

Refugee Council response to consultation on the IND Review:

Fair, effective, transparent and trusted: Rebuilding confidence in our immigration system

August 2006

About the Refugee Council

The Refugee Council is the largest non-governmental organisation in the UK working with asylum seekers and refugees. We not only give help and support to asylum seekers and refugees, but also work with them to ensure their needs and concerns are addressed by decision-makers. We welcome the opportunity to comment on the outline proposals set out in *Fair, Effective, Transparent and Trusted* and hope to continue to work with the Home Office as these proposals are developed and implemented.

Introduction

We welcome the proposal to develop a 'clear and simplified legal framework' but given the enormity of the task, we urge the Home Office to set realistic timescales for the review and ensure that it maintains a clear focus on providing protection for refugees. Likewise, we remain concerned that the pace of change within IND may damage the capacity of the organisation to respond effectively to the needs of asylum seekers and refugees.

Overall, we are concerned that the review does not focus sufficiently on ensuring refugees are able to come to the UK, claim asylum and have their protection needs met. Whilst we acknowledge the importance of building trust in the system, we believe that over-emphasising the need to respond to 'public perception' about immigration may inhibit the Home Office's ability to take an evidence-based approach to policy making and reform.¹

Finally, we recognise the potential value of IND operating on an agency basis, but urge the Home Office to take this opportunity to create a fully independent asylum decision making body, able to make decisions on asylum applications outside the pressures of the wider political context.

Border Controls (Objective 1)

UK immigration controls are blunt instruments that do not distinguish between those fleeing persecution and irregular migrants: currently there is no legal route for a refugee to enter the UK and apply for asylum. We are concerned that increasing border controls without first addressing this fact will only drive more people to take desperate risks to reach the UK and increase the power of smugglers and traffickers.

In particular, it is clear that extending visa controls and pre-travel identity checks without creating legal entry routes for refugees will leave people at risk of persecution. Reducing asylum applications is not synonymous with reducing manifestly unfounded claims: in November 2002, following an increase in the number of Zimbabweans claiming asylum in the UK, the Government imposed visa requirements on Zimbabwean nationals. Asylum applications by Zimbabweans immediately fell by 61% in the first quarter of 2003.² The Government cites this as an example of success in tackling 'abuse' of the asylum system, despite the fact that 2240 Zimbabweans were recognised by the UK as Convention Refugees in the year the visa requirement was introduced³. The 61% fall in the number of Zimbabwean asylum seekers did not coincide with any improvement of conditions in Zimbabwe and Zimbabwe remains a country notorious for the high incidence of human rights abuse.

¹ There is extensive qualitative and quantitative research illustrating the gap between public perception and evidence on asylum and immigration. See Finney, N, Peach, E (2005) *Attitudes to Asylum Seekers, Refugees and other Immigrants' Commission for Racial Equality Research Study*, CRE, London.

² HO press release 22 May 2003. Reference: 144/2003.

³ ICAR (March 2003, updated January 2005) Statistical snapshot series, Zimbabwean asylum applications to the UK 1990-2003

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We urge the Home Office to work with EU partners to ensure that our borders remain open for refugees exercising their human right to claim asylum, and to examine all existing and newly proposed border controls in light of their compatibility with international law and the Government's commitment to providing sanctuary for those who need it.

Fast-track, detention and electronic surveillance (Objective 2)

We are concerned that accelerated procedures are not compatible with a proper examination of individual asylum claims. Not only do the timescales involved make it difficult, if not impossible for applicants to gather the evidence they need to substantiate their claim, they also inhibit access to legal advice and representation.

In our experience, applicants will often see their lawyer for the first time immediately prior to their interview, or even after the interview has taken place. Snapshot evidence indicates that appellants in fast track procedures are far more likely to appear before the IAT unrepresented than appellants subject to normal processing timescales.⁴ These problems have recently been highlighted in Bail for Immigration Detainees' report *Working against the clock*.⁵

Without sufficient time to prepare their case, or find a qualified representative, there is a substantial risk that applicants will be wrongly refused asylum, and returned to a country where they will face persecution.

We are equally concerned at proposals to extend the use of detention and tagging. Detention violates the fundamental human right to liberty, one which can have a profoundly damaging effect on the health and well being of detainees. Taking such a serious step should only be contemplated where it is a necessary and proportionate response to the individuals' circumstances, and where all other less restrictive alternatives have been tried, and failed. Likewise, tagging degrades and stigmatises asylum seekers running the risk that they will become further criminalised in the public mind.

UNHCR's recent study of alternatives to detention across 34 states makes it clear that there is no evidence that detention or tagging is necessary in 'destination' states such as the UK while a claim for asylum is processed. UNHCR also found little evidence that detention or tagging is necessary even for the purposes of encouraging return or facilitating the removal of people whose claims have been refused.⁶

The Refugee Council believes that the case owner model within the NAM offers the opportunity for close personal contact and monitoring of cases throughout the process, and urges the Home Office to build on this approach and develop pilot programmes, based on a casework and welfare approach, for asylum seekers whose claims have been refused. It is our view that this will lead to better decision making, as well as higher levels of compliance with immigration procedures and decisions.

Removing barriers to deportation and removal (Objective 3)

⁴ Based on court listings before the IAT, between 10-15% of appellants are unrepresented, in contrast to 40-50% of appellants from Harmondsworth.

⁵ <http://www.biduk.org/pdf/Fast%20track/BIDFasttrackReportFINAL.pdf>

⁶ Field, O and Edwards, E (2006) Alternatives to the Detention of Asylum Seekers and Refugees, Legal Protection Policy Research Series, UNHCR, p24.

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The Refugee Council is extremely concerned that the absolute commitment not to subject people to torture or inhuman and degrading treatment is being undermined by the UK.

In our view, reliance on Memoranda of Understanding (MoUs) or diplomatic assurances to circumvent A3 ECHR and the Convention Against Torture is to be deplored. Such agreements have no standing in international law, and cannot be enforced or even effectively monitored. The governments with whom the UK has signed MoUs are all on record as having ignored human rights obligations by using torture, and the risks inherent in watering down the absolute prohibition on torture are graphically illustrated by the case of Agiza v Sweden, which concerned two Egyptian asylum seekers, returned to Egypt on the basis of diplomatic assurances and subsequently detained and tortured

The UN Special Rapporteur on Torture, the UN Independent Expert on the Protection of Human Rights and Counter Terrorism, and the Council of Europe Commissioner for Human Rights have all cautioned that the use of such assurances threatens the global ban on torture and other ill-treatment. It is our view that such agreements represent a significant erosion of the refugee protection system. We are similarly concerned about the UK's intervention in the case of Ramzy, which seeks to overturn the ruling in Chahal and allow security considerations to outweigh an individual's ECHR Article 3 right to be protected from torture or inhuman treatment.

The UK Government already has wide ranging powers to prosecute and imprison people who are guilty of offences and these powers should be used to their full extent. Removing people to possible torture or mistreatment should not be regarded as an alternative where the Government deems existing powers to be insufficient.

Extension of Non Suspensive Appeals (Objective 3)

The Refugee Council believes that, given the poor quality of initial decision making and the overwhelming obstacles faced by those attempting to conduct appeals from abroad, the NSA system leaves people vulnerable to persecution.

Reports from the Certification Monitor highlight the weaknesses inherent in the system. In her report of March 2005 the Monitor observed that:

- appellants are unable to appear in person at their hearings (para 116),
- appellants are commonly unrepresented before the Tribunal (para 114),
- there is evidence that legal advice provided at first instance is of variable quality (para 131), and;
- the Home office frequently raises issues of credibility that did not form part of the reasoning for refusal at first instance(para 118).⁷

We are therefore extremely concerned at any proposed extension to the NSA system.

⁷ *The annual report of the Certification Monitor – 2005.*

Doubling of enforcement and compliance resource and outsourcing (Objective 3)

The Refugee Council is concerned that rapidly increasing investment in enforcement and compliance, and the expanding the role of external contractors creates a significant risk of harm to individuals and communities.

There is already evidence of cases where enforcement and removals are poorly carried out, and concern about current removal practices is widespread. Issues identified range from intimidating practices such as dawn raids, to the excessive use of force as documented by the Medical Foundation for the Care of Victims of Torture in their report *Harm on Removal*.⁸ In addition to the harm to individuals and families, bad practice in removals spreads fear and mistrust amongst refugee communities and damages community relations more broadly.

We urge the Home Office to invest in a supportive casework approach to working with asylum seekers whose claims have been refused, and in driving up standards where forced removal is unavoidable, rather than increasing enforcement activity in a manner which is likely to contribute to individual suffering and community tensions.

Protocol on judicial review (Objective 3)

The Refugee Council regards the safeguard of the judiciary as an essential element of the protection system and strongly opposes any intention to weaken or circumvent the scrutiny of the UK Courts. A Protocol that specifies clear procedures and ensures that asylum seekers' interests are protected is to be welcomed; one that is designed to circumvent judicial scrutiny is not.

We trust these comments are helpful and look forward to responding to more detailed proposals as they emerge.

⁸ Medical Foundation (2004) *Harm on Removal: Excessive Force against Failed Asylum Seekers*. Other Refugee Council publications are available at www.refugeecouncil.org.uk