

Rethinking 'Vulnerability' in Detention: a Crisis of Harm

Report by the Detention Forum's
Vulnerable People Working Group

Executive Summary | July 2015

More people than ever before are now being detained without time limit in the UK for immigration purposes. The use of detention has become a core element of immigration policy for successive governments, despite mounting evidence that its use is both inefficient and enormously damaging to those detained.

In particular, increasing numbers of very vulnerable people are now held in detention. Despite repeated and severe criticism, the UK has been unable to find an effective way to prevent this. Monitoring bodies, academics, clinicians, NGOs, and those with experience of immigration detention themselves have all expressed their concern that the UK's immigration detention system is putting vulnerable people at risk. The High Court has found on no less than six occasions in a period of three years that the Home Office had breached its responsibilities under Article 3 of the European Convention on Human Rights (the right to freedom from torture, cruel and inhuman or degrading treatment)¹ for those who are in immigration detention. Most recently, the parliamentary inquiry into immigration detention called for radical reform of the entire detention system.

This report revisits the issue of vulnerability through a literature review and interviews and case studies of 31 vulnerable people. This exercise elicited three key observations which should inform a new approach to vulnerability in detention. Such a new approach would

require that the Home Office think about vulnerability in a different way, in order effectively to prevent detention of vulnerable people.

1. that the Home Office has failed to follow its own guidance and continues to detain individuals they have recognised as members of 'vulnerable groups';
2. that detention centres are inadequate to meet the basic care needs of these individuals;
3. that reliance on the categories of vulnerability within the current policy guidance overlooks the dynamic nature of vulnerability, shaped by individual characteristics and changing over time. This means that detainees who do not fit within the pre-existing categories remain invisible and at risk.

The issue is not just that current policy is failing but that it is inadequate in its own terms. The current policy focuses the decision-maker's mind solely on whether a person fits straightforwardly into a specific category of vulnerability at the point at which a decision to detain is made. This creates an impression that those who do not fit neatly into the existing categories are not and will not be vulnerable in detention.

This narrow, static and category-based approach to vulnerability contrasts starkly with a holistic approach recommended and used by researchers and other specialists. Our

¹ Available at <http://www.legislation.gov.uk/ukpga/1998/42/schedule/1>

literature survey shows that this more holistic approach to vulnerability acknowledges a range of personal, social and environmental factors which may affect or indeed cause a person's vulnerability. Such an approach also highlights the need to monitor how individuals' vulnerability may change over time.

While we were completing this report, the parliamentary inquiry into immigration detention published its report in March 2015. The inquiry panel concluded that 'detention is currently used disproportionately frequently, resulting in too many instances of detention' and urges the government to radically reform its detention system, starting with the introduction of a time limit of 28 days and the development of community-based alternatives to detention.

Our case studies of vulnerable people in detention demonstrate what the inquiry panel called 'the enforcement-focused culture of the Home Office' - its narrow, static and category-based vulnerability assessment is used primarily to reduce as far as possible the number of people who cannot be detained, rather than to prevent vulnerability from happening in detention.

We propose that reform of detention should include the introduction of a more holistic approach to vulnerability so that the detention of vulnerable people for immigration purposes can be truly eliminated. This is likely to be a complex task, and we hope that the government initiates dialogue with practitioners and experts to overcome various shortcomings identified by this report and others.

With this in mind, we recommend the following:

- The government should implement the recommendations made by the parliamentary inquiry into the use of detention.
- The current policy on detention of vulnerable people is not working because of its narrow, static and category-based

approach. We do not think this can be resolved by an expansion of the number of categories used to identify and describe vulnerability. The Home Office should develop a vulnerability assessment tool and practice which enable a more thorough approach to screening of individuals before detention but is also adaptable to changes over time in detention. This should be based on good practice developed by researchers and other practitioners. The primary purpose should be to prevent detention of vulnerable people and the occurrence of vulnerability in detention.

- The development of such a tool should be carried out in consultation with independent experts, including clinicians and mental health professionals, researchers and practitioners from other areas through the establishment of an independent expert working group. This working group should oversee both the development of a vulnerability tool and its implementation, which should be regularly reviewed and externally audited.
- Such a vulnerability tool should be engaged at regular intervals to enable changes over time to be reviewed. People identified as becoming increasingly vulnerable over time should be released immediately.
- As recommended by the parliamentary inquiry, community-based alternatives to detention utilising a case management model should be developed. This would enable a shift away from the current enforcement culture and significantly reduce the use of detention. Such a model should ensure that vulnerable and potentially vulnerable people can go through the immigration system without experiencing detention. The development of such a model is likely to take time and effort, as well as the participation of civil society organisations and other institutions, but the reduced use of detention will generate cost savings which can be reinvested into case working and support in the community.

Case Studies

Jacques

Jacques was detained for the purposes of removal to Denmark where he had previously claimed asylum. He had a traumatic history as a child soldier and was severely impacted by PTSD. Despite being visibly unwell, and despite anecdotal evidence of staff feeling unable to manage the situation, he was detained for over two months before being removed to Denmark.

During detention, Jacques suffered periodic blackouts and dizziness, which at least once led to injury. He was unable to communicate with staff or other detainees and exhibited erratic behaviour, at times running naked out of his room or speaking in what was understood by staff as gibberish. In response,

Jacques was regularly placed in isolation, which appeared to exacerbate his confusion and paranoia.

The local visitors' group made efforts to raise concerns with the detention centre staff, but got no response from the healthcare centre. Attempts to support Jacques were made by a fellow detainee who spoke the same language as well as a solicitor who was willing to represent him for a temporary admission application and for unlawful detention. Jacques' paranoia made him unwilling to enter the room with the solicitor, and so it was impossible to represent him. Communication was so difficult that his fellow detainee was unable to do much to support him either.

Tapiwa

Tapiwa fled his home country after being detained and tortured by the government in relation to his connection with the military. He was arrested in the UK for using false papers. While in prison he received news that colleagues had been killed in his home country, learned of the possibility of claiming asylum and made a claim. He was refused asylum and his claims of torture were disbelieved. Despite making these claims known, he was not provided with a medical review or Rule 35 report during his first detention and, because he was not aware that this was the necessary process, he did not ask for screening. He was released after three months.

Tapiwa pursued his asylum claim for six years and was re-detained after being found working in the community. During his second detention he was held for nine months and educated himself about the asylum process. He requested medical reports and two Rule 35

reports substantiated his claims of torture. He was also diagnosed with PTSD.

Tapiwa says his history in the military gave him the knowledge necessary to deal with the detention centre staff. He also describes the positive impact of being able to represent his own case and of using his educational background to help other detainees. In spite of this Tapiwa's mental health deteriorated during his second detention; he began getting panic attacks and had difficulty with sleep and appetite. Although he felt himself healthy prior to detention, his time in detention still affected him after release.

The HO refused Tapiwa's applications for bail under the claim that he constituted a risk to the public if released, despite having no history of violence and no criminal history other than working without documentation and using false papers in order to flee the danger of his home country.

Syed

Syed had pre-existing mental health conditions that were exacerbated by fleeing trauma in his home country. He was granted asylum with temporary leave to remain in another European country, but travelled to the UK to join family who helped him cope with his mental health issues. Although he had been documented as having a history of trauma and mental health issues, Syed had been detained for five months at the time of this study.

His engagement with his own asylum case diminished over his time in detention, and he reported feelings of extreme hopelessness, which led to suicidal ideations. Aware of his suicidal thoughts, the detention centre placed him in isolation units under constant supervision, which exacerbated his stress and led to increased incidences of self-harming.

Although Syed had family in the UK who supported him and helped him to handle his mental illness, he was refused bail on the grounds that removal was imminent (despite being detained for five months). Medical notes suggested a belief that he would not follow through on his suicidal thoughts, limiting the impact of the Rule 35. As a result of his ongoing separation and feelings of hopelessness, Syed had a diminished sense of agency in dealing with his case, and focused instead on regaining his autonomy through suicide.

'It's my life, I should be able to do what I want with it. I have no hope... you are trying to give me hope but I know it is hopeless.'

Retta

Retta was brought up by her aunt in her home country, but was badly treated and forced into prostitution. She was then trafficked to the UK and forced to work in a brothel, which she was not allowed to leave. She eventually stole some money and managed to escape, only to be put into detention on the Detained Fast Track. The UKBA initially refused to believe that she was a victim of trafficking, but this was challenged when an NGO intervened and referred her into the National Trafficking Referral Mechanism. She was diagnosed HIV-positive while in detention, but again only after the intervention of an NGO who recommended she request a test, as she had not been offered this either by

the UKBA or by the security company who ran the detention centre.

No Rule 35 report was made, and an application to the UKBA for temporary admission was refused, but she was eventually released on bail by the Immigration and Asylum Tribunal. Once it was discovered that Retta was HIV-positive she was given basic counselling, but it was left to a local NGO to make a referral to a local HIV support charity. She was detained for over five months before being released, and is now awaiting the outcome of a fresh claim based on the risk of being re-trafficked upon return.

The Detention Forum



Detention Forum is a network of organisations working together to challenge the UK's use of immigration detention. For a full report, please visit our website at www.detentionforum.org.uk

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