>42</sup>
11. When HMG detains vulnerable individuals it may be subjecting them to treatment incompatible with the prohibition of torture and ill-treatment. The High Court (England & Wales) has found that – on at least three occasions – mentally ill individuals have been unlawfully detained and their detention amounted to violations of article 3 of the ECHR.<sup>43</sup> In May 2013, the UN Committee against Torture, in its review of the UK's law and practice, recommended HMG should have a **blanket ban on detaining those suffering from serious medical conditions or serious mental-illness** rather than allowing for the detention of such individuals where officials believe conditions can “be managed in detention.”<sup>44</sup>

<sup>31</sup> HMIP, ‘Report on unannounced inspection of Brook House IRC, 28 May – 7 June 2013’, Ministry of Justice, p. 28, para. 1.78.

<sup>32</sup> HMIP, ‘Report on an unannounced inspection of Harmondsworth IRC, 5 – 16 August 2013’, Ministry of Justice, p. 5.

<sup>33</sup> HMIP, ‘Report on an announced inspection of HMP Wandsworth, 13-17 May’, 10-14 June 2013.

<sup>34</sup> UNHCR, Detention Guidelines, paras. 21 – 30.

<sup>35</sup> Detention Service Orders and Asylum Instructions, DSO 17/2012; see also; *EO & Ors, R (on the application of) v SSHD* [2013] EWHC 1236 (Admin) (17 May 2013) (**‘EO & Ors v SSHD’**).

<sup>36</sup> *Detention Action v SSHD*, paras. 116-138, paras. 150-1.

<sup>37</sup> *Ibid.*, paras. 139-146.

<sup>38</sup> *Ibid.*, paras. 154-8.

<sup>39</sup> [UN HRC], *Mr. C. v. Australia*, Communication No. 900/1999, U.N. Doc. CCPR/C/76/D/900/1999 (2002); SR Migrants 2012, para. 44; [UNCAT] *A v The Netherlands*, CAT/C/22/124/1998, 12 May 1999, paras. 6.3 and 9; [ECtHR] *Price v United Kingdom* (2002), app. no. 33394/96, 10 July 2001, paras. 29-30; [IACmHR] (2010), ‘Report on Immigration in the United States: Detention and Due Process’, OEA/Ser.L/V/II., Doc. 78/10, 30 December 2010, para. 69.

<sup>40</sup> *EO & Ors v SSHD*, para. 3.

<sup>41</sup> Medical Justice, ‘The Second Torture: the immigration detention of torture survivors’. 22 May 2012, chapter 4, (**‘Medical Justice: Second Torture 2012’**); See also, *Detention Action v SSHD*, paras. 133-4 and para. 129.

<sup>42</sup> HMIP, ICBI, ‘Joint Thematic Review’, December 2012; HMIP Report on an unannounced full follow-up inspection of Harmondsworth IRC (14 - 25 November 2011), para H.23 p.13.

<sup>43</sup> *S, R (on the application of) v SSHD* [2011] EWHC 2120 (Admin) (05 August 2011); *BA, R (on the application of) v SSHD* [2011] EWHC 2748 (Admin) (26 October 2011); *HA (Nigeria), R (on the application of) v SSHD* (Rev 1) [2012] EWHC 979 (Admin) (17 April 2012).

<sup>44</sup> UNCAT, Concluding observations, 27 May 2013, para. 30.

12. REDRESS is concerned that:

- a) the **screening** practices to identify vulnerable and traumatised individuals are failing as recognised by the High Court (England & Wales) in July 2014.<sup>45</sup>
- b) much time is spent deliberating whether a report providing evidence that a detainee was subject to torture constitutes **independent evidence** of torture (as currently required under the rules). This may result in the detention of vulnerable persons and precludes a common-sense approach to identifying persons at risk. Simple follow-up questions in an interview may often suffice to help identify vulnerable persons.<sup>46</sup> In 2013, the UN Committee against Torture suggested that the UK lower the evidential threshold for identifying torture survivors.<sup>47</sup>
- c) the UK's guidelines on what constitutes independent evidence of torture places heavy emphasis on identifying **physical evidence** of torture: "e.g., numerous scars with the appearance of cigarette burns to legs; marks with the appearance of whipping scars".<sup>48</sup> **No examples of mental torture or symptoms of such torture** are provided. Many sexual and/or gender based violations amounting to torture leave no physical scarring.<sup>49</sup>
- d) contrary to domestic law,<sup>50</sup> those that have fled **torture by private actors** (including women and girls fleeing abusive relationships and/or domestic servitude) are being rejected as "torture survivors" by Home Office staff on the grounds that they have not been abused by state actors.<sup>51</sup> Yet, the definition of "torture survivors" for the purposes of Rule 35 includes individuals that have previously been subjected to abuses by private actors, as well as state officials.<sup>52</sup>
- e) torture survivors are being penalised for failing to **disclose** their traumatic experiences immediately even though these experiences may hinder full immediate disclosure.<sup>53</sup> For the purposes of Rule 35, it is for the Home Office to justify their decision to maintain detention despite new evidence, not for the detainee to explain their previous non-disclosure.<sup>54</sup>

**In summary, REDRESS encourages the Inquiry to call upon the *Home Office* to amend its rules and to implement the UN Committee against Torture's recommendations:**

- **the evidential threshold for identifying torture survivors should be lowered for the purposes of identifying individuals at risk of ill-treatment and traumatising in detention.**
- **those suffering from serious medical conditions or serious mental illness are not detained.**
- **staff receive training on all aspects concerning torture, including the definition, the signs and symptoms of physical and mental torture, sexual and gender-based violations that amount to torture, the identification of other vulnerable individuals beyond torture survivors, how to analyse medical-legal reports.**
- **prompt alternative accommodation arrangements are made for individuals designated to be unfit for detention.**
- **call upon the UK government to commit to providing rehabilitative treatment to vulnerable individuals and particularly torture survivors.**<sup>55</sup>

### **III. Alternatives to detention**

13. One of the stated purposes of immigration detention is to facilitate removal, or deportation.<sup>56</sup> However, these end goals are often not possible. Instead of releasing individuals, the result is often prolonged detention

<sup>45</sup> *Detention Action v SSHD*, paras. 133-4, paras. 150 and 200.

<sup>46</sup> *Ibid.*, paras. 133-4 and para. 134.

<sup>47</sup> UNCAT, Concluding observations, 27 May 2013, para. 30.

<sup>48</sup> HMG, Instructions: Mandatory actions and considerations to be taken where a report is issued under Rule 35 of the Detention Centre Rules 2001, p. 6.

<sup>49</sup> Human Rights Foundation of Turkey, 'Atlas of Torture: Use of Medical and Diagnostic Examination Results in Medical Assessments of Torture', p. 91.

<sup>50</sup> *EO & Ors v SSHD*, para. 82.

<sup>51</sup> *Detention Action v SSHD*, paras. 133-4 and para. 129.

<sup>52</sup> *EO & Ors v SSHD*, para. 82.

<sup>53</sup> UNHCR (1992), 'Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees', HCR/IP/4/Eng/REV.1 Reedited January 1992 at para. 198.

<sup>54</sup> *Detention Action v SSHD*, para. 134.

<sup>55</sup> UNCAT, General Comment No. 3, CAT/C/GC/3, 13 Dec 2012.

<sup>56</sup> EIG 55.7.1.

incompatible with UK's international obligations.<sup>57</sup> During 2013, 152 individuals that had been detained for 12 months or more were eventually granted bail, temporary admission or were otherwise released.<sup>58</sup> Alternatives to detention<sup>59</sup> enable asylum seekers and other migrants to retain their liberty and dignity, and (potentially) to seek legal advice in a more-timely manner than in an IRC. Research has found that over 90% compliance or cooperation rates can be achieved when persons are released to supervision and assistance, and alternatives are also considerably less expensive.<sup>60</sup> Each individual detained costs nearly £40,000 a year.<sup>61</sup> In contrast, the cost to support an asylum seeker living in the community has been estimated at £7,800 per year.<sup>62</sup> Alternatives to detention, include: registration requirements, deposit of documents, bond/bail or having a surety/guarantor, reporting requirements, case management/supervised release, designated residence, electronic monitoring, and home curfew/house arrest.<sup>63</sup>

**The Inquiry should call upon the *Home Office* to collect disaggregated data on the number of migrants in administrative detention and/or subject to non-custodial measures and the compliance rate with these measures to evaluate their effectiveness, and share this information with the Special Rapporteur on Migrants.**<sup>64</sup>

## IV. Making Complaints: Protecting Individuals in Detention

### Transparent Complaints Process?

14. There is no oversight and auditing body with responsibility for monitoring complaints in prisons and IRCs. The Complaints Audit Committee was disbanded in 2008 which has resulted in a lack of systematic independent review of complaints handling.<sup>65</sup> The impact was seen clearly in the handling of "Sana's" complaint. Sana is a 29 year-old Pakistani woman who was detained at Yarl's Wood IRC (managed by Serco Group plc ("Serco")). She alleged that she was sexually assaulted on three separate occasions (between November 2010 and January 2011) by a healthcare professional, employed by Serco.<sup>66</sup> Her complaint was dealt with initially by Serco; then the UK Border Authority ("UKBA") Professional Standards Unit; it was later investigated by Bedfordshire Police. Finally, the UKBA and police investigations were reviewed by the Prisons and Probation Ombudsman ("PPO"). The number of entities involved highlights a lack of coherence for complaints raising gross or serious misconduct allegations. Further, contrary to international standards, the complaints process is neither transparent nor easy to understand. REDRESS has sought further clarification from the Home Office, specifically on the complaints process.<sup>67</sup> The Home Office has indicated that it will respond to REDRESS' request by 20 October 2014.

### Victimisation

15. Complainants and witnesses have been pressured to withdraw their allegations. Some complainants, and key witnesses, have been removed from the UK before allegations have been investigated.<sup>68</sup> In September 2013, the *Observer* reported that "Tanja", a 23-year-old Roma detained at Yarl's Wood IRC was forced to give oral sex on two occasions.<sup>69</sup> She alleged she was pressured to withdraw her complaint, was bullied by guards and "started self-harming."<sup>70</sup> News reports indicate that there were attempts to deport her to at least nine different countries while her complaint was investigated.<sup>71</sup> Complainants raising different concerns under article 3 of the ECHR

<sup>57</sup> UNHCR Detention Guidelines, Guideline 6.

<sup>58</sup> Home Office, 'Immigration statistics October – December 2013', 27 February 2014.

<sup>59</sup> International Detention Coalition, *There are alternatives: A handbook for preventing unnecessary immigration detention*, (Melbourne, 2011); glossary.

<sup>60</sup> SR Migrants 2012, para. 48.

<sup>61</sup> HMIP, ICBI, 'Joint Thematic Review', December 2012.

<sup>62</sup> Aspden, J. 'Evaluation of the Solihull Pilot for the UKBA and LSC', 2008, para 230, pp. 65-66.

<sup>63</sup> SR Migrants 2012, para. 56.

<sup>64</sup> SR Migrants 2012, paras.74-5.

<sup>65</sup> *Medical Justice* 'Biased and Unjust Immigration Detention Complaints Process' ('**Medical Justice Complaints Report**'), pp. 12-3.

<sup>66</sup> The *Observer*, *Serco, the Observer, and a hunt for the truth about Yarl's Wood asylum centre*, 17 May 2014; The *Observer*, *Detainees at Yarl's Wood immigration centre 'facing sexual abuse'*, 14 September 2013.

<sup>67</sup> REDRESS Freedom of Information Request, 5 September 2014, available upon request.

<sup>68</sup> *Medical Justice Complaints Report*, pp. 12-14, p.17.

<sup>69</sup> *Ibid*; see also; The *Observer*, *Yarl's Wood affair is a symptom, not the disease*, 14 September 2013.

<sup>70</sup> The *Observer*, *Yarl's Wood abuse allegations: Tanja's story*, 14 September 2013, ('**Tanja's Story, Observer**').

<sup>71</sup> *Tanja's Story, Observer*

(such as failures to provide adequate access to medication<sup>72</sup> or voyeurism<sup>73</sup>) have been removed from the UK before investigations have been completed.<sup>74</sup> These practices go against recognised best practices according to which detainees must feel able to make a complaint without fears of victimisation and/or reprisals. Where complaints raise allegations of article 3 violations, authorities must undertake prompt, impartial and effective investigations, including interviewing witnesses.<sup>75</sup> Failure to do so may result in a violation of article 3.

### Confidentiality

16. Information about complaints has inappropriately been passed on to Home Office caseworkers assessing immigration or asylum applications,<sup>76</sup> which seriously undermines the perceived impartiality and effectiveness of existing complaints procedures.<sup>77</sup> Detainees often do not report complaints for fear that this could adversely affect the outcome of their applications to remain in the UK. Detainees should be assured this will not, in fact, happen and that any complaints raised will instead be considered under a separate process with the details kept confidentially.<sup>78</sup>

### Oversight

17. A number of complaints have not been investigated thoroughly and, instead, have been subject to out-of-court civil settlements for undisclosed sums.<sup>79</sup> When complaints raise allegations of human rights violations, it is in the public's interest to be informed of them. To ensure public oversight, as well as transparency and accountability, all complaints of "gross or serious misconduct" (as defined in the *Handling of complaints Guidance manual for the Home Office and its contractors*<sup>80</sup>) should be notified to an independent body and it should be kept informed of all steps taken to investigate the allegations, as well as to remedy any breaches found. International monitoring entities and/or position holders must also be given access to audit sites of detention under the UK's control.<sup>81</sup>

**The Inquiry should consider *proposing* the establishment of a statutory overarching institution (independent from the Home Office and PSCs) responsible for investigating individual and system-wide complaints of gross or serious misconduct in all places of immigration detention, and deportation flights.<sup>82</sup> Alternatively, further powers should be given to existing monitoring entities (such as the PPO) to ensure that they receive notifications of all gross or serious misconduct allegations made, and are informed of all steps taken to investigate the allegations, as well as to remedy any breaches found. Oversight position holders, bodies or institutions should be required to report to Parliament, as well as the public; and all reports and investigations should be publicly available and open to outside scrutiny (albeit with information revealing the identity of named persons withheld). Finally, we encourage the Inquiry to call upon the *Home Office* to create guidelines for the handling of complaints affirming that: complaints remain confidential; complainants do not suffer victimisation and/or reprisals; complainants and witnesses in ongoing investigations into allegations of serious or gross misconduct in IRCs are protected to enable a thorough investigation to be undertaken, as required under article 3 of the ECHR.**

<sup>72</sup> [ECtHR] *Mkhitaryan v. Russia* Case of *Popov v. Russia*, App. no. 26853/04; [UN HRC] *Kelly v. Jamaica*, Communication No. 253/1987; [UN HRC] *C. v. Australia*, Communication No. 900/1999; [ECtHR] *Gurenko and Gorbunov; Tsokas and others v. Greece*, 28 May 2014.

<sup>73</sup> [ECtHR] *Aleksandr Makarov v. Russia*, App. no. 15217/07; [ECtHR] *Kalashnikov v. Russia*, App. no. 47095/99; [UN CEDAW] *Matthews v. Trinidad and Tobago*, Communication no. 569/1993; [UNCEDAW] *Abramova v Belarus*, CEDAW/C/49/D/23/2009 (27 July 2011), para. 7.7.

<sup>74</sup> Medical Justice Complaints Report, pp. 12-14, p.17

<sup>75</sup> [ECtHR] *MC v Bulgaria* (2005) 40 EHRR 20 (4<sup>th</sup> December 2003) para 168; [ECtHR] *Milanovic v Serbia* App No 44614/07 (14<sup>th</sup> December 2010) [2010] ECHR 2029, para 84.

<sup>76</sup> Medical Justice Complaints Report, p. 16

<sup>77</sup> David Sloss *The Domestication of International Human Rights: Non-Self-Executing Declarations and Human Rights Treaties* in 24 International Yale Journal of International Law 1999 129, at p. 143; UNGA, SR Torture: 'Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment', Annex to A/54/426, UN Doc. E/CN.4/2001/66, 25 January 2001, para 131.

<sup>78</sup> [CPT], Report to the Government of Cyprus on the visit to Cyprus 22-30 May 2000, CPT/Inf (2003) 1, para.41; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment', 9 December 1988, A/RES/43/173, Principle 33 (3): 'Confidentiality concerning the request or complaint shall be maintained if so requested by the complainant.'

<sup>79</sup> The Texas Observer, *The Percos Insurrection: how a private prison pushed immigrant inmates to the brink*, 8 October 2009, New York Daily News, *Disciplinary action taken after inmate Marcia Powell dies from being put in outdoor cell in heat*, 23 September 2009; Sydney Morning Herald, *Government in fight over refugee injury claims*, 20 July 2014.

<sup>80</sup> HMG, 'Handling of complaints in immigration removal centres, short term holding facilities, holding rooms and during escort: Guidance manual for UKBA staff & contractors working under contract to detention services', June 2011, ('**UK Guidance Complaints Handling**'), pp. 27-8.

<sup>81</sup> The Guardian, 'UN special rapporteur criticises Britain's 'in-your-face' sexist culture: Rashida Manjoo also says Home Office refused to allow access to Yarl's Wood immigration centre on fact-finding mission', 15 April 2014.

<sup>82</sup> [ECtHR] *MC v Bulgaria* (2005) 40 EHRR 20 (4<sup>th</sup> December 2003) para 150; [ECtHR] *Szula v United Kingdom* (2007) 44 EHRR at para.173.

## V. Undertaking thorough investigations into allegations of violations of human rights

18. Independent investigations are not being carried out in response to credible allegations of violations of torture or other ill-treatment as required by article 3 of the ECHR.<sup>83</sup> The failure to conduct a prompt, impartial and thorough investigation into allegations of torture or ill-treatment can lead to a violation of article 3. There is ample international jurisprudence according to which sexual abuse by guards on women in custody can amount to torture or other forms of ill-treatment.<sup>84</sup> On the face of it, the allegations made by Sana and Tanja raise credible concerns that fall under article 3 of the ECHR. Yet, in Sana's case Serco failed to refer the matter for independent investigation.<sup>85</sup> Instead, it undertook its own internal investigation. Following that, a separate investigation was undertaken by the UKBA Professional Standards Unit. Detention Services Order 01/2011 recognises that neither entity constitute "independent bodies" suitable for investigating allegations of torture and/or ill-treatment.<sup>86</sup> The inadequacy of Serco's investigation have been well-publicised;<sup>87</sup> for example, Serco failed to treat Sana's allegations as *prima facie* valid suggesting instead that she, with her lawyers or supporters, colluded to raise the allegations as a strategy to enable her to remain in the UK. In addition, the Serco report has not been made public, raising further oversight concerns and highlighting why article 3 requires independent investigations into allegations of gross or serious misconduct.

### Thorough investigation?

19. REDRESS is concerned that a thorough investigation in Sana's case was not undertaken by either Serco or Bedfordshire Police. After her case was eventually referred to Bedfordshire Police, the police undertook a "brief investigation" and reached a "definitive conclusion" to dismiss her allegations **without having**: i) considered all three of her separate allegations; ii) interviewed the Serco officer who took her complaint at the outset; or iii) sent an officer familiar with handling sexual assault cases (contrary to the police's own "*Policy for the Investigation of Rape and Serious Sexual Assaults*").<sup>88</sup> The PPO found it difficult to understand "how the police found it possible to reach such a definitive conclusion after such a brief investigation" which appears to have been completed "in a matter of hours."<sup>89</sup> In a recent case, the High Court found that the following systematic serious failures by police resulted in a violation of article 3 of the ECHR, namely:<sup>90</sup> to train relevant officers in the intricacies of sexual assaults, the supervision of investigations and the collection and use of intelligence sources; to interview vital witnesses, and other failures to collect key evidence;<sup>91</sup> to maintain the confidence of victims in the integrity of the investigative process; and to allocate proper resources to allegations of sexual assaults.<sup>92</sup>

### Current UK Position on Independent Investigations

20. Detention Services Order 01/2011 (which provides specific guidelines on responding to allegations of torture or ill-treatment) does not comply with UK or international law.<sup>93</sup> The Order provides that access to civil, or administrative proceedings in the courts, or a referral by the complainant to the PPO may negate the need for an independent investigation.<sup>94</sup> However, the mere fact that a civil claim against the offender has succeeded and/or that disciplinary measures have been taken against officers is not sufficient; article 3 requires an effective **criminal investigation**.<sup>95</sup> This obligation applies *ex officio*, i.e. even in the absence of a complaint. Each separate credible allegation of torture and/or ill-treatment must be subject to an independent investigation, and not only

<sup>83</sup> Ibid.

<sup>84</sup> See for example; *Aydin v. Turkey*; 23178/94; 25/09/1997, *Reports 1997-VI* [GC]; J v. Peru; P. E. v. France, Communication No 193/2001, 21 November 2002.

<sup>85</sup> Detention Services Order 01/2011, Commissioning Of Investigations and Management Reviews Into Incidents Occurring In the UK Border Agency's Detention Estate ('**Detention Services Order 01/2011**').

<sup>86</sup> Ibid.

<sup>87</sup> The Observer, 'MPs to investigate Serco over sex assault claim at Yarl's Wood centre', 17 May 2014.

<sup>88</sup> Special Notice 11/02 (9<sup>th</sup> August 2002) entitled 'A policy for the investigation of rape and serious sexual assaults'.

<sup>89</sup> PPO Report available from Harriet Wistrich representing 'Sana'.

<sup>90</sup> *DSD & Anor v The Commissioner of Police for the Metropolis* [2014] EWHC 436 (QB) (28 February 2014) para. 88; see also The Observer, 'Scandal of justice revolution that betrayed rape victims', 1 May 2005.

<sup>91</sup> See also [ECtHR] *Edwards v United Kingdom* 35 EHRR 19 (14<sup>th</sup> March 2002), para. 71; [ECtHR] *Denis Vasilyev v Russia* App No 32704/04 (17<sup>th</sup> December 2009) [2009] ECHR 2078, para. 100; *CAS & CS v Romania* App No 26692/05 (20<sup>th</sup> March 2012) [2012] ECHR 512

<sup>92</sup> *DSD & Anor*, para. 13.

<sup>93</sup> Detention Services Order 01/2011.

<sup>94</sup> Ibid.

<sup>95</sup> *DSD and NVB v Met*, Green, para. 222; see also *MC v Bulgaria*(2005) 40 EHRR 20 (4<sup>th</sup> December 2003).

where “it is difficult or not possible to identify those who are alleged to have breached the detainee’s rights” or “allegations of systematic ill treatment” as suggested by the Order.<sup>96</sup>

**REDRESS recommends that the Inquiry:**

- seek information from the *Home Office* on how it trains staff to identify issues under article 3 (and particularly sexual or gender based violence or abuse), including whether training on the Istanbul Protocol<sup>97</sup> is provided.
- recommend changes to the Detention Services Order 01/2011 so that where there is credible evidence of an arguable breach of article 3, an independent investigation is commenced.
- require Serco to share publicly their investigative report into allegations raised by Sana.

## VI. Bringing Appropriate Charges for Criminal Conduct

21. REDRESS is concerned that 16 months after commencing investigations into allegations of forced oral sex (raised by Tanja), the police and CPS have not yet decided whether charges will be brought. Upon undertaking an internal investigation, Serco dismissed three members of staff for behaving in an inappropriate ways towards Tanja.<sup>98</sup> On 18 September 2013 and then 4 July 2014, REDRESS wrote to Bedfordshire Police stating that if the allegations of forced sexual conduct by Serco staff against women in detention at Yarl’s Wood IRC are proven to be correct, they would amount to torture under UK and international law. The offence of torture should be taken into account when considering charges.<sup>99</sup> Further, corporate liability and/or the liability of persons other than the direct alleged perpetrators (the guards) should be fully considered.<sup>100</sup> As of 30 September 2014, REDRESS is unaware of any charges having being brought.
22. REDRESS is concerned that Serco categorically refutes “that there is a widespread or endemic problem” concerning sexual harassment or abuse at Yarl’s Wood IRC or that it has in any way tolerated or overlooked it.<sup>101</sup> Yet, in 2010, a 30-year-old woman became pregnant by an officer in Yarl’s Wood IRC.<sup>102</sup> In May 2014 a former Serco employee came forward claiming that some women felt they had to flirt with staff to obtain everyday essentials such as toiletries and that there was a “blind spot” inside the IRC, which was not covered by CCTV and was a well-known location for trysts.<sup>103</sup> Others have come forward making similar allegations,<sup>104</sup> some say they have been threatened with deportation.<sup>105</sup> Seeking sexual favours is not criminalised as “sexual abuse” in the UK<sup>106</sup> (unlike USA;<sup>107</sup> Brazil;<sup>108</sup> and Spain<sup>109</sup>) it only constitutes “misconduct in public office.”<sup>110</sup> Sexual conduct between staff, volunteers or contractors working in IRCs and detainees is something that can never be less than abusive given the vulnerable position that detained persons find themselves in.<sup>111</sup>

<sup>96</sup> Detention Services Order 01/2011, para. 32. [ECtHR] *Osman v United Kingdom* 29 EHRR 245 (28<sup>th</sup> October 1998), para. 115; [ECtHR] *Menson v. the United Kingdom* (dec.), App. no. 47916/99, ECHR 2003-V, page 229; [ECtHR] *Z & Others v United Kingdom* 34 EHRR 3 (10<sup>th</sup> May 2001) para [73]; [ECtHR] *MC v Bulgaria* (2005) 40 EHRR 20 (4<sup>th</sup> December 2003) paras [150]-[153]; [ECtHR] *Milanovic v Serbia* App No 44614/07 (14<sup>th</sup> December 2010) BAILII: [2010] ECHR 2029 para [86].

<sup>97</sup> Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2004.

<sup>98</sup> Tanja’s Story, Observer.

<sup>99</sup> Section 134 of the Criminal Justice Act.

<sup>100</sup> REDRESS: Yarl’s Wood Sexual Abuse Allegations, Case Docket.

<sup>101</sup> The Observer, Sexual abuse allegations corroborated at Yarl’s Wood immigration centre, 21 September 2013 (**‘Allegations Corroborated, Observer’**).

<sup>102</sup> Tanja’s Story, Observer

<sup>103</sup> The Observer, *Serco whistleblower’s Yarl’s Wood sex claim*, 24 May 2014.

<sup>104</sup> *Ibid*; see also The Observer, *Serco, the Observer, and a hunt for the truth about Yarl’s Wood asylum centre*, 17 May 2014 (**‘Hunt for Truth, Observer’**); File on Four programme, Sunday 29 June 2014; and Allegations Corroborated, Observer.

<sup>105</sup> Hunt for Truth, Observer.

<sup>106</sup> Sexual Offences Act 2003.

<sup>107</sup> In the U.S., a staff member, contractor, or volunteer working within a detention setting can be found guilty of sexual abuse (not ‘misconduct in public office’) where – with or without consent of the inmate, detainee, or resident – they engage in sex; intentional contact with the intent to abuse, arouse, or gratify sexual desire; display uncovered genitalia, buttocks, or breast in the presence of an inmate, detainee, or resident; or invade the privacy of an inmate, detainee, or resident for reasons unrelated to official duties (this includes peering at an inmate who is using a toilet in his or her cell to perform bodily functions; requiring an inmate to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an inmate’s naked body or of an inmate performing bodily functions). Further, sexual harassment includes repeated and unwelcome sexual advances, requests for sexual favours, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature.

<sup>108</sup> Art.216: Criminal Code.

<sup>109</sup> Art. 443: Criminal Code.

<sup>110</sup> Common law offence, see CPS Guidance.

<sup>111</sup> HMIP Report, Yarl’s Wood 2012.

23. REDRESS is unaware that any individuals have faced “misconduct in public office” charges.<sup>112</sup> This is in stark contrast to prison warders that have been found to have had consensual sexual conduct with prisoners. In one case, a prison governor was sentenced to 5 years in prison which the judge hoped would “deter other prison officers tempted to make sexual advances to prisoners.”<sup>113</sup> In another case, a prison warder was sentenced to 15 months for engaging in consensual sexual acts on two occasions. In sentencing the judge made references to the particular vulnerability of women detainees subject to supervision by male guards and stipulated that in these contexts, sexual relationships “must result in an immediate period of imprisonment.”<sup>114</sup> On another occasion a prison warder was sentenced to nine months after she became pregnant following a relationship with a male detainee.<sup>115</sup> There are no justifications for differential treatment nevertheless the overall approach and responses indicate that detainees held in IRCs enjoy lesser protection than those detained in prison.

**REDRESS recommends that the *Inquiry* seek clarifications from *Bedfordshire Police and the CPS* in relation to whether charges will be brought concerning Tanja’s allegations, and in relation to any of the other allegations of sexual misconduct emanating from ex-staff and women that have been detained at Yarl’s Wood IRC; and consider *proposing the criminalisation of soliciting sexual favours* such that where prison staff or IRC staff, contractors, sub-contractors, or volunteers are found to be seeking or receiving sexual gratification in return for granting favours, they can be charged with sexual abuse (not “misconduct in public office”).**

## VII. It is not possible to contract out responsibilities

24. The Home Office is not meeting its obligations to ensure that the human rights of IRC detainees are protected, and that human rights violations are prevented. The contracting-out of state functions to PSCs must not lead to a reduction in the democratic control, transparency and accountability of conditions in immigration detention.<sup>116</sup> IRCs are predominantly managed by PSCs.<sup>117</sup> PSCs are also responsible for escorting individuals in removal flights. This does not absolve HMG from ensuring compliance with its human rights obligations in these contexts.<sup>118</sup> Where the management of IRCs, short-term removal centres, or the escorting of detainees in removal flights – or other aspects of immigration control – are contracted out to private security companies (“PSCs”), the state remains responsible for ensuring compliance with its human rights obligations.<sup>119</sup> At the same time, PSCs, their sub-contractors and staff must protect the human rights of detainees in their control and be held accountable when they fail to do so.<sup>120</sup>
25. The Special Rapporteur on Migrants has raised concerns that the private management of IRCs risks privileging low costs, without giving sufficient attention to the obligation to treat those detained with humanity and with respect for their dignity.<sup>121</sup> In 2013, it emerged that two private security contractors – Group 4 Securicor plc (“G4S”) and Serco – responsible for providing services to the Ministry of Justice and managing IRCs – had been overcharging HMG for phantom costs, since 2005. Until G4S and Serco agreed to repay £109million and £70.5million, respectively, to the Ministry of Justice both companies were barred from bidding for government contracts.<sup>122</sup> Both companies have also faced allegations of ill-treating individuals detained in custody in other

<sup>112</sup> REDRESS has located more than fifteen news reports of convictions in this context, details of which are available upon request.

<sup>113</sup> BBC, Downview sex case prison governor jailed, 18 July 2007.

<sup>114</sup> Mirror, ‘Prison officer jailed for 15 months for having an affair with an inmate’; Mirror, (21 July 2014).

<sup>115</sup> Evesham Journal, ‘Jailed for sex with drug dealer’, 6 December 2007.

<sup>116</sup> Council of Europe Parliamentary Assembly, ‘Recommendation 1858: Private Military and Security Firms and Erosion of the State Monopoly on the Use of Force,’ 2009.

<sup>117</sup> Home Office, ‘immigration enforcement contracts’, FOI request, 7 July 2014; and HMG, ‘Length and value of Contracts between Home Office and G4S, Serco, Capita, Atos organisations’.

<sup>118</sup> Migrant Rights Convention General Comment No. 2, para. 35; The Guiding Principles on Business and Human Rights (A/HRC/17/31); UN HRC, communication No. 1020/2001 (para. 7.2).

<sup>119</sup> *R (on the application of) v SSHD* [2011] EWHC 2120 (Admin), para. 222; *FGP v Serco Plc & Anor* [2012] EWHC 1804 (Admin) (05 July 2012), para. 2; *S, R (on the application of) v SSHD* [2011] EWHC 2120 (Admin), para. 221.

<sup>120</sup> *FGP v Serco Plc & Anor* [2012] EWHC 1804 (Admin) (05 July 2012), para. 61.

<sup>121</sup> SR Migrants 2012, para 34, pg. 9

<sup>122</sup> Guardian, G4S agrees to repay £109m for overcharging on tagging contracts, 12 March 2014.

countries.<sup>123</sup> This, however, does not appear to have impacted their ability to tender for public service contracts. In September 2013, HMG confirmed its commitment to ensuring that human rights matters are reflected appropriately in procurement rules.<sup>124</sup> It confirmed that public procurement rules enabled public bodies to exclude tenderers from bidding for a contract opportunity in certain circumstances, including where there is information showing grave misconduct, including breaches of human rights, by a company in the course of its business or profession.<sup>125</sup> One year on, it is unclear how the government proposes to implement this policy.

26. Unlike the UK, other countries have taken action to preclude companies from managing IRCs (such as in Sweden and Estonia).<sup>126</sup> In Australia, in 2003, the Florida-based company GEO Group PLC lost its contract amid a commission's findings that detained children were subjected to cruel treatment.<sup>127</sup> GEO Group PLC also lost a management contract in Texas, in 2007, after auditors found inhumane detention conditions.<sup>128</sup> Yet, in 2011 GEO Group UK Ltd<sup>129</sup> won contracts to manage two IRCs. In January 2014, HMIP's chief inspector of prisons, Nick Hardwick, accused the GEO managed IRC at Heathrow (Harmondsworth IRC ) of a shocking loss of humanity after a terminally-ill Canadian man was kept in handcuffs as he died in hospital.<sup>130</sup> In June 2014 a jury in an inquest found that neglect by officers at Harmondsworth IRC contributed to the death of Brian Dalrymple, who had schizophrenia and dangerously high blood pressure.<sup>131</sup> Both neglect and excessive hand-cuffing raise issues under article 3 of the ECHR. REDRESS is not aware of any independent investigation into these incidents leading to criminal charges, however.
27. REDRESS has been able to locate a significant amount of information conveying that each of the PSCs currently providing immigration detention services have been implicated in human rights abuses.<sup>132</sup> The fact that repeated complaints surface in all of the countries in which these companies operate suggests that there are systemic issues with the way these companies operate. Where the UK has knowledge that companies may endanger the lives of detainees or subject them to torture or ill-treatment, it has an obligation to do all that it can reasonably to do avoid the risk.<sup>133</sup>
28. REDRESS has requested further information from the Home Office about the contractual arrangements between the Home Office and PSCs to assess whether there are sufficient safeguards to enable the government to withdraw from a contractual agreement where the companies have been implicated in human rights violations, and also to assess whether the contracts contain provisions within them that enable the Home Office to initiate different punitive measures, such as imposing fines or withholding money owed until the provision of services meets human rights standards. The Home Office has indicated that it will respond to our request by 20 October 2014.

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<sup>123</sup> In relation to the conduct of **G4S** related companies in: **A. Australia** see: 1) Department of Commerce, Prosecution Details – G4S Custodial Services Pty Ltd; 2) The Guardian, 'Manus unrest: two guards charged with murder', August 19 2014; 3) Knowledge Consulting, 'Findings and Recommendations from Report of Investigation on behalf of the Department of Immigration and Multicultural and Indigenous Affairs concerning Allegations of Inappropriate Treatment during Transfer from Maribyrnong Immigration Detention Centre to Baxter Immigration Detention Facility', July 2005; Sydney Morning Herald, 'Cry in a dark prison cell echoes in a failed system', 29 May 2011; Sydney Morning Herald, 'Prisoner wins payout over wardens' sausage prank', June 8 2008; ABS, 'Damning report into Victoria's privatised prisons', Transcript, 27 April 2000; Canberra Times, 'Govt suing detention operators', October 10 2011. **B. Iraq** see Asser Institute, 'Danny Fitzsimons – case summary', International Crimes Database, 09 August 2009; **C. Israel and the OPT** see Leigh Day, Investigations, 02-Jun-14; and The Guardian, Children Detained, 22 January 2002. **D. South Africa** see The Guardian, 'G4S-run prison in South Africa investigated over abuse claims', 28 October 2013. The Guardian, 'South Africa takes over G4S prison after concerns', 9 October 2013. **E. UK** BBC News, 'Clive Carter jailed for life for Khanokporn Satjawat SECC murder', 29 October 2013; The Guardian, 'Jimmy Mubenga coroner issues damning report on deportations', 4 August 2013; HMIP Brook House IRC Report 15 - 19 March 2010. REDRESS has collated similar information in relation to Serco, which it can make available upon request.

<sup>124</sup> UK Good Business Implementing the UN Guiding Principles on Business and Human Rights, September 2013, pg. 9-10.

<sup>125</sup> UK Good Business Implementing the UN Guiding Principles on Business and Human Rights, September 2013, pg. 9-10; National Action Plan Substantive Elements to be Included in Guidance on National Plans to Implement the Guiding Principles on Business and Human Rights 1 July 2014 Consultation document.

<sup>126</sup> Sweden abandoned private contracting in 1997, following instances of violence, hunger strikes, suicide attempts and unrest in detention centres. The government transferred responsibility to the Migration Board, requiring that qualified health professionals be available and that facilities not resemble prison cells: further information, p. 12.

<sup>127</sup> New York Times, Companies Use Immigration Crackdown to Turn a Profit, 28 September 2011.

<sup>128</sup> The Texas Youth Commission, 'Coke County Juvenile Justice Center Audit', 02 October 2007.

<sup>129</sup> A wholly owned subsidiary of GEO Group, Inc., registered in the U.S.; <http://www.geogroup.co.uk/who-we-are>

<sup>130</sup> Guardian, 'Detention centre castigated over death of elderly man', 16 January 2014.

<sup>131</sup> Guardian, 'Inquest blasts immigration centre's shambolic records in US man's death', 27 June 2014.

<sup>132</sup> REDRESS has collated material related to over fifty allegations, see Annex.

<sup>133</sup> [ECtHR] *Osman v United Kingdom* 29 EHRR 245 (28 October 1998), para 116; [ECtHR] *Z & Others v United Kingdom* 34 EHRR 3 (10 May 2001), para. 73.

We encourage the Inquiry to:

- determine with precision whether *HMG* has plans to implement its own policy to exclude tenderers from bidding for a contract where there is information showing grave misconduct by a company in the course of its profession, and if so, what these are and the precise time-table for their implementation;
- determine whether there are safeguards in place that would enable *HMG* to undertake the following, or similar, measures where there is information that a contractor (or its subcontractor) is failing to uphold its obligations (with carrying degrees of penalties depending on the failure of the company): rescind a contractual arrangement; withhold monies due under a contractual arrangement; and/or fine companies for non-compliance with the obligations, including their obligations to uphold the human rights of detainees in their control; and
- request information from the *Ministry of Justice* as to whether criminal charges have ever been brought against any of the companies or its staff that have managed IRCs in the UK or been responsible for escorting detainees on removal flights from the UK, in order to ensure corporate accountability for human rights abuses that occur when administrative immigration detainees are under the control of PSCs.