



association of **visitors** to
immigration detainees

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

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

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About AVID: We are the national network of volunteer visitors to immigration detainees in the UK. Established in 1994, AVID has over 18 years experience in supporting immigration detainees wherever they are held; our 20 member groups visit in immigration removal centres (IRCs), short term holding facilities (STHFs) and prisons. Working with and through our membership, AVID collates evidence of the daily realities of immigration detention and uses this to advocate for change.

Use of immigration detention in the UK: developments since the CPT's last visit

1. Increasing numbers detained

1.1 Since the CPT's last visit in 2008, the UK's residential detention estate has increased from 2,466 bed spaces to 3,397. The UK has one of the largest immigration detention estates in Europe and detains around 30,000 migrants each year. A high proportion of these are asylum seekers: in 2011 27,112 people entered detention, 47% of whom were asylum detainees¹. This does not include the numbers held under immigration act powers in prisons or in non-residential holding facilities at ports or police stations. Statistics on the use of detention in these facilities is not collated centrally and does not comprise part of the official statistics produced by UKBA. The number held annually is therefore much higher than official records show at any one time.

2. Expansion of the residential detention estate

2.2 The UK's use of immigration detention has expanded dramatically in the years since the CPT's 2008 visit. The large purpose built facility at Gatwick airport, Brook House, opened in 2009 and holds 426 men. Morton Hall women's prison was re-rolled to an immigration removal centre (IRC) in 2011 and holds 393 men. New wings at Harmondsworth IRC have increased its capacity to 623, making it Europe's largest detention facility. In addition, new residential short term holding facilities have opened in Larne (Northern Ireland) holding 22 women and men for up to seven days, and a unit holding up to 38 men opened in Yarl's Wood IRC in 2012. The UK has also introduced a new category of detention for families – 'pre departure accommodation'- in response to a review of child detention. 'Cedars' opened in 2011 and holds up to 44 people/9 families.

3. Increasing resort to high security regimes

¹ UKBA, [Immigration Statistics Sep- Dec 2011](http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-tabs-q4-2011/detention-q4-2011-tabs) available at <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-tabs-q4-2011/detention-q4-2011-tabs>

3.1 It is of concern that in recent years, purpose built immigration detention facilities have been designed to the same specification as high security prisons. Brook House, Colnbrook and Harmondsworth IRCs all hold migrants in conditions equal to Category B prison standards. These high security buildings are not suitable for migrants held for administrative purposes. This has come under criticism from various sources including Her Majesty's Inspectorate of Prisons (HMIP) who have pointed out that the *'prison like design of the new units is regrettable and such an environment will always be unsuitable for people held under immigration powers'*².

4. Increasing lengths of detention

4.1 The UK has derogated from the European Qualifications Directive and as a result there is no upper time limit on immigration detention in the UK. Migrants are being detained for increasingly longer periods. This has come under intense criticism from NGOs and statutory monitoring bodies³. The High Court recently found that one man's detention for 4 years 11 months was unlawful throughout⁴. In 2009-10 £12 million was paid in compensation and legal costs for unlawful detention cases⁵. For many detainees, removal from the UK within a reasonable time (the statutory purpose of immigration detention) is no longer achievable but their detention continues. Of the 2,993 people in detention as at 30 June 2012, 404 (14%) had been held for more than 6 months⁶. The longest length of detention at that time as recorded in the official statistics was 4.2 years⁷. In 2011, of all those held longer than 2 years, 25% were eventually released back into the community i.e. were not removed from the country⁸.

Recommendation to the CPT:

To ask the UK Government to make a commitment to end the use of high security facilities based on prison specifications for immigration detention.

To ask the UK Government to end indefinite detention.

² HMIP (2011) [Report on an unannounced full follow up inspection of Harmondsworth IRC \(14-25 January 2011\)](#) p6

³ See for example: Independent Chief Inspector of UKBA [A thematic inspection of how the UKBA manages foreign national prisoners](#) (November 2011), Detention Action [Detained Lives](#) (2009)

⁴ Sino, R (on the application of) v Secretary of State for the Home Department [2011] EWHC 2249 (Admin) (25 August 2011)

⁵ House of Lords Hansard, HL3794 accessed at <http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/101129w0001.htm>

⁶ UKBA, [Immigration Statistics April- June 2012](#) available at <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-tabs-q2-2012/>

⁷ Ibid

⁸ UKBA, [Immigration Statistics Sep- Dec 2011](#) available at <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-tabs-q4-2011/detention-q4-2011-tabs>

Broader concerns relating to the use of immigration detention with reference to the CPT standards

AVID would draw attention to the following issues concerning the use of immigration detention in the UK with reference to the CPT standards.

5. Point of entry holding facilities *(Section B, p65)*

5.1 Residential short term holding facilities: AVID has conducted visits to all three residential short-term holding facilities (Colnbrook, Larne and Pennine House) in the last 24 months. 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 newest 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.

5.2 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.

5.3 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.

5.4 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.

5.5 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 2009) but as of July 2012 there is still no published guidance.

Recommendation to the CPT:

To visit a residential short term holding facility.

To ask the UK Border Agency to cease the practice of detaining unrelated women and men in the same short term holding facility.

To ask the UK Border Agency to publish Statutory Guidance on Short term holding facilities as a matter of urgency.

5.6 Non-residential short term holding facilities: there are also a number of non-residential short term holding facilities, which AVID does not have access to but about which concerns have been raised recently by the Independent Monitoring Boards. For example, the facilities at Heathrow airport regularly detain children overnight despite there being no adequate sleeping space⁹. A Freedom of Information request by the Children's Society in 2011 revealed that between May and August 2011 almost 700 children were held in ports in the south-east, despite a government pledge to end the detention of children¹⁰. Further concerns around limited ventilation and limited washing facilities have been raised time and again by the Independent Monitoring Boards¹¹.

6. Regime and access to support

6.1 Prison culture: AVID is extremely concerned that prison structures are also replicated in daily regimes, as highlighted by HMIP and confirmed anecdotally by reports from our visitors groups. In Brook House, for example, *'the application of a prison style basic regime, which included separation within its sanctions'* was criticised by HMIP as being *'inappropriate for a*

⁹ National Council for Independent Monitoring Boards (2012) Behind Closed Doors: Annual Report 2011 <http://www.justice.gov.uk/downloads/about/imb/imb-national-council-annual-report-2011.pdf>

¹⁰ Children's Society Press Release (2011) <http://www.childrensociety.org.uk/news-views/press-release/almost-700-children-detained-four-months>

¹¹ See for example Independent Monitoring Board for Heathrow (2012) Report of the Independent Monitoring Board on the Non-residential short term holding facilities at London Heathrow airport for the year February 2011 to January 2012 <http://www.justice.gov.uk/downloads/publications/corporate-reports/imb/annual-reports-2012/heathrow-2011-2012.pdf>

*detainee population'*¹². At our last visit to Morton Hall IRC we were informed by staff that they planned to develop an 'enhanced wing' for detainees who were compliant with UKBA¹³. We believe that there is a culture which conflates a detained individual's compliance with immigration controls with his or her living conditions. This is wholly inappropriate to a detainee's legal situation; they are not serving criminal sentences for crimes but are deprived of their liberty for administrative purposes.

6.2 An example to underpin this is the use of segregation prior to removal or deportation. Mr M, a Burundi national, was detained at Brook House as a result of disputes over his nationality. The UKBA claimed to have paperwork which proved he was from Tanzania. Mr M disputed this and asked to see the evidence, but this was refused by UKBA. Mr M was placed in segregation under Rule 40 on the same day he was served with Removal Directions. As a result of being placed in solitary confinement, Mr M was unable to make contact with legal representation, and was deported from the UK without being able to progress his case¹⁴. This is just one of many cases where segregation used in IRCs interferes with a detainees' right to legal advice and underpins the severity of the impact of decision making around segregation.

6.3 Further, the use of segregation in immigration detention is arguably less transparent than in the prison system. In the prison estate detainees are given initial reasons for segregation and this is reviewed within 72 hours- prisoners attend the review board and are able to challenge their segregation. No such provision exists for immigration detainees.

Recommendation to the CPT:

To visit the segregation unit at an IRC.

To ask the UK Border Agency to end the use of sanctions and privileges regimes, as unsuitable for immigration detainees.

To ask the UK Border Agency to cease the practice of using segregation as a punitive measure.

To ask the UKBA to ensure that in cases where segregation measures are employed, that effective safeguards should be put in place as per the CPT guidance (including the person concerned being informed of the reasons for the measure taken against him/her, being given the opportunity to present his/her views on the matter prior to the measure being implemented, and be able to contest the measure before an appropriate authority).

¹² HMCIP (2012) Report on an unannounced full follow up inspection of Brook House IRC (12-23 September 2011) p13

¹³ AVID visit to Morton Hall IRC, 2011

¹⁴ Gatwick Detainee Welfare Group email report to AVID, 18th September 2012

To ask the UKBA to ensure detainees have access to mobile telephones, external support and legal advice while in segregation.

7. Immigration detainees in prisons: (Section B, p65)

7.1 Increasing numbers of immigration detainees held in mainstream prisons: In addition to the numbers held in residential detention facilities, it is estimated that around 5-600 individuals are held under immigration act powers every month in prison¹⁵. This amounts to an additional 18-20% of the detainee population. Our member visitors groups who support immigration detainees in prisons regularly report to us on the additional barriers detainees in prison face in terms of access to justice. Communications are even more curtailed, visits minimised, and they face even longer periods of detention.

Recommendation to the CPT:

To ask the UK Government to take steps to end immigration detention in prison.

8. Safeguards during detention (Section C, p66)

We wish to draw your attention to the following concerns regarding safeguards during detention:

8.1 Access to mental health care: Since the CPT's last visit to the UK in 2008, there have been five deaths in immigration detention and during removal¹⁶. HMIP found that half of all the IRCs inspected in 2009 were not judged to offer a sufficiently safe environment for detainees¹⁷. In the period April-June 2012, there were 79 instances of self-harm serious enough to requiring medical treatment in IRCs – this is a 132% rise on the same period last year. In the same period, 489 detainees were deemed to be 'at risk' of self-harm¹⁸. These figures do not include those held in prisons or STHFs.

8.2 Just as operational management of IRCs is contracted out by the UK government to commercial operators and the HM Prison service, provision of healthcare is sub contracted. This results in a mix of public and private healthcare systems. AVID's research into conditions in detention reveal uneven provision in terms of medical support, particularly access to mental health care. For example, there is no standardised access to mental health nurses, or other staff to support those with mental health needs. Preventive strategies for the reduction of harm to vulnerable detainees in IRCs are not in line with the equivalent standards in the UK

¹⁵ Freedom of Information Request: response from UKBA to Detention Advisory Service (March 2012)

¹⁶ House of Commons Hansard, 13th September 2011, c1132W

¹⁷ HMIP (2009) Annual Report 2008-9 p15

¹⁸ Freedom of Information request submitted by the campaigning group 'Nodeportations' and emailed to AVID on 11th September 2012

prison service. For example, first night screening including a detailed assessment of risk of self harm is not carried out in IRCs but it is in prisons. HMIP has repeatedly expressed concerns that mental health provision in IRCs is *'inadequate'*:

'There was only one mental health nurse and a visiting psychiatrist was able to see few people. There was no counselling service and custody officers did not receive mental health awareness training. There was no day care services and the centre had no capacity to provide an adequate environment for those with serious physical and mental health needs'.¹⁹

Recommendation to the CPT:

To urge the UK government to discharge in full its positive obligations in terms of duty of care towards immigration detainees. This should include, as a very minimum, the alignment of protection and treatment for mentally disordered and vulnerable detainees with current provision in the prison service.

8.3 Detention of torture survivors and other vulnerable groups: The CPT guidance recommends that particular care should be paid to the physical and psychological state of asylum seekers who may have experienced torture. In the UK vulnerable adults including people who have survived torture, pregnant women, disabled people, the elderly, those suffering from mental illness or with serious medical conditions are routinely detained despite UK policy guidance to the contrary.

8.4 Rule 35 of the Detention Centre Rules (2001) is the primary safeguard to ensure that vulnerable people are not detained. It places a statutory obligation on IRCs to report to UKBA *'any detained person known to be, or who reports he or she is victim of torture, whose health is likely to be injuriously affected by continued detention or any conditions of detention'* and on the case of any detainee *'suspected of suicidal intentions'*²⁰. However, a UKBA audit of the Rule 35 process, requested by NGOs and published in March 2011, revealed that in 91% of cases where a Rule 35 report was submitted by a medical practitioner in an IRC, the individual was not released from detention²¹. The audit report does not give reasons for this continued detention, nor does it comment on the decision making process involved. This raises serious questions about the efficacy of a system which purports to protect the vulnerable- substantiated by recent research by Medical Justice

¹⁹ HMIP (2010) [Report an announced inspection of Brook House IRC \(15-19 March 2010\)](#)

²⁰ UKBA (2001) [Detention Centre Rules](#) available at www.ukba.homeoffice.gov.uk

²¹ UKBA (2011) [Rule 35 Audit](#) available at www.ukba.homeoffice.gov.uk

which revealed that in that in all but one of 50 asylum seekers whose cases it investigated, only one was released under the so-called Rule 35 process that is supposed to safeguard torture victims on arrival in the UK²².

9. Combating impunity (p94)

9.1 Instances of ill treatment in UK detention and failure to take action to learn lessons: AVID

wishes to draw the Committee's attention to recent cases where ill treatment has occurred while in the care of the state in immigration detention. The UK's detention of people suffering from mental disorder has been found to breach Article 3 of the ECHR in three recent cases²³. In these cases the prolonged immigration detention of people suffering from severe mental disorder was found to amount to inhuman and degrading treatment. By way of context, two of the cases are summarised below.

9.2 The case of 'S' found that the detention of this man between April and September 2011 was unlawful. In prison and psychiatric hospital prior to detention he had psychotic symptoms and had a history of self-harm, and this medical history was known to UKBA prior to his detention. Medical reports clearly state that immigration detention would lead to a regression in his psychotic state. Whilst in detention he was regularly placed on suicide watch and was assessed by a psychiatrist as being unfit for detention. 'S' was not released until a second High Court intervention in September 2010. The High Court found that in detaining S, the UKBA had breached both negative and positive obligations under article 3 ECHR, in that the circumstances of his immigration detention amounted to inhuman and degrading treatment, but also that the UKBA had failed to put appropriate measures in place to ensure that he was not subject to this treatment²⁴.

9.3 In the case of 'BA', the High Court ruled that the Secretary of State had unlawfully detained a man with severe mental illness between June and October 2011. While serving a prison sentence prior to detention, BA was twice admitted to hospital under the Mental Health Act as a result of deterioration in his mental health – he had a history of psychosis and refusing food and fluid. On his discharge from hospital BA was detained in an IRC, despite evidence from his psychiatrist that his mental health would deteriorate in detention. The UKBA continued to detain him despite various medical professionals raising concerns with UKBA about his poor mental health. The IRC healthcare manager noted that BA was unfit for detention and that as a result of his refusal of fluids he was near death. The centre began to

²² Medical Justice (2012) The Second Torture: The Immigration Detention of Torture Survivors

²³ S, R (on the application of) v Secretary of State for the Home Department (2011) EWHC 2120 (Admin), BA, R (on the application of) v Secretary of State for the Home Department (2011) EWHC 2748 (Admin) and

²⁴ S, R (on the application of) v Secretary of State for the Home Department (2011) EWHC 2120 (Admin)

prepare an 'end of life care plan' for him. Despite this his detention was maintained until a High Court order on the 7th October 2011. The High Court found that the circumstances of his detention amounted to inhuman or degrading treatment under Article 3 and described the behaviour of UKBA staff as "chilling" and displaying a "callous indifference"²⁵ to this man's plight.

9.4 We understand that the *raison d'être* of the CPT is to prevent breaches of Article 3, as such we wish to highlight that no steps have yet been taken to ensure that those responsible are held to account, and to date there has been no response from the UKBA to these human rights breaches, despite intervention from NGOs and legal practitioners.

9.5 AVID is part of a stakeholder group with UKBA²⁶ which looks at health and medical issues across the estate. Following the first two cases involving Article 3 (2011), NGOs asked UKBA what lessons the Agency had learned. The UKBA Policy representative replied he was '*not aware*' of these cases. AVID coordinated a letter signed by 50 concerned individuals to the Immigration Minister in May 2012 to ask for clarification on policy changes in light of these breaches. The response we received from the Minister's office does not refer to these human rights implications²⁷ We are concerned that these three breaches constitute a pattern of ill treatment with serious implications for future conduct.

Recommendation to the CPT:

a) Ask the UKBA why it has delayed carrying out a full, independent investigation into the three Article 3 breaches

b) Urge the UKBA to carry out such an investigation immediately

c) Ensure the UKBA make a commitment to ensuring that lessons learned are taken forward and made part of UKBA policy and guidance on the detention of vulnerable people.

18/09/2012

²⁵ BA, R (on the application of) v Secretary of State for the Home Department (2011) EWHC 2748 (Admin)

²⁶ DUG Medical Sub Group, which meets quarterly.

²⁷ Letter from Colin Punton, UKBA to AVID and BID (August 2011) available at http://www.aviddetention.org.uk/index.php?option=com_content&view=category&id=8&Itemid=8