Medical Justice
seeking basic rights for detainees

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Dear Sir/Madam

Participation by Non-Governmental Organisations – Medical Justice submission for 55th session (8 – 26 July 2013)
UK's Seventh Periodic Report
Pregnant women in immigration detention and UK compliance with Article 12 (2) CEDAW

We write regarding the forthcoming 55th session and should be grateful if you would treat this letter as our submissions for consideration in regard to the UK's compliance with CEDAW. We are concerned that the UK is not compliant with Article 12(2) in regard to access to health care by pregnant women being held in detention under immigration powers.

Introduction

On 11 June 2013 Medical Justice launched a report at the House of Commons entitled: **"Expecting Change: the case for ending the detention of pregnant women."** The evidence adduced in that report raises concerns that pregnant women held in immigration detention are being denied their substantive right to health care. We **enclose** a copy of that report for your consideration.

These submissions are of particular relevance to paragraphs 19 – 21[1] of the 'List of issues and questions with regard to the consideration of periodic reports: UK and Northern Ireland', as they relate to disadvantaged women. This is against a background of the past three enquiries into maternal deaths in the UK all citing newly arrived migrants, asylum seekers and refugees as being particularly vulnerable groups.[2]
The UK's Seventh Periodic Report (June 2011) states at paragraph 199 that:

"The UK Government has made extending choice in maternity services a key priority for the NHS in England and Wales in its Operating Framework for 2011/12. Maternity providers working together in networks will be able to offer expectant mothers a broader choice of services and facilitate movement between the different services."

The evidence we collected in our investigation into the experiences of pregnant women in immigration detention demonstrates that for pregnant women who are subject to immigration control, this was not the case.

[1] "List of issues and questions with regard to the consideration of periodic reports: UK and NI"
[2] Lewis, G (2004); Lewis, G (2007); BJOG: An International Journal of Obstetrics and Gynaecology (2011) Special Issue: Saving Mother's lives: Reviewing maternal deaths to make motherhood safer: 2006-2008. The Eighth Report of the Confidential Enquiries into Maternal Deaths in the UK, March 2011, Volume 118 , Issue Supplement s1 page 1-203

Further, there is evidence to suggest that the UK is breaching Article 12(2) in connection with access to health services for pregnant women in detention.

CEDAW

Article 12 provides:

> 1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.
>
> 2. Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.'

The rights guaranteed by Article 12 can be broken down into the following three categories:

i) **Equality**: A right to equality between men and women in relation to access to healthcare services;
ii) **Access to services**: A right of access to appropriate services for (a) pregnancy (b) confinement and (c) the post-natal period, free when necessary;
iii) **Nutrition**: A right to adequate nutrition for pregnant and lactating women.

Medical Justice's Research

Medical Justice was established in 2005 in order to facilitate the provision of independent medical advice and independent legal advice and representation to those detained in immigration detention centres. We assist approximately 1,000 detainees per year. Medical Justice largely relies on a network of doctors and lawyers who hold expertise in different fields and arranges visits by a doctor to a detainee where it appears that there may be issues which require medical assistance.

It is the only organisation in the UK that regularly investigates the adequacy or otherwise of healthcare provision in immigration detention. Medical Justice was granted charitable status in 2009 (registered number 1132072).

Approximately 27,000 people are now detained each year in the UK under immigration powers, with 2000 to 3000 individuals detained at any one time.[3] There is no automatic judicial oversight of the use of the power to detain, it is a decision of the Executive. Detention under immigration powers has no time limit laid down in law.

In our view, the rise in the use of immigration detention demands that the state prioritise the safeguarding of particularly vulnerable groups. Pregnant women are plainly such a group. As the government does not collect any statistical information about the numbers of pregnant women they detain under immigration powers every year, it is difficult to be precise about the size of this group. However, from our own research, we have been able to estimate that number to be slightly less than 100 individuals per year.

By way of background, the most common circumstances of detention are that these women are detained from the community *without notice*, in order to effect their removal or deportation from the UK. This research and a previous Medical Justice audit show that only around 5% of pregnant women were successfully removed or deported following detention. The vast majority are in fact released.

Further, a large proportion of this group of women were to be returned to areas where there is a high or very high risk of malaria. It is stated government policy to ensure the availability of malarial prophylaxis to pregnant women and young children. That is a matter which gives rise to a number of concerns as outlined below.

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[3] The Migration Observatory, The University of Oxford, *Briefing: Immigration Detention in the UK*, 08/03/11 http://migrationobservatory.ox.ac.uk/sites/files/migobs/Immigration%20Detention%20Briefing.pdf

'Expecting Change' Report 11th June 2013

The findings of this report are based on detailed research in respect of a group of 20 pregnant women who were held in detention between January 2009 and September 2012 (at a dedicated immigration detention centre called Yarl's Wood)[4]. This study followed preliminary research we had conducted previously into 75 cases of pregnant women who had been detained between 2005-2011[5]. There is a healthcare centre within the detention centre which is the access point for all healthcare needs. However, ante natal care is not provided by that centre but by the local hospital in the town of Bedford. Women must first attend the on site healthcare centre and depend on the staff there to gain access to ante natal services at Bedford.

We set out some of our key findings in respect of healthcare here (you are referred to Chapter 6 and Chapter 7 of the enclosed report):

- 11 women disclosed they had a history of torture, 5 claimed to have suffered domestic violence, 3 claimed to be victims of trafficking and 7 claimed to be raped (1 was pregnant by rape) (p.23);
- 6 had a history of mental health issues[6] including depression, previous suicide attempts, PTSD and anxiety disorder;
- In all the cases reviewed medical notes were incomplete (p.24) documents typically missing included:
    - Pregnant lady notification form;
    - Blood results;
    - Scan results;
    - Rule 35 responses;
    - Hospital records; and
    - Completed prescription charts;
- Detainees do not have direct access to a midwife and could not request a visit from a midwife themselves (p.26);
- 11 women missed 14 antenatal appointments (p.26);
- 6 women had no ultrasounds during their period of detention (p.27);
- In 5 cases independent doctors stressed that owing to issues relating to the women's pregnancy, they required specialist assessments and/or scans prior to deportation/removal to ensure the safety of the unborn child (p.29). These were issues that had not been identified by the healthcare centre staff;
- There was evidence of detention worsening pre existing mental health issues and/or triggering mental health problems (p.28);
- The number of routine midwife visits during the period of detention ranged from 1 to 5 and was generally consistent with national guidance for 'low risk' pregnancies, however a number of cases were not 'low risk'. For example, 1 woman had only one visit from a midwife during her 12 weeks in detention despite a history of two miscarriages as well as abuse, trafficking and domestic violence. During her current pregnancy and while detained, she experienced abdominal pain, further bleeding and ultimately miscarriage at 20 weeks (p.26);
- Another woman, who was in detention for 17 weeks, had a history of rape, torture, depression and PTSD. Her pregnancy was complicated by urinary tract infection, vaginal discharge, Group B Streptococcus, depression, diabetes, adnominal pain and poor nutrition. Despite this saw a midwife only twice and did not have any routine scans. A healthy low risk woman receiving routine antenatal care would have had 4 visits over a similar period (p.26);
- The average time the women spent in detention was 80 days. The shortest time was 15 days and the longest was 278 days (p.22)

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[4] According to Yarl's Wood IMB 93 pregnant women were held in Yarl's Wood in 2011 (p.1)
[5] Expecting Change report p.7
[6] Expecting Change, p.28 finding by MJ independent doctors

- Most were detained in their first trimester (p.22)
- National guidance on malaria prophylaxis in pregnancy advises that Mefloquine (larium) should not be taken during the first trimester (p.37). Despite this 6 of 13 women requiring malarial prophylaxis were prescribed mefloquine in the first trimester (p.38);
- In *all* cases where mefloquine was prescribed there was a failure to establish a "window of tolerance" (2-3 weeks prior to departure from the UK);
- Mefloquine is contraindicated for women with psychiatric issues such as depression, but despite this, 8 out of 13 women requiring malarial prophylaxis had a history of and/or currently had mental health conditions (p.39).
- Weight and hunger were common complaints[7]. One pregnant detainee spent 12 weeks in detention and lost 4.5 kgs in weight by the time of her release (p.42-43).
- Our analysis showed that the Home Office used force in order to effect the removal of pregnant women (p.50). However, in February 2013 following the case R on the application of Chen & others v Secretary of State for the Home Department CO/1119/2013 the Home Office reinstated an old policy whereby force is only to be used on pregnant women and children when absolutely necessary to prevent harm.[8]

Systemic issues arising are set out below:

- The Home Office does not know how many pregnant women are detained and has no method of recording that information (p.15). In response to questions in Parliament, Damien Green, Minister of State for Police and Immigration stated that UK Border Agency did not hold this information centrally.[9] It difficult to see how the Home Office can monitor its policy of detaining pregnant women only in exceptional circumstances, unless there is a clear prospect of early removal, if this information is not collected and properly considered.
- The report highlighted the failures to properly take account of pregnancy when considering whether detention was necessary at the outset and throughout the detention. Her Majesty's Inspectorate of Prisons has raised concerns about the detention of pregnant women and has highlighted that Home Office detention reviews took no account of pregnancy.[10]
- Only about 5% of pregnant women were successfully removed or deported (p.2)
- Travel to malarial areas should be avoided because pregnant women have an increased risk of developing severe malaria and a higher risk of fatality compared with non-pregnant women. In all cases where anti malarials were offered the healthcare staff failed to follow the relevant medical guidance.
- There is evidence that the healthcare falls short of NHS equivalent standards and national (NICE) standards (as referenced above)Lack of interpreting services for healthcare appointments meant that Yarl's Wood was unable to provide equivalent services to NHS standards (p.61). On two occasions staff at Bedford hospital indicated that the lack of appropriate interpreting made gaining consent impossible (p.61).

Concerns expressed by Royal College of Midwives and Royal College of Obstetricians and Gynaecologists

Our report was supported by the Royal College of Midwives and the Royal College of Obstetricians and Gynaecologists

Louise Silverton, Director for Midwifery at the Royal College of Midwives said: "The detention of pregnant asylum seekers increases the likelihood of stress, which can risk the health of the unborn baby. Midwives can

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[7] See Expecting Change, p. 57, p.62
[8] http://www.bhattmurphy.co.uk/media/files/Press_Release_Chen_22_02_13.pdf
[9] Hansard 25 October 2011: Column 148W
[10] Paragraph 3.21 HMIP Report on announced inspection of Yarl's Wood 4-8 July 2011 states: *'Seven pregnant women were being held at the centre at the time of the inspection, something that should be exceptional. We reviewed the files for five of them. Only one of the monthly review letters mentioned pregnancy, and even that one suggested that the pregnancy was disputed, although it had been confirmed for some time.'*

only work in the context of what they are allowed to do by their managers. The very process of being detained interrupts a woman's fundamental human right to access maternity care. The detention system makes it very difficult for midwives to put women at the centre of their care. We have concerns that the system in place actively inhibits the provision of good care. This is an untenable situation for midwives."[11]

Dr Tony Falconer: President of the Royal College of Obstetricians and Gynaecologists (RCOG) said: "Pregnant asylum seekers and refugees are often very vulnerable and any form of detention puts them and their babies at greater risk. We must ensure that these pregnant women receive high quality NHS maternity care. This includes antenatal support and access to purpose-built medical facilities away from detention centres."[12]

Questions to be raised with the UK

In view of the matters set out above, we call upon you to question the UK government about its compliance with Article 12(2) in regard to the detention of pregnant women in the immigration detention estate. The issues which appear to us to merit investigation include the following:

- The quality of decision making by UKBA officials tasked with authorising and reviewing decisions to detain and then maintain the detention of pregnant women, and, in particular the treatment of clinical evidence and systems in place to ensure that the needs of pregnant women are met;

- The standard of healthcare received by pregnant women in immigration detention, particularly access to routine antenatal care, management of high-risk pregnancies and the prescription of malarial prophylaxis;[13]

- The Home Office should recognise that pregnant asylum seeking women have complex needs and ensure that healthcare professionals they contract with have sufficient specialist knowledge, and in particular are aware of this group's needs and implement national (NICE) guidance;

- Statistics should be collected on the number of pregnant women entering detention; further there should be external monitoring of whether the policies to safeguard this group from prolonged detention and to ensure they are provided with appropriate and safe malarial prophylaxis are implemented in practice;

- Address the failure to properly implement the policy for pregnant women from high risk malarial areas who are either in their first trimester or have mental health problems (and who cannot take mefloquine), and/or who require an appropriate period of time to monitor tolerance to malaria prophylaxis prior to any planned removal;

- The attitude of UKBA staff and staff employed by its contractors to pregnant women as there appears to be a culture of disbelief and disrespect;

- Information sharing, including ensuring that relevant prior clinical records and information, for example handheld notes, GP records, maternity books are obtained;

- Liaison between healthcare services at immigration removal centres and external NHS services (both community and secondary care services).

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[11] http://www.medicaljustice.org.uk/mj-reports,-submissions,-etc./reports/2017-medical-justice-expecting-change-the-case-for-ending-the-immigration-detention-of-pregnant-women-110613.html

[12] http://www.medicaljustice.org.uk/mj-reports,-submissions,-etc./reports/2017-medical-justice-expecting-change-the-case-for-ending-the-immigration-detention-of-pregnant-women-110613.html

[13] See Expecting Change report, p.58 for discussion

It is submitted that pregnant women in detention are a particularly disadvantaged group with serious and complex needs. It is submitted that the evidence in the report supports that pregnant women in detention do not have equality of care, and are not provided appropriate services in connection with pregnancy. Medical Justice believes that pregnant women should not be detained for immigration purposes, particularly on the basis that so few women are ultimately removed or deported following detention. The evidence shows, in our view, that there are serious and systemic failings in regard to the quality of care received which lead to serious adverse outcomes for women and their babies.

We trust that you will appreciate that the matters we have raised are of some importance and that you will be in position to acknowledge receipt shortly.

If you require any further information please do not hesitate to contact us.

Yours faithfully

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