

Joint Committee on Human Rights Committee Announcement

7 February 2019

End indefinite detention and make detention decisions independent from the Home Office, says Joint Committee on Human Rights

New report published today proposes major reforms to immigration detention decision-making, including better access to legal advice, more protection for the vulnerable and improved detention conditions.

The Joint Committee on Human Rights (JCHR), made up of MPs and Peers and chaired by Harriet Harman MP, makes 5 proposals to Government to reform the immigration detention system in a new report published today. An embargoed copy of the report is attached to this email.

They conclude that the current system should be urgently reformed so that it becomes “fair, humane, decent and quick”.

They said that more needed to be done to make detention estates “less like prisons” recommending that there should be an end to the distressing nature of indefinite detention and that decisions to detain need to be made independently from the Home Office.

Five proposals to reform the immigration detention system:

1. **The decision to detain should not be made by the Home Office but should be made independently.** This is such an important power that it cannot be wielded by the Department which is charged with deportations and removals. In cases where the Home Office plan to detain a person (45% of cases) they should ask an independent body for authority to make a detention order

The lack of rigour in detention decisions is evidenced by the series of mistakes accepted by the Home Office in detention cases involving Commonwealth members of the Windrush generation, and the amount spent on compensation for wrongful detentions.

Immigration detainees should not have fewer safeguards than those applicable in the criminal justice system, whether detentions are planned or unplanned. The decision on whether to continue detention should be made by a judge and should be made promptly. However, immigration detainees need sufficient time to get advice and gather evidence before such a hearing.

A period of 36 hours may be too short for this, so the Committee recommend that a judicial decision to detain should be required for any detention beyond 72 hours.

2. **Introduce a 28 day time limit to end the trauma of indefinite detention.** In evidence, former detainees told the JCHR that facing indefinite detention is traumatic. The UK is the only country in Europe that does not impose time limits on immigration detention. The Committee recommend that in exceptional circumstances such as when the detainee seeks unreasonably to frustrate the removal process and has caused the delay, the Home Office should be able to apply to a judge who would decide whether a further period of detention of no more than an additional 28 days should be authorised.
3. **Detainees should have better and more consistent access to legal aid to challenge their detention.** They should have better access to legal advice where there is enough time for the detainee to explain their case and the ability for the advisor to take the case forward to representation.

Foreign nationals liable to deportation at the end of their sentences are among those who face the longest period in detention. The Home Office should make it a priority to resolve their immigration status as quickly as possible and ensure that they have the access to legal advice needed to engage with the legal process appropriately so that they can either be released or removed at the end of their sentences, rather than having such challenges delayed until they are in detention.

The complexity of immigration law means there is now such a complex web of law and regulation that it is impossible for all except the most expert people to understand. People cannot enforce their rights if they cannot understand them, and it is also expensive to run a complex system. Reinstatement of legal aid for immigration cases should be considered.

4. **More needs to be done identify vulnerable individuals and treat them appropriately.** The JCHR believes that the Adults at Risk policy does not give adequate protection to individuals at risk of harm in detention. Both the AAR policy and other Home Office policies are silent on how to respond to the needs of those that lack mental capacity, which puts them at a clear disadvantage.
5. **The Home Office should improve the oversight and assurance mechanism in the immigration detention estate to ensure that any ill-treatment of abuse is found out immediately and action is taken.**
The Committee was concerned that reports of staff abuse and deterioration of Immigration Removal Centre (IRC) conditions were brought to light by undercover reporting rather than the Home Office's oversight processes.

The regime should be as open as possible on the inside, and consideration should be given to separating individuals who have been convicted of serious offences and those who pose a risk of violence from other detainees.

Concerns over the distressing effect of indeterminate detention

Former detainees who gave evidence to the Committee described the indeterminate nature of detention and uncertainty associated with it as "mental torture." The monitoring bodies, Her Majesty's Inspectorate of Prisons (HMIP) and the Independent Monitoring Boards (IMB) expressed serious concerns about open-ended nature of detention and the impact this had on individuals. HMIP told us that it regularly finds individuals held in detention for extended periods of time, giving the examples of an individual who was detained at Harmondsworth IRC for more than four and half years, and another at Yarl's Wood for three years. Both monitoring bodies said that when speaking to detainees during inspections or visits, **the indeterminate nature of immigration detention is a key cause of distress and anxiety.**

Harriet Harman MP, Chair of the Joint Committee on Human Rights, said:

"If a person is suspected of a crime, they cannot be detained by the Government; they can be detained only by the police, who are independent of Government. If the police want to continue to detain a person beyond 36 hours, they have to bring that person before a court, which is, of course, totally independent of Government.

"But if the Home Office suspects a person of being in breach of our immigration laws, there is a complete absence of independence in the decision making. A civil servant—nameless, faceless and behind closed doors—just ticks a box to detain them. The first that person will know about it is when someone bangs on their door in the early hours of the morning to bundle them into an immigration enforcement van and take them to a detention centre.

With no independence in the decision making, and with no scrutiny or accountability, mistakes are inevitable. Those we get to hear about are probably only the tip of the iceberg, but we do know that £21 million was paid out by the Home Office in just five years to compensate for wrongful detention, and terrible mistakes are certainly what happened in the Windrush cases.

"It is routinely said those people were unable to prove their residence here, which is not the case for the detainees we saw. We looked at their Home Office files, which the Home Secretary was good enough to release to them, and it was not that there was no evidence of their residence here. There was masses of it, including records of national insurance contributions going back to the 1970s. If there had been any independence in the decision making, these people would never have been detained, yet they were detained not once but twice.

“The papers in their files were ignored, and the pleas of their families were swept aside.

After the right to life, the right not to be unlawfully detained is one of the most important human rights. It should not be the case that a person has fewer protections from wrongful detention as an immigrant than they would if they had actually committed a crime. We should ensure that, in future, no one is detained unless the decision is taken independently. The Home Office should make its case, but someone independent must take the decision if a person is to be deprived of their liberty. The Joint Committee on Human Rights will table an amendment to that effect, and we hope the Government will agree to it.”

The Committee took a wider range of evidence from former detainees, the Home Office Minister Caroline Noakes MP and officials, Independent Monitoring Boards, HM Inspectorate of Prisons, the Care Quality Commission, the Law Society, lawyers, and groups such as Detention Action, Liberty, Amnesty International, Mind, Freed Voices, INQUEST and Stonewall amongst others. The full list of evidence taken can be found on the [Committee’s website here](#).

Committee Membership is as follows:

Ms Harriet Harman MP (Chair) (Labour)	Baroness Hamwee (Liberal Democrat)
Fiona Bruce MP (Conservative)	Baroness Lawrence of Clarendon (Labour)
Ms Karen Buck MP (Labour)	Baroness Nicholson of Winterbourne (Conservative)
Alex Burghart MP (Conservative)	Baroness Prosser (Labour)
Joanna Cherry MP (SNP)	Lord Trimble (Conservative)
Jeremy Lefroy MP (Conservative)	Lord Woolf (Crossbench)

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