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Association of Visitors to Immigration Detainees (AVID) and Bail for Immigration Detainees (BID)

United Kingdom

Submission to the UN Universal Periodic Review

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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 16 years experience in supporting immigration detainees wherever they are held; our 18 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 present a collective voice for change.

About BID: BID is a national charity established in 1999 to improve access to bail for all those held under Immigration Act powers. BID works across all removal centres and prisons to provide immigration detainees with advice, training and representation, helping around 2000 detainees each year. BID also carries out policy, research and litigation work directed towards access to justice for immigration detainees.

1. About this submission

1.1 In this submission we wish to highlight that many of the UK government's practices in relation to the immigration detention of vulnerable asylum seekers and other migrants are at odds with its obligations under the UK Human Rights Act and the European Convention of Human Rights (ECHR). The 1998 Human Rights Act 'gives further effect' in UK law to the rights contained in the ECHR.

1.2 We draw attention to the immigration detention of vulnerable adults, and in particular to the identification and treatment of detainees with mental health disorders. Many are not receiving humane treatment in line with the UK Border Agency (UKBA)'s duty of care towards those deprived of their liberty for administrative purposes. We make particular reference in this regard to the ECHR Articles 2 (the right to life) and 3 (that no one shall be subject to torture or to inhuman or degrading treatment or punishment).

1.3 Our concerns are based on evidence uncovered during joint research and policy work on mental health in immigration detention since August 2010, complemented by the experience of both organisations in working directly on immigration detention matters on a day to day basis. We also refer to recent UK case law.

2. Context: Immigration Detention in the UK

2.1 The UK has statutory powers of detention in respect of asylum seekers and other migrants and currently detains over 30,000 people each year. The majority of those detained will have claimed asylum at some point (64% of those held in 2010¹). The powers to detain are set out in the 1971 Immigration Act. The UK may detain in 11 designated immigration removal centres (IRCs²) and 4 residential short term holding facilities (STHFs³): these places are included in the official Home Office statistics. However, immigration detention may also be in prisons; other short term holding centres at ports, and police stations- these places are not included in the statistics. The number held annually is therefore believed to be much higher than official records show at any one time.

2.2 The UK has derogated from the European Qualifications Directive and as a result there is no upper time limit on the length of detention. The longest period of detention as at 30th September 2010 was just under five years⁴. Figures show that of all those detained as at 30th June 2011 (2,685), 15% were held for six months or more (407)⁵.

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>

² Brook House, Campsfield, Colnbrook, Dugavel, Dover, Haslar, Harmondsworth, Lindholme, Morton Hall, Tinsley House and Yarl's Wood.

³ Larne, Pennine House, Colnbrook and Cedars

⁴ *House of Commons Hansard*, 25th January 2011, 36217 accessed at <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110125/text/110125w0001.htm#11012554000019>

⁵ 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>

3. Developments since the preceding review and gaps in the previous report

3.1 It is unfortunate that the immigration detention of adults did not feature in the previous review. With the exception of a commitment made to end the detention of children, there has been no discernible progress in human rights terms since 2008. In some areas the situation has deteriorated. The UK is now detaining many more than it was in 2008; three new facilities opened in 2011 alone⁶. As of 2010, the UK has Europe's largest immigration detention facility (Harmondsworth IRC).

3.2 The UK is also detaining people for longer periods. This has come under intense criticism from NGOs and statutory monitoring bodies⁷. The High Court recently found that one man's detention for 4 years 11 months was unlawful throughout⁸. In 2009-10 £12 million was paid in compensation and legal costs for unlawful detention cases⁹. For many detainees, removal from the UK within a reasonable time – the statutory purpose of immigration detention - has ceased at some point to be achievable yet detention continues, at great cost both to the public purse and the mental health of detainees.

3.3 The detention of children also became increasingly controversial during this period. Despite a commitment to end the immigration detention of children (May 2010), the government opened a new family detention facility in 2011. This is described by UKBA as 'Pre-departure-Accommodation'. However, this is a secure facility where families are held under Immigration Act powers. It has areas where families and individuals can be held in isolation.

3.4 Some concessions have been made in policy on child detention, and a time limit of one week has been set (yet to be circumscribed in legislation). However, many of the systemic problems, including barriers to accessing to quality legal advice, have not been addressed. A current bill in parliament would effectively make the position of these families even worse by excluding some families from Legal Aid prior to their detention¹⁰.

3.5 We are also gravely concerned that the UKBA is separating children from their parents by holding parents in detention. This is without time limit. We have worked with families who have been separated this way for long periods; some children have been placed in statutory care as a result. Such practice is at odds with the UK Border Agency's duty to safeguard and promote children's welfare.

⁶ Morton Hall IRC (393 spaces), Larnie STHF (19 spaces) Cedars STHF ('pre departure accommodation') (9 apartments, 44 people)

⁷ 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)

⁸ *Sino, R (on the application of) v Secretary of State for the Home Department* [2011] EWHC 2249 (Admin) (25 August 2011)

⁹ [House of Lords Hansard, HL3794](#) accessed at

<http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/101129w0001.htm>

¹⁰ Legal Aid, Sentencing and Punishment of Offenders Bill (currently being debated in Parliament)

3.6 Recommendation: That the UK should consider its human rights obligations under the UN Convention on the Rights of the Child and revisit its commitment to end the detention of children. The detention of children should end immediately. Families should never be separated for the purposes of immigration control.

3.7 Another gap in the previous review is the detention of trafficked people. Research by the Poppy Project found that 21% of their trafficked clients had been detained in IRCs or prisons and that despite exhibiting symptoms of post-traumatic-stress-disorder only 15% of these were given medication in detention.¹¹

3.8 Recommendation: The UK Government should take steps to prevent victims of trafficking being held in immigration detention by improving procedures for identification and referral of trafficked persons.

4. Promotion and protection of Human Rights on the Ground

Failure to protect the right to life: Article 2

4.1 Article 2 places an obligation on the state both to refrain from taking life and a positive duty to take appropriate measures to safeguard life. These obligations are particularly relevant for those in state custody for whom the state has a duty of care. There is a higher risk of suicide generally amongst detained populations¹², as well as among certain 'high risk' groups including young adults, males, those who have suffered a previous traumatic experience, those with a history of contacting mental health services and those who do not have family or social support¹³. A significant proportion of the UK's detained population consists of these high risk groups.

4.2 In the period since the last review, there were five deaths in immigration detention and during removal¹⁴.

4.3 There were 183 incidents of self harm *that required medical treatment* in 2010 in IRCs. In the same period, 1,367 detainees were deemed to be 'at risk' of self harm¹⁵. These figures do not include detainees held in short term holding facilities or prisons.

4.4 HM Chief Inspector of Prisons (HMCIIP) found that half of all the IRCs inspected in 2009 were not judged to offer a sufficiently safe environment for detainees¹⁶. HMCIIP has repeatedly expressed concerns that mental health provision in IRCs is inadequate¹⁷.

¹¹ Stephen-Smith, S. 'Detained: Prisoners with No Crime' London: Poppy Project (2008)

¹² Her Majesty's Inspectorate of Prisons Suicide is Everyone's Concern (1999)

¹³ Ibid

¹⁴ House of Commons Hansard, 13th September 2011, c 1132W accessed at : <http://www.theyworkforyou.com/wrans/?id=2011-09-13a.70818.h&s=detention#g70818.r0>

¹⁵ Data obtained via a Freedom of Information request submitted by 'Freemovement' and accessed online at www.freemovement.org.uk on 16th march 2011

¹⁶ HMCIIP Annual Report 2008-9 p15

¹⁷ See, for example: HMCIIP (2010) Report on an announced inspection of Brook House IRC (15-19 March 2010) p15, HMIP (2010) Report on an announced full inspection of Harmondsworth IRC (11-15 Jan 2010) p31

4.5 Preventive strategies for the reduction of harm to vulnerable detainees in IRCs are not in line with the equivalent standards in the UK Prison Service. For example, first night screening including a detailed assessment of risk of self harm is not carried out in IRCs.

4.6 Operational management of IRCs is contracted out by the UK government to commercial operators and HM Prison Service¹⁸. Provision of healthcare is also sub-contracted, resulting in a mixed provision of private and public healthcare systems. AVID's research into conditions in detention reveal uneven provision in terms of mental health support across the UK's detention estate. There is no standardised allocation of mental health nurses, or other staff trained to support those with mental disorder.

4.7 Recommendation: That the UKBA discharges in full its positive obligations under Article 2 with respect to those detained under Immigration Act powers and for whom it has a duty of care. 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.

4.8 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. AVID and BID have become increasingly concerned by the number of detainees we see who are suffering from mental disorder. The mechanisms in place to protect these groups have been considerably weakened in recent years. This has compounded an already difficult and potentially damaging situation for the most vulnerable.

4.9 The first mechanism is statutory provision: Rule 35 of the Detention Centre Rules. This is the mechanism through which concerns about those whose health may be 'injuriously affected' by detention, are raised and passed to UKBA to enable release where required¹⁹. NGOs including AVID and BID have raised concerns for some time about the efficacy of this process²⁰. In 2009 an audit of the process by UKBA revealed the dysfunction of Rule 35 and its failure to protect the vulnerable: in 91% of the audited cases, detention was maintained²¹.

4.10 A second example is that the UKBA's own operational policy guidance towards the detention of vulnerable groups has been considerably diluted. This policy outlines those groups of people unsuitable for detention except in '*exceptional circumstances*'²².

4.11 The section of this policy entitled '*Persons considered unsuitable for detention*' was amended without consultation in August 2010, and introduces a new 'manageability' clause

¹⁸ Current private providers are: Serco, Group 4 Securicor (G4S), Mitie PLC, and the GEO Group

¹⁹ UK Legislation: Detention Centre Rules (2001) Rule 35. Accessed at:

<http://www.legislation.gov.uk/ukxi/2001/238/contents/made>

²⁰ See, for example, minutes of the UKBA Stakeholder Meetings 'UKBA Detention User Group Medical Sub Group' throughout 2009 and 2010

²¹ UKBA (2011) Rule 35 Audit accessed at

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/reports/detention-centre-rule-35-audit/>

²² UKBA Enforcement Instructions and Guidance Chapter 55 'Detention and Temporary Release' Section 55.10 'Persons Unsuitable for Detention' accessed at

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/chapter55.pdf?view=Binary>

with regards to certain groups. This effectively alters the previous presumption *against* the detention of these groups to a new presumption *of* detention, provided their specific vulnerability can be 'satisfactorily managed' within detention. The UKBA has confirmed to NGO stakeholders including both AVID and BID that there is no agreed policy definition or guidance on what would constitute '*satisfactory management*'.

4.12 This policy change effectively dilutes the policies to protect vulnerable people from detention, enabling the Secretary of State to detain more broadly, and from a wider range of vulnerable people whose conditions may be injuriously affected by their detention.

4.13 The aforementioned policy on those people deemed unsuitable for detention was amended further with regards to the level of severity of 'mental illness' that would be deemed unsuitable for detention. Prior to August 2010, the policy stated that detention of people with a '*mental illness*' should only be detained in '*exceptional circumstances*'²³. This was amended as follows: '*those suffering from serious mental illness which cannot be satisfactorily managed in detention*'²⁴. This represents a substantive shift in the policy, in that it suggests that those with serious mental illness are now suitable for detention rather than unsuitable. It also suggests that there is a presumption in favour of detention for those whose mental disorder is deemed to be less serious.

4.14 Further, once in detention, the risk of further mental deterioration is well documented²⁵. Many AVID member groups, who visit in every IRC in the UK, have highlighted the negative impact of immigration detention on mental health of those they visit.

4.15 Recommendation: That the UKBA fulfils its positive obligations under Article 2 by ensuring its duty of care is consistently applied throughout its policy guidance. In particular, the UKBA should reverse the policy amendments to the Enforcement Instructions and Guidance (Chapter 55.10 *Persons Unsuitable for Detention*) to ensure that vulnerable groups included those with mental disorder are not detained.

Violation of Article 3: Prohibition of torture and inhuman or degrading treatment

4.16 The UK's detention of people suffering from mental disorder has been found to breach article 3 of the ECHR in two recent cases²⁶, the case of 'S' (August 2011) and the case of 'BA' (October 2011). In these two cases the prolonged immigration detention of people suffering from severe mental disorder was found to amount to inhuman and degrading treatment.

4.17 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

²³ *ibid*

²⁴ *ibid*

²⁵ See, for example: Pourgourides, C. Et al (1997) *The mental health implications of detention of asylum seekers in the UK* *Psychiatric Bulletin*, Vol. 21, p673-4, Detention Action (2009) *Detained Lives: the real cost of indefinite detention*, Cohen, J. (2008) *Safe in Our Hands? A study of suicide and self harm among asylum seekers*, *Journal of Forensic and Legal Medicine*, May 15 (4), p 235-4

²⁶ *S, R (on the application of) v Secretary of State for the Home Department (2011) EWHC 2120 (Admin)* and *BA, R (on the application of) v Secretary of State for the Home Department (2011) EWHC 2748 (Admin)*

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 treatment²⁷.

4.18 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 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"²⁸ to this man's plight.

4.19 Recommendation: In light of the recent judgements concerning Article 3 that the UK undertakes a comprehensive review of the identification and management of mental disorder for those detained under immigration act powers.

²⁷ S, R (on the application of) v Secretary of State for the Home Department (2011) EWHC 2120 (Admin)

²⁸ BA, R (on the application of) v Secretary of State for the Home Department (2011) EWHC 2748 (Admin)