



association of **visitors** to
immigration detainees

**Submission to the UN Committee for the Prevention of Torture
In advance of its visit to the United Kingdom**

February 2016

Submission by the Association of Visitors to Immigration Detainees (AVID)

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About AVID:

AVID (Association of Visitors to Immigration Detainees) is the national membership organisation of volunteer visitors to immigration detainees in the UK. Established in 1994, AVID is a registered charity with 17 independent member groups, who visit in every single Immigration Removal Centre (IRC) and Short Term Holding Facility (STHF) in the UK, as well as in some prisons. As such we have a unique perspective on detention nationally. Working with and through our membership, AVID collates evidence of the daily realities of immigration detention nationally and uses this to advocate for change.

Notes for the Committee in advance of their visit:

1. AVID wishes to note that in the four year's since the last visit of the CPT to the UK, there has been a continuing increase in immigration detention. Figures from September 2015 show that 32,741 people were held in immigration detention, the highest figure ever recorded. This figure does not include immigration detainees in prisons or non-residential short term holding facilities. This is despite the closure of two Immigration Removal Centres (IRCs), at Dover and Haslar.
2. This overuse of immigration detention in the UK has come under greater scrutiny, and criticism, in the four year period since the CPT's last visit. In particular, the 2015 cross party *Parliamentary Inquiry into the Use of Immigration Detention*¹ made several recommendations for systemic change, not least the introduction of a 28 day time limit on immigration detention. Also in 2015, Her Majesty's Inspectorate of Prisons articulated a similar call for a time limit on administrative immigration detention, reporting that 'rigorously evidenced concerns we have identified in this inspection provide strong support for these calls, and a strict time limit must now be introduced on the length of time that anyone can be administratively detained'². And finally, an *Independent review of welfare of vulnerable people in detention* was carried out, at the Home Office's request, by Stephen Shaw³. Published in 2016, his report makes important recommendations for change in the way in which vulnerable people are treated in detention, calls for a reduction in the use of detention, and proposes a 'strengthening of the legal safeguards against excessive lengths of detention'.
3. AVID welcomed the CPT's 2012 recommendation that the UK government should reconsider their policy of indefinite immigration detention (paragraph 113 of the CPT report). This recommendation was rejected by the government at that time. In light of the mounting criticism of long term detention, and the continued call for a time limit which is now being made by cross party parliamentarians, independent

¹ *The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom* A Joint Inquiry by the All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration (2015) <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>

² HMIP (2015) *Report on an unannounced inspection of Yarls Wood Immigration Removal Centre* (13 April – 1 May 2015) https://www.justiceinspectores.gov.uk/hmiprisons/inspections/yarls-wood-immigration-removal-centre/#.Vcp_FvIViko

³ *Review into the Welfare in Detention of Vulnerable Persons* A report to the Home Office by Stephen Shaw (January 2016) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/490782/52532_Shaw_Review_Accessible.pdf

inspection bodies, NGOs, and by the CPT, **we would urge the CPT to revisit their 2012 recommendation regarding indefinite detention.**

4. Further, and of great concern to us, on no less than six occasions in four years (2010 - 2014) the High Court has found that the prolonged immigration detention of mentally ill people amounted to breaches of their Article 3 rights. As yet, despite this case law and various subsequent high-level investigations and reviews, including that of the CPT itself, there have been no substantive policy changes regarding the detention of vulnerable people to ensure these breaches do not happen again. In our view this leaves many people in detention at risk, and this is a matter of some urgency.
5. Our submission focuses on the following four priority issues, which we recommend the CPT investigates during its forthcoming visit to the UK:
 - a. Detention of vulnerable people: particularly those with mental health needs, survivors of torture, and pregnant women
 - b. Use of handcuffs on vulnerable and dying detainees
 - c. Absence of statutory regulation regarding residential and non-residential short term holding facilities
 - d. Continued over-use of prisons to hold immigration detainees
6. We welcome the visit of the CPT to the UK to consider these issues. We would be more than happy to provide further information to the Committee either before or during their visit.

Immigration Detention of Vulnerable People

People with Mental Health Needs

7. Evidence repeatedly highlights the damage caused by indefinite detention to mental health, and yet in the past four years there has been little to no progress in addressing this. This is despite a major change in the commissioning process, from Home Office responsibility for commissioning of healthcare, to the NHS. There is yet to be any substantive policy change towards the detention of people with mental health needs.
8. There have been six cases in which the treatment of mentally ill immigration detainees has reached a level of severity so as to amount to inhuman or degrading treatment in breach of Article 3⁴. It is important to note that these are only those cases which were litigated to hearing, and it is highly likely that there are other cases in which claims alleging breaches of Article 3 were settled, or where the immigration detainee was unable to bring a claim because they were unable to access legal advice or were removed from the UK. The CPT noted in its last report that there were two such cases, it is therefore a grave concern that there have been a further four such findings in the interim period.
9. In 2013 the Royal College of Psychiatrists issued a position statement on the detention of people with mental disorders in immigration removal centres⁵. It states that IRCs are not *'appropriate therapeutic environments to promote recovery from mental ill health due to the nature of the environment and the lack of specialist mental health treatment resources'*. The Independent Monitoring Board for

⁴ R (S) v Secretary of State for the Home Department (2011) EWHC 2120 (Admin), R (BA) v Secretary of State for the Home Department (2011) EWHC 2748 (Admin), R (HA (Nigeria)) v SSHD (2012) EWHC 979 (Admin), R (D) v SSHD (2012) EWHC 2501 (Admin), R (S) v SSHD (2014) EWHC 50 (Admin), R (MD) v SSHD (2014) v SSH (2014) EWHC 2249 (Admin).

⁵ Royal College of Psychiatrists (2013) *Position Statement on the detention of people with mental disorders in Immigration Removal Centres* www.rcpsych.ac.uk

Harmondsworth in 2012 stated '*we continue to be shocked by the detention of those who are mentally ill*'.

10. Our own recent research into the immigration detention of 31 detainees identified as 'vulnerable' by visitors groups and detention NGOs⁶ showed that 77% (24 of the 31 cases) had experienced a mental health issue in detention. All 24 described their mental health worsening as detention continued. As W, from Pakistan, described '*Almost one month, without seeing the psychiatrist, I am totally mentally confused and I didn't see the psychiatrist before. I wanted to ask him because I can't sleep at night, I am forgetting things, and I wanted to ask him how I can improve, how can I help with my mental problems?*'
11. The *Independent Review of Welfare in Detention*, (Shaw Review) led by Stephen Shaw and commissioned by the Home Office itself, recognised that immigration detention complicates mental health and recommends policy change (February 2016).
12. Despite the broad range of expert evidence citing the damage caused, and the range of voices all making recommendations for change, the UK government has never acknowledged the systemic nature of the problems facing those with mental ill health in detention, and policy change has been slow to the point of stagnation.

Pregnant Women

13. In 2014, 90% of pregnant women detained in Yarl's Wood IRC were released back into the community rather than removed from the UK. Also in 2014, HMIP Inspection of Yarl's Wood called the IRC a 'national concern' and stated: 'A large number of pregnant women had been held with little or no recorded evidence of the exceptional circumstances justifying their detention⁷.' Despite this, the UK government continues to detain pregnant women indefinitely, despite the inherent risk.
14. In 2014, the Home Office settled a claim by a pregnant woman (PA) and apologised for unlawfully detaining her. The claimant, from the Democratic Republic of Congo, was detained for four weeks in breach of the policy towards the detention of vulnerable people. She was only seen by a midwife once in this time and missed her 20 week scan. As part of the settlement, the Home Office agreed to review the policy on the detention of pregnant women and to consult with stakeholders. This was anticipated to follow the Shaw Review.
15. In February 2016, the *Review into the Welfare in Detention of Vulnerable People* (Shaw Review) recommended that the 'presumptive exclusion' of pregnant women be replaced with an 'absolute exclusion'⁸.
16. The Home Office response to this review, so far, is in the form of a written ministerial statement which accepts that there needs to be a wider definition of 'at risk' including pregnant women. However the Home Office has also intimated to NGO stakeholders that it does not accept the recommendation to exclude pregnant women from detention.

Survivors of torture

⁶ This research was carried out by AVID and Gatwick Detainee Welfare Group as part of the Detention Forum. See Detention Forum (2015) *Rethinking 'Vulnerability' in Detention: A Crisis of Harm* available at www.detentionforum.org.uk

⁷ See footnote 2, above

⁸ See footnote 3, above, P12

17. According to the government's own policies, individuals who claim to have been tortured should not be held in immigration detention, and they should be released if there is independent evidence of torture, and there are no very exceptional circumstances to justify detention. In spite of this, repeated deficiencies in the system have led to the continued detention of torture survivors, contrary to various international human rights standards.
18. Our Detention Forum research into the cases of 31 vulnerable detainees clearly demonstrates that the systems in place to ensure torture survivors are not detained are inadequate. Almost one third of the cases involved detainees with a history of torture. In three of the cases, the history was declared in the substantive interview, but this was not followed up by decision makers⁹.
19. The *Review into the welfare in detention of vulnerable people* (2016) also demonstrates the failings in the system designed to protect this group and calls for the replacement of the current policy (Rule 35 of the Detention Centre Rules) in order to ensure that torture survivors are not detained.

Recommendations:

The CPT should ask the UK Government what specific actions it is taking in response to, and a timeframe for the implementation of the recommendations of, the 'Review into the Immigration Detention of Vulnerable People' by Stephen Shaw.

The CPT should ask the government what lessons have been learnt from the six Article 3 breaches of human rights of mentally disordered detainees and how it will address the systemic problems at the heart of these cases.

Use of handcuffs on vulnerable and dying detainees

20. In 2012, in Harmondsworth detention centre, a dying detainee, sedated and undergoing angioplasty was handcuffed during the procedure. Also in 2012 in the same centre, a detainee in a wheelchair was handcuffed on his way to hospital having suffered a stroke. In 2013, an 84 year old Canadian man, suffering from dementia, was detained at Harmondsworth detention centre. Despite the recommendations of a doctor there that he be released immediately, he was taken to hospital in handcuffs on two occasions. He died on the second visit.
21. This use of restraint was criticised by the HM Inspector of Prisons who considered the use of handcuffs to be 'excessive' and commented that 'a sense of humanity had been lost in the use of handcuffing of detainees who were dying'¹⁰. Concerns were also raised by the British Medical Association¹¹ particularly in regard to detainees who were 'frail or elderly'.
22. It has recently been brought to our attention that detainees at the Yarl's Wood detention centre, which holds women, were subjected to handcuffs routinely during escort to medical appointments. The reason given was that the escort company

⁹ See footnote 6 above.

¹⁰ HMIP, *Annual report 2013-14*

¹¹ <http://www.bma.org.uk/news-views-analysis/news/2014/january/restraint-of-immigrant-detainees-alarms-bma>

were taking women to a greater number of hospitals than before, and therefore the risk assessments were taking 'longer' to carry out, as each venue had to be checked. This had resulted in a spike in the use of restraints on individual detainees at Yarl's Wood, as it had raised the risk on assessment. This would suggest that the individual risk assessments were dependent on the medical centre rather than the individual.

23. In 2012, the CPT recommended that the UK authorities ensure that handcuffs are only used based on a thorough and individual risk assessment. While improvements have been noted in some detention centres¹², this is not consistent and handcuffing continues on a routine basis in some IRCs.

Recommendation: that the CPT asks the UK government for statistics on use of restraint in each IRC, and that it considers a sample of risk assessments from each IRC, to ascertain whether or not these assessments are indeed 'individual', or routine.

Short Term Holding Facilities

24. Our 2012 submission to the CPT outlined a range of concerns regarding the use of residential short term holding facilities (STHFs) for immigration detention. Unfortunately the CPT was unable to visit an STHF during the last visit, and we would urge the Committee to consider such a visit this time.

25. AVID has conducted visits to all three residential short-term holding facilities (Colnbrook, Larne and Pennine House). We have noticed marked differences in the material conditions of these facilities which make them unsuitable for extended stays of up to 7 days. For example, the facility at Larne in Northern Ireland is located in a working police station; detainees held there have limited access to social visitors and external supports as a result of heightened security restrictions.

26. In particular, Pennine House (Manchester Airport) is inadequate as the facility has no natural light or ventilation. Detainees wishing fresh air are escorted by staff to a small 'smoking area' encased by metal fencing and with a grille over the roof; the area is too small to even enable any exercise. There is no prayer room or space for worship in the facility. There is no provision for mental health and a paucity of information on legal advice.

27. Our key concern regarding residential short term holding facilities is that men and women are held on the same corridor in both Larne and Pennine House, an environment wholly inappropriate for vulnerable single women. While the facilities have rooms for women which can be separated from the male accommodation by a door, they are still on the same corridor. At Pennine House the women's shower cubicle is situated right next door to the men's. No provision is made for women to receive specific care during induction or information on services for vulnerable women. Sanitary products are available but there is no information provided on women's health or welfare needs. While women are allowed to eat in their rooms if they wish, this information is not relayed to the women themselves in the induction process.

¹² See, for example, Stephen Shaw's comments regarding Harmondsworth and Colnbrook detention Centres:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/490782/52532_Shaw_Review_Accessible.pdf (p143)

28. In all short term holding facilities we have grave concerns regarding the availability of legal advice or detainees rights, as there is no provision for publicly funded legal advice for those held in short term facilities, unlike that provided in IRCs. As many detainees held in these facilities are on the move- either to other facilities or out of the country- their need for quality legal advice is arguably even more necessary.

29. While the management of IRCs is subject to the Detention Centre Rules (a statutory instrument) and a set of publicly available operating standards, there is limited accountability in short term holding facilities as the UKBA has, to date, not yet produced either Rules or Operating Standards for its short term holding facilities. We have grave concerns about the lack of accountability in these facilities as a result. We have repeatedly been told by the UKBA that these Rules are in development (since 2004) but as of February 2016 there is still no published guidance.

Recommendations:

That the CPT should visit a residential short term holding facility

That the CPT should ask the Government to cease the practice of holding unrelated men and women in the same short term holding facility

That the CPT ask the Government to publish Statutory Guidance on short term holding facilities as a matter of urgency

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