

CHAPTER 4

Detention of
asylum
seekers



Frankly I have very bad memories of detention. It has taken away my zest for life.”

1. Detaining asylum seekers

“Decisions to detain remain arbitrary and are to a large extent dependent on the bed spaces available to individual teams of Immigration Officers. The reasons on the checklist Immigration Officers use could equally apply to many other asylum seekers who are released into the community and who are not held in immigration detention.”

Submission: AVID

Asylum seekers, including their dependents can be detained at any stage of their application to enter or remain in the UK – on arrival, with appeals outstanding, or prior to removal.¹

1.1 Deciding when to detain

Detention may be authorised if the Home Office has 'good grounds' for believing that a person will not comply with requirements to keep in contact with them.² The decision to detain an asylum seeker is made by an individual immigration officer and is not automatically subject to independent evaluation of the lawfulness, appropriateness or length of detention. The discretionary nature of decision-making is considered problematic by commentators, who have voiced concerns that immigration detention, unlike in the criminal system, does not require judicial decision.³ In its submission to the Commission, Amnesty International concludes that:

“As a result of its research Amnesty International found that detention was in many cases inappropriate, unnecessary, disproportionate and therefore unlawful.”

Submission: Amnesty International

1.2 Description of the UK detention estate

The current UK detention estate can accommodate approximately 2,700 immigration detainees (see Table A). In 2008 the Home Office plans to open another IRC (Brook House) at Gatwick Airport, which will have the capacity to accommodate 426 immigration detainees. The centres in which people are detained are called Immigration Removal Centres (IRCs). The use of the word 'removal' has been criticised by advocacy organisations, who claim that many asylum seekers are detained in IRCs who have on-going claims and are not facing imminent removal.⁴ In addition to IRCs, immigration detainees can also be held in prisons, police stations and short term holding facilities (STHFs), usually at ports. There are currently four STHFs in operation at Manchester, Dover, Harwich and Colnbrook and people can be held in these centres pending transfer to a residential holding centre or an airport.⁵ Seven out of the ten IRCs are privately run and there are government plans to outsource the management of all IRCs. Commentators are concerned that private sector companies are less accountable for their actions, less open to public scrutiny and are bound by fewer rules than government agencies.⁶

There are approximately 500 immigration detainees held in prisons whose whereabouts are often unknown and unrecorded in Home Office statistics.⁷ Advocacy organisations believe that conditions in prisons are inadequate for immigration detainees, especially due to the fact that

1 Jackson, A. (2003) 'The detention of asylum seekers in the UK: bail for immigration detainees,' *Feminist Review*, vol. 73, no.1, pp. 118-22
 2 Joint Council for the Welfare of Immigrants (2006) *Immigration, nationality and refugee law handbook*
 3 Welch, M. and Schuster, L. (2005) 'Detention of asylum seekers in the US, UK, France, Germany, and Italy: A critical view of the globalizing culture of control', *Criminology and Criminal Justice*, vol.5, p.331-355
 4 Jackson, A. (2003) 'The detention of asylum seekers in the UK: bail for immigration detainees,' *Feminist Review*, vol. 73, no.1, pp. 118-22
 5 Bacon, C. (September 2005) *The evolution of immigration detention in the UK: The involvement of private prison companies*, Refugee Studies Centre Working Paper no. 27
 6 Bacon, C. (September 2005) *The evolution of immigration detention in the UK: The involvement of private prison companies*, Refugee Studies Centre Working Paper no. 27
 7 Ireland, H. (ed.) (2006) *Immigration detention: A handbook for visitors*; 6th revised edition, AVID

prisons are primarily geared towards punishing and rehabilitating offenders.⁸ Home Office figures show that on 29 September 2007, 1,625 people were being detained who had claimed asylum at some stage during their stay in the UK. This accounts for 70% of all immigration detainees and excludes persons detained in police cells and prison establishments. Of this total: 84% (1,360) detainees were male; 16% (270) detainees were female and 55 detainees were under 18 years old (30 boys and 25 girls).

1.3 Length of detention

Unlike most European countries and contrary to the recommendation made by the UN Working Group on Arbitrary Detention, there is no legal limit to the time a person may be held in immigration detention in the UK.⁹ The UN Working Group recommended in 1998 that the UK government should specify an absolute maximum duration for the detention of asylum seekers and that this should become statutory, however, this recommendation has not been implemented.

The Operational Enforcement Manual states that ‘in all cases detention must be for the shortest time possible’, however those advocating on behalf of detainees have stated that this instruction is not adhered to in practice. Evidence gathered by Bail for Immigration Detainees (BID) revealed that detention periods of six months were not uncommon and in some cases detention was maintained for over two years, the worst case being a detainee held for just under three years.¹⁰ The Association of Visitors to Immigration Detainees, in its submission to the Commission, states:

“We know of asylum seekers in the system detained for over a year and even up to 6 years while fighting to stay in the UK and while the Home Office has attempted re-documentation”

Submission: AVID

1.4 Detained fast-track system

Increasingly detention is being used to fast-track cases that the Home Office decides are straightforward and capable of being decided quickly. The fast-track process is currently in operation at the Oakington, Harmondsworth and Yarl's Wood removal centres. Oakington has been in operation since 2000 and was the first of the three centres to introduce the fast-track process. The fast-track system at Harmondsworth and Yarl's Wood is a key aspect of the Home Office's New Asylum Model which planned to process up to 30% of new asylum cases in this way by 2005.¹¹ The fast-track process in these two IRCs has been referred to as the ‘super fast-track’, due to the short timescales whereby an applicant is interviewed on the second day of detention, served a decision on the third day and is given two days to appeal.¹² HM Inspectorate of Prisons has criticised the short timescale stating that the seven day speed for processing detainees is

“When I went through the detained fast-track I felt like they were giving me a direction – straight back to my country. There was no way they could verify my story in two weeks. I was so naïve – I thought the Home Office would consider my claim fairly but they don't want to hear my story.”

John, Zimbabwean ex-detainee
Hearing: West London.
For full testimony visit
www.humanrightstv.com

8 **Joint Council for the Welfare of Immigrants** (2006) *Immigration, nationality and refugee law handbook*

9 **Welch, M. and Schuster, L.** (2005) ‘Detention of asylum seekers in the US, UK, France, Germany, and Italy: A critical view of the globalizing culture of control’, *Criminology and Criminal Justice*, vol.5, p.331-355

10 **Bail for Immigration Detainees** (September 2002) *Submission to the United Nations Working Group on Arbitrary Detention: Immigration detention in the United Kingdom*

11 **Home Office** (February 2005) *Controlling our borders: Making migration work for Britain*

12 **Bail for Immigration Detainees** (October 2006) *Briefing on detained fast tracking of asylum claims*



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Harmondsworth Detention Centre

inappropriate for full consideration of complex cases.¹³ Furthermore, a study into the detained fast-track process concluded that asylum seekers are being set up to fail because the system is too fast to give them a fair chance (99% of cases are refused), more than half of detainees at appeal stage are left without legal representation and being unable to apply for bail so remain in detention for long periods.¹⁴ The Home Office believes that asylum seekers in the fast-track process are more likely to have weaker claims, hence the high refusal rates.¹⁵

In April 2005 an Operational Instruction for the detained fast-track process was introduced by the Home Office to define the circumstances in which flexibility should be introduced to the timescales.¹⁶ The instruction states that applicants should be removed from the detained fast-track process if the time allowed is not sufficient to decide the case fairly. The operational instruction sets out a number of factors that should prompt the Home Office to take someone out of the fast-track process, or extend the timescale: for example in cases where a detainee is ill; when a case is deemed more complex than originally thought (for example alleged torture victims); in the event of non-attendance or late attendance of a representative; or in cases where

Table A – Description of the UK detention estate

IRC	Location	Run by	Detainees	Capacity ²¹
Campsfield	Oxfordshire	The GEO Group	Male only	198
Colnbrook	Nr. Heathrow airport	Serco	Male only	313 (plus 40 STHF)
Dover	Kent	The Prison Service	Male only	316
Dungavel	Lanarkshire	Group Four Securicor	Mixed, family accommodation	190
Harmondsworth	Nr. Heathrow airport	Kalyx	Male only	501
Haslar	Hampshire	The Prison Service	Male only	160
Lindholme	South Yorkshire	The Prison Service	Male only	112
Oakington	Cambridgeshire	Global Solutions Ltd (GSL)	Male only	352
Tinsley House	Nr. Gatwick airport	GSL	Mixed, family accommodation	137
Yarl's Wood	Bedfordshire	Serco	Mixed, family accommodation	405
			Total capacity	2,684

13 **HM Inspectorate of Prisons** (April 2003) *Introduction & summary of findings: Inspection of five Immigration Service custodial establishments*

14 **Bail for Immigration Detainees** (July 2006) *Working against the clock: inadequacy and injustice in the immigration fast track system*

15 **Home Office** (February 2005) *Controlling our borders: Making migration work for Britain*

16 **Home Office** (April 2005) *Detained fast-track processes – Operational Instruction*

no competent interpreter is available during the asylum interview. In spite of this policy, research conducted on the fast-track process in Harmondsworth found that several detainees who were alleged torture victims had been processed in the accelerated system.¹⁷ Paul Nettleship, a duty solicitor at Harmondsworth immigration removal centre, speaking at the Commission's West London Hearing, discussed what he viewed as 'serious flaws' in the detained fast-track system operating there:

“The Home Office fight tooth and nail to keep to the timetable of the detained fast-track system, but this compromises the integrity of the system. There is a culture of inflexibility in the fast-track system which leads to vulnerable asylum seekers like my client being denied protection. The detained fast-track process is a gateway to injustice.”

Hearing: West London – for full testimony visit www.humanrightstv.com

1.5 Inspection and Accountability

HM Chief Inspector of Prisons has a duty under the 1999 Act to investigate and publish reports on immigration removal centres in the UK. This remit was extended as part of the Immigration, Asylum and Nationality Act 2006 to include a statutory requirement to investigate all short-term holding facilities and escort arrangements. Criteria for inspection include whether detainees are safe; treated with respect; engaged in constructive activity; able to maintain contact with the outside world and prepare for their release, transfer or removal.¹⁸ Eileen Bye, from HM Inspectorate of Prisons, told Commissioners that, while there had been some improvements in recent years, there had been an insufficient improvement in the welfare of detainees. Commenting on the 'shunting' of detainees between centres, Ms Bye said:

“The movement of detainees between immigration removal centres by the authorities is also a serious problem. Within the space of just a few days, one detainee we interviewed was moved from Dungavel in Scotland, to Colnbrook near Heathrow, then to Lindholme near Doncaster, and then back down to Harmondsworth – which is right next to Colnbrook. This is disorientating and means the detainee loses contact with their friends, family, property and legal advisers.”

Hearing: West London – for full testimony visit www.humanrightstv.com

Detention Centre Rules were established in 2001 to provide a further mechanism of accountability and to ensure conditions are consistent between centres. The rules provide comprehensive procedures for the treatment of those in detention, including standards for conditions within IRCs

“Frankly I have very bad memories of detention; it has taken away my zest for life. I am depressed. Often I have no appetite and don’t eat, I refuse to wash my self, I become anxious. This state of mind started and was worse in detention, but it has not lifted.”

Submission: Anonymous

and provision of reasons of detention for detainees. Under the (non-statutory) rules, an Independent Monitoring Board (IMB) has been formed in each IRC. The board, consisting of members of the public who visit centres on a weekly basis, has a duty to provide annual reports to the Home Office.¹⁹ In addition to the detention centre rules, an operating standards manual has been published by the Home Office to provide a means of raising standards and achieving a level of consistency across the removal estate.²⁰

2. Conditions in detention

2.1 Habitation conditions

Conditions in detention vary considerably between centres; however recurring concerns raised by both advocacy groups and HM Inspectorate of Prisons include a lack of recreational activities, overcrowded accommodation, mistreatment by centre staff, long periods kept in cells, lack of privacy, visiting restrictions, limits on making and receiving calls, an absence of 24-hour medical provision and no facilities to deal with serious illnesses.²² Other concerns include the insufficient provision of interpreting services which results in detainees having to interpret for one another and thereby breaching confidentiality and affecting the credibility of the system.²³

Allegations of detainees being assaulted by immigration staff have been reported by NGOs and in the media.²⁴ In 2004 the Medical Foundation examined 14 cases of alleged abuse by staff; in twelve of the cases gratuitous or excessive force was used and at least four of the detainees in the study were found to have been tortured in their countries of origin.²⁵

2.2 Access to bail

One of the ways in which an asylum seeker may be released from immigration detention is by being granted bail from either the Asylum and Immigration Tribunal (AIT) or the immigration authorities, including in some cases the police. Bail is not often granted by the immigration authorities, partly because they require substantial amounts from sureties (£2,000-£5,000), which in most cases an asylum seeker is unlikely to be able to provide. This has led to more detainees requesting bail from the AIT instead.²⁶

Unlike criminal cases, immigration detainees do not have a right to a bail hearing. Legislation providing automatic bail hearings to all immigration detainees was passed in 1999, but was

19 Ireland, H. (ed.) (2006) *Immigration detention: A handbook for visitors*; 6th revised edition, AVID

20 Home Office (2006) *Operating standards manual for Immigration Service Removal Centres*

21 Home Office (February 2007) *New site for immigration centre*

22 Silove, D., Steel, Z. and Mollica, R. (May 2001) ‘Detention of asylum seekers: assault on health, human rights, and social development’, *The Lancet*, vol. 357, pp. 1436-37

23 BID (5 April 2006) *Fit to be detained? Challenging the detention of asylum seekers and migrants with health needs*

24 BBC (4 October 2006) *Detained immigrants ‘are abused’*

25 Medical Foundation for the Care of Victims of Torture (2004) *Harm on removal: Excessive force against refused asylum seekers*

26 Joint Council for the Welfare of Immigrants (2006) *Immigration, nationality and refugee law handbook*

repealed in the 2002 Nationality, Immigration and Asylum Act. The Home Office claimed that the concept of bail for all was ‘*inconsistent with the need to streamline the removals process and would be unworkable in practice with the continuing expansion of the detention estates.*’²⁷ Advocacy groups have argued that logistical or financial constraints are inadequate justification for the denial of the right to bail.²⁸

The use of public funding for bail applications is subject to a merits test, which requires the legal firm to assess the chances of success to be greater than 50%. According to BID, the merits test is being wrongly applied and detainees are not being advised of their right to review a negative decision for public funding.²⁹ Furthermore, it has been documented that in some cases detained asylum seekers are resorting to representing themselves in bail applications.³⁰

2.3 Legal advice and representation

Research and independent inspections have shown that difficulties in accessing quality legal advice and representation are even more acute when an asylum seeker is detained. This has been raised as an issue of concern by a number of organisations and HM Inspectorate of Prisons has drawn attention to the fact that ‘access to competent and independent legal advice is becoming more, not less difficult, as fewer private practitioners offer legally aided advice and representation.’³¹

Organisations working with detainees have reported reluctance on the part of solicitors to take on cases where a client is detained. Solicitors feel that they cannot sufficiently prepare a case within the restricted timeframe set out by the Legal Services Commission (LSC) and there is often an assumption that the case will most likely fail. The additional time spent travelling to visit detainees and trying to secure their release are added burdens for solicitors particularly because detainees are frequently moved between removal centres. Detainees also experience difficulties in obtaining evidence from their countries of origin, especially because they have less opportunity to contact their community in the UK.³² Furthermore, detainees can be transferred to other IRCs without adequate notice, making it even more problematic for regular contact to be maintained between detainees and lawyers.

Since April 2007 the LSC has piloted a scheme to award exclusive contracts to provide all legal services for immigration detainees. This includes basic advice surgeries, telephone advice, bail hearings and fast-track work. According to BID, these changes will hit detainees particularly hard and may make it even more difficult for detainees to obtain legal representation and may force detainees to seek the services of costly private law firms.³³

Efforts to improve legal advice for detainees have been made, for example in December 2005 the LSC introduced the Detention Duty Advice (DDA) pilot scheme, which offers 30 minute free legal

“It is more than just physical torture, it is mental torture too. The staff made you feel like you don’t belong. I was treated like an animal”

Faith.

Hearing: West London.

For full testimony visit

www.humanrightstv.com

27 **Home Office** (February 2002) *Secure Borders, save haven: Integration with diversity in modern Britain*

28 **Bail for Immigration Detainees** (September 2002) *Submission to the United Nations Working Group on Arbitrary Detention: Immigration detention in the United Kingdom*

29 **Bail for Immigration Detainees** (2006) *Memorandum to the Joint Committee on Human Rights – Uncorrected evidence on the treatment of asylum seekers*

30 **Bail for Immigration Detainees and Asylum Aid** (April 2005) *Justice denied, asylum and immigration legal aid: A system in crisis*

31 **HM Inspectorate of Prisons** (July 2004) *Inspection report on Dover Immigration Removal Centre*

32 **Bail for Immigration Detainees** (September 2002) *Submission to the United Nations Working Group on Arbitrary Detention: Immigration detention in the United Kingdom*

33 **Bail for Immigration Detainees** (October 2006) *Response to the LSC consultation on legal aid changes*

“B had been diagnosed with severe Post-Traumatic Stress Disorder... A doctor stated that he was too unwell to be detained but BIA refused to release him. He was extremely vulnerable and told us repeatedly that he was dying inside every day”

Submission: London Detainee Support Group

advice sessions in all IRCs to approximately 20 detainees per week. The DDA scheme has been welcomed by NGOs, but concerns still remain that the sessions are not sufficiently fulfilling the ongoing demand for quality legal advice and representation.³⁴

3. Detention of vulnerable groups

3.1 Detaining those with health and welfare needs

Home Office operational guidelines state that detention is considered unsuitable, unless there are exceptional circumstances, for example those ‘suffering from serious medical conditions or the mentally ill.’³⁵ A report by Médecins Sans Frontières found that IRCs lacked a systematic process of identifying and ensuring the release of detainees suffering from serious medical conditions or the mentally ill, in accordance with the guidelines issued.³⁶

The lack of accountability in relation to privately sub-contracted medical companies operating in detention centres has also been raised as a major concern by several commentators.³⁷ Examples have been documented where detainees have not received adequate medical care for ongoing illnesses or have not been able to express themselves properly due to the insufficient provision of interpreters.³⁸

Reports by advocacy groups working with detainees claim that mental health services are rarely of good quality. Referrals to specialist mental health services are limited and inconsistent; leading to problems going unaddressed despite evidence that many asylum seekers are distressed.³⁹ In addition the manner in which detainees with mental health problems are handled has been strongly criticised. For example medical emergencies or suicide attempts do not necessarily lead to release; instead they may lead to a detainee being transferred to a high security prison.⁴⁰ Furthermore, deaths in immigration detention do not have to be reported to any outside agency. Advocacy groups are concerned relatives of detainees may not receive adequate support and that deaths in immigration detention may not be brought to the attention of the Prisons Ombudsman

34 **Bail for Immigration Detainees** (2006) *Memorandum to the Joint Committee on Human Rights – Uncorrected evidence on the treatment of asylum seekers*

35 **Home Office** (2006) *Operational Enforcement Manual, Chapter 38 – Detention and temporary release*

36 **Médecins Sans Frontières** (November 2004) *The health and medical needs of immigration detainees in the UK: MSF’s experiences*. Published as an annex in **BID** (May 2005) *Fit to be detained? Challenging the detention of asylum seekers and migrants with mental health needs*

37 **Bacon, C.** (September 2005) *The evolution of immigration detention in the UK: The involvement of private prison companies*, Refugee Studies Centre Working Paper no. 27

38 **Bail for Immigration Detainees** (May 2005) *Fit to be detained? Challenging the detention of asylum seekers and migrants with mental health needs*

39 **Pourgoirides, C.** (2002) *A second exile: The mental impact of detention on asylum seekers in the UK*

40 **Weber, L.** (July 2003) ‘Down that wrong road: Discretion in decisions to detain Asylum seekers arriving at UK ports’ *Howard Journal of Criminal Justice*, vol. 42, no.3, pp. 248-262

or coroner.⁴¹ Peter Booth, National Council Member for the Independent Monitoring Boards, told the Commission:

“We are concerned by health provision – although all centres are well covered for coughs and colds, they are not adequately covered for HIV and TB, and they are severely lacking in mental health provision.”

Hearing: West London. For full testimony visit humanrightstv.com

Since 2000, ten immigration detainees have committed suicide and every other day a detainee makes an attempt at self-harm serious enough to require medical treatment. Asylum Welcome, in its submission to the Commission, identified the fact that:

“Poor mental health is exacerbated by poor communication with Immigration Service caseworkers and the attendant uncertainty regarding the outcome of an individual’s case.”

Submission: Asylum Welcome

From April 2006 to January 2007 there were 176 self-harm incidents that required medical treatment and 1,643 detainees were deemed at risk of self-harm. Campaign groups believe the actual numbers of self-harm incidents to be higher than reported.⁴²

3.2 Detaining children and families

The government has stated that family detention is a regrettable but necessary part of maintaining effective immigration control, and that it is used sparingly and for as short a time as possible.⁴³ Organisations working with detained families argue that there is a gap between policy and practice, for example cases where families are held in detention for prolonged periods.⁴⁴

Children can be made subject to detention through one or both of their parents. They may also be affected by the detention of one of their parents, in cases where a family is split up. Visiting detained family members is made even more difficult by the fact that a higher proportion of dispersal operates in the north of the UK and the majority of IRCs are located in the south.⁴⁵

The Home Office believes the detention of families is essential in order to reduce the risk of people absconding. However research has found that families are more likely to stay in contact with the Home Office and adhere to immigration reporting conditions because they need access to services such as healthcare and education for their children.⁴⁶

“We spent five and a half months in detention. It was extremely stressful for me as a mother, and my young children cried every day. Our children were locked up like prisoners. Which type of a human could keep a child locked up all day?”

Hearing: West London. For full testimony visit www.humanrightstv.com

41 **Bail for Immigration Detainees** (2005) *Self-inflicted deaths of asylum-seekers and migrants detained under Immigration Act powers in the United Kingdom*
 42 **NCADC** (February 2007) *Self-harm in Immigration Removal Centres*
 43 **Home Office** (February 2002) *Secure borders, save haven: Integration with diversity in modern Britain*
 44 **Amnesty International** (June 2005) *Seeking asylum is not a crime: detention of people who have sought asylum*
 45 **ILPA and Bail for Immigration Detainees** (October 2003) *Challenging immigration detention: a best practice guide*
 46 **Cole, E.** (April 2003) *A few families too many; The detention of asylum seeking families in the UK, Bail for Immigration Detainees*



Father presents poem about the detention of his son

The Home Office does not produce statistics on where minors are detained, their nationalities nor on the number of age disputed cases.⁴⁷ However, it is clear from recent policy developments outlined above that the use of detention for children within asylum-seeking families is increasing; with an estimated 2000 children held in immigration detention in 2005.⁴⁸

Children's organisations are concerned that the impact of detention on children is detrimental to their health and education.⁴⁹ Furthermore, a critical lack of effective child protection systems in IRCs and an absence of independent assessments about welfare and development needs of detained children have been highlighted in a recent Joint Chief Inspectors report on safeguarding children.⁵⁰

The Immigration Service's Operational Enforcement Manual (OEM) specifies that unaccompanied minors must be detained only in the most exceptional circumstances and at most overnight. However, problems arise when the given age of a detainee is disputed by the Home Office. According to the OEM, where an applicant claims to be a minor but their appearance strongly suggests that they are over 18, the applicant is treated as an adult until such time as credible documentary or medical evidence is produced which demonstrates that they are the age they claimed.⁵¹ NGOs have expressed concern that this policy can result in lengthy periods of detention while documentary evidence is obtained and considered.⁵² Due to litigation in February 2006, the Home Office has now become more cautious about detaining age-disputed asylum seeking children, and they now are assumed to be children and are not put through the fast-track system.⁵³

3.3 Women in detention

The detention of pregnant women is one of the main concerns for refugee women's advocacy groups. A report highlighting their plight draws attention to the fact that access to adequate nutrition and medical care is limited for pregnant women in detention, which may be damaging for their physical and mental health. The report calls on the government to stop the prolonged use of detention for pregnant women and mothers with young children and consider more suitable alternatives, such as regular reporting.⁵⁴

UNHCR guidelines state that as a general rule the detention of pregnant women in their final months and nursing mothers, should be avoided due to their special needs.⁵⁵ In addition the Home Office's operational enforcement manual states that only in very 'exceptional circumstances'

47 Home Office (February 2007) *Asylum statistics: 4th Quarter 2006*, United Kingdom

48 Crawley, H. and Lester, T. (2005) *No place for a child – Children in UK immigration detention: Impacts, alternatives and safeguards*, Save the Children UK

49 Crawley, H. and Lester, T. (2005) *No place for a child – Children in UK immigration detention: Impacts, alternatives and safeguards*, Save the Children UK

50 Joint Chief Inspectors (2005) *Safeguarding children: The second Joint Inspectors' report on arrangements to safeguard children*

51 Home Office (2006) *Operational Enforcement Manual, Chapter 38 – Detention and temporary release*

52 Crawley, H. and Lester, T. (2005) *No place for a child – Children in UK immigration detention: Impacts, alternatives and safeguards*, Save the Children UK

53 Joint Committee on Human Rights (20 November 2006) *Uncorrected evidence on the treatment of asylum seekers*

54 McLeish, J., Cutler, S. and Stancer, C. (2002) *A crying shame: Pregnant asylum seekers and their babies in detention*. London: Maternity Alliance, Bail for Immigration Detainees & London Detainee Support Group.

55 UNHCR (February 1999) *Revised guidelines on applicable criteria and standards relating to the detention of asylum seekers*. Geneva: UNHCR

should pregnant women be detained.⁵⁶ Despite these instructions, organisations are aware of and have recorded instances where pregnant asylum seekers are detained, sometimes for many months.⁵⁷

The New Asylum Model Quality Team recently undertook an evaluation relating to the compliance of the Asylum Policy Instruction (API) on gender at Yarl's Wood IRC. This consisted of examining all female cases passing through the detained fast-track system at Yarl's Wood during February 2006. The main recommendations included the need for a more robust referral mechanism for female cases, which considers the basis of an asylum claim prior to deciding whether it is suitable for a quick decision and improved training for caseowners on gender issues in the asylum process, including obligations under the Gender Asylum Policy Instructions.⁵⁸ APIs are guides to the Government's policy on asylum and are used on a daily basis by caseowners in the Home Office to provide guidance on all aspects of asylum policy.⁵⁹

In spite of the NAM evaluation at Yarl's Wood, organisations remain concerned about the treatment of women in the detained fast-track process. BID is concerned with the quality and accessibility of legal representation provided for these women and it has documented cases where detained women in the fast-track process have not had sufficient time to prepare their case and were not able to disclose information about rape and sexual violence in time for it to be considered. Figures show that between May 2005, when the fast-track centre began to process female asylum seekers, up to the start of September 2006, of the 345 cases heard at the Yarl's Wood Asylum and Immigration Tribunal, 26% of the women did not have any legal representation at their appeal.⁶⁰ It is unclear whether this figure is due to the women being unable to access legal representation or failing the initial merits to qualify for legal representation in the first place.

Yeukai, an asylum seeker from Zimbabwe, described being detained in three different detention centres during the course of her asylum claim, including with hundreds of foreign national prisoners awaiting deportation.

“I came to England because my political activities in Zimbabwe meant my life was in danger. But when I was locked up in Dungavel, having committed no crime, with six other women and hundreds of convicts, I wasn't sure whether this was Britain or Mugabe's Zimbabwe.”

Yeukai, Zimbabwean asylum seeker Hearing: South London. For full testimony visit www.humanrightstv.com

“A lady I befriended had suffered incredibly in Uganda. She was a highly intelligent woman, but after her release she was unable to walk, eat, drink or look after herself. She was also mute. This was a direct result of her detention at Yarl's Wood. And yet the medical centre at Yarl's Wood insisted she had no medical concerns.”

Gill Butler. Hearing: West London. For full testimony visit www.humanrightstv.com

56 Home Office (2006) *Operational Enforcement Manual*, Chapter 38 – Detention and temporary release
57 McLeish, J., Cutler, S. and Stancer, C. (2002) *A crying shame: Pregnant asylum seekers and their babies in detention*. London: Maternity Alliance, Bail for Immigration Detainees & London Detainee Support Group.

58 NAM Quality Team (August 2006) *Yarl's Wood detained fast-track compliance with the Gender API*
59 <http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/>

60 Bail for Immigration Detainees (September 2007) *Refusal Factory: Women's experiences of the Detained Fast Track asylum process at Yarl's Wood Immigration Removal Centre*

“On 3 separate occasions representations were made by the detention centres where she was being held that she was a victim of torture but these were all totally ignored and no action was taken to verify her allegations or to ensure that they were verifiable by the Medical Foundation.”

Submission: Friends of Oakington

3.4 Other vulnerable groups

Asylum seekers who may have been victims of torture are an additional category of people the Home Office states should only be detained in exceptional circumstances.⁶¹ However, research has shown that victims of torture are detained even in cases where the Home Office has prior information obtained during an asylum interview of an applicant’s past torture.⁶² Critics believe that instead of providing special care for torture victims, the Home Office may be subjecting them to the very conditions that are likely to hinder recovery.⁶³ In addition there is concern that the practice of detention discourages applications from asylum seekers who have experienced torture in their own countries and that the experience of being detained in the UK forces them to relive a painful past.⁶⁴

Advocacy groups claim that there appear to be failures in the system of identifying torture victims in the detention population. Research into detainees with mental health needs revealed that in some IRCs initial health assessments do not always include a question on torture. The report concluded that if notification and referral of individuals who disclose torture by medical staff is not done, it is unclear how immigration staff acquire the independent evidence needed to ensure torture victims are not detained, in accordance with Home Office guidelines’.⁶⁵

Notably there is a dearth of research or commentary on the detention of other vulnerable asylum seekers including the elderly, disabled and Lesbian, Gay, Bisexual and Transgender (LGBT) asylum seekers. The Operational Enforcement Manual states that the elderly, especially those requiring supervision, and people with serious disabilities are not normally considered suitable for detention. Organisations have observed that there is no guidance on what age is elderly or what amounts to a serious disability.⁶⁶ Research carried out by the Information Centre about Asylum and Refugees (ICAR) has found that organisations experience difficulties identifying and responding to the specific needs of lesbian and gay detainees because they may be reluctant to disclose their sexuality whilst in immigration detention. Furthermore, it was stated that IRCs need to be issued with guidelines about LGBT clients and be made aware of potential instances of homophobia, for example in situations where detainees are accommodated together with other detainees from the same country.⁶⁷

61 Home Office (2006) *Operational Enforcement Manual, Chapter 38 – Detention and temporary release*

62 Bail for Immigration Detainees (May 2005) *Fit to be detained? Challenging the detention of asylum seekers and migrants with mental health needs*

63 Silove, D., Steel, Z. and Mollica, R. (May 2001) ‘Detention of asylum seekers: assault on health, human rights, and social development’, *The Lancet*, vol. 357, pp. 1436-37

64 Immigration Advisory Service (March 2007) *IAS evidence to the Independent Asylum Commission*

65 Bail for Immigration Detainees (May 2005) *Fit to be detained? Challenging the detention of asylum seekers and migrants with mental health needs*

66 ILPA and Bail for Immigration Detainees (October 2003) *Challenging immigration detention: a best practice guide*

67 ICAR (2006) *Interviews with Outrage and UKLIGIG for the Researching Asylum in London (RAL) project*

4. Alternatives to detention

The UN Working Group on Arbitrary Detention recommends that in deciding to detain asylum seekers, non-custodial alternatives, for example reporting requirements and residence restrictions, should always be considered first.⁶⁸ The UN Special Rapporteur's report on the detention of migrants identifies a variety of alternatives to detention including release on bail, home detention, semi-liberty, payment of a certain sum as guarantee, police supervision, ban on leaving the country, obligation to reside at a given address with periodic reporting to the authorities and withdrawal of passports.⁶⁹

In the UK, existing alternatives to immigration detention include temporary admission, bail, reporting requirements, electronic tagging and residence restrictions.⁷⁰ A study into the risk of detainees absconding, found that 90% of released detainees (i.e. who had originally been considered high risk absconders by the Home Office) complied with terms of bail and therefore, according to the researchers, were unnecessarily detained.⁷¹ In a recent UNHCR report on alternatives to detention, it was noted that proper evaluation is required to determine whether other reception arrangements, such as dispersal, reporting requirements, accommodation centres and biometric identity cards, will be efficient enough at monitoring asylum seekers' whereabouts to allow for a reduction in the use of immigration detention facilities.⁷²

The Border and Immigration Agency's 'Ten point plan for border protection and immigration reform' stated a commitment to seek alternatives to the detention of children within 360 days.⁷³

68 **United Nations Working Group on Arbitrary Detention** (1998) *Country report to United Kingdom*

69 **United Nations Commission on Human Rights** (30 December 2002) *Report of the Special Rapporteur on specific groups and individuals: migrant workers*. Geneva: United Nations Economic and Social Council

70 **Bercow, J., Harris, E. and Lord Dubs** (July 2006) *Alternatives to immigration detention of families and children*, A discussion paper for the All Party Parliamentary Groups on Children and Refugees, Supported by the No Place for a Child Coalition

71 **Bruegel, I. and Natamba, E.** (June 2002) *Maintaining contact: What happens after detained asylum-seekers get bail?* Social Centre Science Research Papers, No 16, South Bank University

72 **Field, O.** (April 2006) *Alternatives to detention of asylum seekers and refugees*, UNHCR Legal and Protection Policy Research series

73 **Liam Byrne MP**, Minister for Immigration, *Border Security and Immigration: Our Deal for Delivery in 2008*, 14th January 2008