Written evidence to the Parliamentary Inquiry into the use of immigration detention in the UK, hosted by the APPG on Refugees and the APPG on Migration

Introduction

1. Bhatt Murphy is a specialised niche firm established to concentrate expertise in matters pertaining to detention: our focus is upon the treatment of individuals by the criminal justice system and those within immigration detention.[1] During the firm's 15 years, we have represented hundreds of individuals detained by the Home Office in both public law and private law claims. This evidence is drawn from our own casework, judgments of the United Kingdom ('UK') courts and domestic and international monitoring bodies.[2] We have sought to direct this evidence towards particular questions identified by the Inquiry.

How far does the current detention system support the needs of vulnerable detainees, including pregnant women, detainees with a disability and young adults ?

2. Serious flaws in executive decision-making have been extensively documented over many years, including failures to comply with detention policy intended to regulate the exercise of wide discretion. Reporting systems for vulnerable detainees have repeatedly been found not to work as intended. In particular, the Home Office's pro forma Rule 35 document[3] elicits minimal information so that such notifications rarely secure release, regardless of the gravity of the detainee's condition. Further, the Detention Centre Rules 2001 (the 'DCR') apply only to those detainees held in Immigration Removal Centres ('IRCs'), not to the 30% of immigration detainees now held in prisons. The UN Committee Against Torture ('CAT') in 2013 expressed particular concern over the detention of vulnerable people in the UK, including within the Detained Fast Track system ('DFT').[4]

3. The Independent Chief Inspector of the Borders and Immigration ('ICIBI') and Her Majesty's Inspector of Prisons' ('HMIP') joint report in 2012, likewise recorded particular failures in respect of vulnerable detainees:

'*In our interviews, 67% of detainees said they had health problems, with 53% describing mental health problems, such as depression, stress and anxiety. Those held for more*

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[1] Our website is at http://www.bhattmurphy.co.uk/ which includes further details of our work.

[2] We are grateful to Bail for Immigration Detainees (BID), Raza Husain QC (Matrix Chambers) and Laura Dubinsky (Doughty Street Chambers) for their invaluable contribution to this evidence which was informed by BID's submissions as Intervener in the case of *JN v UK* (Application No: 37289/12) currently before the European Court of Human Rights.

[3] Rule 34 of the Detention Centre Rules 2001 SI 2001/238 requires that detainees in Immigration Removal Centres be given a medical examination by a medical practitioner within 24 hours of arrival. Rule 35 of the Detention Centre Rules 2001 requires healthcare practitioners in immigration removal centres to report to the manager, who in turn must notify the Secretary of State for the Home Department '*without delay*' '*on the case of any detained person whose health is likely to be injuriously affected by continued detention or any conditions of detention.*'

[4] "*The Committee remains concerned at:(a)Instances where children, torture survivors, victims of trafficking and persons with serious mental disability were detained while their asylum cases were being decided;(b)Cases of torture survivors and people with mental health conditions entering the [DFT] due to a lack of clear guidance and inadequate screening processes, and the fact that torture survivors need to produce "independent evidence of torture" at the screening interview to be recognized as unsuitable for the DFT system"* UN, Report of the Committee Against Torture, 49th Session (29 October – 23 November 2012) & 50th Session (6 – 31 May 2013), Supplement No.44 (A/68/44), 6 August 2013.

than six months were much more likely to describe such symptoms.... The Rule 35 process did not provide the necessary safeguards for vulnerable detainees.

...

The Rule 35 reports are often perfunctory and contain no objective assessment of the illness, condition or alleged torture. The replies are often cursory and dismissive and... it is extremely rare for a Rule 35 report to lead to release.[5]

Mentally ill detainees

4. In six judgments since 2011, the High Court has found that mentally ill detainees were detained by the Home Office in such conditions that their rights under Article 3 ECHR were breached[6]. Four of the detainees were clients of this firm. In all six cases, detention had been authorised notwithstanding clear expert diagnoses of mental illness. In *R (HA) v Secretary of State for the Home Department* ('SSHD') [2012] EWHC 979[7], for example, a paranoid schizophrenic was detained despite clear warnings from a psychiatrist that his condition would deteriorate. A common feature of these cases is the inappropriate use of segregation to "manage" those suffering mental illness, notwithstanding evidence that segregation is likely to exacerbate such conditions.[8]

5. The European Committee for the Prevention of Torture ('CPT') stated following its visit in 2012:

'*At Colnbrook, the CPT's delegation came across a number of detainees who suffered from mental health problems, such as schizophrenia, paranoia, or psychotic episodes, and whose suitability for detention was, at best, questionable. Some of them were not receiving any psychiatric treatment.* [9]

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[5] '*The effectiveness and impact of immigration detention casework',* December 2012 http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/thematic-reports-and-research-publications/immigration-detention-casework-2012.pdf (Page 28).

[6] *R (S) v SSHD* [2011] EWHC 2120; *R (BA) v SSHD* [2011] EWHC 2748 (Admin); *R (HA) v SSHD* [2012] EWHC 979; *R (D) v SSHD* [2012] EWHC 2501 (Admin); *R (S) v SSHD* [2014] EWHC 50; *R (MD) v SSHD* [2014] EWHC 2249 (Admin).

[7] *R (HA) v SSHD* [2012] EWHC 979, para 83.

[8] HMIP's recommendations that IRCs should, like prisons, operate a health screen to ensure that segregation is not clinically inappropriate have not been implemented – see http://www.justiceinspectorates.gov.uk/prisons/wp-content/uploads/sites/4/2014/03/brook-house-2011.pdf at page 61

[9] European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report to the Government of the United Kingdom on the visit to the United Kingdom from 17 to 28 September 2012, CPT/Inf (2014) 11, Strasbourg, 27 March 2014. http://www.cpt.coe.int/documents/gbr/2014-11-inf-eng.pdf Specific examples of their observations included: '*One detained person (a Sri Lankan national), had at various points in time received diagnoses of mental health problems, including paranoid schizophrenia, borderline personality, depression and suicidal tendencies...Another detainee with a very severe and complicated medical history, who spoke no English and had poor communication skills in his native language, suffered from severe delusions. At the time of the visit, he had been lying in his bed for several days, wide awake but eyes closed, refusing to communicate, displaying paranoid behaviour. An entry in his medical record prior to detention stated that should the patient´s mental state deteriorate, he should be referred for assessment and admission to a forensic unit. However, no such referral had been made while in Colnbrook IRC...The delegation also met a detainee with a diagnosis of schizophrenia, who exhibited paranoid behaviour and was not associating with other detainees; he also suffered from weight loss. The medical admission screening noted that he had schizophrenia and was very thin; however, it was stated that there were no mental health concerns and he was not prescribed any medication'*

6. The Home Affairs Select Committee raised serious concerns over the use of immigration detention for the mentally ill, including the tendency for the Home Office's caseworkers (lacking any medical qualification) to override concerns raised by medical practitioners. The Committee referred to potential 'systemic failures in relation to the treatment of mentally ill immigration detainees.'[10] .

7. A follow-up report by the Committee stated:

'We are concerned at the enormous gap between the number of reports received and the number of individuals released...Further intransigence will continue to pose a risk to individuals, as mental health issues may not be properly identified.'[11]

8. Those concerns are echoed by analysis to which this firm contributed, as part of its membership of the 'Mental Health in Immigration Detention Action Group'. The Action Group's report in December 2013 described endemic failures on the part of the detaining authorities in identifying vulnerable detainees[12].

Detainees with independent evidence of a history of torture

9. In a series of cases, the courts have found that detainees were held in breach of the published policy that those with independent evidence of torture should be detained only in very exceptional circumstances[13].

10. Both CAT and the United Nations High Commissioner for Refugees ('UNHCR') have expressed concern that insufficient screening systems exist to identify asylum seekers who may be victims of torture. In 2011 the UNHCR stated that in its view *'safeguards to identify vulnerable and traumatised individuals are inadequate.'*[14]

Trafficking victims

11. The aforementioned joint report by HMIP and the ICIBI further criticised inadequate screening processes to identify and respond appropriately to victims of human trafficking in detention. The Inspectors described how one detainee had been subjected to prolonged detention notwithstanding his identification as a person who had been trafficked as a child:

'In September 2009, a competent authority through the national referral mechanism (which identifies, protects and supports victims of human trafficking) confirmed that Mr L was a victim of trafficking. However, in March 2010, on completion of his criminal sentence, Mr L was detained. UKBA's policy is to detain victims of trafficking in only the

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[10] Home Affairs Select Committee, 8th Report, Report into the work of the UK Border Agency, November 2012, http://www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/603/60302.htm

[11] Home Affairs Select Committee, 14th Report, Report into the work of the UK Border Agency, March 2013, http://www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/792/79202.htm

[12] *Mental Health in Immigration Detention Action Group Report* (Medical Justice, Helen Bamber Foundation, Royal College of Psychiatrists Asylum Working Group, MIND, BID, Deighton Pierce Glynn Solicitors, Bhatt Murphy Solicitors, Birnberg Peirce & Partners), December, 2013; http://www.medicaljustice.org.uk/reports-a-intelligence/other-organisations-reports/about-detainee-health/2251-mental-health-in-immigration-detention-action-group-initial-report-17-12-13.html.

[13] In *R (D and K) v SSHD* [2006] EWHC 980 (Admin); R (B) v SSHD[2008] EWHC 364 (Admin); *R (RT) v SSHD* [2011] EWHC 1792 (Admin); *R (AM) v SSHD* [2012] EWCA Civ 521; *R (EO and Others) v SSHD*[2013] EWHC 1236 (Admin)

[14] UNHCR, Submissions by UNHCR for the Office of the High Commissioner Human Rights' Compilation Report, Universal Periodic Review, United Kingdom, November 2011, http://www.unhcr.org.uk/fileadmin/user_upload/pdf/UNHCR_submission_on_the_United_Kingdom_13th_UPR_session.pdf

most exceptional circumstances. No mention was made in the initial detention minute or subsequent detention reviews that Mr L was a trafficking victim, or what exceptional circumstances justified his detention. By the time Mr L was interviewed by us in June 2011, he had been in detention for 15 months.[15] [emphasis added]

Separated Families

12. In two High Court cases[16], the court found that mothers were unlawfully detained for prolonged periods while their children were in private or local authority foster care. In both cases, internal advice to release the women, given by the Home Office's advisor on the duties towards children under section 55 of the Borders, Citizenship and Immigration Act 2009, the Children's Champion, had been ignored. In *R (NXT)*, the Children's Commissioner intervened. Mr Justice Blair noted that the mishandling of these complex cases appeared to be far from unique:

'The fact remains, however that the decision had to be faced...It is plain from the material from BID, the Children's Society, as well as the submissions of the Children's Commissioner, that such circumstances are not unique, and that the circumstances in which such detention continues has caused considerable concern'[17].

13. This is consistent with the detailed research later published by Bail for Immigration Detainees ('BID') into family units separated by detention,[18] which found that detention decisions and reviews paid scant regard to the welfare of children when detaining or maintaining the detention of a parent, notwithstanding the acute effects for the children of separation:

'Their parent's absence often meant that children's basic practical and emotional needs were not met. Where single parents were detained, children were placed in care. Some children moved between unstable care arrangements, experienced neglect and were placed at risk of serious harm. Parents and carers outside detention often struggled to cope financially and emotionally. Children were seldom able to visit their parents in detention because of the distance involved and the prohibitive cost of travel, and parents struggled to pay for phone calls to children.'[19]

Pregnant women

14. Failures to have regard to the effects of detention on pregnant women have also been documented in research by Medical Justice - *Expecting Change: the case for ending the detention of pregnant women*, June 2013.[20] Those concerns follow two critical

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[15] *The effectiveness and impact of immigration detention casework, a joint thematic review* by HM Inspectorate of Prisons and Independent Chief Inspector of Borders and Immigration, December 2012, page 18, http://icinspector.independent.gov.uk/wp-content/uploads/2012/12/Immigration-detention-casework-2012-FINAL.pdf

[16] *R (MXL) v SSHD* [2010] EWHC 2397 (Admin); *R (NXT) v SSHD* [2011] EWHC 969 (Admin).

[17] *R (NXT) v SSHD* [2011] EWHC 969 (Admin), para 138.

[18] The case studies considered in that research were detained between 2009 – 2012.

[19] BID, *Fractured Childhoods the separation of families by immigration detention*, April 2013, page 9, http://www.biduk.org/162/bid-research-reports/bid-research-reports.html

[20] http://www.medicaljustice.org.uk/about/mj-reports/2186-expecting-change-the-case-for-ending-the-immigration-detention-of-pregnant-women-11-06-13.html

reports by HMIP[21] following visits to Yarl's Wood IRC, which recorded failures by decision makers to consider the pregnancy at all in detention decisions, long and arduous transfers within the immigration estate, uncomfortably thin mattresses which were unsuitable for pregnant women, and too few female staff. A challenge to the legality of the policy and practice of detaining pregnant women is currently before the Administrative Court[22].

There is currently no time limit on immigration detention – in your view what are the impacts (if any) of this?

15. In our view the absence of a time limit, particularly when taken together with the absence of any automatic judicial oversight, creates an unacceptable level of impunity and sustains a culture of poor decision making by the executive.

16. Increasingly large numbers are detained under immigration powers: by the end of 2013, that number was 4041, an increase of 150% since December 2003.[23] Immigrants have been administratively detained for as long as nine years, even in non-national security cases.[24] Foreign national offenders are held for longer periods than other immigration detainees. In September 2012, for example, 58% of foreign national offenders had been held for three months or more compared to 18% of non-foreign national offender detainees.[25] Some long-term detainees are serious offenders; others more minor: a joint report by ICIBI and HMIP described one detainee '*held for nearly five years after spending almost eight months in prison for burglary*'.[26]

17. In 2013, 249 immigrants leaving IRCs had been detained under Immigration Act powers for periods exceeding a year; of these 106 for periods exceeding 18 months.[27] The five longest periods of detention for those still detained as of 31 March 2014 were 1,518 days; 1168 days; 1154 days; 1098 days; and 1041 days.[28]

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[21] HM Chief Inspector of Prisons Report on an announced inspection of Yarl's Wood IRC (4-8 July 2011), September 2011 & HM Chief Inspector of Prisons Report on an unannounced inspection of Yarl's Wood IRC (June 2013 & Sep 2013), October 2013. http://www.justice.gov.uk/publications/inspectorate-reports/hmi-prisons/immigration-removal-centres/yarls-wood

[22] R (on the application of PA) v SSHD C0/1978/2014.

[23] 2796 in the immigration detention estate: source Home Office: *Statistical News Release: Immigration Statistics, October - December 2013'*, 27 February 2014, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/285031/immigration-q4-2013snr.pdf and 1214 in prisons: source House of Commons, Written Answers to Questions, Hansard 9 April 2014, c249W. There are, however, widely discrepant figures available from the Home Office for the numbers of detainees held under sole Immigration Act powers in prisons. An alternative figure of 850 immigration detainees held in prisons on the same date (31 December 2013) is found in House of Commons, Written Answers to Questions, Hansard 13 May 2014, c 459W. If the latter, lower figure is correct, the total figure of immigration detainees would be 3,646.

[24] Her Majesty's Chief Inspector of Prisons, in 2012 reported encountering '*one prisoner who had been detained for nine years after his sentence had ended and was still awaiting a decision on his future*' (Report on a full unannounced inspection of HMP Lincoln 20-24 August 2012,p.36, https://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/prison-and-yoi-inspections/lincoln/lincoln-2012.pdf). We understand that the 9 years of immigration detention in this case may have been interrupted on one occasion rather than continuous.

[25] Home Office Migration Statistics: Foreign National Offenders in detention and leaving detention. Those figures exclude those held under immigration powers in prisons .

[26] A joint thematic review by HM Inspectorate of Prisons and Independent Chief Inspector of Borders and Immigration', December 2012, p. 10. See footnote 15 for link.

[27] Home Office Migration Statistics, Immigration Statistics - January - March 2014. Table dt_06.

[28] Home Office Migration Statistics, Response to Freedom of Information Request FOI 31764 on 3 June 2014.

18. The adoption of maximum time limits by the UK has been recommended by CAT in 2013[29]; the CPT following its visits in 2012 and earlier in 2009[30]; the UNHCR in 2011[31]; and the Commissioner for Human Rights of the Council of Europe in 2008.[32]

Detention as default position

19. Detainees are frequently administratively detained, purportedly for the purposes of expulsion, long after an impasse has been reached over travel documents[33]. The ICIBI published a report on the emergency travel document process in March 2014, in which he stated that:

'despite recommendations I have made previously, I was concerned to find that the Home Office was still keeping foreign criminals, who had completed their prison sentences, in immigration detention for months or even years in the hope that they would eventually comply with the re-documentation process. Given the legal requirement only to detain individuals where there is a realistic prospect of removal, this is potentially a breach of their human rights. It is also very costly for the taxpayer.'[34]

20. Detention may be maintained even where the Home Office itself accepts the impasse is caused by the embassy of nationality (rather than fault of the individual detainee). The ICIBI observed:

'Among the 52% classified as individually non-compliant...the average detention time was 523 days; for those where the embassy was categorised by the Home Office as 'non-compliant', the average detention time was 755 days. In many of these cases, we assessed that there was little prospect of a travel document being obtained within a reasonable timescale'.[35]

21. The ICIBI gave one example in which the Home Office failed to record on a detainee's file that the embassy from which the travel document was sought had in fact closed five months previously.[36]

22. The question of whether there has been deliberate obstruction on the part of a detainee carries significant consequences as published policy treats non-cooperation

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[29] UN, Report of the Committee Against Torture, 49th Session (29 October – 23 November 2012) & 50th Session (6 – 31 May 2013), Supplement No.44 (A/68/44), 6 August 2013.
[30] European Committee for the Prevention of Torture, Report on the visit to the United Kingdom from 17 to 28 September 2012, CPT/Inf (2014) 11, Strasbourg, 27 March 2014. See footnote 9 for link.
[31] Office of the High Commissioner Human Rights' Compilation Report, Universal Periodic Review, United Kingdom, November 2011. See footnote 14 for link.
[32] Memorandum of Thomas Hammarberg, former Commissioner for Human Rights of the Council of Europe, following his visits to the United Kingdom on 5-8 February and 31 March-2 April 2008, Strasbourg 18 September 2008, https://wcd.coe.int/ViewDoc.jsp?id=1339037
[33] In *R (Mhlanga) v SSHD*[33] for example, the Administrative Court found that a Zimbabwean national who had been administratively detained for five years after completion of a 21 month prison sentence was unlawfully detained. Detention in that case had been maintained notwithstanding that (i) the government had (owing to the human rights situation in the country at the time) suspended all enforced removals to Zimbabwe for the first four years of the detention; and (ii) for the last year of the detention, that suspension had ended but Zimbabwe was refusing to issue travel documents to nationals who did not accept voluntary return. In *R (Sino) v SSHD* [2011] EWHC 2249 the Court found that the entire period of detention of 4 years 11 months was unlawful from the outset on the basis that it was apparent that a travel document would not be possible to obtain within a reasonable timeframe. It is thought to be one of the longest periods of immigration detention in a non-national security context.
[34] *Inspection of emergency travel document process*, Independent Chief Inspector of Borders and Immigration (May – Sept 2013), March 2014, p.2, https://www.gov.uk/government/publications/emergency-travel-document-process.
[35] Ibid, p.2.
[36] Ibid, p 17.

as indicative of a risk of absconding (thus capable of justifying further detention).[37] But it may be difficult to determine. In *R (Raki) v SSHD*[38], for example, the Administrative Court found that a detainee had been wrongly accused of non-cooperation because he could not provide autobiographical information. In *R (HA) v SSHD*[39], the Administrative Court found that failures by a severely mentally ill detainee to attend interviews in detention may have been treated erroneously by the Home Office as deliberate obstruction. The ICIBI expressed concern that Home Office allegations of non-cooperation against a detainee are rarely prosecuted under Asylum and Immigration (Treatment of Claimants) Act 2004 s.35[40], which would provide independent scrutiny of the allegation[41]. The ICIBI endorsed the findings of the HMIP report which found:

'Detention as Default

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In his 2012/13 annual report, [HMIP] concluded that, rather than use section 35 to deal with non-compliance with the documentation process, caseworkers instead 'relied on open-ended and costly detention, effectively waiting for detainees to "give in"....

'long-term detention is still the Home Office's default position in FNO [foreign national offender] *cases where the individual is non-compliant with the ETD* [emergency travel document] *process. ...*[There was evidence of] *a significant presumption towards maintaining detention. This is a questionable approach, given both the wording of the Home Office's own policies on detention and the presumption of a right to liberty under Article 5 ECHR.*'[42] [emphasis added]

Foreign national offenders

23. In a series of events demonstrating particularly vividly the need for maximum time limits and automatic judicial oversight, between April 2006 and September 2008, the government operated an unpublished policy of blanket detention of foreign national offenders. At odds with the published policy at the time (which included a presumption in favour of release in all cases) under the unpublished blanket policy, all foreign national offenders[43] were detained upon sentence completion, regardless of the feasibility or likely timescale of deportation.

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[37] Chapter 55 Enforcement Instructions and Guidance §55.3.2.5

[38] [2011] EWHC 2421 (Admin) at §45

[39] [2012] EWHC 979 at §83

[40] Under section 35 it is a criminal offence for a detainee to fail, without reasonable excuse, to comply with a request by the Home Office to take a specified action (such as providing documents; completing a form accurately; or attending an interview) which it is believed may result in a travel document being obtained. "*Prosecution places the burden of proof on UKBA, which has to prove beyond reasonable doubt that the detainee is not cooperating. Prosecution would allow disputed cases to be scrutinised by an independent judge.*"- *The effectiveness and impact of immigration detention casework 'A joint thematic review* by HM Inspectorate of Prisons and Independent Chief Inspector of Borders and Immigration', December 2012, p. 35. See footnote 15 for link.

[41] "*Prosecution places the burden of proof on UKBA, which has to prove beyond reasonable doubt that the detainee is not cooperating. Prosecution would allow disputed cases to be scrutinised by an independent judge.*"- *The effectiveness and impact of immigration detention casework 'A joint thematic review* by HM Inspectorate of Prisons and Independent Chief Inspector of Borders and Immigration', December 2012, p. 35. See footnote 15 for link.

[42] *Inspection of emergency travel document process*, Independent Chief Inspector of Borders and Immigration (May – Sept 2013), March 2014, p. 50. See footnote 34 for link.

[43] With *de minimis* exceptions

24. The unpublished policy came to light only in the course of litigation brought by detainees in 2008. Documents disclosed by the Home Office in that litigation included an internal Home Office memorandum, stating that ministers'

'*preferred position may be to continue to detain all FNPs [foreign national former prisoners] and let immigration judges take any hit which is to be had by releasing on bail.*'[44]

25. In 2011, the ICIBI observed that a culture remained among Home Office decision-makers in which detention was treated as the default position:

'of the cases sampled by us...the highest percentage concerned convictions for fraud and forgery and these offences are not listed in the Agency's policy as offences where 'particular weight' or 'particularly substantial weight' should be given to the risk of further offending or harm to the public. Despite this, such cases were also overwhelmingly likely to result in detention. The individual circumstances of such cases may again justify detention, but the sheer weight of cases resulting in detention is of concern and, in our view, there remains a culture that detention is 'the norm'...

'*In interviews with staff and managers, we encountered genuine fear and reluctance to release foreign national prisoners from detention in case they committed a further crime. This, together with the potential media and political scrutiny, is fuelling a culture where the default position is to identify factors that justify detention rather than considering each case in accordance with the published policy.*'[45] [emphasis added]

Are the current arrangements for authorising detention appropriate?

26. The flaws described above are not remedied by the executive's detention review process. The domestic courts and statutory monitoring bodies have documented numerous flaws in that process. The Supreme Court's judgment in R (*Kambadzi) v SSHD*[46], for example, concerned a case in which 12 out of 22 detention reviews had been missed for a long-term detainee. Of those 10 reviews that had been carried out, only six had been conducted by sufficiently senior officials. Two had been flawed by material factual errors.

27. Detainees are not given a copy of their detention reviews. Rather, the DCR requires that detainees be given written monthly progress reports (MPRs).[47] The MPRs, which are supplied in English only, are in principle based on the internal detention reviews but frequently fail to reflect its contents. Indeed, in *Kambadzi (above)* at first instance, the Court found that all but one of the MPRs provided to the detainee had predated the review on which the update was supposedly based. In the Administrative Court, Munby J commented:

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[44] *Lumba and Mighty v Secretary of State for the Home* Department [2011] UKSC 12, [2012] 1 A.C. 245 §156

[45] Independent Chief Inspector of Borders and Immigration, *A thematic inspection of how UK Border Agency manages foreign prisoners* (Feb – May 2011), October 2011, p. 22. http://icinspector.independent.gov.uk/wp-content/uploads/2011/02/Thematic-inspection-report-of-how-the-Agency-manages-Foreign-National-Prisoners.pdf

[46] [2011] UKSC 23

[47] Rule 9

'The casual mendacity of a system under which the written reasons for detention required by rule 9(1) of the Detention Centre Rules 2001 to be sent to detainees are dated and signed by junior officials before the decisions have in fact been taken is concerning...'[48]

28. The ICIBI and HMIP's aforementioned joint report found in respect of detention reviews that:

'Many reviews did not consider all factors relevant to the case, including family ties and health problems. Factors that might support a detainee's case for release were regularly under-recorded, while detrimental information was recorded in detail.'[49]

29. Concerning the state of detainees' files generally, the Inspectors noted:

'*We found a number of cases where asylum claims were not dealt with efficiently, leading to periods of detention that were not the fault of detainees. In a quarter of the file sample (20 cases), inefficiencies in casework were the main explanation for ongoing detention, and in a further 10 cases there were delays in removing people. Files were in poor condition, making cases hard to understand, and missing information could have included documents to establish the validity or otherwise of unlawful detention claims.'*[50] [emphasis added]

Conclusion

30. Our extensive casework and expertise in this field leads us to conclude that the immigration detention regime in the UK operates inhumanely. The overwhelming evidence from statutory and non-governmental bodies, as well as international monitors is that it fails to protect all from arbitrary and prolonged detention and that it fails to recognise and protect vulnerable groups in particular.

Bhatt Murphy Solicitors

Date: 30 September 2014

[48] R *(SK (Zimbabwe)) v SSHD* [2008] EWHC 98 (Admin) §49

[49] See The Independent Chief Inspector of the UK Border Agency and Her Majesty's Inspector of Prisons, *The effectiveness and impact of immigration detention casework, a joint thematic review* December 2012, §§1.9, 1.11, 4.1. See footnote 15 for link.

[50] Ibid, §§5.1