



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

30 September 2014

Submission by René Cassin

Main contact: Shauna Leven, Director, René Cassin

**Address: JHub, Haskell House, 152 West End Lane,
London, NW6 1SD**

Tel: 020 7443 5130

Shauna.Leven@renecassin.org

<http://www.renecassin.org/>

About René Cassin

1. René Cassin is a London-based human rights non-governmental organisation that works to promote and protect universal human rights, drawing on Jewish experience and values. Jewish people have been forced to seek refuge from persecution throughout their history, and as such we feel uniquely compelled and qualified to speak out on the issues at hand.

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

2. **The political argument: Damaging the UK's reputation.** Indefinite detention causes long-term damage to detainees' physical and mental health. In May 2013, the UN Committee Against Torture (CAT), expressed its concern regarding the "*absence of limit on the duration of detention in Immigration Removal Centre*" and urged the UK to "*introduce a limit for immigration detention and take all necessary steps to prevent cases of de facto indefinite detention*".¹

3. **The UK is an anomaly.** The UK is the only country in Europe that has no time limit on detention and routinely detains migrants for years; most EU countries have time limits of two to six months. The UK has opted out of the EU Returns Directive, which sets a maximum time limit of 18 months.²

4. During the year ending June 2014, 29,050 people left detention. Of these, 19% had been in detention for between 29 days and two months and 14% for between two and four months. Of the 1,794 remaining, 148 had been in detention for between one and two years and 33 for two years or longer.³

5. In France, administrative detention is "*limited to the time strictly necessary to organise the removal and, except in some cases, cannot exceed 45 days*".⁴ Comparison between France and the UK shows that even with a time limit of 45 days, France has enforced more than twice as many removals than the UK (54.4% more in 2011 and 60.8% more in 2012).⁵

6. **The High Court has repeatedly found indefinite detention of migrants unlawful.** In 2011, in the case "*R (on the application of Sino) v Secretary of State for the Home Department*"⁶, the High

¹ Committee Against Torture, [Concluding observations on the fifth periodic report of the United Kingdom, adopted by the Committee at its fiftieth session \(6-31 May 2013\)](#), par. 30, CAT/C/GBR/CO/5.

² Council of European Union, [Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals](#), Article 15. 5 and 15.6.

³ Home Office, [Immigration statistics, April to June 2014](#), 12.2 Length of detention.

⁴ Article 555-1 of the CESEDA – Code of entry and stay of foreigners and asylum law. Information available in French at: <http://vosdroits.service-public.fr/particuliers/F2780.xhtml>

⁵ For figures in France, see: Le Figaro, [Record d'expulsions pour les sans-papiers en 2012](#) and for UK figures, see: Home Office, [Immigration Statistics. October – December 2012](#). In 2011, 32,912 foreigners were removed from French territory whilst only 15,012 were removed from England and in 2012 the UK removed 14,435 migrants whilst France removed 36,822 irregular migrants.

⁶ [Sino, R \(on the application of\) v Secretary of State for the Home Department](#) [2011] EWHC 2249 (Admin) (25 August 2011)

Court held that the entire period of detention of an Algerian man was unlawful for a period of four years and eleven months. In 2012, the High Court also declared the detention of a man for more than six months unlawful in the case “*HA (Nigeria) v Secretary of State for the Home Department*”⁷. More recently, in July 2014, the High Court ruled that the Home Secretary falsely imprisoned the wife of a UK resident refugee over an eleven month period.⁸

7. **The financial argument: Wasting tax-payers’ money.** Each year, 76 million pounds are spent detaining people who are ultimately released,⁹ including the huge sums paid as compensation for unlawful detention (12 million pounds in 2009-10). By identifying unreturnable migrants earlier, the UK could save the equivalent in cost of at least three detention centres, or 60 million pounds¹⁰, over a five year period.¹¹

8. **The efficiency argument: Encouraging complacency and warehousing of migrants.** The Independent Chief Inspector’s joint investigation with HM Inspectorate of prisons, found inefficiency and poor quality decision-making.¹² Without a time limit, officials have no clear deadline by which to return people. Further, the Independent Chief Inspector of Borders and Immigration found that in many long-term detention cases “*there was little prospect of a travel document being obtained within a reasonable timescale*”, and recommended the creation of an independent mechanism to review long-term cases.¹³

9. **The longer a person is detained, the less likely they are to be removed from the UK.** According to 2013 Home Office statistics, of migrants leaving detention after more than a year inside 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.¹⁴

10. **The dramatic increase in the numbers of migrants in detention has led to no increase in the numbers of removals from the UK.** Since 2008, the numbers of migrants in detention has increased 35%, yet numbers of enforced removals have actually declined by 24%.¹⁵

⁷ [HA \(Nigeria\) v Secretary of State for the Home Department\[2012\]](#), EWHC 979, 17 April 2012.

⁸ *MD v Secretary of State for the Home Department* [2014], EWHC 2249, 8 July 2014.

⁹ Matrix Evidence, [An economic analysis of alternatives to long-term detention](#), Final Report September 2012.

¹⁰ It costs roughly 20 million pounds per year to run a detention centre. There are currently [12 immigration removal centres](#), The [latest](#), Brookhouse and Morton Hall opened in 2009 and 2011 respectively. HMP The Verne reopened in March 2014 as a prison exclusively for immigration detainees. Up to 580 migrants will be detained under the Prison Rules.

¹¹ *Ibid*, p.17.

¹² Independent Chief Inspector of Borders and Immigration and HM Inspectorate of [Prisons, The effectiveness and impact of immigration detention casework](#), December 2012.

¹³ Independent Chief Inspector of Borders and Immigration, [An Inspection of the Emergency Travel Document Process May-Sep 2013](#), p4.

¹⁴ Home Office, Immigration Statistics October to December 2013, Detention, table dt_06

¹⁵ Enforced removals fell from 17,239 in 2008 to 13,051 in 2013.

11. As recommended by the UN Committee Against Torture, René Cassin urges the UK to “[e]nsure that detention is used only as a last resort”.¹⁶ We recommend the introduction of the best recent practice in Europe also advised by the Joint Committee on Human Rights of a limitation to detention of 28 days.¹⁷

How far does the current detention system support the needs of vulnerable detainees, including pregnant women, detainees with a disability and young adults?

12. **With the Detained Fast Track System (DFT) more asylum-seekers are now detained, at the taxpayer’s expense, for longer periods and in worse conditions.** The DFT places an asylum seeker in detention for the time it takes to process their claim; this is intended to expedite the process but in practice only results in people being kept in detention for longer. Since its introduction in 2000, the DFT has grown vastly in scope and size.

13. In July 2014, the High Court found “deficiencies” in the screening process of the DFT and ruled that “*the process inherently cannot identify all the claims which are in fact unsuitable for detention or a quick decision*”¹⁸. Mr Justice Ouseley expressed “*real unease about the cases which go through the DFT system when they should not have done so*”¹⁹ and ruled that “*the DFT as operated carries an unacceptably high risk of unfairness, thus crossing the threshold of unlawfulness*”.²⁰

14. **The UK government must ensure that each applicant has access to high quality legal advice.** On 1 April 2013, legal aid for immigration and asylum cases was significantly reduced to a few specific areas of immigration. In this highly complex area it is unrealistic for vulnerable people to prepare cases without legal help.²¹ As Court of Appeal Judge Lord Justice Longmore stated, ‘*it cannot be expected that a defendant could keep up with the complex law without specialist legal advice*’.²²

15. The UN Committee Against Torture expressed its concern regarding “[i]nstances where children, torture survivors, victims of trafficking and persons with serious mental disability were detained while their asylum cases were being decided” and “[c]ases of torture survivors and people with mental health conditions entering the Detained Fast Track (DFT) system due to a lack of clear guidance and inadequate screening processes”.²³

¹⁶ Committee Against Torture, *Concluding observations on the fifth periodic report of the United Kingdom*, *op. cit.* 1, par. 30.

¹⁷ Joint Committee on Human Rights, [The treatment of asylum seekers](#), 22 March 2007, p.83, par.246.

¹⁸ *Detention Action vs Secretary of State for the Home Department* [2014] EWHC 2245 (Admin), 9 July 2014, par. 112.

¹⁹ *Ibid*, par. 194.

²⁰ *Ibid*, par. 192.

²¹ New legal aid changes were introduced through the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

²² *AA (Nigeria) v SSHD* [2010] EWCA Civ 773

²³ Committee Against Torture, *Concluding observations ... op.cit. n°5, par. 30(a) and (b)*

16. The CAT issued two recommendations where it urged the UK to: “[e]nsure that detention is used only as a last resort (...), not for administrative convenience” and “to [t]ake necessary measures to ensure that vulnerable people and torture survivors are not routed into the Detained Fast Track System”.²⁴

17. **The asylum process is particularly damaging for children**, who will experience disrupted education; integration problems; trauma from prison-like conditions in detention centres; and, destitution caused by low levels of child benefits.²⁵ This exacerbates the existing traumas they have experienced in their home countries and en route to the UK. Despite the Government announcement in December 2010 that it would be ending child detention by May 2011, the practice continues in the UK. Following the Government announcement, the number of children entering detention has fallen, however, detention of children remains alarming: between July and September 2013, 65 children entered detention²⁶ and in the last quarter of 2013, 63 children entered detention. The latest figures released by the Home Office in June 2014, record that 19 children entered detention immigration removal centres in the second quarter of 2014.²⁷

18. A 2010 report found that 74 out of 141 child asylum seekers studied suffered psychological harm as a result of immigration detention, with symptoms such as anxiety, loss of appetite, and bed wetting.²⁸ 92 children had developed physical symptoms including fever, vomiting, and coughing up blood.²⁹ Children were also exposed to out of date food and witnessed violence between adult detainees.³⁰

19. **The UK is failing to meet human rights obligations by detaining the mentally ill.** Immigration detention can have grave effects on the mental health of asylum seekers,³¹ who already experience higher rates of mental illness than the general population.³² The UK is failing to comply with international legal standards by continuing to detain the mentally ill.³³

²⁴ *Ibid.*

²⁵ According to the [UK Border Agency](#), a lone parent aged 18 or over will only receive £43.94 per week. With a baby under the age of 12 months, the parent receives an extra £5 a week. Pregnant women and children aged between one and three years receive an extra £3 a week.

²⁶ Home Office, [Immigration statistics, July to September 2013](#), 13.2 key facts and [Immigration statistics, October to December 2013](#), 12.2 key facts.

²⁷ Home Office, [Immigration statistics, April to June 2014](#), 12.1.

²⁸ Jon Burnett, [State Sponsored Cruelty: Children in Immigration, Summary Report](#), Medical Justice, 1 (09 Sept. 2009).

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ United Nations High Commissioner on Refugees, [Back to the Basics: The Right to Liberty and Security of Person and ‘Alternative to Detention’ of Refugees, Asylum-Seekers, Stateless Persons, and Other Migrants](#), 48-49, U.N. Doc. PPLA/2011/01.Rev.1 (April 2011).

³² Sian Rees, [Mental Ill Health in the Adult Homeless Population: A Review of the Literature](#), Crisis, 9 (March 2009).

³³ The UN Human Rights Committee found that Australia breached the right not to be subjected to cruel, inhuman or degrading treatment or punishment, and the right of people detained to be treated with dignity, by continuing to detain people in the knowledge that it was contributing to mental illness. Human Rights Committee, [Madafferi v Australia](#), Communication No. 1011/2001, UN Doc CCPR/C/81/D/1011/2001 (2004), para 9.3.

20. **Detention exacerbates damages already affecting torture survivors in breach of human rights law.** Torture survivors already suffer psychological and physical damage as a result of their experiences³⁴ and the uncertainty of indefinite detention further increases suicidal intent, self-harm, depression, and may exacerbate physical maladies as well.³⁵ In contravention to international standards, in the UK there is no duty to proactively identify torture victims as ruled in the case *R. (on the application of MT (Congo)) v. Secretary of State for the Home Department* where a torture survivor was placed in the DFT. A similar outcome occurred in the combined cases of *The Queen on the Application of D v. Secretary of State for the Home Department and others* and *The Queen on the Application of K v. Secretary of State for the Home Department and others*.

What are your views on the current conditions within UK immigration detention centres, including detainees' access to advice and services?

21. As well as the problems highlighted elsewhere in this submission, we believe that there are several areas which need urgent attention:

22. **Deaths in removal centres.** In August 2011, separate investigations into three deaths in immigration removal have been launched by the police, amid growing concern about the treatment of detainees. Two men had died from suspected heart attacks at Colnbrook and the third had killed himself at the Campsfield House detention centre.³⁶ In May 2014 the number of recorded deaths that have taken place in immigration removal centres or shortly after release from immigration detention included 26 people.³⁷

23. **Sexual abuse in detention centres: the case of Yarl's Wood.** The Home office has received four complaints "of a sexual nature from detainees" relating to contractor staff at Yarl's Wood since 2008.³⁸ Allegations of guards inappropriately touching female detainees, entering rooms at night and making suggestions that they could help with immigration cases in return for sexual contact have been made and corroborated.³⁹ Almost 90% of people held at Yarl's Wood are women, yet about half the staff are male.⁴⁰ In April 2014, the UN Special Rapporteur into violence against women Rashida Majoo, was prevented from entering Yarl's Wood to investigate these allegations.⁴¹

³⁴ *Ibid.*

³⁵ Natasha Tsangarides, "[The Second Torture: The immigration detention of torture survivors- Summary Report](#)", *Medical Justice*, 3 (22 May 2012).

³⁶ The Guardian, "[Detention centre deaths spark police investigations](#)", 5 August 2011. See also the case of Alois Dvorzac, a 84-year-old man declared by doctors unfit for detention or deportation after he was diagnosed with Alzheimer's but who spent almost three weeks in Harmondsworth immigration removal. He finally died in January 2014 when he was taken to hospital in handcuffs and passed away while in restraints.

³⁷ Institute of Race Relations, "[Deaths in immigration detention: 1989-2014](#)", 8 May 2014.

³⁸ The Guardian, "[Yarl's Wood abuse allegations: Tanja's story](#)", 14 September 2013.

³⁹ The Guardian, "[Sexual abuse allegations corroborated at Yarl's Wood immigration centre](#)", 21 September 2013.

⁴⁰ The Guardian, "[Yarl's Wood sex inquiry witness to be deported without speaking to police](#)", 2 November 2013.

⁴¹ The Guardian, "[UN inspection of Yarl's Wood was blocked, claim campaigners](#)", 13 April 2014.

Majoo began her investigation the day after Christine Case, a Jamaican national, died inside Yarl's Wood after being denied medical attention.⁴²

24. **Anti-immigration culture in detention.** In May 2014, a former senior Serco official who worked at Yarl's Wood alleged that an anti-immigration culture was "*endemic*" among staff, and that vulnerable women have been deported without their mental health being properly assessed.⁴³

25. **Exploitation of detainees by contractors running detention centres.** An August 2014 report showed that firms were "*exploiting their captive migrant workforce*" by paying detainees as little as £1 an hour to cook and clean in immigration centres run by Serco, G4S and other contractors.⁴⁴ Had they been paid at the national minimum wage, the cost would have been more than £280,000.

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?

26. **The risks of absconding or reoffending are overstated.** Research by the Bail Observation Project and Bail for Immigration Detainees has found that such risk is routinely asserted without evidence at bail hearings, and that Home Office assessments of risk similarly lack evidence.⁴⁵

27. To the extent these risks exist, they can be managed more effectively and cheaply by allowing migrants to live in the community through reporting programmes and curfews. Detention Action is piloting a model which demonstrates 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. Work permits and earning a wage besides receiving NASS support should also be considered whilst the applicant is awaiting a decision to be made on their application.

28. **States that have tried working with migrants in the community have found that most comply voluntarily with immigration requirements, for a fraction of the cost of detention.** Australia introduced alternatives to mandatory indefinite detention in 2006 with case managers working with people in the community to resolve their immigration cases, helping them to access welfare, legal advice and voluntary return information. The programme costs \$AU38 per day, compared to \$AU125 for detention.⁴⁶ Similarly, Sweden achieved high rates of voluntary return through emphasis on dialogue with refused asylum seekers. Each refused asylum-seeker has

⁴² The Guardian, [Immigration Minister pledges full investigation over Yarl's Wood death](#), 1 April 2014.

⁴³ The Guardian, [Serco Whistleblower's Yarl's Wood sex claim](#), 24 May 2014.

⁴⁴ The Guardian, [Private firms "are using detained immigrants as cheap labour"](#), 22 August 2014.

⁴⁵ Bail for Immigration Detainees, *The Liberty Deficit: long-term detention and bail decision-making*, November 2012. <http://www.biduk.org/download.php?id=205>

⁴⁶ Also the programmes have a compliance rate of 93%, with 60% of those not granted a visa returning voluntarily to their countries of origin International Detention Coalition, *There are alternatives* (2011), p40.

approximately two months where they are supported by a case worker to leave voluntarily and detention is used only as a last resort.⁴⁷ 82% of returned asylum seekers in Sweden left voluntarily in 2008 and 80% between 2011-2013.⁴⁸

⁴⁷ International Detention Coalition, *There are alternatives. [A handbook for preventing unnecessary immigration detention](#)*, 2011, p35.

⁴⁸ Sweden secures the return of around 80% of refused asylum seekers. Centre for Social Justice, *Asylum Matters: Restoring Trust in the UK Asylum System*, December 2008 and Swedish Migration Board, unpublished statistics