



# Written evidence to the Home Office review into the welfare in detention of vulnerable persons

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Submission by René Cassin

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## ABOUT RENÉ CASSIN

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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 issue of asylum as it exists today.

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The recommendations submitted by René Cassin fall under the following categories:

1. Conditions in detention centres.
2. Access to justice.
3. Protection of vulnerable detainees, including those with special needs.
4. Introducing a time limit to detention.

We note that the Terms of Reference (TORs) of this review state that this inquiry should be focused on policies and practices affecting the welfare of detainees, and not the decision to detain. These two aspects are inextricably connected, and it is our recommendation that individuals with extreme vulnerabilities not be placed in detention centres. It is our belief that this recommendation is in line with the TORs, as these have specifically called for an inquest into determining the status of 'vulnerable' detainees, as a means of ensuring their welfare.

Further, René Cassin fully endorses the findings of The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom, conducted in 2014-2015 by the All Party Parliamentary Group on Refugees and the All Party Parliamentary Group on Migration.

## 1. Conditions in detention centres.

### a. Immigration Removal Centres should not be prisons.

The Detention Centre Rules of 2001 outline the purpose of Immigration Removal Centres, or detention centres as follows,

3. *(1) The purpose of detention centres shall be to provide for the secure but humane accommodation of detained persons in a relaxed regime with as much freedom of movement and association as possible, consistent with a safe and secure environment, and to encourage and assist detained persons to make the most productive use of their time, whilst respecting in particular their dignity and the right to individual expression.*

*(2) Due recognition will be given at detention centres to the need for awareness of the particular anxieties to which detained persons may be subject and the sensitivity that this will require, especially when handling issues of cultural diversity.<sup>1</sup>*

Despite the rules set out above, many detainees are held in prison-like conditions. The majority of IRCs currently in use are either converted high security prisons or were built on the model of prison standards. Not only does the physical layout of these facilities impact the quality of life of detainees, for example by inhibiting their freedom of movement within the centre, but it also has a profound effect on the culture and atmosphere created in these institutions. The prison-like conditions in IRCs contradict the Home Office's policy of maintaining a relaxed regime in detention facilities.

- **We recommend that detainees be held in accommodation that is conducive to the open and relaxed regime outlined in the Home Office's policies and the Detention Centre Rules (2001).**
- **We recommend the introduction of a clear time limit to the use of immigration detention in the United Kingdom. The introduction of this measure will be conducive to improving the standard of living and the conditions faced by detainees.**

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<sup>1</sup> The Detention Centre Rules 2001, <http://www.legislation.gov.uk/uksi/2001/238/contents/made>

## b. Deaths in IRCs

In August 2011, separate investigations into three deaths in IRCs were 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 committed suicide at the Campsfield House detention centre.<sup>2</sup> In April 2014, the UN Special Rapporteur into Violence Against Women, Rashida Majoo, visited Yarl's Wood IRC as part of her investigation of the United Kingdom following the death in detention of Christine Case, a Jamaican national. Ms Case died in Yarl's Wood after being denied medical attention.<sup>3</sup> As of May 2014, there have been 22 deaths in immigration removal centres since 1989.<sup>4</sup>

- **We recommend urgent attention be brought to the issue of deaths in immigration detention. Specific recommendations are detailed in sections below, including reforms in the provision of health care, with a special emphasis on mental health assistance in IRCs.**
- **We recommend the introduction of a clear time limit to the use of immigration detention in the United Kingdom. As detailed below, this measure will dramatically improve the standard of care afforded to detainees; assisting the mental health of those in detention, and creating a significant change in the culture amongst staff in IRCs.**

## c. Sexual Abuse in IRCs: The Case of Yarl's Wood

Since 2008, the Home Office has received several allegations of sexual abuse suffered by detainees at the hands of contracted staff.<sup>5</sup> 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.<sup>6</sup> Almost 90% of individual detained at Yarl's Wood are female, yet over half the staff are male.<sup>7</sup> In April

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<sup>2</sup> The Guardian, [Detention Centre Deaths Spark Police Investigations](#), 5 Aug. 2011. See also the case of Alois Dvorzac, an 84 year-old man declared unfit for detention or deportation by doctors after he was diagnosed with Alzheimer's disease. Nevertheless, he spent almost three weeks in Harmondsworth IRC, before he was finally taken to hospital in handcuffs, where he finally died in January 2014 still in restraints.

<sup>3</sup> The Guardian, [Immigration Minister Pledges Full Investigation Over Yarl's Wood Death](#), 1 April 2014.

<sup>4</sup> Institute of Race Relations, [Deaths in Immigration Detention: 1989-2014](#), 8 May 2014.

<sup>5</sup> The Guardian, [Sexual Abuse Allegations Corroborated at Yarl's Wood Immigration Centre](#), 21 September 2013.

<sup>6</sup> Ibid.

<sup>7</sup> The Independent, [Yarl's Wood Immigration Detention Centre 'Needs More Female Staff' After Detainee Abused by Officer](#), 29 October 2013.

2014, the UN Special Rapporteur into Violence Against Women, Rashida Majoo, was prevented from entering Yarl's Wood to investigate these allegations.<sup>8</sup>

- **We call for the inclusion of a higher representation of women amongst staff in IRCs, in line with previous recommendations.<sup>9</sup> Furthermore, the Home Office should ensure a strong system of accountability is in place to monitor the behaviour of staff in the centres.**
- **Any allegations of abuse – especially sexual abuse – are of the utmost concern and indicate a serious problem in the culture that has been created amongst staff in IRCs. As indicated in previous sections of this submission, our central recommendation is the need to facilitate an intervention in the culture that has permeated the detention regime. This includes developing specialised training for staff, in line with the needs of detained persons, and ensuring conditions in detention are in line with those outlined in the 2001 Detention Centre Rules.<sup>10</sup>**
- **We recommend the introduction of a time limit to the use of immigration detention in the United Kingdom. This measure will have a dramatic impact in improving both conditions in detention and the status of detainees.**

#### d. Access to Internet

Following the publication of The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom,<sup>11</sup> it has come to light that, in practice, detainees are often blocked from accessing certain sites, including, “the websites of Amnesty International, the BBC, IRC visitors groups, foreign language newspapers and other NGOs,” despite the fact that these sites pose no apparent security risk. Detainees’ restricted access to Internet and certain websites contribute to the sense of isolation experienced by detained individuals. It also cuts them off from news sources and restricts their ability to access support or legal assistance from NGOs working with detainees.

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<sup>8</sup> The Guardian, *UN Inspection of Yarl's Wood Was Blocked, Claim Campaigners*, 13 April 2014.

<sup>9</sup> 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 and the All Party Parliamentary Group on Migration, 2015.

<sup>10</sup> The Detention Centre Rules 2001, <http://www.legislation.gov.uk/uksi/2001/238/contents/made>

<sup>11</sup> 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 and the All Party Parliamentary Group on Migration, 2015.

- **We recommend that detainees be granted fair access to social media and the Internet, especially with regard to maintaining contact with their family and friends outside the IRCs, and NGOs providing assistance to detainees. We understand that certain restrictions should be put in place to ensure the Internet is used safely, and accept that certain controls may need to be placed on Internet usage for this purpose – but these should not restrict contact with family members and access to justice.**

#### e. Healthcare in detention

##### (i) Improving the standard of healthcare in detention centres

Detainees have a right to a basic standard of healthcare, including access to treatment and care when necessary. Currently, the healthcare provided to detainees is inadequate, and treatment is frequently delayed or altogether unavailable to detainees. Further, though current policy calls for thorough medical screening upon arrival in IRCs, testimonies gathered by the APPG Inquiry into the Use of Immigration Detention in the UK raise issues of deep concern with regard to the screening process.<sup>12</sup> These testimonies indicate that, in practice, these screenings are rushed, often conducted without an interpreter, and are very limited in their scope. As a result, this has a deep impact on the level of medical care afforded to detainees, which in turn raises concerns over detainees' long-term health and wellbeing.

- **We recommend overhauling the healthcare screening process, by improving their scope and ensuring they are designed to meet the specific needs of detainees. This includes specialised training for medical staff in the areas of detention, cultural sensitivity, and trauma, amongst others. We also recommend expanding access to medical treatment and services for detainees.**
- **We recommend that individuals with a specific health profile should not be detained, as it is inhumane to place individuals with certain illness or health conditions in detention, which could seriously aggravate pre-existing conditions.**

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<sup>12</sup> 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 and the All Party Parliamentary Group on Migration, 2015.

- **We recommend the introduction of a clear time limit to the use of immigration detention in the United Kingdom. The current system of detaining individuals without a clear time limit has resulted in some remaining in detention for extremely prolonged periods of time. Reports indicate that the health of long-term detainees severely deteriorates in detention. Limiting the amount of time individuals can be detained could alleviate this issue. Further, implementing a time limit on immigration detention in the UK will result in a lowered population of detainees in UK IRCs, which in turn can improve the level of medical care and support afforded to those in detention.**

(ii) Mainstreaming awareness and treatment of mental health in detention

The UK is failing to meet human rights obligations by detaining the mentally ill, and growing evidence suggests that detention itself actively harms the mental health of detainees.<sup>13</sup> The distress of being placed in detention without a clear time limit can have devastating consequences on the wellbeing and mental health of detainees. Reports indicate that many detainees go so far as to attempt suicide, and even then, when their mental health is evidently at great risk, they are still not being provided with appropriate counselling or assistance.<sup>14</sup> The UK is failing to comply with international legal standards by continuing to detain the mentally ill.<sup>15</sup>

- **We recommend that NHS health care providers in IRCs work closely with experts in mental health and detention to train staff on identifying and treating mental health conditions. Proper care for mental health should be streamlined into the overall healthcare services provided to detainees, especially in light of reports indicating the negative impact of detention on mental health.**
- **We recommend that the screening process (addressed in the section above) should show special care with regard to mental health conditions, and if signs of mental conditions are flagged over the course of the screening, then it is our urgent recommendation that, in**

<sup>13</sup> Jon Burnett, *State Sponsored Cruelty: Children in Immigration, Summary Report*, Medical Justice, 1 (09 Sept. 2009)

<sup>14</sup> 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 and the All Party Parliamentary Group on Migration, 2015.

<sup>15</sup> 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 the 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, *Madaffer v Australia*, Communication No. 1011/2001, UN Doc CCPR/C/81/D/1011/2001 \*2004) para 9.3.

accordance with international legal standards,<sup>16</sup> these individuals not be placed in detention.

## 2. Access to justice.

### a. Access to legal representation

The UK government must ensure that each applicant for asylum in the UK has access to high quality legal advice. On April 1<sup>st</sup> 2013, legal aid for immigration and asylum cases was significantly reduced to a few specific areas of immigration.<sup>17</sup> In this highly complex area it is unrealistic for vulnerable people to prepare cases without legal help. 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.'*<sup>18</sup>

This issue is of particular concern in the case of detainees, with reports such as the Joint Inquiry by the APPG on Refugees and the APPG on Migration into the Use of Immigration Detention in the UK highlighting detainees' difficulty in accessing the level of legal assistance their complex cases often require.<sup>19</sup> Current contracts for the provision of legal aid advice in the IRCs are failing to meet the pressing needs of detainees and do not grant legal practitioners the necessary time or resources to adequately represent their clients.

- **We recommend that the Shaw Review account for a detailed assessment of the legal assistance available to detainees in IRCs to ensure that detainees are guaranteed proper access to justice. Following the findings of the APPG on Refugees and the APPG on Migration's Joint Inquiry into the Use of Immigration Detention in the UK, we echo their recommendation that the Legal Aid Agency and the Immigration Services Commissioner carry out regular audits on the quality of advice provided by contracted firms in IRCs. All forms of assessment should prioritise talking to detainees about their experiences with legal assistance.**

### b. Automatic bail hearings

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<sup>16</sup> Ibid.

<sup>17</sup> New legal aid changes were introduced through the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

<sup>18</sup> *AA (Nigeria) v SSHD [2010] EWCA Civ 773*

<sup>19</sup> 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 and the All Party Parliamentary Group on Migration, 2015.



Detainees need to be able to challenge their ongoing detention, particularly given the lack of a time limit. The main mechanism for doing so is through asking for a bail hearing. However, evidence shows that this mechanism is currently not working, and research by the Bail Observation Project and Bail for Immigration Detainees has found Bail hearings appear to operate in a way that creates a presumption against release.<sup>20</sup> In particular, the risk of absconding or reoffending is overstated, and reports indicate that such risk is routinely asserted without evidence at bail hearings, and that Home Office assessments of risk similarly lack evidence.<sup>21</sup>

- **Until the time limit recommended in this submission is implemented, we recommend that automatic bail hearings, as contained in section 44 of the Immigration and Asylum Act 1999,<sup>22</sup> when it gained Royal Assent, be introduced. This will improve detainees' access to justice and legal support for their case.**

### 3. Protection of vulnerable detainees, including those with special needs.

#### a. Ending Detention of Vulnerable Detainees

Following the UN Committee Against Torture (CAT) fifth periodic review of the United Kingdom in 2013, the CAT expressed its concern regarding,

*Instances where children, torture survivors, victims of trafficking and persons with serious mental disability were detained while their asylum cases were being decided*

and

*Cases 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.<sup>23</sup>*

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<sup>20</sup> Bail for Immigration Detainees, *The Liberty Deficit: Long-term Detention and Bail Decision-making*, November 2012. <http://www.biduk.org>

<sup>21</sup> Bail for Immigration Detainees, *The Liberty Deficit: Long-term Detention and Bail Decision-making*, November 2012. <http://www.biduk.org>

<sup>22</sup> *Immigration and Asylum Act 1999*, Part III – Bail, Section 44 – *Bail Hearings for Detained Persons*, <http://www.legislation.gov.uk/ukpga/1999/33/section/44>

<sup>23</sup> UN 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(a) and (b) <https://www.justice.gov.uk/downloads/human-rights/cat-concluding-observations-may-2013.pdf>

The CAT urged the UK to, “[t]ake necessary measures to ensure that vulnerable people and torture survivors are not routed into the Detained Fast Track System.”<sup>24</sup>

The broader categorisation of “vulnerable people” can be subdivided to include the following categories of persons of concern:

- (i) Children: The asylum process is particularly damaging for children, who will experience disrupted education; integration problems; and trauma from prison-like conditions in detention centres. This exacerbates the existing traumas they have experienced in their home countries and en route to the UK. Despite the Government’s announcement in December 2010 that it would be ending the practice of detaining children 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 an alarming reality. Between July and September 2014, 26 children entered detention, a small increase on the figures for the first and second quarters of 2014.<sup>25</sup> Jon Burnett’s 2010 report on Children in Immigration<sup>26</sup> 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.<sup>27</sup> 92 children had developed physical symptoms including fever, vomiting, and coughing up blood.<sup>28</sup> Children were also exposed to expired food and witnessed violence between adult detainees.<sup>29</sup>
- **We recommend that the Home Office follow through on the Government’s commitment in 2010 to end the practice of detaining children. This practice should immediately be ended, and children currently in detention should not only be released but receive support and counselling to ensure they are rehabilitated following their detention. Children should be categorically excluded from detention, and alternatives implemented.**

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<sup>24</sup> Ibid.

<sup>25</sup> Home Office, *Immigration Statistics, July to September 2014*, 13.2 Detention - Key Facts, <https://www.gov.uk/government/publications/immigration-statistics-july-to-september-2014/immigration-statistics-july-to-september-2014#detention-1>

<sup>26</sup> Jon Burnett, *State Sponsored Cruelty: Children in Immigration, Summary Report*, Medical Justice, 1, 9 September 2009.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

- (ii) Pregnant Women: Detention of pregnant women by the UK Home Office is an extremely controversial practice. The issue recently received national attention following Channel 4 News's undercover report into conditions in Yarl's Wood IRC. Amongst other things, the report highlighted the terrible risks associated with the detention of pregnant women. The investigation heard about a pregnant detainee who was taken to hospital after collapsing in the facility's dining hall.<sup>30</sup> Channel 4 News learnt that the woman later suffered a miscarriage due to the inadequate level of health care afforded to her while detained at Yarl's Wood. Further, reports indicate that conditions in detention are traumatic and induce great stress,<sup>31</sup> neither of which is advisable for women going through pregnancy.
- **We recommend that the Home Office cease the practice of detaining pregnant women. Women should receive a health screening prior to detention to ensure no pregnant women are detained. Pregnant detainees should be released and provided with appropriate medical support and follow-up to ensure they are healthy for the remainder of their pregnancy. Pregnant women should be categorically excluded from detention, and alternatives implemented.**
- (iii) Survivors of Torture: Detention exacerbates damages already affecting torture survivor, and constitutes a contravention of human rights law.<sup>32</sup> Torture survivors suffer from psychological and physical damage as a result of their experiences, and the uncertainty of indefinite detention combined with conditions in detention further increases suicidal intent, self-harm, depression, and may exacerbate physical maladies due the inadequate level of health care provided to detainees.<sup>33</sup>
- **We recommend that screening processes be improved before a decision to detain is taken, so as to ensure that survivors of torture are not detained for immigration purposes. Survivors of torture should be referred**

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<sup>30</sup> Channel 4 News, [Yarl's Wood: Undercover in the Secretive Immigration Centre](http://www.channel4.com/news/yarls-wood-immigration-removal-detention-centre-investigation), March 02 2015.

<sup>31</sup> 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 and the All Party Parliamentary Group on Migration, 2015.

<sup>32</sup> UN 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(a) and (b) <https://www.justice.gov.uk/downloads/human-rights/cat-concluding-observations-may-2013.pdf>

<sup>33</sup> Natasha Tsangarides, 'The Second Torture': *The Immigration Detention of Torture Survivors – Summary Report*, Medical Justice, 3, 22 May 2012.

**to the National Referral Mechanism (NRM) rather than being detained. Home Office workers should receive training to better understand the NRM, as well as specialised training to identify and support survivors of torture.**

- (iv) Victims of Trafficking: Detention exacerbates damages already affecting victims of trafficking, and constitutes a contravention of human rights law.<sup>34</sup> Victims of trafficking should be referred to the NRM rather than being detained. Given the Government's focus on supporting victims of these crimes, this is especially worrying. Further, the new Modern Slavery Act of March 2015 introduces modern slavery as a defence for victims compelled to commit offences by their slavers. This legislation is intended to protect them from prosecution and should also be applicable to the issue of immigration detention.
- **We recommend that screening processes be improved before a decision to detain is taken, so as to ensure that victims of trafficking are not detained for immigration purposes. Victims of trafficking should be referred to the National Referral Mechanism (NRM) rather than being detained. Home Office workers should receive training to better understand the NRM, as well as specialised training to identify and support victims of trafficking.**
- (v) Persons with Mental Health Conditions: As outlined in the previous section, 'Mainstreaming awareness and treatment of mental health in detention,' the UK is failing to meet human rights obligations by detaining the mentally ill.<sup>35</sup> The UN CAT has highlighted that it is both inhumane and a contravention of human rights law to detain individuals with mental health conditions.<sup>36</sup> Further, reports indicate that conditions in detention further exacerbate the symptoms and extreme vulnerabilities of detainees with mental health conditions.<sup>37</sup>

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<sup>34</sup> UN 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(a) and (b) <https://www.justice.gov.uk/downloads/human-rights/cat-concluding-observations-may-2013.pdf>

<sup>35</sup> 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 the 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, *Madaffer v Australia*, Communication No. 1011/2001, UN Doc CCPR/C/81/D/1011/2001 \*2004) para 9.3.

<sup>36</sup> Ibid.

<sup>37</sup> Sian Rees, *Mental Health in the Adult Homeless Population: A Review of the Literature*, Crisis, 9, March 2009.

- **We recommend that the screening process (addressed in the section above) should show special care with regard to mental health conditions, and if signs of mental health issues are flagged over the course of the screening, then it is our urgent recommendation that, in accordance with international legal standards,<sup>38</sup> these individuals should not be placed in detention.**
- (vi) Survivors of Sex and Gender Based Violence (SGBV): Following alarming indications of sexual and physical abuse of detainees by staff in detention centres, the conditions in detention centres would subject survivors of SGBV to great psychological and physical harm and distress, and aggravate any pre-existing conditions incurred by their past traumas.
- **We recommend that men and women who are survivors of rape, and sex and gender based violence should not be detained for immigration purposes.**
- (vii) Lesbian, Gay, Bisexual, Trans, and Intersex (LGBTI) Individuals: UNHCR identifies LGBTI individuals as particularly vulnerable, as research indicates they face heightened risks of sexual and physical abuse.<sup>39</sup> UNHCR has introduced specialised guidelines to ensure these individuals are adequately supported.<sup>40</sup> Reports indicate that LGBTI detainees face bullying, harassment and abuse inside detention centres.<sup>41</sup> LGBTI asylum seekers are vulnerable individuals, and should be treated and supported as such. There is a lack of information about the extent to which LGBTI individuals face detention, and current procedures outlined in the Enforcement Instructions and Guidance make no mention of assessments of the risks faced by LGBTI detainees.
- **We recommend that the Home Office work with the Home Office National Asylum Stakeholder Forum to properly assess the risks faced by LGBTI detainees, and to ensure that LGBTI individuals faced with detention do not experience harassment. We also recommend that staff**

<sup>38</sup> Sian Rees, *Mental Health in the Adult Homeless Population: A Review of the Literature*, Crisis, 9, March 2009.

<sup>39</sup> UNHCR, *The Protection of Lesbian, Gay, Bisexual, Transgender, and Intersex Asylum-seekers and Refugees*, Discussion Paper, September 2010, Geneva.  
<http://www.refworld.org/pdfid/4cff9a8f2.pdf>

<sup>40</sup> *ibid.*

<sup>41</sup> 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 and the All Party Parliamentary Group on Migration, 2015.

**receive specialised training and sensitisation in dealing with LGBTI individuals in an appropriate manner, with a particular emphasis on the heightened risk of SGBV amongst LGBTI individuals.**

#### **4. Introducing a time limit to detention.**

- (i) 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.<sup>42</sup> Between June 2013 and June 2014, 29,050 individuals were released from detention. Of these, 19% had been in detention for a period ranging between 29 days and two months, and 14% for a period ranging between two to four months. Of the 1,794 remaining, 148 had been in detention for between one and two years, and 33 for two or longer.<sup>43</sup>
- (ii) In May 2013, the UN Committee Against Torture (CAT), expressed concern over the UK's failure to introduce a time limit on immigration detention. The CAT urged the UK to, "introduce a limit for immigration detention and take all necessary steps to prevent cases of de facto indefinite detention,"<sup>44</sup> and to "ensure that detention is used only as a last resort [...], not for administrative convenience."<sup>45</sup> Indefinite detention has been ruled as inhumane, and reports indicate that detainees undergo significant psychological distress due to the open-ended nature of their sentence.<sup>46</sup>
- (iii) The High Court has repeatedly found indefinite detention of migrants and asylum-seekers unlawful. In 2011, in the case *R (on the application of Sino) v Secretary of State for the Home Department*, the High Court held that the entire period of detention of an Algerian man was unlawful for a

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<sup>42</sup> 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 Articles 15.5 and 15.6

<sup>43</sup> Home Office, Immigration Statistics, April to June 2014, 12.2 – Length of Detention.

<sup>44</sup> UN 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(c) <https://www.justice.gov.uk/downloads/human-rights/cat-concluding-observations-may-2013.pdf>

<sup>45</sup> Ibid.

<sup>46</sup> 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 and the All Party Parliamentary Group on Migration, 2015.

period of four years and eleven months.<sup>47</sup> 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*.<sup>48</sup> 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.<sup>49</sup>

- (iv) 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%.<sup>50</sup>

In France, administrative detention is “limited to the time strictly necessary to organise the removal and, except in some cases, cannot exceed 45 days.”<sup>51</sup> Therefore, it is evident that high levels of detention enforcement do not produce high rates of removals.

In fact, the longer an individual is detained, the less likely they are to be removed from the UK. According to 2013 Home Office statistics, only 37% of migrants released from detention after more than a year were removed or deported. Almost two-thirds were released back into the UK, their protracted, traumatic and expensive detention effectively having served no purpose. By contrast, 57% of migrants detained for under 28 days left the UK.<sup>52</sup>

- (v) Each year, £76 million is spent detaining individuals who are ultimately released,<sup>53</sup> including the huge sums paid as compensation for unlawful detention (£12 million in from 2009 to 2010). By identifying ‘un-returnable’ migrants earlier, the UK could save the equivalent in cost of at least three detention centres, or £60 million over a five year period.<sup>54</sup>

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<sup>47</sup> *Sino, R (on the application of) v Secretary of State for the Home Department* [2011] EWHC 2249 (Admin) 25 August 2011.

<sup>48</sup> *HA (Nigeria) v Secretary of State for the Home Department* [2012], EWHC 979, 17 April 2012.

<sup>49</sup> *MD v Secretary of State for the Home Department* [2014], EWHC 2249, 8 July 2014.

<sup>50</sup> Enforced removals fell from 17,239 in 2008 to 13,051 in 2013. Home Office, [Immigration Statistics](#), Key Facts.

<sup>51</sup> Article 555-1 of the CESEDA – Code of Entry and Stay of Foreigners and Asylum Law, “Rétention administrative d’un étranger en instance d’éloignement,” Information available in French at: <http://vosdroits.service-public.fr/particuliers/F2780.xhtml>

<sup>52</sup> Home Office, Immigration Statistics Oct. – Dec. 2103, Detention, table dt\_06

<sup>53</sup> Matrix Evidence, [An Economic Analysis of Alternatives to Detention](#), Final Report Sept. 2012.

<sup>54</sup> It costs roughly £20 million 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.



- (vi) The Independent Chief Inspector's joint investigation with HM Inspectorate of Prisons found inefficiency and poor quality decision-making.<sup>55</sup> 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.<sup>56</sup>
- (vii) The current system for immigration detention has produced an enforcement-focused culture within the Home Office that has permeated the detention system and undermined the effectiveness of its original guidelines. Detention is currently used with disproportionate frequency, resulting in both too many instances of detention and a system that is severely backlogged. Introducing a time limit and restructuring the enforcement of detention to ensure it is used sparingly would reduce the number of individuals in detention at any given time. This would thereby reduce pressure on services and allow the standard of care and conditions in detention to improve, as these shift to meet the needs of a much smaller number of detainees.
- **We recommend that a time limit of 28 days be introduced on the length of time anyone can be held in immigration detention.**
  - **We recommend that decisions to detain should be very rare and detention should be for the shortest time possible, and only to effect removal.**
  - **We recommend that the prevalence of immigration detention should be curtailed, and used only in specific cases as a means of effecting removal, and that community-based resolution be developed and introduced as an alternative to immigration detention.**
  - **We recommend that the Government form a working group to undertake an in-depth study of international best practice and introduce a much wider range of alternatives to detention than are currently used in the UK.**

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<sup>55</sup> Independent Chief Inspector of Borders and Immigration and HM Inspectorate of Prisons, *The Effectiveness and Impact of Immigration Detention Casework*, December 2012.

<sup>56</sup> Independent Chief Inspector of Borders and Immigration, *An Inspection of the Emergency Travel Document Process* May-Sept. 2013, page 4.