

“Surviving torture and surviving detention is equally very hard experience. I won’t forget neither as they are like wounds in my heart. I couldn’t talk to anyone about it.”

Tortured in his home country; detained in the UK

“The Second Torture”:

The immigration detention of torture survivors

Summary Report

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Medical Justice exposes and challenges inadequate healthcare provision to immigration detainees.

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1: Introduction

Victims of torture are routinely being held in immigration detention centres in breach of the government's own rules. This report investigates Rule 35 of the Detention Centre Rules 2001: the primary safeguard to facilitate the release of torture survivors and vulnerable people from detention. The report exposes start to end process failure. Of the 50 cases analysed, only one person was released through the Rule 35 process.

Torture survivors were failed so badly that two of them were removed and tortured again in their home country before they made it back to the UK to claim asylum again. Apart from these two, no others were removed which begs the question why they were detained for the purpose of removing them in the first place.

Around 26,000 people were held within the immigration detention estate in the UK in 2010. The majority of these people sought asylum at some stage in the process. It is estimated that between 5 and 30% of asylum seekers have suffered torture. Whilst some of these will bear scars of the abuse they underwent, others who may have been raped or electrocuted, for example, will rarely bear physical signs. All, however, share the **common injustice of being detained** for administrative immigration purposes.

Rule 35 requires medical practitioners in immigration removal centres (IRCs) to report on the case of any individual who he/she is concerned may have been a victim of torture. In turn, the UKBA caseowner responsible for the case reviews the detention. Policy guidance and legislation make clear that individuals who have independent evidence of torture should be released, absent exceptional circumstances. However, this report shows that **Rule 35, which should prevent torture victims being locked up in all but very exceptional cases, is routinely flouted.**

Since the inception of the Detention Centre Rules in 2001, issues with implementing Rule 35 have been raised at both the operational and legislative level. Her Majesty's Inspectorate of Prison reports, the Joint Committee of Human Rights and UKBA's own audit provide evidence of the continued failures in implementing Rule 35 procedure. Furthermore, there are numerous reported cases where the courts have had cause to consider the legality of the detention of vulnerable individuals and victims of torture and have made damning findings about the process.

However, despite years of criticism, there has been a failure to rectify poor implementation and **UKBA remains in breach of its own policy.** This illustrates the disregard that UKBA shows not only to external criticism but also to the vulnerable individuals themselves, many of whom describe the "second torture" they have had to face in immigration detention since coming to this country to seek sanctuary.

Many people in this sample suffered indefinite detention without trial in their home countries. The last thing they thought when making the perilous journey to the UK was that they would experience the exact same thing here.

2: Survivors of torture, Survivors of detention: About the Sample

The report is based on 50 people who were held in detention some time between May 2010, when the coalition government took office, and May 2011. All cases included in the sample involved torture and had a medico-legal report (MLR) or medical letter produced for them by Medical Justice independent doctors, which revealed injuries that accorded well with their accounts of torture. The primary data sources relied upon in this investigation include immigration case files, healthcare notes, questionnaires completed by (ex) detainees and MLRs.

The 50 people reported having endured various methods of torture. For example, **beatings** with various objects including: gun butts; bats or batons; sticks; cable wires; or metal objects as well as **whippings**. 16 out of the 50 suffered **rape** or instrumental rape. Everyone in the sample suffered from ongoing physical and/or mental effects owing to their torture and all have medical evidence supporting their accounts.

They fled to this country in pursuit of sanctuary. Instead, they were detained for administrative purposes and the safeguarding mechanism that should identify and release them, failed to do so in all but one example.

3: Data Results

Profiles: 50 individuals took part in this study (36 men and 14 women). The majority of individuals in the sample claimed asylum within one week of arrival. 43 individuals cited torture in either their screening, statement of evidence form (SEF) or asylum interview. Two of the 50 were forcibly returned to their countries of origin and endured torture for a second time. Both managed to flee again, claimed asylum for a second time and were detained again in the UK. One of these people now has leave to remain on the basis of the risk he faces in his country of origin.

Outcomes: Only one individual was released through the Rule 35 process. None of the individuals in the sample have been removed (other than those previously forcibly returned) and all but two have since been released. 14 of the 50 now have leave to remain.

Costs: The average length of time spent in detention for the victims of torture in this sample was 226 days. The average cost of detaining each of the individuals in the sample based on the average 226 days, was £23,052 per person.¹ Furthermore, a minimum of 17 are in the process of pursuing unlawful detention claims.

Health outcomes: The health outcomes of the individuals in the sample indicate deterioration of health in detention coupled with poor management of their health conditions.

- ▶ 23% of the sample went on hunger strike during detention, of which 50% of those required hospitalization after a period of time
- ▶ 34% of the sample experienced suicidal intent/ideation or actual self-harm. 16% attempted suicide
- ▶ 83% self-reported that detention had a negative impact on their mental and physical health
- ▶ 11 detainees were transferred to hospital as acute emergencies
- ▶ There was one near death event, where a young man hung himself, was transferred to an Intensive Care Unit in a hospital, only to be returned to immigration detention as soon as he was stabilised

Medicolegal reports: All individuals in the sample were seen by an independent doctor. In the majority of cases, detention was deemed to be injurious to the patients' health. Several reports also heavily criticised the level of care received by the patients in the IRC.

Rule 35 Process: Failures were identified at every stage of the process. This includes (i) the initial healthcare screening on arrival to the IRC, (ii) the Rule 34 assessment (a mental and physical examination by the IRC GP), (iii) Rule 35 medical reports and (iv) the responses from UKBA caseowners reviewing detention.

(i) Health Screening:

- ▶ Poor record keeping: 23% of the screening notes had no time recorded
- ▶ The majority of screenings took place in the middle of the night, with the modal time between midnight and 4am

¹ This is based on the rate of £102 per day, as noted by Damian Green in October 2011 as being the average cost of detaining someone per day. Hansard: 10 October 2011, c81W <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm111010/text/111010w0003.htm>

- ▶ Lack of use of interpreters: 70% had no first language documented and none documented use of interpreter
- ▶ 8 screenings noted a history of torture but this failed to prompt a Rule 35
- ▶ There were examples of fellow detainees acting as interpreters for others, which is inappropriate when discussing sensitive subjects such as methods of torture or rape

(ii) Rule 34 Assessment:

- ▶ Rule 34 documents were available for 31 detainees
- ▶ Only one individual had a “full” physical examination and only 5 had a “full” mental examination
- ▶ Rule 34 assessments were found to be inadequate. In only two assessments were scars noted by IRC doctors compared with 45 MLRs, demonstrating a failure to properly examine patients

(iii) Rule 35 Reports:

- ▶ 40 individuals had Rule 35 reports completed in IRCs
- ▶ The process failed to identify a significant number of torture survivors, despite 8 people stating they had been tortured in their initial health screening
- ▶ 22 of 45 reports were incomplete. In a further 22 reports, there was no body map
- ▶ 46% of reports were completed by nurses, contravening policy instructions
- ▶ Failure to identify signs of torture and a failure to review medical notes
- ▶ Failure to express opinion or comment on severity
- ▶ Failure to consider the impact of detention on detainees’ health

(iv) Rule 35 Responses:

- ▶ 42 of 45 medical reports got a response from UKBA
- ▶ 36% of responses missed prescribed timeframes
- ▶ The credibility of account and/or medical evidence was disputed in most cases
- ▶ Failure to adequately consider the evidence and/or consider the impact of detention on detainees’ health

During the course of analysis, issues wider than Rule 35 emerged. There were reports of assaults and racism as well as evidence showing **general clinical mismanagement**, the repeated disregard of independent medical advice, inadequate standards of mental health care and instances where individuals were deprived of urgent medication.

An analysis of the 50 cases in the sample illustrate start to end process failure. UKBA remains in breach of its own policy.

4: Fred's Experience

Fred came to Britain having suffered torture in his home country during the civil war. At the age of 16, Fred was targeted owing to his (perceived) political and ethnic affiliations by an opposition group. He suffered torture involving being stripped, tied up, kicked, beaten with rifle butts, burnt with wax and stabbed in the foot.

He applied for asylum in 2009, stating in his screening interview that he had been a victim of torture but was placed on the detained fast track. He had a Rule 35 report completed, where the doctor wrote a summary of his alleged torture and documented the multiple scars on his body.

The response from UKBA comprised a series of standardized "cut and paste" paragraphs maintaining his detention. "It has therefore been decided that detention will be maintained as the AOT [Allegation of Torture] form merely repeats your account of ill-treatment as opposed to making a diagnostic finding about your injuries/ symptoms. As a result, the form is not believed to support your account of torture". However, dismissing reports on the basis of not making "diagnostic findings" is an error from a legal and clinical perspective – they applied an incorrect threshold of proof.

Following that report, an independent Medical Justice doctor produced a medicolegal report (MLR). This documented Fred's multiple scars concluding that they were "consistent" and "highly consistent" with his account. The doctor noted the after effects of the torture, which included poor appetite, weight loss, insomnia, haemorrhoids, suicidal ideation and symptoms of depression and PTSD.

Despite the medical evidence, **Fred was forcibly removed from the UK. Upon arrival in his home country, he was tortured again.** Fred was immediately arrested and beaten by officials. He was stripped, handcuffed, slapped, accused of being a rebel, threatened with death, kicked to the ground and forced to drink urine.

He fled once again, returning to Britain in 2010. In his screening interview, he stated he was a victim of torture. He was detained immediately under the detained fast track process.

The day after being detained, he had a Rule 35 report done. The report did not have a body map, gave a very basic account of his experience, and failed to express an opinion. The UKBA response failed to consider the evidence and instead dismissed the report, deciding to continue detention. The response stated: "This decision was based on your continued use of deception and the fact that your application is one that may be decided quickly".

The following month, a second independent MLR was produced. This report documented his old torture scars and the fresh torture scars that he had received after

being forcibly removed. Upon examination, the doctor asserted that his scars were “typical” with the account given. Individually, however, they were “consistent” and “highly consistent” with his account. He also diagnosed him with PTSD, documented his suicide attempt and head banging and found him to be symptomatic of depression.

The doctor concluded: “Mr XX’s consistent history ... his history and symptoms of depression and PTSD ... taken together with **injuries and scarring both highly consistent and typical of a history of torture** ... are all *typical of someone who has survived ... torture*. ... He should not be in detention.”

Despite the doctor’s recommendation for immediate release, Fred was not released until almost two months after this report. Fred was finally granted humanitarian protection on the basis that he was at risk if returned to his country of origin.

5: Complicit in retraumatisation

The findings show that as a result of UKBA staff failing to understand the Rule 35 process and/or medical evidence, they fail in turn to release torture victims where appropriate. Furthermore, healthcare teams in detention centres frequently fail to: conduct a mental and physical examination on patients arriving into the IRCs; identify torture victims; identify signs of torture and provide relevant clinical information to UKBA; carry out sexual health tests for rape victims; screen for post traumatic stress disorder (PTSD); provide adequate care and/or make appropriate referrals.

The effective implementation of Rule 35 is dependent on the IRC healthcare system to function adequately and identify those with injuries from torture in order to safeguard them. However, the results show that **IRC healthcare teams were unable to reliably assess if detention or continued detention might be injurious to health**, and specifically to express clinical opinions if there was an allegation of torture.

The analysis of the medical notes highlighted a number of failings that prevented victims of torture from being identified, clinically assessed or managed adequately. This included a lack of training, brief consultations, poor use of interpreters, poor clinical assessments, inadequate mental health services and a lack of clinical governance and accountability mechanisms.

Detainees within the sample were held for long periods of time and had serious health problems. High rates of **suicidal ideation, deliberate self-harm, hunger striking** and hospitalisation within the sample indicate that detention itself is likely to be detrimental to their health. Clearly, detention has a toxic effect on the health of detainees.

Leonardo's experience

Leonardo came to the UK having been a child soldier and victim of torture. Leonardo was detained under immigration powers in 2010. There were 15 self-harm incidents reported, including cutting himself and head banging, in his first 70 days of being held under immigration powers. He also went on hunger strike leading to renal impairment.

Two Rule 35 reports were written from the healthcare teams at the detention centre. Both reports failed to secure his release. Both responses from UKBA used the inadequate and illogical reasoning that there was an 'absence of any independent evidence that you were tortured'.

The responses did not consider that at this point in time, Leonardo had two reports by independent consultant psychiatrists both outlining his history of torture and his diagnosis of PTSD. There was also a letter from a Medical Justice independent doctor stating that he is "unfit for detention". There were clear indications that his health was deteriorating in detention, having been on hunger strike, attempted suicide and attended A+E twice.

Leonardo was not released from immigration detention until after almost 6 months.

6: Never mind the rules

Medical Justice has raised concerns about the Rule 35 process and its failure to adequately protect victims of torture since the organisation was formed in 2005. Responses from UKBA have been tardy and at times farcical. In 2006, UKBA gave in to pressure from Medical Justice and others to conduct an audit. However, in 2010 they admitted the results had been "lost". In 2011, a second audit was published, which found that one third of Rule 35 reports were not dealt with inside the 48-hour time limit and another third were ignored altogether.

Despite the endless and arduous communications since 2005, little has changed. It was only the recent threat of litigation and the issuing of a pre-action protocol letter that ultimately seem to have spurred UKBA into action, proposing a series of commitments, none of which have yet been met.

Five Medical Justice clients have recently launched five coordinated judicial review

challenges on this issue. Each case is seeking to secure the client's release and/or claim damages for false imprisonment based on UKBA's breaches of Rules 34 and 35 of the Detention Centre Rules 2001 and her published policy. UKBA has failed to respond.

The report exposes the **disrespect and disregard UKBA have in meeting their safeguarding duties** as laid down in policy and legislation. Year after year, the same criticisms have been fielded by independent monitoring bodies and NGOs and similar recommendations have been made, but UKBA has failed to act.

The flagrant breaches of the rules and a lack of will to rectify pre-identified historical problems demonstrate a belligerent attitude toward asylum seekers and victims of torture. Whilst monitoring exists giving a semblance of transparency, recommendations are not binding and rarely is anyone ever brought to account.

A fundamental issue that plagues the effective functioning of Rule 35 relates to governance and a lack of accountability. The use of private security companies and their outsourcing of healthcare services to subcontractors shrouds their accountability. The lack of information about their contracts and in turn their accountability against public law is a pressing issue.

Since 2004, asylum applications have fallen dramatically yet the detention estate has expanded. An increasingly severe detention policy goes hand in hand with the increased use of private security companies managing the centres. Whilst UKBA seeks to detain and remove greater numbers of people, the private companies have a commercial interest in winning contracts, removing people from the UK, cutting expenditure and maximising the number of bed spaces and usage of their facilities. Thus, the primary aims of the parties involved, (namely increasing detention and profit), conflict with the principles of Rule 35. Whilst Rule 35 is presented as a safeguard, its successful implementation is trumped by wider political and economic goals, thus making it little more than a **fig leaf**.

7: Conclusions and Recommendations

This report has uncovered systemic failures on the part of UKBA and its contractors to follow statutory law and provisions. The Rule 35 process is not fit for purpose.

Last year, there were three deaths in detention. Moreover, in the past year there have been three cases of individuals whose detention was found to amount to inhuman and degrading treatment, breaching article 3 of the European Court of Human Rights (ECHR). In 2010/2011 the government paid over £12 million in legal costs and compensation to asylum seekers and other immigrants. The need for identifying and safeguarding vulnerable individuals cannot be understated.

The Detention Centre Rules 2001 put in place by Parliament to safeguard vulnerable individuals are being breached. Abuse is taking place behind closed doors and torture victims are suffering the consequences. As many (ex) detainees described, detention was a **“second torture”**, bringing back memories of their incarceration in their home countries and provoking re-traumatisation.

This dossier exposes the government’s blatant disregard for the law, doing serious damage to human lives in the process, because ultimately it values immigration targets more than it does the people who it detains. Indeed, the report shows how the government treats human life and the laws, mechanisms and procedures, which have been put in place to hold it to account with total and utter contempt.

As one former detainee explained, ‘People who have gone through torture should never be ignored’. We ask the government to listen to these words and once and for all to implement Rule 35 of the Detention Centre Rules 2001.

Our key request is that the government simply:

Implements Rules 34 and 35 of the Detention Centre Rules 2001 and demonstrates this through an independent audit of the Rule 34/35 process, which assesses its effectiveness. The audit should review outcomes and the quality of all reports and responses over a 3 month period and should be published no later than December 2012.

**For a full copy of the report, please visit our website
www.medicaljustice.org.uk**

“My detention was hell... I wouldn’t wish that on any person. It made me feel worthless, useless and that I had no future, which is why I attempted suicide on 4 occasions during my detention...The damage done to me, remains with me. Detention broke my heart... [it] took everything from me...”

Torture survivor, unidentified by the Rule 35 process

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