

Written evidence from The Independent Advisory Panel on Deaths in Custody (IMB0076)

Summary

The role of the Independent Advisory Panel on Deaths in Custody (IAPDC) is to advise Ministers and officials on how they can meet their human rights obligations to prevent deaths and protect the lives of people detained in state custody.

The IAPDC welcomes the opportunity to make a submission to the Joint Committee on Human Rights' call for evidence as part of its legislative scrutiny of the Illegal Migration Bill. Since our sole objective is to prevent deaths in custody, this response will focus on the risk to life as protected by Article 2 of the European Convention on Human Rights (ECHR) posed by the Bill. Specifically, it will look at detention provisions in clauses 11 to 14.

The Bill seeks to significantly expand immigration detention powers. This includes the period for which individuals can be detained for the purpose of removal, the cohort of people liable to be detained – including unaccompanied children, pregnant women, and families – and the expansion of the detention estate to anywhere the Home Secretary deems appropriate, which may include facilities that risk the safety of detainees.

It also seeks to limit the checks and balances on the lawfulness of detention, making it more difficult to secure the release of individuals at most risk of harm in detention. The overall effect of the Bill will be to expand the circumstances in which individuals can be detained and to significantly lengthen, and render considerably uncertain, the period for which they are detained. This uncertainty is likely to have profound mental health implications for detainees, potentially leading to increased feelings of hopelessness which is one of the most prominent risk factors associated with suicidality.

There have been two deaths within the immigration detention estate within the last year, one at Colnbrook immigration removal centre (IRC) and another at the short-term holding facility at Manston. The IAPDC has serious concerns that the provisions relating to detention within the Bill will significantly increase the risk to life of detainees.

Uncertainty and hopelessness linked to an increased risk of suicide

1. The IAPDC's 2020 guidelines on the prevention of deaths in IRCs, submitted to and accepted by the Home Office, highlighted the link between the indefinite nature of detention and the increased risk of suicide.¹ Feelings of hopelessness are one of the most prominent cognitive factors associated with suicidality.² Similarly, uncertainty has been

¹ IAPDC, 'Priorities for a prevention of deaths strategy in Immigration Removal Centres', October 2020, available [here](#).

² Helen Christensen, Phillip Batterham, Andrea Soubelet, Andrew Mackinnon, 'A test of the interpersonal theory of suicide

found to have a negative impact on the mental health of detainees, who may hold negative beliefs about their future due to their personal circumstances.³

2. A 2015 joint inquiry by the All-Party Parliamentary Groups on Migration and Refugees spoke with over 200 people and organisations and found that uncertainty around a detainee’s case can make them particularly vulnerable. One person said: *“All these people here, and no one knows how long they will be there. Some lose hope, and they try to kill themselves...Detention is a way to destroy people: they do not kill you directly, but instead you kill yourself.”*⁴
3. While the Home Secretary has stated that the *“aim of the Bill is not to detain people but swiftly remove them”*,⁵ it is not clear how this is going to be effected. Currently, the UK has agreements in place with Albania, Serbia, India, Pakistan, and Nigeria, as well as Rwanda as part of the UK-Rwanda Migration and Economic Development Partnership. The latest figures show that over the last five-year period, four out of the top five nationalities arriving via small boats, with the exception of Albania, were from countries with which the UK has not negotiated a return agreement (Iran, Iraq, Syria, and Afghanistan).⁶ The Rwanda scheme has an initial capacity of 200 people⁷ and continues to be subject to legal challenges. It is unclear when this route will be available, meaning extended periods of detention is likely in the interim.
4. The Bill allows the detention of individuals for periods which the Home Secretary deems *“reasonably necessary”*, and this power would apply even in cases where there are obstacles preventing the purposes of detention being carried out. This might include, for example, cases where it is not possible to identify a suitable country to remove the individual to or where travel documentation cannot be arranged within a reasonable timeframe.
5. The extended use of detention in such circumstances could leave tens of thousands of people in a long-term state of uncertainty and under an increased risk of suicide. For example, the inquest into the death of Marcin Gwozdziński, who took his life in 2017 while detained at Heathrow IRC, noted that a *“prolonged period of detention”* (nine months) was a possible factor of death.⁸ These provisions risk large numbers of people

in a large community-based cohort’, 2013, 144(3) Journal of Affective Disorders.

³ Stephen Shaw, ‘Review into the Welfare in Detention of Vulnerable Persons. A report to the Home Office’, January 2016, available [here](#).

⁴ All-Party Parliamentary Groups on Refugees and Migration, 3 March 2015, available [here](#)

⁵ Hansard, HC, deb. ‘Illegal Migration Bill’, vol. 729, 13 March 2023, available [here](#).

⁶ Home Office, ‘Irregular migration to the UK, year ending September 2022’, 24 November 2022, available [here](#).

⁷ House of Commons Parliament, ‘UK-Rwanda Migration and Economic Development Partnership’, 20 December 2022, available [here](#).

⁸ INQUEST, ‘Jury finds ‘systemic failures’ at Heathrow IRC contributed to death of immigration detainee Marcin Gwozdziński’, 12 June 2019, available [here](#).

being detained for extended periods, significantly increasing the risk to life that extended and uncertain detention presents.

Removal of safeguards for vulnerable groups

6. Concerningly, the Bill seeks to remove existing statutory limitations on the detention of groups who are potentially at greater risk of harm, including unaccompanied children who arrive in the UK alone, pregnant women, and families. Unaccompanied children are particularly vulnerable in respect of mental ill-health due to the trauma caused by dislocation from family and, under current legislation, cannot be detained for more than a 24-hour period at any one time.
7. The independent review of the welfare of people in immigration detention pointed to the “*incontrovertibly deleterious effect [of detention] on the health of pregnant women and their unborn children*”.⁹ Research carried out by Medical Justice found that pregnant women detained at Yarl’s Wood IRC (which has since been repurposed to house male asylum seekers and migrants)¹⁰ often missed antenatal appointments, while some women had no ultrasound scans nor direct access to a midwife. One woman who was supported by the charity complained for several weeks about pain before being taken to hospital where she had a miscarriage. Medical Justice reported that she subsequently attempted suicide.¹¹
8. In addition to removing the maximum time limit of seven days for which families may be held, the Bill seeks to suspend the duty to consult the Independent Family Returns Panel when seeking to remove families. The Independent Family Returns Panel was established to provide advice to the Home Office on the safeguarding and welfare plans for the removal of families who do not have permission to remain in the UK.
9. When recently questioned about the oversight of safeguards for children who are proposed for removal as part of a family unit, the Prime Minister said “*the Home Office can do that itself*”.¹² However, the removal of this independent oversight “*in order to swiftly remove those families who fall for removal under the Illegal Migration Bill*”¹³ risks the safety of children during potentially dangerous enforced removals. This is particularly concerning as the Home Office has stated that using force on children may “*be necessary if a family is resisting removal*”.¹⁴ The case of Jimmy Mubenga, who died

⁹ Home Office, ‘Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons’, 24 August 2018, available [here](#).

¹⁰ BBC, ‘Yarl’s Wood: Women no longer held as centre repurposed for Channel migrants’, 18 August 2020, available [here](#).

¹¹ Women for Refugee Women, ‘Joint Briefing on the ‘Illegal Migration Bill’: Take action against the proposed new powers to detain pregnant women indefinitely’, 23 March 2023, available [here](#).

¹² Liaison Committee, ‘Oral evidence: Work of the Prime Minister, HC 1222’, 28 March 2023, available [here](#).

¹³ UK Parliament, ‘Questions for the Home Office: Independent Family Returns Panel’, 22 March 2023, available [here](#).

¹⁴ Home Office, ‘Illegal Migration Bill: children factsheet’, 31 March 2023, available [here](#).

in 2010 from cardiac arrest while security guards attempted to deport him to Angola and was found by a Coroner to have been unlawfully killed, demonstrates the potentially lethal impact of the use of force in enforced removals.¹⁵

Expansion of the detention estate

10. The Immigration (Places of Detention) Direction 2021 specifies the places where individuals may be detained under immigration powers.¹⁶ However, the Bill seeks to enable the detention of individuals in “*any place the Secretary of State considers appropriate*”. This “*includes, but is not limited to, pre-departure accommodation, a removal centre or a short-term holding facility*”.¹⁷
11. The drastic deterioration of conditions at short-term holding facilities such as Manston demonstrate the Home Office’s inability to safely manage large numbers of asylum seekers and migrants in accommodation outside traditional IRCs. Problems including inadequate sleeping and catering arrangements, poor sanitation, and the spread of infectious, and potentially fatal, diseases make clear the unsuitability of short-term holding facilities such as Manston for potentially prolonged periods of detention such as those implied in the Bill.
12. The Home Secretary has suggested up to 80,000 people could be liable for detention in the coming year.¹⁸ Despite her assurances that people will be removed swiftly, the absence of extensive return agreements and the Rwanda scheme’s limited capacity to resettle asylum seekers and migrants raises the potential for thousands more individuals – including vulnerable groups such as unaccompanied children, pregnant women, and families – to be detained in unsuitable facilities such as Manston for extended periods.
13. Following publication of the Bill, the Immigration Minister outlined that the expansion of the asylum and migrant estate will include military barracks and that the Home Office will “*continue to explore the possibility of accommodating migrants in vessels*”.¹⁹ More recently, the Government announced plans to house 500 asylum seekers on a barge off the coast of Dorset.²⁰ It remains unclear whether these settings will also be used as detention facilities as the provisions of the Bill seek to give the Home Secretary the power to detain individuals in such places, despite the risks posed by facilities such as Manston. Some of the further mooted facilities present additional risks of their own, with

¹⁵ INQUEST, ‘Jury rules Jimmy Mubenga was unlawfully killed’, 9 July 2013, available [here](#).

¹⁶ Home Office, ‘Immigration (places of detention) direction 2021’, 9 December 2021, available [here](#).

¹⁷ Illegal Migration Bill, Explanatory Notes, 7 March 2023, available [here](#).

¹⁸ Evening Standard, ‘80,000 people could arrive in UK by ‘small boats’ in 2023 despite new crackdown, admits Suella Braverman’, 8 March 2023, available [here](#).

¹⁹ Hansard, HC, ‘Illegal Migration Update’, vol. 730, 29 March 2023, available [here](#).

²⁰ The Guardian, ‘Asylum seekers to be housed on Dorset barge despite local opposition’, 5 April 2023, available [here](#).

military bases potentially triggering pre-existing vulnerabilities in people who have likely fled war and/or persecution.

Restricting the ability to secure the release of individuals at risk

14. The Bill seeks to remove the right of detainees to apply for bail to the First-tier Tribunal or challenge the lawfulness of their detention by way of judicial review during the first 28 days of their detention. While it does not seek to prevent individuals from applying to the High Court for a writ of *habeas corpus*, judicial review is broader in scope and more widely used than *habeas corpus*. This all raises significant concerns about the ability of individuals who are unsuitable for detention, and may be at risk of serious harm, to effectively challenge their detention.
15. The other means through which to secure the release of individuals who cannot be safely managed in detention in the first 28 days is through the Home Office's Adults at Risk policy and Rule 35 of the Detention Centre Rules 2001. However, the adequacy of the policy has been called into question following a recent report by the Independent Chief Inspector of Borders and Immigration which concluded that the "*enthusiasm to protect vulnerable people in immigration detention was being held back*" by the unevidenced view held by staff that the Rule 35 process was being abused by detainees as a method to secure their release. The report found that Rule 35 was "*no longer achieving its aim*" and that opportunities to identify vulnerable detainees were missed due to a lack of translators and little information made available about its purpose.²¹
16. Further to this, the *Hardial Singh* principles, established through the case law of UK courts, currently place important limitations on the Home Office's immigration detention powers pursuant to which it is for the courts to determine the reasonableness of a given period of detention. However, the Bill seeks to specify that it will be for the Secretary of State, not the courts, to decide the reasonableness of a period of detention. This would weaken judicial scrutiny and remove a safeguard which is especially important for individuals who are particularly vulnerable to harm from prolonged detention. Decreased judicial oversight and increased arbitrariness of detention risks intensifying detainees' feelings of uncertainty and hopelessness which, as outlined above, is linked to an increased risk of suicide.

Questions for the Home Secretary

17. It is the duty of the Government to take active steps to protect the lives of all individuals in its custody. As such, we believe the following questions should be asked of the Home

²¹ Independent Chief Inspector of Borders and Immigration, 'Third annual inspection of 'Adults at risk in immigration detention', June – September 2022', 12 January 2023, available [here](#).

Secretary to ensure any changes to the UK's immigration detention system complies with Article 2 of the ECHR:

- Has the Home Office carried out a full assessment of the risks - and in particular the risk to life - linked to detaining the new cohort, including children, families, and pregnant women? Will the Home Secretary publish that assessment?
- Could the Home Secretary clarify why the Bill proposes to remove the duty to consult with the Independent Family Returns Panel, and whether she will publish any risk assessment her Department has completed?
- Has the Home Office carried out a full risk assessment linked to the proposed expansion of the detention estate, and will it be published?
- What steps will be taken to ensure individuals who are vulnerable and who cannot be safely detained will be swiftly identified by appropriately qualified staff and released, with appropriate safeguards in place, following removal of currently available legal channels? Will the Home Secretary publish a risk assessment?
- Will the expansion of the asylum and migrant estate to include military bases and, potentially, ferries and barges be used as initial accommodation for asylum seekers and migrants or as detention facilities? If it is proposed to use these locations as detention facilities, has the Home Office carried out full risk assessments and will these be published?

18. The IAPDC would welcome the opportunity to provide further information or oral evidence if required by the Committee.

24/04/2023