

Independent Asylum Commission

CONDUCTING A NATIONWIDE REVIEW OF THE UK ASYLUM SYSTEM

IN ASSOCIATION WITH THE **CITIZEN** ORGANISING FOUNDATION

deserving dignity

The Independent
Asylum Commission's
Third Report of
Conclusions and
Recommendations

How to improve the
way we treat people
seeking sanctuary

The Independent Asylum Commission's
nationwide review of the UK asylum
system in association with the Citizen
Organising Foundation.

Executive Summary

The Independent Asylum Commission (IAC) is conducting a nationwide citizens' review of the UK asylum system. In its Interim Findings, published on 27th March 2008, it presented evidence gathered from several hundred individuals and organisations, through public hearings, written and video evidence, and research.

Since that publication, the UK Border Agency has issued a comprehensive response to those Interim Findings, and described the Commission's first report of conclusions and recommendations, *Saving Sanctuary*, as "constructive". The Commission has continued to gather evidence on public perceptions of asylum in the UK and the values the British people think should underpin how we respond to those seeking sanctuary. Along with the CITIZENS SPEAK consultation on sanctuary in the UK, we have commissioned an opinion poll and focus group research to gain a better understanding of public attitudes to asylum.

This report, *Deserving Dignity*, is the last of three reports of the Commissioners' conclusions and recommendations, to be published in Summer 2008. The Commissioners aim to make credible and workable recommendations for reform that safeguard the rights of asylum seekers but also command the confidence of the British public.

Key findings

- ◆ The Commission concludes that all those who seek sanctuary in the UK deserve to be treated with a dignity over which mere administrative convenience must never prevail; and recommends that urgent action is taken to remedy situations where the dignity of those who seek sanctuary is currently compromised, particularly in the treatment of those who are detained, or women, children, torture survivors, those with health needs, and LGBT asylum seekers.
- ◆ The Commission concludes that 'how we treat those seeking sanctuary' should be based on the fourth mainstream consensus British principle identified in the Commission's *Saving Sanctuary* report: "People seeking sanctuary should be treated fairly and humanely, have access to essential support and public services, and should make a contribution to the UK if they are able."
- ◆ The Commission concludes that the responsibility for the fair and humane treatment of people who seek sanctuary in the UK lies with the UK Border Agency, but also with politicians, the media, and every individual citizen; and recommends that the UKBA must engage swiftly with the 92 recommendations to improve how we treat people seeking sanctuary.

Key recommendations

Review the use of detention, find alternatives, and improve safeguards

- ◆ There should be an independent root and branch review of the detention of asylum seekers, from the starting point that it is appropriate only for those who pose a threat to national security or where there is absolutely no alternative to effect return.
- ◆ An independent analysis of viable long-term alternatives to detention, and of the likelihood and motivation of asylum seekers absconding, should be undertaken. Pilot schemes to test alternatives to detention should be undertaken and rigorously evaluated.
- ◆ The basic safeguards that exist in the criminal system should be applied to detention. Detention should be time-limited, for clearly stated reasons, and subject to judicial oversight.
- ◆ The Detained Fast Track process should be phased out because it is unfair, contrary to the spirit of the Refugee Convention, and can lead to unjust decisions.

Allow asylum seekers to support themselves

- ◆ Asylum seekers who pass through the New Asylum Model without final resolution of their case within six months should be entitled to work.

Treat children as children

- ◆ UKBA policy towards children should be based on the principle that the best interests of the child should be paramount.

The government's reservation to the UN Convention on the Rights of the Child must be revoked.

- ◆ There should be an end to the detention of children and age-disputed young people.
- ◆ A form of guardianship for unaccompanied children who claim asylum should be seriously investigated and consideration given to its swift implementation.

Ensure the dignity of women, torture survivors, those with health needs and LGBT asylum seekers

- ◆ Family-friendly improvements made to Lunar House in recent years, such as the provision of adequate baby-changing facilities, should be provided in all client-facing UKBA offices.
- ◆ There should be appropriate training on a regular basis for UKBA staff to make sure they understand initiatives related to women's rights, and implement them accordingly.
- ◆ Healthcare should be provided on the basis of need, and asylum seekers should be eligible for primary and secondary health care until their case is successful, or they leave the UK; in particular and specifically, that all peri-natal healthcare should be free.
- ◆ That survivors of torture, sexual abuse or other forms of trauma should be clearly identified as 'at risk' during their passage through the asylum system in order to avoid detention and fast-track procedures.
- ◆ Specific guidelines for UKBA case owners on the sensitivities of handling the cases of lesbian, gay, bisexual or transgender asylum seekers should be developed.

Conclusions and Recommendations

'Deserving Dignity' – the Independent Asylum Commission's Third Report of Conclusions and Recommendations: How we treat people seeking sanctuary.

Commissioners



Sir John Waite (Co-Chair)

A former Judge of the High Court (Family Division) and of the Court of Appeal, former President of the Employment Tribunal & until recently Chair of UNICEF UK.



Shamit Saggar

Professor of Political Science at the University of Sussex and Chair of the Law Society's Consumer Complaints Board. Previously a Senior Policy Advisor in the Prime Minister's Strategy Unit; he holds academic posts at Queen Mary University, UCLA and Yale.



Ifath Nawaz (Co-Chair)

President of the Association of Muslim Lawyers, member of the Policing and Security working group in the wake of the bombings of 7 July 2005, a Commissioner on the Lunar House Report.



Nicholas Sagovsky

Canon Professor Nicholas Sagovsky, Canon Theologian at Westminster Abbey. A Commissioner on the South London Citizens Lunar House Report.



Countess of Mar

A cross-bench member of the House of Lords, previously sat on the Asylum and Immigration tribunal, for over two decades and resigned when she became disillusioned with the system.



Katie Ghose

Director of the British Institute of Human Rights. A public affairs specialist and barrister with a background in human rights law and immigration, Katie has also worked in the voluntary sector.



Lord David Ramsbotham GCB CBE

Her Majesty's Chief Inspector of Prisons between December 1995 and August 2001 and a former army general.



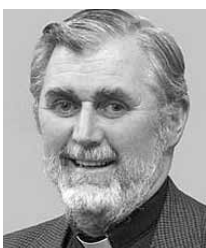
Zrinka Bralo

A journalist from Sarajevo who has also worked as a researcher and commentator since her exile to the UK in 1993. She is Executive Director of the Migrant and Refugee Communities Forum in West London.



Dr Silvia Casale

Member of the United Nations Subcommittee on Prevention of Torture and President of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.



Bishop Patrick Lynch

Rt Reverend Patrick Lynch is the Auxiliary Bishop for the Roman Catholic Archdiocese of Southwark. He has worked extensively with many different migrant communities during his ministry.



Earl of Sandwich

A cross bencher in the House of Lords with an interest in international relations and refugee issues.

Jacqueline Parlevliet

Deputy Representative of the United Nations High Commissioner for Refugees in London (Observer status)

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For more information see
www.independentasylumcommission.org.uk



Contents

Executive Summary

List of Commissioners

Foreword

How we treat people seeking sanctuary: detention and material support

How we treat people with additional vulnerabilities

Glossary

AIT	Asylum and Immigration Tribunal
API	Asylum Policy Instruction
ARC	Application Registration Card
ASU	Asylum Screening Unit
COI	Country of Origin Information
ECHR	European Convention on Human Rights
EU	European Union
FNP	Foreign National Prisoner
IRC	Immigration Removal Centre
LGBT	Lesbian, Gay, Bisexual and Transgender
LSC	Legal Services Commission
MSR	EU Council Directive 2003/9/EC of 27 January 2003 laying down Minimum Standards for the Reception of Asylum Seekers
NAM	New Asylum Model
UKBA	UK Border Agency (formerly the Border and Immigration Agency)
UNHCR	The Office of the United Nations High Commissioner for Refugees

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 email evidence@cof.org.uk or call 020 7043 9878.

Foreword

by Sir John Waite and Ifath Nawaz, Co-chairs of the Independent Asylum Commission

This is our final report. Over the past two years we have been engaged in the most comprehensive review of the UK asylum process ever undertaken. At hearings throughout the country we have listened to numerous personal testimonies. We have read hundreds of submissions of written evidence, and we have received a great number of reports from expert witnesses.

As we complete our review, it is appropriate to thank the Citizen Organising Foundation for their pioneering work in establishing the Independent Asylum Commission. We live in times of mounting disquiet about the concentration of power in central government and the lack of opportunity for democratic participation by ordinary citizens. Therefore the initiative of ordinary citizens who care enough about an issue to recruit and establish an independent commission to look into it on their behalf, to raise all of the money needed to fund such an enterprise, and end up with three reports of recommendations that are making an impact on the national debate, is astonishing and tremendously encouraging for the future of civil society.

Our team of Commissioners, many of them coming to this issue completely fresh, have been struck by the qualities of character in those we have met. Asylum seekers continue to be misunderstood, demonised and scapegoated by many people. Yet those we met, even though many of them may never (despite the often terrible conditions they are trying to escape at home) succeed in achieving formal recognition of their status as refugees, were not scroungers and ne'er-do-wells, but decent people trying to maintain their dignity in difficult circumstances.

We need to add to that our appreciation of the insight we have gained into the problems of those who have to decide the fate of asylum seekers. Our experience of the staff of the UK Border Agency has been of concerned and conscientious people trying to make the right decisions in difficult circumstances. Pilloried in the press, often facing criticism from all sides, it is important that the people who take on the responsibility for deciding who is and who is not able to find sanctuary in the UK should be able to take pride in their work. We have shown a lot of concern for asylum seekers in the course of our review; it is only right that we should express concern for UKBA staff also. The same applies to those working within, and for, the appeal tribunal system.



Sir John Waite



Ifath Nawaz

If public confidence in the asylum system is to be rebuilt, it must become a system that reflects mainstream British values. Our *Saving Sanctuary* report identified five mainstream consensus values that we recommend as the foundation principles for the asylum system in the UK. In considering how we treat people seeking sanctuary in the UK, the fourth principle is particularly relevant:

“People seeking sanctuary should be treated fairly and humanely, have access to essential support and public services, and should make a contribution to the UK if they are able.”

In this report we explore further the concerns relating to the detention of asylum seekers, the material support with which they are provided, and the treatment of the most vulnerable of those who seek sanctuary here: women, children, torture survivors, those with health needs and LGBT asylum seekers.

The way we treat the most vulnerable in our midst is a true gauge of our values as a nation and a people. The public rightly expects fair and humane treatment of asylum seekers, befitting of a civilised society. There is considerable distance to travel until the reality of how we treat people seeking sanctuary matches that aspiration. We hope these recommendations help point policy-makers towards a system that treats all those who seek sanctuary on our shores with the dignity they deserve.

CHAPTER 1

Introduction

What is the Citizen Organising Foundation?

The Citizen Organising Foundation supports the development of broad based community or citizen organising across Britain and Ireland. COF's primary affiliate community organization is LONDON CITIZENS: the Capital's largest and most diverse campaigning alliance. London Citizens has earned a reputation for taking effective action to pursue change. Members include churches, mosques, trade unions, schools and other civil society organisations.

For further information see www.cof.org.uk.

History of the Independent Asylum Commission

In 2004 South London Citizens, a coalition of churches, mosques, schools, trades union branches and other civil society groups who campaign for the common good, conducted an enquiry into Lunar House, the headquarters of the Immigration and Nationality Directorate (IND), now the UK Border Agency (UKBA).

They published their report, *A Humane Service for Global Citizens*, in 2005, and it was well-received by IND, who have since implemented a number of its recommendations and continue to liaise with a monitoring group from South London CITIZENS. The report's final recommendation was that there should be an independent citizens' enquiry into the implementation of national policies on asylum.

The Independent Asylum Commission was commissioned by the Citizen Organising Foundation to undertake this work. It was launched in 2006 in the House of Commons, and has since been collecting evidence from a wide range of witnesses across the UK – from asylum seekers and refugees to those citizens who feel the system is being abused. The final conclusions and recommendations will be presented in three reports to the Citizen Organising Foundation and its member organisations later in 2008.

Aims

The Independent Asylum Commission aims to:

- Conduct an independent citizens' enquiry into the UK asylum system;
- Identify to what extent the current system is effective in providing sanctuary to those who need it, and in dealing with those who do not, in line with our international and human rights obligations;
- Make credible and workable recommendations for reform of the UK asylum system that safeguard the rights of asylum seekers but also command the confidence of the British public;
- Work constructively with the UK Border Agency and other appropriate bodies to implement those recommendations.

The Independent Asylum Commission is concerned only with those who come to the UK seeking sanctuary from persecution and makes no comment on economic migration. The Commission has striven to listen to all perspectives on this debate and to work constructively with the major stakeholders while retaining its independence from the government and the refugee sector. We hope that this report will uphold the UK's proud and historic tradition of offering sanctuary to those fleeing from persecution.

How the recommendations are structured

The Independent Asylum Commission's report of Interim Findings, '*Fit for Purpose Yet?*' published on March 27th 2008, had three main sections, looking at three distinct areas of the UK's asylum system:

- How we decide who needs sanctuary;
- What happens when we refuse people sanctuary;
- How we treat people seeking sanctuary.

In accord with this structure, the Commission's recommendations are set out in three separate publications. *Saving Sanctuary*, the first of these publications, detailed the Commissioners' recommendations on 'How we decide who needs sanctuary' and public attitudes to asylum. The second report, *Safe Return*, made recommendations about how to improve what happens when we refuse people sanctuary. This report, *Deserving Dignity*, sets out the Commissioners' conclusions and recommendations on 'How we treat people seeking sanctuary'.

The Commissioners' concerns on each issue, as set out in the Interim Findings, are listed, followed by the response from the UK Border Agency to those concerns. The Commissioners' conclusions and recommendations are then listed at the end of each section.

Funders

The Citizen Organising Foundation is a registered charity that receives no government money and is funded by the annual dues from member communities and grants from charitable trusts. The Independent Asylum Commission owes much to the generosity of the charitable trusts and individuals that have provided funding:



The Diana, Princess of Wales, Memorial Fund

The Society of Jesus

The Esmée Fairbairn Foundation



The Joseph Rowntree Charitable Trust

The M.B. Reckitt Trust

The City Parochial Foundation

The Sigrid Rausing Trust

The Bromley Trust

The Network for Social Change



The United Nations High Commissioner for Refugees, London

St Mary's Church, Battersea

Garden Court Chambers

UNISON Scotland

Mr T. Bartlett Esq.

Staff and Steering Committee

The Independent Asylum Commission has been supported by three staff members:

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Commission Co-ordinator

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Commission Associate Organiser

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Commission Communications Officer

Advisers

Lisa Nandy, The Children's Society; Maurice Wren, Asylum Aid; Louise Zandre, Jesuit Refugee Service; Jane Herlihy, PsyRAS; and Bernadette Farrell, South London Citizens.

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Particular thanks to Jonathan Hughes, Justin Russell and Grahame Jupp and other staff at the UK Border Agency who provided the response to our Interim Findings.

CHAPTER 2

How we treat people seeking sanctuary:

Detention and material support

In the Commissioners' Interim Findings, *Fit for Purpose Yet?*, seventy concerns were raised regarding how we treat people seeking sanctuary. These concerns are printed below, with the relevant response from the UK Border Agency, the Commissioners' assessment of that response, and their conclusions and recommendations.

The Commissioners summarised their concerns in the following way:

“Nations are commonly judged by the standards of humanity with which they treat people who are seeking sanctuary from persecution. The Commissioners are disturbed to have found much evidence of shortcomings in the treatment of asylum seekers – from the use of administrative detention to inadequacies of support.

While all asylum seekers are in a vulnerable situation, the Commissioners are concerned to find that some individuals, such as children, disabled people and torture survivors, have additional vulnerabilities that are not adequately recognised or reflected in their treatment.”

Key findings:

- ◆ That administrative detention is not necessary for most people seeking sanctuary, is hugely costly, and should never be used for children or pregnant women.
- ◆ That some of those seeking sanctuary have additional vulnerabilities that are not appropriately addressed in the way children, women, older, disabled, and lesbian, gay, bisexual and transgender (LGBT) asylum seekers, and torture survivors are treated.

The Commissioners affirm:

- The desire of the Home Office to find alternatives to the detention of children and families.
- The desire of the Government to resolve all outstanding and future asylum claims within a reasonable timeframe.
- The willingness of the UK Border Agency to engage stakeholders in working for improvements to the treatment of people seeking sanctuary.
- The decision to review the UK's reservation to Article 22 of the UN Convention on the Rights of the Child.

UKBA Responded:

The UK takes very seriously its obligations to provide sanctuary to those who need it. We have implemented in full all EU Directives relating to the treatment of asylum seekers, in particular the Council Directive on Minimum Standards on procedures in Member States for Granting and Withdrawing Refugee Status. Our commitment to upholding these measures is regularly tested through the UK court system, including up to the House of Lords, and through the European Court of Human Rights.

While their claim is being determined, those seeking sanctuary are entitled to:

- support and accommodation;
- access to National Health Service care;
- legal representation, including through the appeals stage where an appeal is made; and
- access to education for all children.

If and when it has been decided that an applicant has no protection needs leading to their claim being rejected, and any appeal dealt with, we expect applicants to return home. Where there is a barrier to removal, we provide hard case support. However, our obligation to the taxpayer means that, like other EU Member States, we cannot provide indefinite support. Through the Assisted Voluntary Returns scheme we also work with the International Organisation for Migration to provide advice and support to those who return voluntarily to their country of origin.