

# **Submission to Home Affairs Select Committee** **New Inquiry into Asylum**

from

## **Campaign to Close Campsfield, Bail Observation Project**

This submission is to accompany the second report of the Bail Observation Project: “Still a Travesty: Justice in Immigration Bail Hearings”, already sent to all members of the Home Affairs Select Committee.

### **1) Introduction:**

Our campaign, which now operates both nationally and internationally as well as locally as its name describes, is totally opposed to arbitrary, administrative immigration detention. We maintain that taking a person’s liberty with no charge or time limit is a gross infringement of their human rights. The effects on mental health in particular are well documented\* and known to be devastating to many detainees.

\*Three references here (of many available):-

Gatwick Detainees Welfare Group, “A Prison in the Mind”, Nov. 2012

K Robjant, R Hassan, C Katona - The British Journal of Psychiatry, 2009, 194:306-312

Z Steel, D Silove, R Brooks, S Momartin... - The British Journal of Psychiatry, 2006, 188: pp58-64

It is fundamentally wrong to lock up innocent people many of whom have already suffered greatly. People have come here expecting human rights to be upheld, only to find that in practice the legal system operates to deny them the rights which successive governments have committed the UK to uphold.

We are focusing on detention of immigrants and asylum seekers and in particular on perceived injustice at bail hearings at First-Tier Tribunals (IAC).

### **2) Need to Widen the Scope of the Inquiry:**

Although this inquiry is looking into asylum, we ask that other groups of people who are enmeshed in the system, particularly those held in immigration detention, are not treated separately in relation to matters of human rights and justice. There is not necessarily a clear line between these groups.

a)Asylum seekers deemed failed. (28% of refusals were overturned on appeal last year, even within the injustices of the current system) Most have had poor or no legal representation. Cases often have not been fully investigated. eg. For the Detained Fast Track there is an initial 90% failure rate for those claiming asylum. Disbelief even in the face of evidence, is common. Many are

torture victims whose condition has not been acknowledged or investigated. People are returned to areas of conflict such as Afghanistan, Iraq, Iran, Democratic Republic of the Congo, Sudan, Somalia with no system in place (even if it were possible) to find out what happens to them.

b)Overstayers . People who came legally, with a visa, but at some point failed to renew it. In some cases they have been here for 20 or 30 years and have all their family here. Detention and removal contravenes their right to family life under Article 8 of the ECHR. Very few white overstayers appear to be detained.

c)Foreign National Offenders . These are people who have committed a crime, served their sentence and get double punishment, immigration detention and a deportation order. Many had previously been given refugee status here or indefinite leave to remain, but lose it. Also many are imprisoned because of immigration 'crimes' such as entering with false documents, which in our view and under Article 5 of the ECHR, should not have been deemed a criminal action in the first place.

d)Detainees wanting to go home often wait in detention for months before arrangements are made.

### **3) Changes needed in the existing system:**

Given the system that exists, where practice falls far short of theory and rules and guidelines are disregarded, we find the following areas need scrutiny and improvement.

**a) Initial decision to detain** - lack of judicial oversight and lack of adherence to rules. Ignoring the H.O. Enforcement instructions and guidance on these matters.

**b) In Particular Rule 35 – UKBA’s own rules and release from detention**  
Rule 35 of the Detention Centre Rules 2001 lays out certain requirements :-  
“The medical practitioner shall report to the manager on the case of any detained person

1) whose health is likely to be injuriously affected by continued detention or any conditions of detention

2) he suspects of having suicidal intentions, and the detained person shall be placed under special observation for so long as those suspicions remain, and a record of his treatment and condition shall be kept throughout that time in a manner to be determined by the Secretary of

State

3.) who he is concerned may have been the victim of torture. “

Section 55.10 of the Enforcement Instructions and Guidance lists groups of people who are considered suitable for detention only in very exceptional circumstances. This list includes those with independent evidence of torture and those with a medical condition which cannot be satisfactorily treated in detention. Rule 35 reports are crucial to obtain release for these detainees.

**There were 983 Rule 35 reports during 2012 ,  
Detention maintained 909/Detainee released 74**

(Response to a recent request by Bridget Phillipson in the House of Commons from Mr. Harper)

The figures speak for themselves about the effectiveness of this rule even when a report is submitted. Not mentioned is the large number of detainees for whom a legitimate report is never sent to the UKBA to be allocated to the responsible officer. eg. Torture victims are frequently not believed when evidence has been produced and no report is submitted.

**c) Length of detention** – Unacceptable periods of detention when there is no sign of ‘imminent removal’, months or years in many cases. In the Bail Guidance for First-tier Tribunal Judges (2012) it states “.. it is generally accepted that detention for three months would be considered a substantial period of time and six months a long period. “

**d) Legal representation** – Our survey shows that bail applicants who had a legal representative were nearly 5 times as likely to get bail as those who represented themselves.

Extrapolating this evidence to appeals gives a grim picture of .the inadequacy and unfairness of self representation in almost all cases.

**e)Movement round detention estate** – This is still frequent and very upsetting for detainees who often lose support networks and legal representation, as well as social and welfare contacts that have been established in a detention centre.

**f) Bail Hearings-** The Guidelines for FT-T judges address some issues we have shown up to be in need of review. Our Report recommendations give a much stronger picture of what needs doing. Major improvements of issues below are detailed in our recommendations. We hope you can see your way to adopting our recommendations to improve fairness and justice for people whose human rights should be upheld, as we would expect for ourselves.

- \*Access to bail - automatic right and legal representation.
- \*Video link problems
- \*Interpreting problems (Capita now responsible)
- \*Representation/Self representation - language/legal problems /role of judge.  
See (d) above.
- \*Bail Summary - need for translation, errors, availability before hearing.
- \*IJ behavior - inconsistency, partiality re HOPO - no challenge to assertions by H.O.
- \*Ignoring guidelines and medical evidence. Ignorance of country situation
- \*Training for immigration judges and regular monitoring of performance.
- \*Available record of entire proceedings. This is essential to provide evidence to challenge the result or lodge a complaint about treatment at a bail hearing.
- \*Reasons for refusal, typed and stating reasons clearly, as described in the new guidelines for immigration judges.

#### **4) Media Coverage and Public Perception:**

We are concerned at the culture of disbelief in the media and public perception of asylum issues. From our own experience we find much reporting not only negative but inaccurate and distorting of the facts. We welcome the potential change signalled in the proposed royal charter on press regulation whereby the press would be required to give as high a profile to apologies and corrections as to the often sensational stories misrepresenting asylum issues, which mislead the public and give rise to dangerous myths based on fear rather than facts. We recognise that this inquiry is concerned with asylum issues; we believe that there is a need for an integrated approach to asylum and migration, and call on the Committee to initiate a public debate based on the principles of human rights, and the information available through organisations such as the Migration Observatory .

#### **5) Financial aspects:**

( Figures available in Detention Action's Matrix Report Sept 2012)

It has been suggested that the huge and lucrative 'industry' which has developed around immigration detention is a driving force behind policies and its continuing expansion. Overall costs to the UK tax payer are never divulged.

We are told that the estimated average cost of holding a person in an immigration removal centre is £840 per week (figures based on data supplied by Lord West of Spithead in the House of Lords / 4 Feb 2010 : Hansard Column WA67,). It is not certain what this covers but it does not appear to include building maintenance, transport, frequent movement of detainees round the detention estate, escorts, tribunal hearings etc. The cost of all the personnel

involved with bail hearings, judges, H.O. legal representatives, clerks, interpreters, hearing centre officials, must be very significant.

To illustrate a totally unnecessary waste of resources: It is not uncommon when, after refusal of bail, a detainee is released few days later on Temporary Admission, where no application has been made and no reason given. Why was the individual detained in the first place and kept there, often after several bail hearings, if release can be so arbitrary?

None of this vast expenditure would be needed if immigration detention were abolished.

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