



Universal Periodic Review Stakeholder Submission

**New or emerging human rights trends in the UK:
Long-term detention of migrants without time limit and the
Detained Fast Track asylum process**

Submission by Detention Action, UK

Main contact: Jerome Phelps, Director, Detention Action

Address: Unit 3R, Leroy House, 436 Essex Rd, London N1 3QP, UK

Tel: 020 7226 3114

jerome@detentionaction.org.uk

www.detentionaction.org.uk

Summary

1. The expansion of the use of long-term detention of migrants without time limit and the detained accelerated asylum process are emerging human rights issues in the UK. The UK routinely detains foreign ex-offenders for periods of years, when the prospects of deportation are remote. The practice of long-term immigration detention risks breaching Articles 3 and 8 of the European Convention on Human Rights. Around 9% of asylum claims are processed on the Detained Fast Track, in which asylum-seekers are detained for increasing periods in inappropriate conditions. This use of detention for the purpose of administrative convenience in processing asylum claims may breach Article 26 of the 1951 Refugee Convention and Article 5 of the European Convention on Human Rights.

About Detention Action

2. Detention Action (formerly London Detainee Support Group) is a national charity established in 1993 that aims to change the way that migrants are treated by immigration detention policy in the UK. Detention Action defends the rights and improves the welfare of people in detention by combining support for individuals with campaigning for policy change. Detention Action works primarily in Harmondsworth and Colnbrook Immigration Removal Centres, near Heathrow Airport in London. All primary evidence and quotes are taken from our casework and reports, unless otherwise stated.
3. **Long-term detention of migrants without time limit**
4. Migrants are frequently deprived of their liberty for periods of years without charge for purely administrative purposes, in stark contrast to the limitation on detention of terrorist suspects which currently stands at 14 days. According to the latest UK Border Agency (UKBA) statistics, of the total of 2,685 people detained, 407 people (15%) had been detained for over six months at 30 June 2011. Of these, 217 people had been detained for over a year and 74 had been detained for over 2 years.¹² These figures understate the true scale of the problem in that they arbitrarily exclude immigration detainees who have been held in prison throughout their detention, who may experience some of the longest periods of detention.

¹ UKBA, *Immigration Statistics April - June 2011*, available at <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-tabs-q2-2011v2/detention-q2-11-tabs>

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5. Migrants can be held in immigration detention under powers contained in the 1971 Immigration Act, “where there is a realistic prospect of removal within a reasonable period.”³ The UKBA policy states that “detention must be used sparingly, and for the shortest possible period necessary.”⁴ However, UK is one of the few countries in Europe which uses immigration detention without time limit, having derogated from the EU Returns Directive that sets a maximum time limit of 18 months. As a result, the UK detains more migrants for longer periods than any other country in Europe.
6. Many NGOs, domestic monitoring bodies and international observers have been alarmed by a dramatic increase in the numbers of migrants being detained for long periods over the last five years, following increased media concern over the deportation of foreign ex-offenders. For example, the Chief Inspector of the UK Border Agency criticised a culture of the detention of foreign ex-offenders as “the norm,” in which “a decision to deport equals a decision to detain.”⁵ The Committee on Migration, Refugees and Population of the Parliamentary Assembly of the Council of Europe criticized in January 2010 European states’ use of detention as “an option of first resort and not last resort, (that) can be prolonged, particularly where there is no practical and imminent possibility of removal”.⁶ The Committee identified the UK’s practice of indefinite detention as one extreme.
7. Detention becomes protracted where a migrant is considered by the UKBA to be unsuitable for release, yet intractable barriers exist to their deportation. Some countries, such as Somalia, are too dangerous for forced deportations to take place⁷, and other states routinely refuse to issue emergency travel documents to their nationals.⁸ Yet the UK continues to detain nationals of these countries for long periods.
8. Migrants in detention have the right to apply to the First Tier Tribunal of the Immigration and Asylum Chamber for bail. However, the quality of scrutiny of bail applications has been criticised by NGOs.⁹ In particular, ex-offenders are rarely

³ UK Border Agency, *Enforcement Instructions and Guidance*, 55.2

⁴ *ibid.*, 55.1.3

⁵ Independent Chief Inspector of the UK Border Agency, *A thematic inspection of how the UK Border Agency manages foreign national prisoners*, November 2011, 6.15

⁶ Committee on Migration, Refugees and Population, Parliamentary Assembly of the Council of Europe, *The detention of asylum seekers and irregular migrants in Europe*, 11 January 2010, para. 5

⁷ Forced returns to Somalia have not generally been possible for many years, as a result of Rule 39 letters issues by the European Court of Human Rights and the recent judgment in the case of *Sufi and Elmi*. See *Sufi and Elmi v UK* (Applications nos. 8319/07 and 11449/07)

⁸ See for example Human Rights Watch, *Eritrea: Service for Life: State Repression and Indefinite Conscriptio in Eritrea*, (2009), p75-77, *Bail for Immigration Detainees, Travel Document Project*, <http://www.biduk.org/543/country-information/country-information.html>

⁹ *Bail for Immigration Detainees, A Nice Judge on a Good Day*, July 2010, Close Campsfield Campaign, *Immigration Bail Hearings: A Travesty of Justice?*, March 2011

granted bail, even where there is little prospect of deportation, due to the perceived risk of reoffending or absconding.

9. The potential arbitrariness of long-term detention is demonstrated by Detention Action's September 2010 report "No Return No Release No Reason", which provided evidence that long-term detention is not an effective tool for ensuring deportations. If deportation has not been possible after a year, continued detention is unlikely to make it become possible. Of the 167 indefinite detainees whose cases were monitored over several years, a clear majority (57%) were finally released. Only a third (34%) of the detainees were deported. Almost one in ten of the detainees (9%) remained in detention. The 188 detainees in the initial survey group had been held for a total of 399 years, an average of 25 months each.¹⁰
10. Detention Action's 2009 report "Detained Lives" documented the impact of indefinite detention on the mental health of detainees. Interviews with 24 detainees held for over a year revealed a picture of endemic mental disorder and distress. Interviewees described witnessing other detainees self-harming or attempting suicide. 21% of interviewees described symptoms of mental disorder, including hearing voices, talking to themselves and memory problems, despite having no previously diagnosed conditions. 8% described harming themselves, and 13% described suicidal feelings.¹¹
11. *"There's nothing to do, every night. I start hearing voices, hearing voices, tell you do crazy things to myself... I've never had medication in my life before now, never. Not in my country, never."* - Mohammed Ali Saad, detained 2 years, interviewed for "Detained Lives".¹²
12. Since 2009, the UK has seen a sharp increase in the number of findings of unlawful detention by the High Court. Between 2009 and early 2011, the High Court ruled on 15 occasions that a detainee held for over year with little prospect of removal was detained unlawfully. In Detention Action's experience, this figure is likely to be dwarfed by the number of occasions on which the UKBA has agreed to release a detainee before an unlawful detention action reached the court. The Home Office paid out £3 million in 2008-09 and £12 million in 2009-10 in compensation and legal costs arising from unlawful detention actions.¹³
13. In the case of Sino, whom Detention Action supported, the High Court found that an Algerian national with a psychological disorder and a history of minor offending had been detained unlawfully for the entirety of his 4 years and 11 months in

¹⁰ London Detainee Support Group (now Detention Action), *No Return No Release No Reason*, 2010, p8

¹¹ London Detainee Support Group (now Detention Action), *Detained Lives*, p22

¹² *ibid.*

¹³ Baroness Neville-Jones, Minister of State, Home Office, Hansard 29 Nov 2010 : Column WA410

immigration detention.¹⁴ This is thought to be the longest ever period of unlawful immigration detention in the UK. The court found that there was at no point any prospect of his deportation becoming possible in a reasonable period, so there was never a power to detain him. Efforts to obtain a travel document had been unsuccessful for three years prior to Mr Sino's detention, so it should have been clear at the outset that further efforts would prove unsuccessful.

14. Over the last three months, the High Court has on two occasions found that the prolonged detention of mentally disordered people amounted to breaches of Article 3 of the European Convention on Human Rights. Both litigants received support from Detention Action.
15. In August 2011 in the case of "S", the High Court ruled for the first time that the detention of a man with severe mental illness had amounted to inhuman or degrading treatment in breach of Article 3. The Court made clear that it would have found that Article 8 was also breached, had it been necessary to do so. S had a history of serious ill treatment and abuse prior to arriving in the UK which had been accepted by a number of medical experts. After serving a prison sentence, he was sectioned under mental health legislation until April 2010, when he was transferred to immigration detention, despite evidence that detention caused deterioration in his psychotic state. By continuing S's detention, the UKBA was found to have breached the negative and positive obligations under Article 3.¹⁵
16. A second finding of breaches of Articles 3 and 8 in October 2011 concerned BA, a Nigerian with a criminal conviction for smuggling drugs, who was detained between June and October 2011. He had been assessed by the Probation Service as low risk of reoffending or serious harm to the public. He was twice sectioned under the Mental Health Act during his prison sentence, with evidence of psychosis and refusal of fluids. By July 2011, the UKBA had been informed by the Healthcare Manager at Harmondsworth Immigration Removal Centre that he was not fit to be detained as he could die imminently due to his refusal of fluids. After a spell in hospital, he was transferred back to detention, in breach of a court order. He was not released until a further order from the High Court on 7 October. In finding a breach of Article 3, the High Court described "callous indifference" on the part of the UKBA, alongside "a deplorable failure... to recognise the nature and extent of BA's illness."¹⁶

¹⁴ Sino, R (on the application of) v Secretary of State for the Home Department [2011] EWHC 2249 (Admin) (25 August 2011)

¹⁵ S, R (on the application of) v Secretary of State for the Home Department, [2011] EWHC 2120 (Admin), (5 August 2011), para 212.

¹⁶ BA, R (on the application of) v Secretary of State for the Home Department, [2011] EWHC 2748 (Admin) (26 October 2011)

Recommendation 1: The UK should protect migrants from arbitrary long-term detention through adopting a maximum time limit for detention. The evidence shows that extended detention more often leads to release than deportation. The UK should follow best practice in the EU and implement a time limit of one month.

Recommendation 2: Likelihood of imminent deportation should have priority in decisions by UKBA and the Tribunal to initiate and continue detention. Where deportation is not imminent, it can be pursued while the person is in the community.

Recommendation 3: Where deportation is not imminent, community-based alternatives to detention should always be used. UKBA should study the successes of the Swedish and Australian models, which have achieved high rates of voluntary return through an emphasis on dialogue with asylum seekers and migrants in the community.

The Detained Fast Track asylum process

17. The UK detains asylum-seekers on the Detained Fast Track asylum process (DFT), in order to process their asylum claims quickly. Detention for the purpose of administrative convenience in processing asylum claims appears to breach Article 26 of the 1951 Refugee Convention, as some asylum-seekers on the process are ultimately recognised as refugees.
18. Asylum-seekers on the DFT are detained throughout the asylum process. Men are usually held in Harmondsworth IRC and women at Yarls Wood IRC. Their claims are processed according to accelerated timescales. Over 2,000 asylum seekers are detained in this way per year, around 9% of claimants. In 2009, 23% of people on Detained Fast Track were from Afghanistan.
19. The DFT is intended for “straightforward” asylum claims. However, effectively screening out vulnerable people with complex cases is impossible, as the decision to detain an asylum-seeker is taken before any detailed questions are asked about the nature of their claim. UKBA guidance contains a presumption that the majority of asylum applications are suitable for the DFT, unless there is evidence to suggest otherwise.¹⁷ Significant numbers of torture victims and mentally disordered people go onto the DFT.¹⁸ A DFT process for women operates in Yarls Wood IRC, despite the complexities and the obstacles to early disclosure associated with the high prevalence of histories of rape and sexual violence.¹⁹ The selection of cases for the Detained Fast

¹⁷ UKBA, *DFT and DNSA - Intake Selection (AIU Instruction)*, 2.2

¹⁸ Medical Foundation for the Care of the Victims of Torture, quoted in Detention Action, *Fast Track to Despair*, May 2010, p31

¹⁹ Bail for Immigration Detainees, *Refusal Factory: Women’s experiences of the Detained Fast Track asylum process at Yarls Wood Immigration Removal Centre*, 2007, p19-20

Track risks appearing arbitrary, yet in Harmondsworth 99% of claims are refused by the UK Border Agency.²⁰

20. The timescales on DFT risk breaching the rights of asylum-seekers. Policy documents set out tight deadlines, reflecting the gravity of depriving migrants of liberty in order to process their asylum claims. UKBA policy states that they should be interviewed on day 2 of their detention.²¹
21. However, research in Detention Action's report "Fast Track to Despair" has found that asylum-seekers are detained for an average of two weeks before the process even starts, due to administrative delays by the UKBA.²² 18% wait for over a month in detention.²³ Most have no access to legal advice for this period. They then face an asylum process at breakneck speed, in most cases meeting their duty solicitor on the morning of their asylum interview with no advance notice. They are given only two days to gather evidence for and submit an appeal. Finally, they spend an average of 58 days in detention awaiting removal.
22. *Case study: John B spent 34 days in detention after claiming asylum before he was allocated a solicitor. His asylum interview was the next day. He was refused on day 39 of his detention. He was released on bail after 184 days in detention.*²⁴
23. Asylum-seekers in Harmondsworth are often held in high security conditions equivalent to a Category B prison. Interviews with 45 asylum-seekers for Detention Action's research found that the majority were confused and distressed, struggling to understand the complex asylum procedure in a hostile and stressful environment.²⁵
24. *"Whoever comes into these detention centres, from the moment they are detained they lose all their rights. It is like we are all in prison... What have we done to be locked up? Just living under these circumstances, I feel I will go crazy just from thinking" - Asif from Pakistan, asylum-seeker on the DFT interviewed for "Fast Track to Despair"*²⁶
25. The majority (63%) of asylum-seekers on the DFT are unrepresented on appeal,²⁷ in most cases following decisions by their legal aid duty solicitors that their cases have insufficient merit. It is in the interests of justice that free legal advice be provided to

²⁰ UKBA, Freedom of Information Act response, 3/2/11

²¹ UKBA, *Detained Fast Track and Detained NSA, 9 September 2009*, quoted in Detention Action, *Fast Track to Despair*, May 2011, p11

²² Detention Action, *op cit*, p4

²³ *ibid*, p22

²⁴ *ibid*, p23

²⁵ *ibid*, p18

²⁶ *ibid*, p16-18.

²⁷ 448 of 711 cases, January - September 2010. Ministry of Justice, Freedom of Information Act response, 01/03/11

asylum-seekers who require it throughout the DFT process, so current practice risks breaching Article 6 of the European Convention on Human Rights.

26. Detention Action believes that the DFT is no longer necessary. It was developed in 2000 as a response to unprecedented numbers of asylum claims and an increasing backlog. However, the number of asylum applications has fallen by 79% since 2002, processing times have been reduced, and the backlog has largely been resolved. Yet the DFT continues to expand, increasing by 39% in 2009.
27. In the case of Saadi, the European Court of Human Rights held in 2008 that detention for seven days in the “relaxed regime” of a low security centre did not breach Article 5 of the European Convention on Human Rights.²⁸ The court took into account the necessity to ensure the speedy resolution of the large numbers of asylum applications at that time. However, since Dr Saadi was detained in 2000, the lengths of time that asylum-seekers are detained have increased, they are detained in centres with far higher security levels, and the pressure of numbers of asylum claims has greatly reduced. Given these changes, the operation of the DFT today risks breaching Article 5.

Recommendation 4: The UK should take steps to ensure compliance with Article 26 of the Refugee Convention and Article 5 of the European Convention on Human Rights. The abolition of the DFT is likely to be necessary to ensure full compliance.

Recommendation 5: If the DFT is to be retained, the UK should take steps to ensure that vulnerable and complex cases are not arbitrarily routed into the DFT, in breach of policy. This will require thorough reform of the screening process.

Recommendation 6: Asylum-seekers on the DFT should be provided with a legal representative on their second day in detention at the latest.

Recommendation 7: Sufficient time should be allocated to allow asylum-seekers and their legal representatives to fully prepare their cases and gather evidence.

²⁸*Saadi v UK* (Application No 13229/03)