

BECOMING VULNERABLE IN DETENTION

Executive Summary



Civil Society Report on the Detention of
Vulnerable Asylum Seekers and Irregular
Migrants in the European Union

(The DEVAS Project)



Jesuit Refugee Service-Europe

INTRODUCTION

The objective of the DEVAS project was to investigate and analyse vulnerability in detained asylum seekers and irregular migrants: both the way in which pre-existing vulnerable groups cope with detention, and the way in which detention can enable vulnerability in persons who do not otherwise possess officially recognised vulnerabilities and special needs.

In partnership with NGOs in 23 EU Member States, JRS-Europe oversaw the collection of 685 one-on-one interviews with detainees. The size and scope of the sample reveals that, despite the diversity of personal circumstances of the detainees, detention does have a common negative effect upon the persons who experience it. In addition to detainees, project partners interviewed detention centre staff and other NGOs operating within the centres, and conducted a survey of asylum and immigration laws in their respective countries. This data is included within each of the national reports.

This study builds on previous reports and projects that investigated vulnerability in detention. It analyses the situation of individuals and groups that possess officially recognised special needs, such as minors, young women with children, the elderly and persons with medical illness. But this study also analyses the situation of detainees who often go unnoticed: young single men, persons without stated physical and mental health needs, and persons in prolonged detention. Most importantly, this study pushes the discussion on vulnerability and detention one step further because its results are based exclusively on the voices of detainees. Thus the understanding of vulnerability that emerges from this study characterises the experiences of detainees as they told it themselves.

PART 1: DATA FINDINGS

BASIC INFORMATION

The average detainee in the sample is male, single, 30 years old and likely to be from West Africa, South Asia or the Middle East. But women do consist of almost one quarter of the sample, of which many come from not only West

Africa but also Eastern Europe and Eastern Africa.

The data shows that, at an average of 3.56 months at the time of their interview, asylum seekers experience the most prolonged periods of detention in the sample. They were detained for one month longer than irregular migrants. Of those detained for five to six months, 78 percent are asylum seekers.

Taking the entire sample into account, the average duration of detention at the time of interview is 3.01 months. Detainees were kept for as little as one day, or for as long as 31 months.

POSSESSION OF INFORMATION

Asylum seekers are less informed about the reasons for their detention than irregular migrants are. One-third of female asylum seekers do not know why they are detained; and almost 40 percent of asylum seekers detained for more than three months contend to know little about why they are detained. Forty percent of asylum seekers are uninformed about the asylum procedure.

Awareness of detention increases with age: one-third of minors do not know why they are detained, and 76 percent of asylum-seeking minors are uninformed of the asylum procedure. Women, especially those aged 18 to 24, possess less information about detention, and their immigration/asylum status, than men do.

Persons kept for more than three months in detention know less about the circumstances of their detention, and the details of their respective cases, than persons detained for less than three months; 85 percent of persons detained for four to five months describe a need for more information on their situation.

SPACE WITHIN THE DETENTION CENTRE

Detainees overwhelmingly feel negative about the conditions of the detention centre. Many complain of unsanitary toilet and shower facilities, and unhygienic kitchens. A large number of detainees equate their detention centre to that of a prison.

Asylum seekers and long-term detainees more frequently complain of overcrowded conditions

than others do. Moreover, detainees kept for more than three months say they have little access to private space within the detention centre.

RULES WITHIN THE DETENTION CENTRE

The strict regimes found in many detention centres have a profound negative impact on detainees' lives. The fixed eating times, recreation hours and mandatory nightly curfews lead detainees to feel as if they are in prison.

A great number of detainees describe rules that keep them isolated in their cells more than anything else. Consequently, many detainees report to sleep excessively during the daytime, leading to insomnia at night. Isolation and inactivity leaves other detainees feel degraded and undignified.

The "informal" rules are just as important as the "formal" rules. Detainees describe an atmosphere where certain persons receive more favour from the staff, and thus benefit from more relaxed rules. This creates an atmosphere of arbitrariness, uncertainty and mistrust. It also makes certain detainees more vulnerable to other, more socially dominant, detainees.

DETAINEES' INTERACTION WITH STAFF IN THE DETENTION CENTRE

Detainees are more frequently in contact with security staff than any other staff. The manner in which detainees interact with staff is good. But detainees are critical about the way the staff supports their daily needs in detention.

Language is an important factor in detainee-staff relations. Minors and women in the study especially report having experienced discrimination for not being able to speak the language of the staff.

SAFETY WITHIN THE DETENTION CENTRE

Detainees attribute their safety to the security guards, but their lack of safety to co-detainees. Nevertheless, incidents of physical and verbal abuse occur at the hands of staff as well as other detainees. Incidents of physical abuse were recorded in three quarters of the EU Member States; and incidents involving verbal abuse were recorded in 19 Member States. Minors, women aged 18 to 24 and asylum

seekers frequently report being victims of both forms of abuse.

The living conditions have an impact on detainees' sense of safety. Excessive noise, unhygienic conditions and the prison-like atmosphere are widely reported factors that make detainees feel unsafe.

ACTIVITIES WITHIN THE DETENTION CENTRE

Prolonged inactivity is inherent within the situation of detention. Detainees have little to do unless the staff organises something for them to do. The resulting boredom increases levels of psychological stress. Most notably, detainees aged 18 to 24 – in particular women – report high levels of inactivity in the detention centre.

Detainees have greater access to sedentary and physical activities, rather than those that would engage their intellectual capacities. Television watching, rudimentary sports activities and general time spent outdoors is more widely available than educational and religious/spiritual activities. Even books are not available to a significant minority of detainees.

More than anything, detainees either want activities that enable them to connect to the 'outside world', or they want nothing at all. Asylum seekers and minors especially wish for greater access to the Internet and telephone. When asked which activities they would like to have, a startlingly large minority of detainees said that they want "freedom" or "nothing".

MEDICAL CARE IN THE DETENTION CENTRE

Detention centres are generally only able to provide very basic medical care to detainees, irrespective of their needs. Medical specialists such as psychologists, gynaecologists and dentists are largely unavailable. In fact, 87 percent say psychological services are unavailable to them.

Language is a major factor here too. Detainees report an inability to speak with the medical staff because of language differences. Co-detainees are often turned to for help because other options do not exist. Minors frequently report experiencing difficulties in this regard.

Most detainees want improved medical care services. Over 90 percent of women aged 18 to 24 express a need for better medical care. Many detainees report receiving only pain-reducing medication for whatever medical need they express.

Persons kept for more than three months in detention are more frequently negative about medical care than those who are kept for fewer months. In fact, detainees who are negative about the quality of medical care are detained on average for one and a half months longer than detainees who feel positive about the medical care.

PHYSICAL HEALTH IN DETENTION

The data shows that detention harms otherwise healthy people. While a number express having pre-existing conditions such as asthma, chronic pain or medical illnesses, most say they entered into detention in relatively good physical health.

The living conditions of the centre, such as the lack of fresh air or the mere confinement to one location, and the psychological stress associated with detention all bring harmful physical health consequences.

Physical health deteriorates as detention endures. Whereas one quarter of people detained for one month describe their physical health as being poor, 72 percent of people detained for four to five months say they have very poor physical health.

Younger detainees more frequently report poor physical health than older detainees do. Minors and women aged 18 to 24 frequently describe negative physical health impacts than when compared to others.

MENTAL HEALTH WITHIN THE DETENTION CENTRE

Detention brings very negative consequences for detainees' mental health. Almost half of the entire sample describes their mental health as being poor in detention.

The mere situation of detention itself is a primary determinant in the negative mental health consequences described by detainees. Many were unable to provide specific reasons for these impacts. Instead, they more frequently

described being "shocked", "fearful" and "depressed" at their situation of confinement. Detainees' psychological stress is also a consequence of the poor living conditions, the self-uncertainty of their situations and their isolation from the 'outside world'. Their inability to establish a perspective of their future, due to a lack of information and disconnection from the outside world, places a great deal of psychological stress upon their shoulders. This stress often leads to deeper anxiety and depression.

Prolonged detention compounds the adverse mental health effects of detention: 71 percent of persons detained for four to five months blame their psychological problems on detention itself.

Age and legal status are two important factors for how detainees mentally cope with detention at a personal level. Minors and detainees aged 18 to 24 frequently report negative mental health impacts. Asylum seekers express shock at their detainment – it being far from what they would have expected by coming to Europe. Irregular migrants express anxiety and uncertainty about what may happen to them post-expulsion. Seventy-seven percent of 'Dublin II' asylum seekers and 55 percent of 'rejected asylum seekers' report poor mental health in detention.

SOCIAL INTERACTION WITHIN THE DETENTION CENTRE

The environment of detention has a negative impact on the level and quality of social interaction among detainees and between detainees and staff. The mix of cultures, nationalities and languages within the detention centre makes conflict inevitable. Prolonged detainees more frequently report negative social interactions than others.

An absence of language skills makes certain detainees vulnerable to other, more dominant, social groups. Minors and detainees aged 18 to 24 are frequently witness to arguments and physical violence.

COMMUNICATION WITH THE 'OUTSIDE WORLD'

Almost half of the entire sample admits that they do not have networks of family or friends in the host Member State. Detainees are more likely

to receive support from strangers than from familiar persons.

The telephone is the most widely used means of communication, and detainees' preferred method of communication. However many detainees say they are unable to use their personal mobile telephones – an important loss for detainees as their personal mobile telephones often contain important contact information.

Asylum seekers are particularly isolated from the outside world: approximately 80 percent do not receive any personal from family and friends, and over half do not have any family or friends in the host Member State.

The data shows that the young detainees in the sample are particularly isolated from the 'outside world'. Up to 80 percent of minors, and almost half of women aged 18 to 24, do not receive any personal visits. In other cases, people kept for more than three months in detention are shown to be particularly isolated.

THE IMPACT OF DETENTION ON THE INDIVIDUAL

A large majority of detainees express deep dissatisfaction over the quality of the food provided in the detention centre, and over half experience insomnia at night. Both conditions significantly contribute to the amount of psychological stress detainees feel. In particular, the quality of the food contributes to an overall sense of indignity among detainees. Appetite and weight loss are very common. Prolonged detention exacerbates these negative effects.

The situation of detention itself is the biggest difficulty detainees described coping with. The mere imposition of detention and all of its consequent effects are an insurmountable difficulty for many detainees. Everyone, regardless of age, sex, legal status and duration of detention, is affected.

The difficulties of detention are daily present in detainees' lives; any changes of these difficulties are usually for the worse. The inability to establish a future perspective is crippling; in fact, 79 percent of detainees do not know when they will be released from detention.

Remarkably, detainees hold positive perceptions of themselves despite the adversities they experience. But almost 70 percent say that detention steadily worsens their self-perception.

When asked directly, most detainees do not admit to having special needs – but they readily point out the needs and vulnerabilities that others possess. Those who do admit having special needs are more likely to describe needs that are not officially recognised: language capacity, connection to family, possession of information and the ability to communicate with the outside world. According to detainees, language capacity and familial connections are two of the more important factors of vulnerability they perceive in others.

PART 2: ANALYSIS

WHAT DOES THIS STUDY SAY ABOUT 'VULNERABILITY'?

The data offers a story of detainees who not only have special needs such as medical problems, pre-existing traumatic histories and families to take care of, but also of detainees who *become vulnerable* to the negative effects of detention. Some detainees find that they can cope with the adversity posed by detention; others find that they are easily crippled. Some detainees find that detention does not negatively affect them until after one or two months; yet others find that detention harms them from the very first day.

The picture that emerges from the data is one of a detainee who is trapped and cannot escape, and is thus vulnerable to harm from the factors associated with detention. The detainee must therefore rely on their personal attributes, the people in their social network and the factors in their environment in order to free him or herself from that trap. Conversely, the same personal, social and environmental factors – or an absence of such factors – may actually hinder an individual's ability to reduce their level of vulnerability to detention.

A NEW OUTLOOK TOWARDS VULNERABILITY IN DETENTION

Within the context of detention and the data that was collected for DEVAS, ‘vulnerability’ can be conceptualised as a concentric circle of personal (internal), social and environment (external) factors that may strengthen or weaken an individual’s personal condition. Put differently, the presence or absence of these factors may either empower a detainee to cope with the negative effects of detention, or they may expose the detainee to further harm.

Factors interact with each other in a variety of ways, both positively and negatively. For example, the data findings show that detention centre staff members are an important part of detainees’ social network. Discriminatory attitudes and inappropriate behaviour on the part of staff can have a detrimental affect on detainees’ well being. Thus it would be important that staff members are sufficiently trained so that they can meet the needs of detainees in a dignified and humane manner.

In another example, the study shows that the possession of information is important for detainees to understand their situation, to exercise their rights and also to organise plans for their future. The inability to receive understandable and clear information about their case, and to communicate with supportive networks in the ‘outside world’, may foster a deep sense of personal uncertainty, stress and despair within the detainee. All of these effects can lead to a deterioration of their mental and physical health.

Personal factors can be defined as the *sum of the individual’s personal sense of agency*. It is a set of determinants that an individual personally carries with him or herself, all of which may hinder or improve the individual’s ability to cope with the adversities of detention. Language capacity, level of awareness of the asylum/immigration procedure and state of physical and mental health are shown to have the most influence over an individual detainee’s ability to cope in the environment of detention.

Social factors can be defined as the *sum of the individual’s existing social network, and available means of communicating with that network*. It is made up of the persons, organisations or bodies in the detainee’s life who may lessen or increase his or her level of vulnerability to the adversities of detention. These social factors may also be labelled as

‘external factors’, in the sense that they are situated outside of the personal self. Yet they do not necessitate existence in the ‘outside world’, *per se* – such factors may also exist in the detainees’ social network within the detention centre. The factors that seem to most influence detainees’ personal situations are family, relatives and/or friend in the ‘outside world’, the ‘outside world’ (means of contact to), co-detainees and detention centre staff.

Finally, environmental factors can be defined as *the sum of the determinants that exist in the individual’s larger environment but that the individual cannot control nor influence, and which may still increase or lessen his or her level of vulnerability to detention*. Among those that seem to most influence detainees’ level of vulnerability is the architecture of the detention centre, the terms and length of their detention and the living conditions in the detention centre.

ASSESSING VULNERABILITY IN PRACTICE

The data shows that detention has the potential to harm many types of people: those with pre-existing special needs and otherwise healthy persons. It is important to stress that a person becomes vulnerable from the first day of their detention, as the individual’s personal condition is instantly affected due to their disadvantaged and weakened position. Detainees’ level of vulnerability fluctuates in relation to the characteristics that they personally possess, the factors in their social network and the determinants in their wider environment.

This method of understanding attempts to acknowledge the variety of factors that foster vulnerability in detained asylum seekers and irregular migrants. In practice, it shows that every person must be individually assessed for vulnerabilities and special needs that may make it difficult for them to cope in the environment of detention. This is the only way to ensure that detention does not cause unnecessarily harm to individuals and is not disproportionate to their actual situation.

PART 3: CONCLUSIONS & RECOMMENDATIONS

DEVAS RESEARCH IMPLICATIONS FOR THE ONGOING USE OF DETENTION

The data reveals that detention is implemented in a broad variety of cases and situations. Everyone, from asylum seekers to irregular migrants, from minors to older persons, and from medically ill persons to the healthy, can be subject to detention irrespective of their special needs and vulnerabilities.

Detention, as observed from the research, is used in a mostly indiscriminate manner with little deference to personal choice and preferences. The cases that were recorded demonstrate a situation where detainees can do little to alter their circumstances within the detention centre. They must accept the state of living conditions within the detention centre, and cohabitation with persons of differing nationalities, cultures and even personalities and temperaments; and they must accept the restriction on their freedom to move about as they please, even within the confines of the detention centre. Although exceptions may exist in some Member States for persons with special needs, the 'average detainee' will find that he or she is unable to exercise a degree of personal choice and must therefore accept detention as one accepts a punishment, rather than an administrative procedure.

The results show that persons with officially recognised needs, such as minors, young women and the medically ill, are indeed negatively impacted by detention. The adult environment of detention immediately puts minors at a disadvantage, especially if they are unaccompanied, because they are vulnerable to the behaviour of the staff and to the prison-like atmosphere of detention, for example. The data findings show that women, especially between the age of 18 and 24, especially suffer from adverse mental health impacts. The medically ill may not be able to receive the treatment they need because the detention centre only provides for basic medical care.

In almost every case, the study shows that detention has a distinctively deteriorative effect

upon the individual person. Only in very few cases do detainees describe their personal situation as having improved after detention; and just as few say that detention has not impacted them whatsoever. The vast majority of detainees describe a scenario in which the environment of detention weakens their personal condition. The prison-like environments existing in many detention centres, the isolation from the 'outside world', the unreliable flow of information and the disruption of a life plan lead to mental health impacts such as depression, self-uncertainty and psychological stress, as well as physical health impacts such as decreased appetite and varying degrees of insomnia. The manner in how detainees see themselves is significantly impacted by detention. In this context, self-perception becomes an important indicator of the effects of detention because as an administrative measure, it should not bring such detrimental personal consequences.

The biggest implication from the DEVAS research is the way in which detention – frequently implemented as a tool of asylum and immigration policymaking for the EU and its Member States – leads to high rates of vulnerability in people. It calls into question the proportionality and necessity of detention in relation to the ends it seeks to achieve: that is, to systematically manage migration flows so that States may enforce their asylum and immigration policies.

The research reveals that the human cost of detention is too high, regardless of the achievability of these ends because

- The negative consequences of detention and its harmful effects on individual persons are disproportionate to their actual situations, in that they have committed no crime and are only subject to administrative procedures, and;
- It is unnecessary to detain persons and thus make them vulnerable to the harmful effects of detention because non-custodial alternatives to detention do exist.

RECOMMENDATIONS FOR EU POLICYMAKING ON THE DETENTION OF ASYLUM SEEKERS

The institutions of the European Union and its Member States have an important role to play in the way asylum seekers are received and treated within the territory of the EU. But the legal minimum standards that have been established at the end of the first phase of the *Common European Asylum System*, such as in the Reception Conditions Directive and Dublin Regulation, provide very little guidance for the implementation of detention, and for the treatment of asylum seekers with special needs.

The DEVAS research findings allow us to put forth a series of recommendations that aim to further improve future *EU policymaking* on vulnerability within the context of detention for asylum seekers:

1. Asylum seekers should not be detained during the asylum procedure.

It is not appropriate for asylum seekers to be detained because there should neither be a presumption that they have committed a wrongdoing, nor a presumption of rejection or removal while they are in the asylum procedure. Furthermore, the legal complexity inherent within the asylum procedure means that asylum seekers should access all means of support at their own volition; the closed environment of detention cannot provide this. The negative impacts of detention, and the vulnerabilities it creates, make the asylum seeker less able to present his or her case in an appropriate way, calling into question the fairness of the asylum procedure.

2. Non-custodial alternatives to detention for asylum seekers that respect their human dignity and fundamental rights should always take precedence before detention.

Asylum seekers, due to the legal complexity of their situation and the asylum procedure, require a level of care and support that cannot be provided in a detention centre. In particular, detention cannot be implemented if there is no assessment of their special needs and vulnerabilities at the beginning, because it would then not be known how

they might cope within the environment of detention. This is why non-custodial alternatives to detention should always take precedence.

3. A system of qualified identification of asylum seekers' special needs and vulnerabilities should be designed and implemented at ports of entry, be they land, sea or air, for the purpose of avoiding the use of detention.

This identification should be done as soon as possible after entry. It can help to ensure smoother procedures at later stages, a more efficient use of State resources and a higher degree of safety and care for asylum seekers' potential vulnerabilities. Most importantly, an appropriate assessment of special needs and vulnerabilities can ensure that detention is not used for persons who may be particularly harmed by it.

4. A qualified identification system should be individually based and holistic, taking into account the personal, social and environmental factors that are present within the asylum seeker's situation.

Factors such as legal status, country of origin, marital status, the possession of information, the presence of supportive social networks and the state of physical and mental health highly impact detainees' level of vulnerability to detention. These and other factors should be assessed in order to determine an individual asylum seeker's vulnerabilities, and the types of concrete special needs he or she may possess.

5. If the detention of asylum seekers cannot be avoided, and if all non-custodial alternatives have been exhausted, then detention should be subject to regular tests of necessity and proportionality; the duration of detention should be for as short a time period as possible.

Criteria for the necessity of asylum seeker detention should adhere to the 1999 UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers. Regular tests of necessity and proportionality should be conducted on a monthly basis by the relevant judicial authority.

6. If detention cannot be avoided, then asylum seekers should be given

appropriate and effective legal aid and/or assistance from the very first day of their detention.

The legal complexity of asylum procedures in the EU, mixed together with the precarious situation of asylum seekers, means that they may not be able to adequately fulfil all of the asylum procedures in a manner that serves their best interests – especially if they are in detention. Legal aid and/or representation are thus vitally necessary.

7. Detained asylum seekers should be given regular and transparent access to all information concerning their asylum case and the terms of their detention, in verbal and written form, and in a language they can understand.

The isolative environment of detention means that extra efforts should be made to inform asylum seekers as well as possible on all details that concern their situation. The regular provision of information is a key step in lowering asylum seekers' vulnerability to the adversities of detention.

8. Detained asylum seekers should be afforded all means of contact to the 'outside world'.

Detained asylum seekers should be able to contact family, relatives, friends and other supportive persons who are in the 'outside world'. The DEVAS research shows that it can reduce psychological stress, and it can help prepare detained asylum seekers for their eventual release from detention.

9. Detained asylum seekers should be given regular access to activities that engage their physical and intellectual capacities.

The monotony of detention that comes as a consequence of its isolative environment can have a negative impact upon the physical and mental health of detained asylum seekers. Time spent in detention should not be 'wasted time'; instead, detainees should be afforded activities that help them to pursue their goals.

10. Detained asylum seekers should be given regular access to appropriate and relevant medical care, including mental health care.

Medical care, as well as mental health care, should be made available everyone in the detention centre. In the case that such care only exists outside of the detention centre, the staff should ensure that access remains unhindered and facilitated.

RECOMMENDATIONS FOR MEMBER STATE POLICYMAKING ON THE DETENTION OF ASYLUM SEEKERS

Member States can take steps toward improving the immediate situation of asylum seekers in their territory. They can do this by implementing current EU asylum law in a manner that best serves the interests of asylum seekers, and in a manner that narrowly restricts the use of detention.

11. Article 18.1 of the Asylum Procedures Directive, "Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum", should be adhered to in all circumstances.

Member States should make this principle applicable for reception conditions and for asylum seekers in the "Dublin system". It should be the one principle that applies to all circumstances. In this context, "detention" should be defined as confinement to a particular place and therefore also covering the situations at the port of entry.

12. If detention cannot be avoided, then Article 18.2 of the Asylum Procedures Directive stipulating, "Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review" should be strictly adhered to.

Access to regular judicial reviews is important in order to continually determine the necessity and proportionality of detention. This is especially necessary for detainees to know when they will be released from detention. The data findings show that not knowing the release date places a great deal of psychological stress upon detainees. Therefore, such judicial reviews should be effective, transparent and should occur at least once per month.

13. Detained asylum seekers should have regular access to visitors from the ‘outside world’, including the UNHCR, lawyers, civil society organisations and also family, relatives and friends.

Alongside this, detained asylum seekers should have access to persons in their social network that help them cope with the negative effects of detention, e.g. spiritual/faith counsellors, psychosocial care providers – all of which may greatly limit the level of vulnerability asylum seekers may experience in detention.

14. All guarantees and protections contained within the Reception Conditions Directive should be extended to asylum seekers in detention.

This should include rights to information, medical care, education and vocational training. In the case of Article 14.8 allowing Member States to “exceptionally set modalities for material reception conditions different from those provided ... when the asylum seeker is in detention”, such modalities should include strong safeguards that monitor the level of vulnerability of detained asylum seekers.

15. Health care provision – foreseen in Article 13 of the Reception Conditions Directive – should include sufficient resources to care for the mental health needs of detained asylum seekers.

Access to mental health professionals such as social workers, psychologists and psychiatrists, should be afforded to asylum seekers who need such services; these services should be available from the first day of their detention.

16. Detention centre staff persons should receive sufficient training in order to respond to the vulnerabilities and needs of detained asylum seekers.

Article 24 of the Reception Conditions Directive – ensuring the necessary training of staff – should be implemented so they can be able to respond appropriately to asylum seekers’ concerns and needs. In particular, staff persons should be trained to identify signs of vulnerability within detainees.

17. Access to translators and interpreters should be ensured for asylum seekers who need it.

The inability to speak the same language as detention centre staff, the asylum authorities and even with co-detainees has a profound effect on one’s ability to cope with being in detention. Translators and interpreters can help detained asylum seekers with understanding the information that is given to them, and they can also help to maintain good relations between staff and detainees.

RECOMMENDATIONS FOR MEMBER STATE POLICYMAKING ON THE DETENTION OF IRREGULAR MIGRANTS FOR THE PURPOSE OF REMOVAL

Taking into account the elements within the Return Directive that relate to the detention of irregular migrants, the DEVAS research allows us to propose a set of recommendations that aim to improve government policymaking in this area. As the deadline for national transposition has not yet passed, it may be too early to indicate in which specific way EU policy should be improved since the common standards contained within the Directive have not yet been sufficiently tested in the Member States. Thus the main target of the following recommendations will be Member States’ efforts to transpose the Directive into their respective national legislation.

18. Detention for irregular migrants should only be used as a last resort.

The negative effects of detention are so great as to warrant its spare use. Detention should only be applied in cases of strict necessity, and in a manner that is directly proportionate to an individual person’s situation.

19. Article 15.1 of the Return Directive stipulating “sufficient but less coercive measures” should lead to the establishment of non-custodial alternatives to detention that respect the fundamental rights and human dignity of individual persons and families.

The optimal way to reduce people’s vulnerability to detention is to limit its use by instituting viable alternatives to detention. Only by removing persons from the closed

and isolative environment of detention can they best prepare themselves for the possibility of return, but also for the possibility of legal residence within the Member State should the opportunity present itself.

20. The criteria foreseen in Article 15.1(a, b) for the purpose of determining whether an irregular migrant should be detained should go beyond the “risk of absconding” and the hampering of the “return or ... removal process” to include a holistic assessment of the person’s level of vulnerability to detention.

The DEVAS research shows that all types of persons are vulnerable to the negative effects of detention, irrespective of whether or not they possess officially recognised special needs. Holistic individual assessment criteria should include a review of the personal, social and environmental factors that are present in an individual’s situation, such as their legal status, the presence of supportive social networks and their level of physical and mental health.

21. If detention cannot be avoided, then it should be strictly set for “as short a time period as possible and only maintained as long as removal arrangements are in progress”, as laid down in Article 15.1 of the Return Directive.

The DEVAS research shows that while detention carries negative consequences from the first days of its implementation, the personal circumstances of detainees deteriorates as the time period of their detention endures. Alternatives should be immediately sought when detention is no longer necessary or proportional.

22. The situation of individual detainees and detained families should be reviewed at least once per month, using holistic assessment criteria to determine the personal impacts of detention.

Ongoing assessments are the only way to ensure that harmful effects of detention are minimised as much as possible. Detention centre staff, especially social workers or staff who have received sufficient inter-cultural or psychosocial training within the context of detention, may be among those who conduct these assessments.

23. The provision of information on “rules ... rights and obligations” in detention – as foreseen in Article 16.5 of the Directive – should be provided in a language the detainees can understand.

Many of the persons interviewed for the DEVAS project have never before been in a situation of detention. The stress of detention and its isolative effects means that detention centre staff should make an effort to immediately inform detainees of all rules, rights and obligations. Language is a key factor of vulnerability because it facilitates communication and understanding. This is why it is important that such information be given in an understandable language.

24. The provision of “legal assistance and/or representation” – as foreseen in Article 13.4 of the Directive – should be provided to all detainees at no additional cost, and in a language that detainees can understand. Such legal assistance and/or representation should extend to detainees who challenge the lawfulness of their detention.

The DEVAS research shows that the legal complexities of detention can have an adverse affect on detainees because they are unsure of how to proceed and how to alleviate their situation. Legal assistance and/or representation is a key factor of vulnerability in detention; without it detainees are left disempowered and with further deteriorations in their mental health.

25. Detained irregular migrants should have the opportunity to establish immediate contact with supportive persons or bodies in the ‘outside world’, as foreseen in Article 16.2 of the Directive.

Detainees should be able to communicate by fixed-line and mobile telephone, especially since the latter often contains vital contact information that detainees need. Internet stations should be made available, as this would allow detainees to search for support if they lack a social network in the Member State.

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