**Organization Information**

Name of Organization Completing Form: Jesuit Refugee Service (JRS) UK

Country: United Kingdom

Date: 29th March 2019

**Part A: General Information**

1. Please describe the process by which migrants are detained in your country. Which authorities are tasked with this responsibility? Who or what body oversees these authorities?

The Home Office makes all decisions to detain. This is an administrative decision, and does not go before a judge. It is made by an individual Home Office caseworker who does not meet the potential detainee concerned.

1. Where do arrests and detentions take place? Is force typically used during arrest or detention? Are there standards for treatment of migrants during an arrest? To what extent are migrants informed of what is going on during an arrest (why they are being detained, possible charges against them, etc.)?

Arrests for detention take place in a variety of contexts, and it is important to note that no meaningful warning is given: 1) During routine reporting to the Home Office; 2) at migrants’ places of residence, very often early in the morning or late at night; 3) from the street. We know of immigration officers stopping people to question them about their immigration status as they are going about their day, and then detaining them. 4) Directly from prison, once foreign prisoners have served their sentence. It is significant that many things that would not be a crime for a British citizen are deemed a crime for people without immigration documents and others with precarious immigration status. Many who now fall into the category of “foreign national offender” may have crimes such as driving or working. Additionally, many are victims of trafficking rather than perpetrators of crime: over the last year and a half, we have supported 14 victims of trafficking in immigration detention (see response to question 7). All of these were transferred to detention from prison, where they had served sentences for convictions arising directly and solely for actions they had been forced by traffickers to carry out.

From those we work with, we know that force is sometimes used during arrests and detentions. People being detained are routinely handcuffed, even if they are not resisting (which they rarely are).

In order to understand the process of detaining someone, some background to the reporting system is necessary. Asylum seekers, those without up to date immigration documents and many others subject to immigration control are obliged to report, normally at regular intervals, to the Home Office. Where possible, this is likely to be at a Home Office building, but in smaller towns it may be at a police station. One is given a particular time to report and, if one is late, this will be counted against immigration status and increase the likelihood of being detained. People frequently have to queue for hours in the cold and rain.

In recent interviews we conducted on detention, several respondents went into detail about the process of being detained at a reporting centre, and a pattern emerged. They arrived in the morning and were held at the point of detention for most of the day; transported in a van to a detention centre in an unknown location, travelling for several hours at night; and were not given anything to eat or drink on arrival, but had to wait until breakfast the next morning. Most had been given crisps and water at some point on or before their journey. For some who had been obliged to report to the Home Office early in the morning, this was all they had had to eat or drink since going to bed the previous night – i.e., in approximately a 36-hour period.

1. Who are the personnel that staff facilities that hold people in detention (corrections officers, law enforcement, social workers, etc.)? What are the professional qualifications of staff at these detention facilities? Who oversees staff at detention facilities?

Detention centre staff are employed for that specific purpose by the company to whom the detention centre is subcontracted. No formal qualification is required to be appointed as a custody officer in a detention centre.

1. Who owns the facilities used to house migrants who are detained? Who operates the facilities used to house detained migrants? Are facilities that house detained migrants public or private?
2. Does your country monitor detention facilities? Who monitors detention facilities? What are the standards that detention facilities must adhere to?
3. During detention, do detainees have access to communication with their families, legal counsel, and their own consular authorities? Are detainees provided with information on the process they are going through?

Communication access in detention centres is poor. Detainees are not allowed smart phones. Though they are given basic phones without cameras or internet access, phone signal in many detention centres is exceptionally poor as many are in rural areas. Furthermore, people in detention are not provided with regular phone credit. Internet access is extremely limited, often to a couple of hours per week. Access to certain social media sites, such as facebook, is often banned, which makes it very difficult for people to keep in touch with family and friends; social media is particularly important for making contact with relatives abroad in the case of someone being returned to their home country. Access to websites providing migrants with support and signposting advice is also reported to be banned in many cases.

Documents are routinely sent to solicitors via fax, which those detained must rely on detention centre staff to send. This obviously interferes with their privacy. We also occasionally hear reports of staff refusing to send documents or doing so incorrectly, for example by faxing the wrong side of the paper.

1. Are the particular needs of women and other groups of people met? Is consideration given to the status of asylum seekers, victims of torture and trafficking, and other migrants who are particularly vulnerable?

Asylum seekers, victims of torture and victims of trafficking are frequently held in detention. For more information on detained victims of trafficking and torture, see JRS UK’s report *Survivors of Trafficking in Immigration Detention*, available on our website here: <https://www.jrsuk.net/wp-content/uploads/2018/10/Topical-Briefing-Survivors-of-Trafficking-in-Immigration-Detention-13.10.18.pdf>

**The Adults at Risk Policy:** The Home Office employs an ‘Adults at Risk’ policy, ostensibly designed to identify those vulnerable to risk of harm in detention. It operates with reference to several ‘at risk’ categories, including being a victim of torture and being a victim of trafficking. Under the policy, there are 3 Levels – corresponding to levels of evidence of vulnerability and risk, rather than extent of vulnerability and risk – and these are weighed against immigration factors in decisions about whether to continue detention. In practice, immigration factors routinely outweigh vulnerability in the case of those recognized at Levels 1 and 2, and there are very serious barriers to recognition at Level 3. Recognition at Level 3 requires professional evidence, not only of being in an at risk category, but also of being at risk of continued harm in detention. This is by its nature difficult to evidence until harm has occurred, and therefore fails to protect even the most vulnerable from harm. Additionally, our detention outreach team observe multiple cases of evidence of harm simply being disregarded. For example, a document explaining a Home Office decision to continue detention will quote a medical professional stating that a detainee will be harmed by further detention, but later state that no concerns about further harm have been raised.

1. Does the detention process look any different if minors are involved?

People recognized to be minors are no longer routinely detained under immigration powers in the UK. There is a family unit at which children may be detained in the Tinsley House detention Centre for short periods. Over the last year and a half, our detention outreach team has supported a child held in the Heathrow IRCs under the same conditions as adults because the Home Office disputed their age.

**Part B: Legal Treatment**

1. What is the legal basis for detaining migrants in your country? What purpose does detention of irregular migrants serve? How has this purpose been articulated through legislation and through the judicial system and public policies? Please identify any relevant cases in your country’s court system.

Everyone subject to immigration control is liable to detention in the UK. In theory, detention is used for the purpose of removal, or to check someone’s status on entry. However, the majority of people detained under immigration powers are ultimately released back into British communities: approximately 56% in 2018, according to Home Office statistics. Detention does not, therefore, operate primarily as a mechanism for removal. There are good reasons for thinking that current policy around detention is designed partly as a deterrent measure to enforce compliance with immigration policies. For example, speaking in parliament on 5th March 2019, the immigration minister stated ‘It is vital to have a detention system that…upholds our immigration policies, and that *acts as a deterrent to those who might seek to frustrate those policies*.’

1. Is immigration governed by criminal law or administrative law?

A combination, but aspects of law relating to immigration have been increasingly criminalized in recent years. Under the Immigration Act 1971, it is a criminal offence to knowingly enter the UK without leave, knowingly overstay one’s leave, or knowingly breach a condition of one’s leave. It is also relevant that the 2014 and 2016 Immigration Acts between them criminalise, for undocumented migrants, many every day activities that would not be illegal for British citizens, such as working and driving (working while on a visa that does not permit one to do so is also a criminal offence).

1. Does the immigration detention proceed *ex officio* or there is an individualized analysis of its pertinence and proportionality?

In theory there is an individualized analysis of each case. However, the caseworker responsible for this analysis never meets the individual concerned, and documents explaining decisions to detain tend to lack detail and repeat stock phrases.

1. Does legislation establish a maximum amount of time for immigration detention? What is the maximum amount of time that someone can be detained? Are there any exceptions or extensions allowed by law?

No. There is no time limit on immigration detention in the United Kingdom.

1. Does legislation provide any mechanism to challenge the legality of the detention?
2. Is there any national legislation that guarantees legal representation or interpreters in immigration proceedings? Is there a guarantee of access to free legal representation?

Asylum claimants are entitled to legal representation. Immigration cases fall outside the scope of legal aid, so many people cannot access legal advice for immigration cases. Additionally, our observation is that it can be difficult to access legal advice in a timely fashion in detention; those held in detention must attend a surgery for an initial meeting with a solicitor in order to obtain legal representation. Those we support in detention, who we know continue without legal representation, frequently report being turned away by solicitors without adequate explanation.

1. Is there any legislation that establishes the right to consular assistance for migrants? Is this right guaranteed in practice?
2. Does your country recognize the due process rights of non-citizens to the extent that it recognizes the due process rights of citizens? If not, what are the differences?

The UK does not equally recognize the due process rights of non-citizens in the sense that immigration enforcement rules and procedures are much less grounded in these rights than other areas of British law, and specifically criminal law. For example, it is not possible to incarcerate a British citizen indefinitely without charge, but it is possible to do this to someone subject to immigration control.

1. Is information available to detainees regarding the processes of requesting asylum or applying for refugee status?

In theory, but in our observation the accessibility of this information varies. People who either do not speak English, or do not speak English fluently, especially struggle to access this information.

1. What do proceedings that determine migration status look like? Who is the decision-maker or decision-makers? What are the qualifications of the decision-makers? Are they appointed or elected?
2. Is there a duty to ensure that decisions are duly motivated by legal reasoning? How is that ensured in practice?
3. How much time elapses after arrest before a determination of migration status is made? How long does the initial determination of status process take?
4. If families are involved, are their cases determined separately or together? Is consideration given to the special circumstances of children?
5. What are the consequences of a finding of irregular migration? Is an individual who is found to have entered the country in an irregular manner returned to detention or moved to a different facility? Are the conditions different for individuals found to be irregular migrants? Are irregular migrants eligible to be released on bond/bail until a final determination has been made?
6. Is there a right to appeal of finding of irregular migration status? What does the appeal of a finding of irregular migration status look like? How much time elapses from a judgment of irregular migration status to an appeal? What due process guarantees are given during the appeal process of a finding of irregular migration status? Does the appeal process have suspensive effect regarding deportations?

**Part C: Impact on Detainees**

1. Please describe the impact that detention has on detainees’ physical and mental health.

Detention universally has a negative impact on detainees’ physical and mental health. This is well-documented, and corroborated by our organizational experience. In recent interviews with people who had experienced detention, multiple respondents likened detention to torture. They described a long-term deterioration of skills, ability to engage socially and empathetically with others, and general sense of well-being. Several respondents reported suffering from a chronic physical health condition that had first developed in detention (despite no direct questions about health being asked).

1. Please describe the varying impacts on particularly vulnerable groups, including racial and ethnic minorities. What systems or practices are in place to prevent discrimination in both proceedings and detention?

Victims of torture and trafficking almost universally report to us that detention reminds them of their previous experiences of incarceration. Individuals who do not speak English often find detention especially isolating, and find it particularly difficult to navigate the systems in place to support them and for them to address their situation.

1. Please describe the way in which detention of migrants in your country particularly affects children who are detained. How does the detention affect education? Are educational resources available in the facilities in which they are held? Please describe any of these programs.
2. Is consideration given to keeping families together?

Detention of parents often separates them from their children.

1. Are children typically kept in detention? How long?

Children are not routinely detained in the UK.

1. How does the detention of migrants in your country particularly affect women? Are health resources for women made available to women in detention? How can women in detention access health resources? Are resources available for pregnant women in detention? How are pregnant women accommodated with respect to the conditions of detention?

**Part D: Alternatives to Detention**

1. What alternatives to detention exist in your country? Please describe these alternatives to detention and how they are generally perceived and implemented in your country.
2. Have all detainees access to alternatives to detention? How many persons get an alternative to detention in comparison with the number of detainees?
3. Have there been any policies proposed in your country that could achieve the same objectives as detention? How have these proposals for alternatives to detention been received in your country? Are proposals for alternatives to detention generally met with favor or have they been rejected? Please describe the criticisms of the policies for alternatives to detention by the general public. If these proposals have been rejected, what was the rationale for rejecting them?

**Part E. Additional information**

Please add any other information that you consider to be relevant for the CMW to take into account in the elaboration of this general comments.