

## **How the UK government is breaking its own rules on torture victims**

This Briefing outlines the Detention Centre rule that does not allow victims of torture to be detained. It also describes how this is being flouted in practice in the detention centres where asylum-seekers are being held.

### **Detention Centre Rules 2001**

Rule 35:

#### **Special illnesses and conditions (including torture claims)**

**35.—(1)** The medical practitioner shall report to the manager on the case of any detained person whose health is likely to be injuriously affected by continued detention or any conditions of detention.

**(2)** The medical practitioner shall report to the manager on the case of any detained person he suspects of having suicidal intentions, and the detained person shall be placed under special observation for so long as those suspicions remain, and a record of his treatment and condition shall be kept throughout that time in a manner to be determined by the Secretary of State.

**(3)** The medical practitioner shall report to the manager on the case of any detained person who he is concerned may have been the victim of torture.

**(4)** The manager shall send a copy of any report under paragraphs (1), (2) or (3) to the Secretary of State without delay.

**(5)** The medical practitioner shall pay special attention to any detained person whose mental condition appears to require it, and make any special arrangements (including counselling arrangements) which appear necessary for his supervision or care.

<http://www.legislation.gov.uk/ukSI/2001/238/article/35/made>

The guidelines are quite clear - victims of torture should not be kept in detention. The Order on the Application of Rule 35 states:

*The purpose of Rule 35 is “to ensure that particularly vulnerable detainees are brought to the attention of those with direct responsibility for authorising, maintaining and reviewing detention. The information contained in the report needs to be considered in deciding whether continued detention is appropriate in each case”<sup>1</sup>. The Enforcement Instructions and Guidance continues “Normally considered suitable for detention in only very exceptional circumstances, whether in immigration detention accommodation or*

*prisons: ....[are] those where there is independent evidence that they have been tortured.”<sup>1</sup>*

The 2012 report “The Second Torture”<sup>2</sup>, by the charity Medical Justice, found that Rule 35 is consistently being flouted. Doctors who routinely examine those newly taken into detention are meant to report any claim to have been tortured, and the individual in question should then be released. This is not happening, as the Medical Justice study too clearly shows. “The Second Torture” makes for difficult reading - not because of harrowing stories, although they are there too, but because of the detailed statistics, tables, pie-charts, examples of forms, and so on. The key request coming from the report is for an independent audit of the process.

In the same year John Vine, the then Chief Inspector of Borders and Immigration, and Nick Hardwick, Chief Inspector of Prisons, published their report on immigration detention, which included the finding that *“in some cases there was a failure to consider evidence of post-traumatic stress and mental disorders in case reviews, and in one case a victim of torture was detained without evidence of exceptional circumstances to justify this.”<sup>3</sup>*

In May 2013, the High Court ruled that the detention of torture survivors by the British Government was unlawful following legal action brought against the Home Office on behalf of five victims of torture who had been subjected to lengthy periods of detention in Immigration Removal Centres.<sup>4</sup> The government was ordered to pay compensation, leaving the way open for scores of other detained torture victims to make claims.<sup>5</sup>

These reports and the court case are now several years in the past - but nothing has changed.

In February 2015, HMI Inspector of Prisons published a report on an unannounced visit to Campsfield Detention Centre which had taken place in August of the previous year. The inspectors found that the processes covered by Rule 35 were poor and did not provide vulnerable detainees with sufficient protection. In two cases, detainees had been released after Rule 35 reports by the examining doctor, but *“many [reports] merely repeated the detainee’s account and failed to provide a medical opinion, for example, on the consistencies between scarring and alleged methods of torture.”* [The medical report is then considered by a caseworker who decides whether to detain or not.] *“Caseworkers’ responses were prompt, although sometimes dismissive, while others did not comply with Home Office policy. In two separate cases, a doctor stated that a detainee might have been the victim of torture but caseworkers maintained they should*

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1 The Order can be seen at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300366/17.2012\\_v2.0\\_-\\_Application\\_of\\_Detention\\_Centre\\_Rule\\_35\\_ext.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300366/17.2012_v2.0_-_Application_of_Detention_Centre_Rule_35_ext.pdf)  
<http://bit.ly/1QVKv5q>

2 <http://www.medicaljustice.org.uk/images/stories/reports/2ndtfull.pdf>

3 <http://icinspector.independent.gov.uk/2012/12/12/immigration-detention-casework-poor-casework-must-be-addressed-say-chief-inspectors/>

4 <http://www.leighday.co.uk/News/2013/May-2013/Detention-of-Torture-Survivors-Ruled-Unlawful>

5 <http://www.theguardian.com/uk/2013/may/21/torture-victims-win-case-uk-detention>

*remain in detention stating that this would not impact on the detainee's health; the impact on their health was irrelevant as Home Office policy is not to detain torture survivors. In another case, a caseworker maintained that a person should remain in detention because he 'did not mention being tortured during your screening interview ...'”<sup>6</sup>*

If doctors do not take the time to conduct detailed interviews, why should we expect more of the caseworkers?

## **Government attitude and response**

The government (like all our governments) makes fine statements condemning torture. On the International Day in support of victims of torture in 2014, Baroness Warsi said:

*Today, on 26 June, we show our continued support to victims of torture. The UK has consistently and unreservedly condemned the use of torture and cruel, inhuman or degrading treatment or punishment and recognises that the impact on victims, their families and their communities is devastating. Torture cannot be justified in any circumstance.*

*Despite torture being a crime under international law, this vile and unjustifiable practice continues. This year's International Day is a reminder that all too often the perpetrators go unpunished and steps are not taken to prevent the crime being repeated.<sup>7</sup>*

Readers of Q-CAT's Newsletter and Briefings will know that this statement is hollow.

The HMIP report said that overall its inspection of Campsfield had been “positive” - but then went on to make 84 recommendations for improvement to reach an “acceptable” standard. As in all its reports, it did not challenge the detention system - that is not within its remit. The government used the overall positive report to announce plans (later withdrawn) for doubling the size of Campsfield.

The average period of time of asylum-seekers are kept in detention is now between 18 and 24 months.<sup>8</sup> And we can be sure that torture victims are among them.

## **What can we do?**

The further information in the footnotes makes difficult reading, but is essential if anybody wishes to take up this concern.

The main recommendation of the HMIP Report was:

*The Home Office should ensure that the rule 35 process provides vulnerable detainees*

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<sup>6</sup> <https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2015/02/Campsfield-House-web-2014.pdf>

<sup>7</sup> <https://www.gov.uk/government/news/foreign-office-marks-international-day-in-support-of-victims-of-torture-2014>

<sup>8</sup> <https://closecampsfield.wordpress.com/2015/02/03/very-positive-hmip-report-is-not-a-reason-to-double-the-size-of-campsfield/>

*with adequate protection. The reports should include a clinical opinion wherever possible, caseworkers' responses should address detainees' vulnerability and torture survivors should not be detained.*

Please ask your MP to contact the following Ministers to find out what steps the government has taken to implement this recommendation (writing to your MP is more effective than writing directly to a Minister, as MPs are obliged to follow up requests from their constituents):

Theresa May MP - Secretary of State

James Brokenshire MP - Minister for Immigration

Dominic Raab MP - Parliamentary Under-Secretary of State for Civil Liberties

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The next Newsletter is planned for early December

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