



Detention of Vulnerable Asylum Seekers & Irregular Migrants in the European Union

Jesuit Refugee Service - European Regional Office

Public conference, 8th June 2010
Hotel Silken Berlaymont Brussels

SUMMARY CONCLUSIONS

On Tuesday, 8th June 2010, the Jesuit Refugee Service-Europe held a public conference in Brussels to disseminate its new research report, *Becoming Vulnerable in Detention*. The event served as an opportunity for government and civil society stakeholders of varying points of view to come together to discuss the results of the study and how it may be used in EU and national level policymaking, and in detention monitoring and advocacy. Following the presentation of the report by JRS-Europe and remarks from ten panellists, the conference chair identified six important points that summarised the perspectives exchanged at the conference:

1. **There is a strong sense of certainty in the findings of the report, *Becoming Vulnerable in Detention*, as it is based on interviews with 685 detained asylum seekers and irregular migrants in 21 EU Member States.** JRS-Europe and its project partners interviewed detainees as young as ten years, and as old as 64 years. At the time of their interviews, persons were in detention for as little as one day or as long as two and a half years. Unaccompanied minors, pregnant women and medically ill persons were interviewed, but many more single young men without any officially recognised needs were interviewed. Despite the diversity present within the sample of people who participated in the study, it is clear that the consequences of detention are negative for almost everyone who is subject to it.
2. **There is convergence in the diversity of stakeholders' view, namely that detention is an unsatisfactory measure because it brings harm to those who experience it; in light of this, alternatives to detention must be developed.** Panellists from the European Commission and the Member States acknowledged that detention carries negative consequences for migrants. Yet it was also argued that detention would continue to be used for the foreseeable future, since Member States regard detention as an important tool for the implementation of migration management policies. Nevertheless, the negative consequences of detention mean that it should only be used in the last resort, and when strong safeguards are put in place to limit harm to individuals. Panellists from Civil Society organisations strongly argued for alternatives to detention, citing examples in Belgium and in Canada showing that such alternatives can be implemented to meet the needs of States while respecting the liberty and human dignity of migrants. This convergence in views mirrors the convergence found in the experiences of detainees who were interviewed for the study.
3. **There are still large areas of ambiguity, tension and paradox that are present in the discourse on migrant detention and vulnerability in Europe.** The findings of the study portray this tension from the experiences of detainees, such as the psychological stress imposed by their isolation from the 'outside world', versus the stress they experience from their proximity to co-detainees of different cultures and nationalities. These tensions also exist for Member States and EU policymaking: the gap between legislation and practice, reconciling the human rights of people versus the interests of States and communities, and the ambiguity of information that is provided to EU policymakers on the realities of detention.



4. **Existing policy at the EU and national level must be revised in a manner that encompasses high standards with compromise; and advocacy strategies should be reconsidered to address new and ongoing challenges.** Asylum policy is currently being revised at the EU level, particularly in the way Member States can detain asylum seekers and the protections that should be granted. Member States are also in the process of transposing EU policy with respect to the detention and removal of irregular migrants into national law. The complex and arduous task of revising detention policy means that compromise must be accepted – compromise that acknowledges the needs of Member States while fairly balancing the rights and needs of migrants. Likewise, advocacy initiatives for the protection of detainees undertaken by Civil Society should be reassessed to determine what is most effective – whether it is conventional approaches, such as negotiation with government policymakers, or litigation strategies.
5. **There is a need to fine-tune the system of checks and balances so as to reduce undue harm to individual detainees.** In and of themselves, people in detention are vulnerable to the authority exercised by States, merely for the fact that the liberty and rights of detainees are restricted, and that detainees have little opportunity to effectively advocate for themselves. If States are to continue implementing detention, then the vulnerabilities and special needs of detainees must be subject to early and ongoing holistic assessment in order to minimise as much as possible the harmful consequences of detention. The interest States have in executing an effective migration management policy is indeed important and valid. But the power dynamic between States and detainees is invariably tipped towards the former. This means that not only should the management of detention centres be improved, but policies at a higher decision making level, such as those establishing alternatives to detention, should be implemented in order to reduce the harm of detention altogether.
6. **Finally, policy responses must be tailored and targeted to meet the individual needs and rights of migrants in detention.** The findings of the report, *Becoming Vulnerable in Detention*, are presented in a way that portrays the common impact caused by detention. Yet it also centres on individual stories and experiences so as not to neglect the important fact that detainees are individual persons, all of whom carry personal aspirations, family contacts, worries, hopes and special needs. The severity of detention and the differing circumstances of the people who are subject to it means that, if it is implemented at all, it must be in a way that responds to individual needs to ensure adequate support and safety for migrants.

CONFERENCE SPEAKERS

- Dr. Edward Warrington (conference chair), professor of public policy at the University of Malta;
- Mr. Philip Amaral, policy and advocacy officer of JRS-Europe;
- Mr. Michael Schöpf, director of JRS-Europe;
- Mr. Fabian Lutz and Ms. Xenia Messariti, policy officers from European Commission Directorate-General Justice, Liberty and Security;
- Ms. Jean Lambert, Member of European Parliament;
- Ms. Francesca Nastri, of the Office of the Secretary of State in Belgium;
- Mr. Christophe Renders, the director of JRS-Belgium;
- Mr. André Costa, the director of JRS-Portugal;
- Ms. Marta Pardavi, the co-chair of the Hungarian Helsinki Committee;
- Ms. Blanche Tax, senior policy officer from the UNHCR Europe Bureau;
- Dr. Alice Edwards, a lecturer on international human rights and refugee law from the Refugee Studies Centre at the University of Oxford;
- Mr. Jerome Phelps, the director of the London Detainee Support Group

CONFERENCE ATTENDEES

In addition to the project partners (see last page), persons who attended the conference represented the following bodies, organisations and agencies:

- International Organisation for Migration
- The Aliens Office of Belgium
- International Catholic Migration Commission
- Flemish Refugee Council
- Jesuit European Office
- Italian Permanent Representation to the EU
- Permanent Representation of Hungary to the EU, and the Ministry of Justice of Hungary
- *Médecins du Monde*
- The European Association for the Defence of Human Rights
- Belgian Committee for Aid to Refugees
- Caritas Europa
- *Médecins Sans Frontières*
- International Committee of the Red Cross delegation to NATO
- Centre for Social Policy, *Universiteit Antwerpen*
- Churches' Commission for Migrants in Europe
- Migration Studies Programme, University of Kent at Brussels
- European Council for Refugees and Exiles
- Amnesty International, Belgian Flemish and Francophone sections
- Amnesty International EU office
- Office of Security and Co-operation in Europe
- Global Detention Project
- The Odysseus Network at the *Université Libre de Bruxelles*
- Human Rights Studies department, *Katholieke Universiteit Leuven*
- Belgian Red Cross
- Statewatch

PRESENTATIONS

Mr. Michael Schöpf of JRS-Europe opened the conference by focusing on the particular experiences of detainees, and by highlighting the unique aspect of the report, *Becoming Vulnerable in Detention*: being based on interviews with 685 detainees in 21 EU Member States, the report focuses heavily on detainees' voices for the purpose of letting them define what vulnerability means for them. **Dr. Edward Warrington of the University of Malta**, as the chair, opened the conference by inviting participants to set aside tension and to listen to the input offered by panellists in as objective a manner as possible, noting that the issue of detention as one being particularly complex for public policymakers and advocates.

Mr. Philip Amaral of JRS-Europe presented the main findings of the report, which was undertaken by partners in 23 EU Member States as a part of a EU co-financed project entitled, "The Detention of Vulnerable Asylum Seekers and Irregular Migrants in the European Union (DEVAS)". Using the results of the study, Mr. Amaral defined vulnerability as "a loss of control of oneself to someone, or something, with more power, thus making oneself susceptible to some type of harm". Going further, the findings of the study show that "detention, in its inherent form, has a greater likelihood to cause harm rather than to bring benefit upon individuals who are subject to it". Persons with officially recognised special needs such as unaccompanied minors, pregnant women, trauma victims and the medically ill are indeed vulnerable to the environment of detention due to the factors that they possess. But, persons who do not possess such officially recognised needs are made vulnerable to the environment of detention due to the particular personal (such as language capacity, physical and mental health), social (such as connection to family and friends in the outside world, interaction with staff) and environmental factors (such as the architecture

of the detention centre, and the terms and length of detention) that are present in their lives. Vulnerability deepens as the length of detention endures, but its harmful consequences are already apparent within the first month.

Following this presentation, the conference chair invited the first four panellists to remark upon the findings of the study. **Ms. Jean Lambert, MEP**, commented that the findings in the study mirror what MEPs had seen in their visits to detention centres in Europe. Many of the recommendations within the report are already accounted for in law and policy – but the “delivery” in Member States has been far less. For the EU, it is a matter of getting the framework legislation right, and then guiding Member States to implement the legislation in the best way possible. Ultimately, Ms. Lambert argues that the report findings show that detention policy should not be just a justice and home affairs issue – with all of its linkages to security – but also a development issue. In this way perhaps policymaking can shift its focus towards reducing the potential harm persons face as a result of detention.

Ms. Xenia Messariti of European Commission DG-JLS commented that many of the report’s recommendations were already found within the recast legislation proposed by the Commission for the Dublin Regulation¹ and the Reception Conditions Directive.² Both proposals aim to restrict the use of detention in the Member States and to establish vulnerability assessments by qualified professionals prior to detention. The inconsistency in the way in which Member States implement detention is problematic, as it leaves wide gaps between law and practice. These gaps can be closed as long as Civil Society organisations continue to inform the Commission of how detention is being used in the Member States.

Mr. Fabian Lutz, also of the European Commission DG-JLS remarked upon the report’s findings in light of the EU Return Directive³, which lays down law for the return of irregular migrants in Europe. Mr. Lutz argues that detention is necessary for the implementation of migration policy in the Member States. Migration law loses its purpose if detention is removed. The resulting question should not be ‘if’ Member States should detain, but ‘how’ detention should be implemented. There needs to be compromise between ideals and pragmatism in lawmaking. The fundamental rights of migrants must be safeguarded when detention is used, and alternatives to detention should be exhausted should before such measures are enforced. But the needs and interests of Member States must also be seriously addressed.

Speaking from a Member State’s perspective, **Ms. Francesca Nastri of the Office of the Secretary of State in Belgium** underlined that detention is a measure that should only be used in the last resort. The national authorities must be vigilant in ensuring that the negative consequences of detention do not become great. The recently implemented alternative to detention in Belgium, for irregularly staying families with children, is a marked improvement from the past. This alternative rests on the fundamental basis that voluntary return should be promoted over forced detention and removal. Migrants often know little about return procedures. This is why they it is important for the State to provide social counselling and assistance. The right to information is important; moreover, it encourages migrants to realistically consider all of their options.

Following this, a second panel of three project partners offered their comments: **Mr. Christophe Renders of JRS-Belgium, Mr. André Costa of JRS-Portugal and Ms. Marta Pardavi of the Hungarian Helsinki Committee**. Mr. Renders noted that detention is more commonplace in Belgium, especially for Dublin II asylum seekers. Detention to prevent absconding is not based on the reality – in Belgium, asylum seekers rarely abscond from the authorities, calling into question the necessity of detention. The alternative to detention in Belgium is a good step, but more should be done to care for migrants’ special needs and vulnerabilities, and to insist less on getting families to voluntarily return. In Portugal, Mr. Costa noted that the good collaboration between JRS and the national authorities has improved the quality of

¹ COM (2008) 820, Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)

² COM (2008) 815, Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down minimum standards for the reception of asylum seekers (recast)

³ DIRECTIVE 2008/115/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals

life for persons kept in the country's only detention centre, located in Porto. JRS-Portugal provides psychosocial services to detainees, and as a result detainees have good access to physical and psychiatric care, and enjoy more connections to the outside world. Ms. Pardavi described the frequent utilisation of detention in Hungary, which leads to a strong sense of imprisonment among detainees. The EU has an important role to play in restricting the use of detention, she says. But it is unclear whether or not EU legal instruments can really balance the interests of both migrants and States – the needs of the latter are legitimate too, but they often take precedence over the fundamental rights of migrants.

The third panel, composed of external Civil Society stakeholders, offered their perspective of the study's results. **Dr. Alice Edwards of the Refugee Studies Centre at Oxford University** argued that the report's findings were a good launching pad for further research into alternatives to detention. By focusing on alternatives, she says, the discourse can shift from the needs and security of Member States to individual's rights to liberty and security. Alternatives are implemented in other countries with successful results. Member States' fear that migrants will abscond just does not hold in reality. Research shows that when given the ability to choose and to voluntarily participate, most asylum seekers and irregular migrants agree to abide by the alternative to detention and to participate fully in immigration or asylum procedures.

Ms. Blanche Tax of the UNHCR Europe Bureau commented on the link between integration and detention. Many detained migrants will eventually stay in the host Member State, she notes, leaving the question of how detention might impact their ability to integrate into the host society. Since detention causes more harm than good, it becomes difficult to envision how former detainees can integrate into a society that they may perceive as being reluctant to accept them. From this perspective, the report's findings call into question the logic of detention. The findings also give a human face to policy discussions that often neglect to address the human consequences of policy. The information within the report could be used to enhance practical cooperation between Member States, and it can serve as a useful tool for the European Asylum Support Office as it begins to take shape.

Closing the panel, **Mr. Jerome Phelps of the London Detainee Support Group** described his organisation's work with long-term detainees in the United Kingdom. Persons who have been detained for three or four years are severely impacted. Clinically severe depression, anxiety and suicidal ideation are common consequences that result from such prolonged detention. According to Mr. Phelps, detention is a practise that has become normalised and inevitable. But Member States cannot accurately assess the impact detention has on individuals. Detention monitors should build upon the example of the report by maintaining a human-focused approach in their work, and by continuing to highlight detainees' voices in their advocacy strategies.

The executive summary and full report, *Becoming Vulnerable in Detention*, can be downloaded at

www.jrseurope.org, and, www.detention-in-europe.org

Any questions or comments about the report's findings and its methodology may be directed to

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The DEVAS project has been coordinated by JRS-Europe in partnership with:

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