NATIONAL INDEPENDENT COMMISSION
ON ENFORCED REMOVALS

Additional Findings and Recommendations

21st December 2012

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INTRODUCTION

The National Independent Commission on Enforced Removals (NICER), whose Commissioners are listed at Annex 1, was commissioned by Citizens UK, Europe’s largest alliance of civil society institutions, to ensure that what had happened to Jimmy Mubenga, an Angolan who died while being restrained by escorts from Group 4 Security (G4S), on an aircraft during his enforced removal to Angola, never happens again. Officials and organisations involved in oversight of the removals process, who gave evidence, are listed at Annex 2 and a summary of all evidence given at Annex 3. A list of documents considered by the Commission is listed at Annex 4.

The Commission decided to present their recommendations in two distinct reports. The first, made public on December 6th 2012, was a summary of the issues that they wished to bring as quickly as possible to the attention of the Home Secretary, the Home Affairs Select Committee and the Coroner appointed to conduct the inquest into Jimmy Mubenga’s death. However, the Commission decided to publish a number of additional findings and recommendations, in a separate and follow-on document because, while some complement those contained in the earlier report, others affect the asylum process and wider immigration system in general rather than the enforced removal process in isolation.

The Commission’s Terms of Reference were based on the New Deal for Safe and Sure Returns, set out in the report of the Independent Asylum Commission (IAC) in 2009. Like the IAC, the Commission was conscious of the importance of upholding the UK’s proud and historic tradition of offering sanctuary to those fleeing from persecution, full and fair hearings to all those who wished to build productive lives in this country, and humane treatment to those who, having been found to have no right to remain, had to be removed.

The Terms of Reference are:

1. To conduct an independent inquiry into the UK enforced removal process.
2. To identify to what extent the current system is effective and humane in removing those who have received a full and fair hearing on their right to remain in the UK, in line with our international and human rights obligations.
3. To make credible and workable recommendations for reform of the UK removals system that safeguard the rights of detainees but also command the confidence and respect of the British public, including migrant communities.

4. To engage constructively with the UKBA, its contractors and all others involved in the enforced removals process.

The work of the Commission was influenced by three documents in particular, which are listed at Annex 4. In April 2011, the charity INQUEST published a briefing on the death of Jimmy Mubenga, which describes the circumstances so adequately that there is no need to repeat them here. Secondly, on 17 January 2012, the House of Commons Home Affairs Select Committee published a report entitled *Rules Governing Enforced Removals from the UK*, to which the government published its response in April 2012. Amongst the Select Committee’s (italicized) findings and recommendations were:

> ‘Whenever the state uses force to coerce a person, there need to be checks on that force. These checks take the form of carefully constructed procedures to limit harm, of adequate training and proper supervision of staff, and adequate means of complaint and redress if anything goes wrong. Where the state has contracted out responsibility for coercion, it retains ultimate responsibility for ensuring that all checks are in place and working well….This is one of a number of areas of activity where there appears to be a reluctance by officials to accept constructive criticism and, as the UK Borders Agency is not an independent body, but is in fact an integral part of the Home Office, this is a matter that we call on the Home Secretary to require the Permanent Secretary to address, as part of the central management responsibilities of the Department’.

Commissioners considered that the evidence given to NICER suggests that, currently, if the checks listed by the Select Committee are in place, they are by no means as robust as they could or should be. The emphasis on ‘constructive’ criticism was behind the deliberate involvement of the UKBA with the work of the Commission.
‘We recommend that the Home Office commissions research into appropriate physical intervention techniques that are suitable for use on an aircraft’.

NICER Commissioners were disappointed that, when they received evidence from, amongst others, the lead trainer at Ashworth High Secure Hospital, such research had not taken place. The Commission welcomes the recent announcement of an Independent Advisory Panel on Non-Compliance Management (IAPNCM), but is disappointed that the Home Office did not put more pressure on the National Offender Management Service to look outside its own special custodial techniques, following the recommendation of the Home Affairs Select Committee:

‘The main issue is the need for better management and oversight of the removals process. Contracting out the actuality of removals to a private company does not obviate the Home Office from setting clear evidenced guidelines as to how removals should proceed. A lack of consistency of approach from the Agency is apparent, and this is a matter that must be addressed by the Permanent Secretary in relation to removals as well as the generality of the work of the Agency which, as we have pointed out repeatedly, is an integral part of the Home Office’.

Ms Homer (then Chief Executive of the UKBA) said that the UKBA tended to commission the Ministry of Justice to conduct research on techniques and to provide advice on medical issues, specific training and the evaluation of techniques.

Because the techniques developed and approved by HM Prison Service for the management of violence and aggression including physical intervention and restraint techniques are generally inappropriate and unsuitable for use other than on prisoners held in custody, Commissioners question why contractors working for the UKBA are contractually obliged to follow these methods to the exclusion of others that have proved to be successful in other settings, such as the NHS and High Secure Hospitals.
NICER Commissioners consider that, if the UKBA had consulted with the Department of Health and others on medical issues, it would have learned of the more suitable alternative techniques developed for use in other settings, including in the NHS and High Secure Hospitals. We have learned that several organisations, including the High Secure Hospitals, whose staff used to be trained by the Prison Service, have, in the main, rejected pain-compliance techniques in favour of a more therapeutic approach to the management of violence and aggression. Unfortunately, the Department of Health has not thought to co-ordinate the slightly different approaches that have been developed by the NHS trusts and High Secure Hospitals, including Carstairs in Scotland. We have also learned that the lead trainer at Ashworth High Secure Hospital was asked by the Liverpool Port Police to help in the development of appropriate techniques for use on persons aboard ships, including the escorting persons on and off crowded Mersey ferries via narrow gangways. He told us that these techniques could be adapted for use at airports and on aircraft. Eric Baskind, the NICER Commissioner with specific experience in this area, concurs wholly with this view.

The Commission therefore questions why, in view of the large number of injuries caused to returnees by the authorised techniques, some of which were catalogued in the report *Outsourcing Abuse* (which was itself evaluated by Baroness O’Loan on behalf of the then Home Secretary in a report that is listed in Annex 4), the Home Office and the UKBA had not themselves followed the example of the High Security Hospitals, and looked to develop techniques suitable for use in public, and on people other than prisoners. Having taken its own evidence from a far wider number of witnesses than the Select Committee, the Commission feels that the required use of Prison Service techniques is part of the problem, and that, therefore, any solution must begin with their evaluation and amendment, something the Commission hopes will be achieved by the introduction of the IAPNCM.

The Commission therefore hopes that the Home Affairs Select Committee will take note of its reports, and regard the additional evidence taken, as well as its recommendations, as a supplementary report to its own. They are all related to the checks and balances on the use of force by the State, the necessity for which it has stated in its Report.
THE NATIONAL INDEPENDENT COMMISSION ON ENFORCED REMOVAL’S MAIN RECOMMENDATIONS:

1. The need for a multi-disciplinary panel for complex returns;

2. The need for a more robust system for regular and appropriate licensing of contracted detainee custody officers (DCOs) and escort staff;

3. The need for independent oversight of the enforced removal process;

4. The need for pain-free restraint techniques appropriate for use during enforced removals.
ADDITIONS TO MAIN FINDINGS AND RECOMMENDATIONS

MAIN RECOMMENDATION 1:
THE NEED FOR A MULTI-DISCIPLINARY PANEL FOR COMPLEX RETURNS

The Commission considers that, once a return has been ordered, a formal risk assessment process to determine the probable complexity of the return should be instituted without delay. Many individuals notified of the decision that they must return will go voluntarily and some will respond to explanations about the options for supported voluntary return. However, there will be some whose return will have to be enforced, some of whom may resist, verbally or physically. Such cases should be designated as complex.

A multi-disciplinary panel has already been introduced to handle all family returns. Therefore, the Commission recommends that a similar multi-disciplinary panel be introduced for handling complex individual adult cases, reflecting the positive lessons learned from the Family Panel process. It should be responsible for making dynamic risk assessments and ensuring the earliest possible contact between the person to be removed and the escorting service. It must also have right of veto over plans advanced for a return if they are insufficiently robust (though they have no say in the decision to return an individual). These are the same powers as currently accorded the Independent Family Returns Panel (IFRP). It is the Commission’s view that difficulties with individual returns are foreseeable and can be addressed with planning and agreed strategies to manage identified risks.

Additional findings relating to the need for a multi-disciplinary panel for complex returns:

The Commission regarded the completion of the legal processes, resulting in an order for enforced return, as the start point of their inquiry. Commissioners are agreed that the most important part of subsequent work within the UKBA is the assessment of risk that determines into which category individual returnees are put. If the continuous stream of complaints, and the excessive number of injuries inflicted during current enforced removals, are to be reduced, there is clearly an urgent need for current risk procedure arrangements to be examined and evaluated, and a more
sophisticated, multi-disciplinary and on-going dynamic assessment introduced, that differentiates differing types and magnitudes of risk.

The increased risk assessment required of staff in the preparation of a family removal plan, introduced by the IFRP, has resulted in significant improvements, particularly where the likelihood of a failed, or force induced removal, is higher than average. Commissioners were most impressed by the introduction of the early involvement of Detainee Custody Officers (DCOs), stemming from an appreciation of the advantage of escorts knowing as much as possible about the person whose return they are required to enforce, and having time to make themselves known to the returnee before the removal. Commissioners were given examples, by both the Chairmen of the IFRP and contracted DCOs, of such early contact helping to calm very disturbed returnees, enabling trouble-free enforced return to be completed. But, at the same time, Commissioners were concerned at the inadequacy of current arrangements for the briefing and de-briefing of escorts. Currently, in addition to not having time to meet the returnee, there is no systematic requirement for Immigration Detention Centre (IDC) staff to proactively alert or inform DCOs, prior to handover, of how detainees have responded to their removal order, or if their behaviour has shown any recent signs of an increased risk of physical resistance. In addition DCOs do not know which official drew up the risk assessment, their knowledge being limited to what is written on the front cover page of a ‘removal pack’. The only way in which DCOs can receive up to date information on the condition and mind-set of the detainee they are about to collect and escort, is to contact Immigration Detention Centre (IDC) staff. Furthermore, when contracted escorts arrive at an IDC, insufficiently equipped to deal with the agitated state of a detainee, they are sometimes put under pressure from IDC staff to continue with a removal under circumstances that are likely to involve increased risk of harm to staff and returnees. Additional pressure is also put on the contractor by the possibility of additional costs being incurred if a removal is delayed due to insufficient staffing levels.

Evaluation of the risk assessment process must include examination of policy concerning the use of the current ‘IS91’ risk assessment tool, which includes an RA3 form that should be used to update the UKBA central computer system with any changes that increase risk. Evidence suggests that even this inadequate measure is seldom put to use or sufficiently monitored, and that it includes no provision for alerting those most affected, DCOs, to any changes. Increased risk factors that remain inadequately managed include evidence that a detainee has had a previous
failed return, served a prison sentence, demonstrated past use of recorded violence, or threatened to use force to prevent him/herself being removed.

Commissioners also learned that removal contractors are often required to assign DCOs to a specific removal at very short notice, which reduces their ability to assign specialist staff to complex cases. Commissioners were told that this results from requirements laid down by the company commissioned by the UKBA to purchase airline tickets, and recommend that this is something to be investigated and, if possible, changed. Commissions are aware that a financial imperative is at play here but the Home Office has a duty of care towards those individuals the UK Government has decided to return to their country of origin. This duty of care must override issues of finance and administrative convenience. It seems an artificial separation to have the returns contractor not making the travel arrangements and the UKBA may wish to reflect on allowing the contractor to make the travel arrangements, which would enable them to plan staffing in a more straightforward fashion and, in particular, earlier contact with returnees, particularly in complex cases.

Additional recommendations relating to the need for a multi-disciplinary panel for complex returns

1.1 Detainees in complex removal cases must have the opportunity to meet DCOs during the 24 hour period prior to removal to begin a de-escalatory process and manage expectations of the removal.¹

1.2 In high-risk cases, interpretation must also be adequately provided for, particularly when detainees meet an escort at least 24 hours prior to departure.

1.3 All detainees should be required to declare explicitly that they do not wish to take up Assisted Voluntary Return (AVR) prior to UKBA applying to the authorities of their country of origin for travel documents. Although this should be the norm for all instances where travel documents are sought, it should also be a function of an Independent Complex Removals Panel to ensure that this declaration has been given by all detainees facing a complex removal.

¹ This may require specifically trained DCOs on a salaried pay scale.
1.4 The system of airline ticket purchase for DCOs and returnees must be reviewed to ensure that it is providing best value for money in terms of reducing the risk of failed returns as well as pricing. This will require better communications between the UKBA and all airlines allowing enforced removals on to their aircraft, as well as with the contractor.

1.5 UKBA Case Owners must be trained to provide increased risk assessments as part of the preparation of removal plans for complex adult cases and must be more clearly accountable for the provision of timely information both as a matter of obligation (e.g. notifying legal representatives at the same time as applicants of a decision to remove) and on request from those acting in the best interests of an immigration applicants, and should be more regularly assessed on their knowledge of immigration law.
MAIN RECOMMENDATION 2:

NEED FOR A MORE ROBUST SYSTEM FOR REGULAR & APPROPRIATE LICENSING OF CONTRACTED DETAINEE CUSTODY OFFICERS (DCOS) & ESCORT STAFF

Main recommendation

Internal UKBA arrangements are neither independent nor robust. Whilst it is true that there are no costs involved in current internal “licensing”, in view of the unreasonable number of injuries sustained, with the occasional tragic death being just the tip of an avoidable iceberg, Ministers must satisfy themselves that it is sufficiently robust to justify their public endorsement.

The Commission is concerned at the current exemption of escorts employed by the private security company holding the UKBA enforced removals contract from the provisions of the Security Industry Act (2006), and therefore from licensing by the Security Industry Authority (SIA). The Commission recommends that the Security Industry Act 2006 should be amended requiring the licensing of contracted detainee custody officers (DCOs) and escort staff.

Additional Findings relating to the need for a more robust system for regular and appropriate licensing of contracted detainee custody officers (DCOs) and escort staff

Retraining of long-serving DCOs is currently not compulsory, and DCOs are paid at a lower hourly rate for time spent in training. This creates a clear disincentive for on-going staff training and sharing of good practice.

Additional recommendations relating to a more robust system for regular and appropriate licensing of contracted detainee custody officers (DCOs) and escort staff

2.1 The disincentives for DCOs to spend time on training should be removed and further steps taken by the contract holder to demonstrate a learning culture throughout its training, management and monitoring of all enforced removals. This should include adequate time and managerial oversight for all removals to be sufficiently evaluated.
MAIN RECOMMENDATION 3:

THE NEED FOR INDEPENDENT OVERSIGHT OF THE ENFORCED REMOVAL PROCESS

Main recommendation

The Commission considers that independent and objective oversight of enforced removals is essential to meet the UK’s international treaty obligations and to enable Ministers to demonstrate the integrity of the process. The Commission questions the current oversight of the Home Office Professional Standards Unit - which is responsible for the oversight of the enforced removals process - by the Independent Police Complaints Commission.

The Commission therefore recommends that this function would be more appropriately exercised by the Chief Inspector of Borders and Immigration and HM Chief Inspector of Prisons. In this connection the Commission notes and endorses the agreement reached by HM Chief Inspector of Prisons and the Chief Inspector of Borders and Immigration concerning their responsibilities for external oversight.

Additional findings relating to independent oversight of the enforced removals process

As the Home Affairs Select Committee has stated, responsibility for the enforced removals process must rest with Ministers, through the Home Office Executive Management Board. Currently the Chief Inspector of Borders and Immigration and HM Chief Inspector of Prisons are tasked with monitoring various, but by no means all, aspects of the removals process; preliminaries to the return itself appear to be subject only to internal Home Office Standards Unit oversight of the UKBA’s own internal oversight. This incestuous situation seems all the more unsatisfactory when oversight of the Home Office Standards Unit by the Independent Police Complaints Commission (IPCC) is added, no doubt because of the IPCC’s connection with the Home Office. While that connection may be true, the police have very little to do with the overall Enforced Removals process. Judging again by the continuous stream of complaints, let alone the excessive number of injuries, Commissioners do not feel that this system of self-regulation has ever been adequate,
and therefore, not least to protect themselves, suggest that Ministers should insist on an urgent examination of current arrangements.

Commissioners heard a great deal of evidence about unprofessional case-work and unsatisfactory communication with returnees. UKBA guidelines should state that case-workers ‘shall’ inform legal representatives about refusal or a decision to remove a client, at the same time as the client is presented with a removal order. Current guidelines state only that the case-worker ‘may’ inform them, and Commissioners were concerned at the number of examples of cases reported to them where the legal representative was not informed, and the person subject to removal did not understand the notification.

They were also told of removals being carried out despite judicial review or other suspensive action, which were ignored either deliberately or because of alleged delays in delivery of documentation and reliance on outdated technology. They were given frequent examples of notification of refusal to remain being given without a full explanation of options open, including voluntary return. They were also told of instances of case owners issuing removal documents to detainees without sufficient confirmation that all barriers to a safe or sustainable return had been removed. The inclusion of cases requiring application for travel documents within the remit of a complex panel would reduce the risk of these failures, but Commissioners are also concerned at the evidence of inappropriate actions being taken by case owners and IDC staff. These must be addressed in conjunction with the establishment of a complex removals panel.

Commissioners were concerned to learn of the experience of inspectors from HM Inspectorate of Prisons, who reported blatantly inappropriate attitude and behaviour towards detainees by DCOs, who knew that the inspectors were present on a removal flight. Their apparent confidence that no corrective action would be taken against them by UKBA monitors and observers confirmed the existence of what has been described as a ‘climate of impunity’, particularly among long-standing escort staff who have been employed by a succession of companies holding the removal contract, and who have neither been held to account nor adequately accredited for their use of force. This suggests the need for a new culture of professional care to be introduced, in which both the UKBA, and those contracted by it, employ management structures that reward de-escalation and the avoidance of force wherever possible.
In addition to their concerns about UKBA staff responsible for case-work, Commissioners were disturbed by the lack of independent oversight of contracted Private Security Companies, including the content and letting of contracts, the recruitment and regular accreditation of individual escorts and DCOs, and their training and continuation training. These concerns also applied to the training of the 8 UKBA monitors, whose use of physical force training, for example, consisted of watching one session in a Private Security Company training course.

Commissioners believe that incidents involving the use of force should not only be monitored and investigated but made public. One reason for suggesting that the Chief Inspector of Borders and Immigration and HM Inspector of Prisons would be the right people to be made responsible for independent oversight is that this publicity could be given, regularly, as part of their published annual reports. Should a return fail, Commissioners are concerned that detainees are currently returned to IDCs without any adequate debriefing to establish what caused the failure, and what signs of risk should be monitored until the next removal attempt. Furthermore there is no provision for DCOs or IDC staff to be adequately debriefed “after use, or avoidance, of force.

Commissioners heard evidence of case owners displaying an inadequate level of understanding of relevant immigration law.

Commissioners heard that seemingly minor errors such as the loss of luggage in transit have, on numerous occasions, escalated the risk of physical resistance to removal, and systems must be improved. In cases where detainees are separated from their property in the process of removal, realistic assurances must be provided about retrieving/replacing lost property.

Commissioners were told of numerous instances of allegations of inadequate provision for medical needs during enforced removal.2

2 Cases were reported of medical certifications of fitness to fly not being carried out by doctors prior to removal, and cases of women being declared fit to travel despite being 28 weeks pregnant, or the decision being taken to remove a detainee despite medical opinion that the strong medication taken by the detainee for some time should not be discontinued abruptly and would not be available in the country of origin.
Additional recommendations related to independent oversight of the enforced removals process

3.1 The Commission recommends that the Home Secretary considers conferring responsibility for independent oversight of the letting and execution of the enforced return contract, the operation of the returns process including risk assessment, the work of Returns Panels, inflight treatment and arrival at country of origin, on the Chief Inspector of Borders and Immigration and HM Inspector of Prisons. As part of the responsibility for monitoring the execution of contracts, the Commission recommends that the Chief Inspector should be responsible for evaluating every incident of the use of force, details of which should be included in his annual report.

3.2 This will require the additional designation of the Inspectorate of Borders and Immigration as a constituent body of the UK’s National Preventive Mechanism, in compliance with the provisions of the Optional Protocol to the Convention Against Torture and other Cruel and Degrading Treatment and Punishment (OPCAT).

3.3 The UKBA must design, introduce and monitor improved arrangements for the exchange of risk management information between officials, IDCs and contracted escort staffs. IDC staff should be responsible for informing DCOs, at the earliest possible opportunity, of any signs of increased risk that a returnee is likely to resist removal. Training should be given to IDC staff to enable them to brief DCOs in advance of a return, and conduct debriefing with them on return of a detainee to their care after a failed removal attempt. This must include training in monitoring and recording signs of increased risk.

3.4 Contractors must ensure that all DCOs receive sufficient and regular training, preferably co-designed by those with recent or current DCO experience, to ensure that realistic scenarios are included. An appropriately evaluated probationary period should be made a milestone in the training of all new DCOs, complimented by bi-annual Personal Development reviews of all staff, based on the recognition and celebration of good practice in comparable professional care sector employment.
3.5 All DCOs and escorts should be equipped with body cameras and required to justify any use of force, based on a rebuttable presumption that the use of a restraint might indicate a failure to de-escalate the incident. DCOs must be given adequate time and managerial supervision to evaluate every failed removal or use of force.

3.6 All monitors, including members of IMBs, must be appropriately and specifically trained for their role, in particular for monitoring the use of force.

3.7 The Commission recommends that the Chief Inspector of Borders and Immigration and HM Inspector of Prisons be invited to advise on a suitable mechanism for overseeing the training of all involved in the Enforced Returns process, in conjunction with the SIA and the IAPNCM, discussed below.

3.8 Oversight should include monitoring of the provision for medical needs and of the systematic medical certification of all returnees.
MAIN RECOMMENDATION 4:
THE NEED FOR PAIN-FREE RESTRAINT TECHNIQUES APPROPRIATE FOR USE DURING ENFORCED REMOVALS

Main recommendations

The Commission is greatly encouraged by the recent announcement that the UKBA is to establish an independent advisory panel on non-compliance management (IAPNCM). This is a welcome move away from the enforced adoption of inappropriate restraint techniques designed by NOMS/Prison Service, and hopefully will redress the previous failure of both NOMS and the UKBA to examine more appropriate restraint techniques.

The Commission notes the dynamic nature of the management of violence and aggression and therefore recommends that the IAPNCM, rather than having a limited life, is given an ongoing remit to advise on any necessary subsequent developments of techniques for managing non-compliance, and to contribute to independent oversight of the frequency and quality of the training in their use.

However constituted, the Commission recommends independent oversight of training in restraint and other non-compliance management techniques, and believes that it is essential that at least one member of the Panel should have experience of the issues arising from both the design and the use of restraint techniques in a wide variety of settings, both custodial and non-custodial.

Additional findings relating to the need for appropriate restraint techniques in the enforced removals process

Commissioners felt that much was left to be desired in the design of the vans used to transit returnees. For example, the seating arrangements do not allow the most appropriate restraint techniques to be used where these are deemed to be necessary and noise levels that consistently reach 80+ decibels on motorways, make communication impossible. Communication is vital to the
on-going de-escalation process and will frequently obviate the need to use any force on a returnee.

**Additional recommendations related to restraint techniques in the enforced removals process**

4.1 Transport of detainees to and from Immigration Detention Centres must be reviewed to ensure that it allows for effective communication at all times and the use only of appropriate pain-free restraint techniques when required.
ADDITIONAL FINDINGS AND RECOMMENDATIONS
OTHER ISSUES IN THE CONTEXT OF THE ENFORCED REMOVALS PROCESS

The lack of independent oversight of immigration advisers and solicitors

The focus of the NICER’s hearings throughout the UK was hearing evidence from people with direct experiences of the enforced removals system, including either their own mistreatment or the mistreatment of those they support and represent. Two common threads appeared to link almost every testimony, namely lack of adequate legal representation and subsequent exploitation by unscrupulous self-styled legal advisors. Commissioners concluded that it was inadequate regulation, particularly of immigration solicitors, that allowed such exploitative practices to continue.

Commissioners took evidence from the Immigration Services Commissioner and Deputy Immigration Services Commissioner. The Commissioners understand that the OISC is funded through grant-in-aid by the Home Office. They were made aware that the OISC operates as an independent, non-department public body, which is answerable to the Home Secretary and through her to Parliament.

The Immigration Services Commissioner advised that her statutory authority came from the Immigration and Asylum Act 1999, as amended, under which she had regulatory powers over those immigration advisers operating in the UK. She does not regulate those immigration advisers who are directly regulated by one of the Approved Regulators in England and Wales (Solicitors Regulation Authority; the Bar Standards Board; Chartered Institute of Legal Executives, all of which are overseen by the Legal Standards Board) or the equivalent bodies for Scotland Northern Ireland. Primary legislation would be required to give her such authority. She has, however, oversight jurisdiction in relation to Scottish and Northern Ireland bodies.

The Immigration Services Commissioner explained to the Commissioners the need for 1999 legislation to be amended to provide her with increased powers. The Commission is strongly supportive of this.
5.1 Commissioners recommend that the Office of the Immigration Services Commissioner (OISC) should be given greater statutory powers to regulate and accredit immigration solicitors and legal advisors, and be funded elsewhere but from the Home Office. Subsequent publicity, home and abroad, should be designed to help immigrant and asylum seekers, and those who support them, to avoid ‘rogue advisers’. It may be that the Home Secretary will need to consult with the Solicitor-General and the Law Society over the disciplining of solicitors, and with the Attorney-General over the disciplining of legal advisors.

Constituency Office Support for MPs

Commissioners were told of the amount of immigration case work that is carried out in MP’s constituency offices, some being particularly busy for which, from all the evidence given to NICER, it would appear that that they are at present woefully unsupported and under-resourced.

5.2 NICER therefore recommends that this is a subject that should be investigated, possibly at the instigation of the Home Affairs Select Committee. For example consideration might be given to MPs being able to claim back the costs of immigration cases from the Home Office in the same way that Local Authorities may claim back the costs of services to unaccompanied asylum seeking children.

The Role of Civil Society

5.3 In addition to the need for more robust oversight of the immigration advice sector, Commissioners also recommend the expansion of CITIZENS UK’s ‘New CITIZENS Legal Service’, which aims to increase access to affordable and trustworthy immigration advice and representation by:

- training volunteer immigration ‘sign-posters’ in diaspora community organisations to direct people to reputable practitioners and support them through the process;
- organising immigration workshops to triage large numbers of cases, provide free legal consultations from qualified advisers, and educate people on the immigration process as well as managing expectations.
- offering an assisted complaints process supported by law students to help the Immigration Services Commissioner tackle fraudulent practitioners;
• using our collective power to sign up practitioners to a ‘Good Advice Charter’ to raise standards and expose cowboy immigration advisers;
• providing an holistic referrals service by bulk purchasing immigration advice through a consumer co-operative which we can offer to members at substantially below the market rate.

The lack of monitoring of returnees to validate or evaluate the decision making of UKBA case owners

In 2008, the IAC report ‘Safer Return’ noted that: there is no monitoring of what happens to those returned once they have left the UK. [Finding 4.4] The report went on to acknowledge that, ‘...it would be impractical for UK authorities to monitor all returned asylum seekers. However, there is no reason why a random sample or a sample based on certain criteria should not be monitored, building on the liaison that UKBA says already exists with the FCO. Using the good offices of the UNHCR, the Red Cross, or other reputable agencies, it would be possible, if the will were there, to commission independent research. The use of such research as a resource for still better initial decision-making could make a significant contribution to building confidence in the system. Commissioners believe that every encouragement should be given to developing a system which enables some record to be maintained of the subsequent history of refused asylum-seekers after return to their country of origin. Where refused asylum seekers have reintegrated successfully, this would be a positive encouragement to the decision-maker who refused their claim. Where there has been persecution on return, knowledge of such persecution would contribute towards better decision-making for the future. It could also contribute to ensuring that country of origin information is kept as up-to-date as possible’.

The focus of NICER has been to produce a pragmatic set of findings and recommendations for improving the enforced removals process, and not the decision making processes that have led up to the decision to remove an individual. However, Commissioners welcome the precedents established by the Independent Family Returns Panel for ‘monitoring’ and planning for the welfare of children upon return to their country of origin, which they believe should be followed by their proposed Individual Complex Removals Panel. Continued improvement in the gathering of
country of origin information and the preparation of country guidance notes, and more accurate information on the successful reintegration of returnees into their country of origin would increase trust in the system,

Commissioners were also concerned that updating Country of Origin Information (COI) and reviewing safe country status occurred too infrequently in relation to some countries. Evidence gathered at hearings demonstrated that UKBA practices or assessments were at times based on false assumptions concerning the risk situation in the country of origin. At worst this seemed to demonstrate a continued culture of disbelief among UKBA case workers, or at least a misunderstanding of the complexity of risks faced. Some of the situations encountered by Commissioners included assumptions that a person removed to one part of a country would easily be able to travel to a safer region (ignoring the complexities and risks of travel in countries such as DRC and Iraq). Other risks not adequately taken into account included the threat of honour killings and domestic violence, the risks of arrival on a charter flight or under removal escort immediately exposing the removed person to detention / ill-treatment by the receiving authorities.

Related to their concern at the lack of effective systems for monitoring the welfare of returnees, Commissioners also consider it unacceptable that there has been no evaluation of the relative merits of returning under AVR or enforced removal. Such evidence could determine the possibility of increasing the take up of AVR by more vigorous promotion.

5.4 In light of the prohibition of non-refoulement, the Commissioners considered that there was a compelling case, supported by evidence presented in the hearings, for improvements in gathering and analysing information for use in the UKBA’s risk assessments. Commissioners recommend a re-examination of how details of conditions in other countries, particularly affecting disbelieved victims of torture, are gathered and communicated by the FCO and acted on by the Home Office. In particular, the Country of Origin Information Teams should issue clear guidelines for evidence that is considered acceptable, and Country Guidance Teams should visit the country of origin to carry out primary research annually for countries deemed by the FCO to be unsafe for travel by UK

3 The obligation under international law not to return a person to a country where he or she runs a real risk of torture or other inhuman or degrading treatment or punishment or where his or her life or freedoms are at risk.
nationals. Such research should provide the opportunity for civil society organisations to present evidence, within agreed parameters, on the safety of the country of origin for returnees.

5.5 Commissioners recommend that both the Home and Foreign and Commonwealth Offices should review their examination of how details of conditions in other countries, particularly affecting disbelieved victims of torture, are gathered and communicated by the FCO and acted on by the Home Office, and should expand the pilot of ‘the Compact’ between applicants and the UKBA to eventually include all adults applying to remain in the UK.

Return migration is not always a ‘natural’ process or a matter of simply going home. Particularly forced migrants, who return involuntarily, can face several obstacles upon return. Return can only be sustainable when returnees have the possibility to become re-embedded within economic, social and psychosocial dimensions. Support to integrate can sometimes be provided by willing communities and faith based groups.

By making contacts with such communities or key individuals willing to look out for that person upon return before they leave the UK can help to provide reassurance to the individual and your own community prior to travel.

Monitoring can be undertaken directly between the individual and an individual or community here in the UK. Citizens UK recommends recognising and drawing strength from local communities to make monitoring a local process grounded in existing networks. A monitoring of return would include the following:

- Assisting with the preparation of return
- Exploring reintegration opportunities with regard to accommodation, employment, social security, health and education
- Assisting during transit and point of arrival
- Continuing to monitor individuals’ wellbeing
5.6 Commissioners recommend that CITIZENS UK continue to work with partners to build links between UK diaspora communities and institutions in countries of origin to facilitate supported reengagement and monitoring of returnees.

CONCLUSION

The National Independent Commission on Enforced Removals was commissioned to hear evidence and prepare reports by community leaders demanding new approaches to old problems. From the beginning, Commissioners determined to engage with all those responsible for the enforced removals process in a spirit of partnership. Commissioners have been grateful for and much heartened by the way in which the UKBA, Reliance and all others they approached have responded and co-operated.

Many of the Commission’s recommendations do not require significant financial input from either the contractor or UKBA. Rather, the changes that they suggest to the current enforced removal process could result in savings brought about by increased efficiency. The Independent Asylum Commission recommended a ‘New Deal for Safe and Sure Returns’, which sadly, appears to be more of a wish than a reality. Nothing can bring Jimmy Mubenga back to his family, but the Commissioners believe that, if the recommendations contained in their two reports are implemented by all those responsible for conducting Enforced Removals, what happened to him should never happen again.
ADDITIONAL MATERIAL

Annex 1: Commissioners

Lord David Ramsbotham GCB CBE (Chairman), Her Majesty's Chief Inspector of Prisons between December 1995 and August 2001 and a former army general. Member of the Independent Asylum Commission.

Dr Silvia Casale CMG, Former President of the United Nations Subcommittee on Prevention of Torture and of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Member of the Independent Asylum Commission.

Eric Baskind, Senior Lecturer in law at Liverpool John Moores University, and a leading expert on restraint techniques and the management of violence and aggression.

Andy Elvin, CEO Children and Families Across Borders. Member of CITIZENS UK Reference Group on Ensured Returns.

Paul Underwood, Head-teacher, St Winefride’s RC Primary School in Newham (attended by Mr Mubenga’s children at the time of his death).

Patricia Chinyoka, Leader Zim Unite! (National Diaspora Community Group).

Okito Tongomo, Founding President, Congo Support Group UK (National Diaspora Community Group).

The Commission has been advised by:

Zrinka Bralo, Executive Director of the The Forum in West London, a former journalist from Sarajevo who has worked as a researcher and commentator since her exile to the UK in 1993. Member of the Independent Asylum Commission.

Puck De Raadt, CTBI (Churches Together in Britain and Ireland) trained in psychology and psychiatric care and is the Patron of Citizens UK’s New Citizens Legal Service.

Phil Haywood, Immigration Barrister, Doughty Street Chambers.

CITIZENS UK Secretariat

Ben Pollard and Carina Crawford-Rolt.
Annex 2: NGOs and Experts who gave evidence to NICER:

As well as evidence received at the regional hearings, we have heard evidence at hearings in London from the following:

- Baroness Ruth Henig, Chair, Security Industry Authority
- Bill Butler, CEO, Security Industry Authority
- Keith Best, CEO, Medical Foundation for the care of victims of torture
- Suzanna McCathy, Commissioner, Office of the Immigration Service Commissioner
- Chris Spencer, Chair Independent Family Returns Panel
- Ross Ferguson, Lead on High Secure Services/C&R Training, Ashworth High Security Hospital
- Laura Paton, Senior Policy Officer & National Preventive Mechanism Co-ordinator, HM Inspectorate of Prisons
- Louise Lockhart-Mummery, Independent Monitoring Board at Harmondsworth Immigration Detention Centre
- Deborah Coles, Director, INQUEST
- Emma Ginn, Co-ordinator, Medical Justice
Annex 3: Summary of Evidence Given at Hearings

During the course of the Commission’s work we were able to gather important information from many people we met in different parts of the country, some of whom continued to provide information in confidence after the meetings. The information was sometimes painful to retell. For reasons of confidentiality not all of those who helped us are named in this report. We greatly appreciate all the contributions to the Commission.

<table>
<thead>
<tr>
<th>Witness</th>
<th>Summary</th>
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<tr>
<td>Matthew Rhodes, British Futures (Public Attitudes Research) &amp; Ex-Researcher to Stephen Timms MP for East Ham.</td>
<td>Matt was involved in attempts to halt Mr Mubenga’s deportation through the office of Stephen Timms MP. He spoke briefly on this experience and then provided an overview of public perceptions to removals from the UK.</td>
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<td>Eric Baskind, LLB (Hons), MCIArb, FHEA, senior lecturer in law at Liverpool John Moores University and advisor to numerous bodies on the management of violence and aggression and use of physical restraints.</td>
<td>Eric has appeared as an expert witness on the management of violence and aggressions and restraint techniques to several independent inquiries and in hundreds of legal proceedings, both criminal and civil. He has also been involved in ground-breaking training on the use of force across many settings, both custodial and non-custodial, including training to reduce the need for restraint and the development of non pain-inducing techniques.</td>
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<td>Andy Elvin, CEO Children and Families Across Borders</td>
<td>Andy has experience of child protection and restraint procedures both in the UK and the US. He was also involved in negotiations to implement alternatives to child detention in the immigration process.</td>
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<td>Theresa Gilson, Head of Service Delivery, Prisoners Abroad</td>
<td>Prisons Abroad runs an excellent service supporting UK nationals imprisoned abroad.</td>
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<td>David Ku &amp; Deric Chng, Queen’s Chinese (BOC)</td>
<td>David Ku had a positive experience with Reliance staff when he was forcibly removed to Malaysia in Dec 2011 - he was not granted permission to enter the country and was returned to the UK. His UKBA case worker told him that the Malaysian high commission had been contacted prior to his removal - the high commission denies this. The Immigration Minister has agreed to halt removals of BOC’s until a safe &amp; sustainable route of return has been established.</td>
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<td>Jamima Fagta, Kanglungan</td>
<td>Jamima is in constant contact with members of the Filipino community facing issues relating to their immigration status in the UK.</td>
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<td>S E-A</td>
<td>Testimony: If people seeking sanctuary change their testimony because at the first telling they were fearful, they are penalised later.</td>
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<td>Sara Latimer, Crowley Solicitors</td>
<td>Solicitor with experience of successfully challenging removals to Iraq</td>
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<td>MTK</td>
<td>Iraqi national detained for removal to Iraq on the 9th June 2010. Claimed asylum Dec 05, initially successful at the then AIT, but overturned following a challenge by the SSHD on the basis that relocation to KRG was an option. Detained on the 14.5.10 pending removal. Attempted suicide, removal did not go ahead and he was released. Despite concerns of UKBA officials about placing him on a flight to Baghdad when it was accepted that he was at risk on return, the intention to remove him remained. He was also subjected to the documentation system with the involvement of the Iraqi authorities (as per the 5 step programme)</td>
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<td>Jenny Mc Dowell, Coordinator of Space 4 You Drop In Centre</td>
<td>Dublin Convention - need for monitoring of returnees or assurances given to UKBA of ‘safe and sustainable’ returns even within EU.</td>
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<td>M K</td>
<td>Destitution in UK and Italy - removal to Italy under Dublin Convention but with no assurance that Italy will provide care for her or her young child.</td>
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<tr>
<td>S K</td>
<td>Suren Khachatryan was kicked and stamped on during at attempt to remove him. He suffered a collapsed lung. Baronees O’Loan’s report found that there had been no proper investigation of Mr Khachatryan’s complaint on whether the force used against him was lawful, necessary or proportionate.</td>
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<td>M A</td>
<td>Mike was told by UKBA staff that telling them that he planned to kill himself if returned to Iraq (so that he was not tortured and then killed) was a ‘protest’.</td>
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<td>Ross Ferguson, Lead on High Secure Services/C&amp;R Training, Ashworth High Security Hospital</td>
<td>Ross has worked closely with Eric Baskind to accredit non pain-inducing restraint techniques for the High Secure Hospital, a success we wish to learn from and hopefully replicate in other settings.</td>
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<td>Chris Spencer, Chair Independent Family Returns Panel</td>
<td>The purpose of the Family Returns Panel is to provide independent advice to the UK Border Agency on the method of removal from the UK of individual families when an ensured return is necessary. The advice provided by the panel will help to ensure that individual return plans take full account of the welfare of the children involved and that the UK Border Agency fulfils its responsibilities under section 55 of the Borders, Citizenship and Immigration Act 2009. Chris offered a review of the functioning of the FRP to date and spoke to areas regarding support for and safeguarding of returning families, and the need for improved dissemination of information on AVR within communities and detention centres.</td>
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<td>Laura Paton, Senior Policy Officer &amp; National Preventive Mechanism Co-ordinator HM Inspectorate of Prisons</td>
<td>HM Chief Inspector is a Crown Appointment, and reports to the Justice Secretary on the treatment of prisoners and conditions in prisons in England and Wales. HM Chief Inspector also reports to the Home Secretary on conditions and treatment in all places of immigration detention in the United Kingdom. Laura and Hindpal will spoke to the role of HMIP in monitoring removals and the Council of Europe’s European NPM Project.</td>
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<td>Suzanna McCathy, Commissioner OISC</td>
<td>The OISC is responsible for ensuring that all UK immigration consultants and advisers fulfill the requirements of good practice. They are committed to the elimination of unscrupulous advisers and the fair and thorough investigation of complaints. Solicitors are currently regulated as a function of the Legal Services Board’s wider remit, rather than being regulated directly by The OISC.</td>
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<td>Dr I C Leigh, Deputy Commissioner OISC</td>
<td>The Security Industry Authority is the organisation responsible for regulating the private security industry. They are an independent body reporting to the Home Secretary, under the terms of the Private Security Industry Act 2001. Their mission is to regulate the private security industry effectively; to reduce criminality, raise standards and recognise quality service.</td>
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<td>Bill Butler, CEO Security Industry Authority</td>
<td>Commissioners heard from Bill Butler, Nick Smith and Tony Holyland on the response of the SIA to various Coroner’s Rule 43 Letters to the Home Secretary and subsequent consultations on the viability of top-up training for security guards. Questions were also answered about the practicality of including UKBA contracted DCOs in SIA regulation, and the appropriate use of ‘non pain-compliant’ restraint techniques.</td>
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<td>Nick Smith</td>
<td>Medical Justice exposes and challenges inadequate healthcare provision to immigration detainees. Baroness O’Loan’s detailed report into the allegations raised by the Outsourcing Abuse report has also been considered as written evidence to NICER. <a href="http://www.medicaljustice.org.uk/content/view/1139/88/">http://www.medicaljustice.org.uk/content/view/1139/88/</a> Emma Ginn and Emma Stephens offer an update on UKBA responses to their report and talked specifically to the need for reform of the UKBA complaints process.</td>
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<td>Tony Holyland</td>
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<td>Emma Ginn, Co-ordinator Medical Justice</td>
<td>Medical Justice exposes and challenges inadequate healthcare provision to immigration detainees. Baroness O’Loan’s detailed report into the allegations raised by the Outsourcing Abuse report has also been considered as written evidence to NICER. <a href="http://www.medicaljustice.org.uk/content/view/1139/88/">http://www.medicaljustice.org.uk/content/view/1139/88/</a> Emma Ginn and Emma Stephens offer an update on UKBA responses to their report and talked specifically to the need for reform of the UKBA complaints process.</td>
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<td>Emma Stephens, Case worker/Complaints</td>
<td>Medical Justice exposes and challenges inadequate healthcare provision to immigration detainees. Baroness O’Loan’s detailed report into the allegations raised by the Outsourcing Abuse report has also been considered as written evidence to NICER. <a href="http://www.medicaljustice.org.uk/content/view/1139/88/">http://www.medicaljustice.org.uk/content/view/1139/88/</a> Emma Ginn and Emma Stephens offer an update on UKBA responses to their report and talked specifically to the need for reform of the UKBA complaints process.</td>
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<td>Louise Lockhart-Mummery, Chair of Heathrow IMB</td>
<td>Inside every prison, immigration removal centre and some short term holding facilities at airports, there is an Independent Monitoring Board (IMB). IMB members are independent, unpaid and work an average of 2-3 days per month. Their role is to monitor the day-to-day life in their local prison or removal centre and ensure that proper standards of care and decency are maintained. Annual reports are written and responded to by Ministers, sometimes with attention in the press. <a href="http://webarchive.nationalarchives.gov.uk/20110206195651/http://www.imb.gov.uk/">http://webarchive.nationalarchives.gov.uk/20110206195651/http://www.imb.gov.uk/</a> <a href="http://www.justice.gov.uk/about/imb">http://www.justice.gov.uk/about/imb</a> The Heathrow Independent Monitoring Board has a lot of experience of monitoring aspects of enforced removals from Heathrow, Louise Lockhart-Mummery has monitored 2 charter flights and represented HMIP and the National Council of IMBs at the EC workshop on Enforced Removals in Geneva in March 2012. On the National Council, Anna’s constituency is IMBs in Immigration Removal Centres and Immigration Holding Facilities.</td>
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<td>Anna Thomas-Betts, IMB National Council</td>
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| Jackie Fearnley, (support sanctuary seekers in a personal capacity) | • C & B - Returnees to Cameroon (also spoke to Rev Payne’s letter on ‘fresh’ evidence not being accepted by UKBA case workers).  
• Italy - man in hospital due to mistreatment by guards (Hani).  
• Escorts giving false info - both to make themselves feel better and to try and help, but without relevant knowledge.  
• Escorts using force when a person asks to see what travel docs they are being removed with.  
• Also: Repeated return of torture survivors. Charter flights. Escorts giving returnees misinformation. No independent checking of CCTV in detention. |
| H & H | Allegations of inappropriate / Illegal Removals to Afghanistan |
| F & A | Testimonies on experiences of torture upon removal to country of origin and successful return to UK. |
| Catherine Ramos, Justice First | • Exec Summary of Unsafe Return Report.  
• Allegations of misleading of MPs by UKBA staff.  
• Highlighted treatment of detainees prior to removal, including solitary confinement of victims of torture prior.  
• Section 35 rejected by Detention centre staff but then bail granted as judge accepted detainee as a victim of torture. |
| Barbara Hungin, Justice First | • Medical evidence - families returned to country of origin without basic malaria nets, yellow fever vaccinations etc.  
• People removed in wheel chairs or while on strong medication that could not be continued.  
• Torture survivors removed by guards with no experience of handling such vulnerable individuals. |
| Frances, Drop In Centre - Newcastle & Hexhan Diocese - Stockton. | • People not offered voluntary removal.  
• Cameroonian mother who had to give her children to a lady in prison.  
• E - abandoned at the train station when released from YW, when not allowed on train with her luggage (detained, let out and UKBA came back for her within 48 hours to take her back to YW with her little boy - then removed with four year old and a 6 month old baby).  
• Child picked up by officers without his mother - she was picked up when collecting vouchers and the officers went to pick up the child - under two. |
| Keith Best, CEO Freedom from Torture | Presented evidence focusing on challenges made to the UK Government on the return of victims of torture to Sri Lanka who continue to face a significant risk of torture on return. |
| Sonya SCEATS, Head of Policy, Freedom from Torture | Overview of the legal process running parallel with NICER and the role of INQUEST in both supporting families through the process of public prosecution and ongoing advocacy for increased statutory response to Coroners’ reports. |
UKBA Staff who contributed to NICER hearings:

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<tr>
<th>Name</th>
<th>Position and Team</th>
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<tr>
<td>Hugh Ind</td>
<td>Strategic Director Asylum</td>
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<td>Karen Abdel-Hady</td>
<td>Head of Operations, Returns Directorate</td>
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<td>Emma Ross</td>
<td>AD Returns Directorate</td>
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<td>Phil Schoenenberger</td>
<td>AD Returns Directorate</td>
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<tr>
<td>Lyn Sari</td>
<td>AD Hampshire and IoW Local Immigration Team</td>
</tr>
<tr>
<td>John Fields</td>
<td>Team Leaders, Operational Support and Certification Unit</td>
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The Commission’s regional hearings ran from April to September 2012, with a final call for public submissions in October. The detailed presentations of evidence at hearings in London, Cardiff and the North East of England from a wide variety of witnesses raised issues ranging over the wider immigration field. Whereas the focus of the Commission’s work is enforced removal, the broader range of issues has allowed the commissioners to develop a deeper understanding about the process leading to enforced removal and the problems encountered after enforced return. This information is valuable and was provided often through great effort, both by individuals working to support people seeking to remain in this country and legal practitioners providing advice to them, and by those who reported suffering ill-treatment in their countries of origin or in the immigration removal process. Lists of those who gave verbal and written evidence are to be found in the Annexes.

Evidence was also heard from front-line and managerial staff from both UKBA and the removal escort contractor. The Commission wishes to express its appreciation for the willing contribution to our hearings of:

Keith Mahony, Deputy Director Performance, Process and Service Improvement (PP&SI) and Safeguarding Children Manager
Adrian Balchin, Overseas Detainee Custody Officer with a background in mental health nursing
Barry Morris, Reliance Training Manager

Separate to the process of this commission, CITIZENS UK has facilitated focus groups to identify challenges faced and attitudes held by front line staff of the security firm holding the contract from UKBA to carrying out enforced removals. The focus groups are actively seeking the views and considerations of front line staff with the aim of developing new models of working. A staff-working group will then be established to ensure recommendations are taken forward. Leaders of CITIZENS UK member institutions will retain a seat on the working group to ensure that the values and principles of the Commission are upheld in all recommendations taken forward.
Annex 4: List of documents

Inquest’s Briefing on the death of Jimmy Mubenga, published by INQUEST in April 2011


Baroness O’Loan’s detailed report into the allegations raised by the Medical Justice, ‘Outsourcing Abuse’ report has also been considered as written evidence to NICER.
http://www.medicaljustice.org.uk/content/view/1139/88/