

## Refugee Council submission to the Independent Asylum Commission

November 2007

### Executive Summary

The Refugee Council hopes that the Commission's final report and future work will highlight the following four key points:

1. The importance of the international principle of asylum and the need to protect and defend it.
2. The need to treat asylum seekers with dignity and fairness.
3. The severe consequences of government policy which results in the destitution of thousands of rejected asylum seekers.
4. The importance of reinstating the entitlement to work for asylum seekers.

We note that the report of the inquiry into the treatment of asylum seekers by the parliamentary Joint Committee on Human Rights published in March 2007 sets out many useful recommendations.<sup>1</sup> The government response to this report has been inadequate and we hope that the Commission will reiterate many of the points made by the JCHR.

In addition, we hope that the Commission's recommendations will urge the government to:

- Consider the case for an independent asylum determination system
- Change government policy and rules so that all asylum seekers are entitled to a level of support equivalent to that received by UK citizens and prevents extreme poverty, and destitution, and end the use of vouchers
- Recognise refugee and asylum seeker status as protected categories in any future Single Equality Act and public duty, and in the remit of the Commission for Equality and Human Rights
- Ensure that the forthcoming Simplification Bill is a genuine opportunity for positive change

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<sup>1</sup> <http://www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/81/81i.pdf>

- Ensure that the introduction of a new independent immigration inspectorate constitutes an effective and independent mechanism for oversight
- Extend the remit of the Independent Police Complaints Commission to cover all agencies and activities involved in the detention and removal process
- Develop activities and services that recognise that integration begins on arrival, and is crucial to achieving cohesive communities
- Grant refugees indefinite leave to remain, not time-limited five year status, and take steps to ease the transition from asylum seeker to refugee
- Drop the English language requirements for those with limited leave who are applying for settlement or indefinite leave to remain (ILR)
- Make UK border control and interception measures 'protection sensitive' so that refugees can access the UK to claim asylum
- Improve the fairness, transparency and effectiveness of the case resolution process for those who claimed asylum before April 2007
- Improve the fairness of the new asylum model, including ensuring easier access to asylum processes, an end to the detained fast track element of NAM, better joint action with the Legal Services Commission to ensure provision of adequate, quality legal representation and improved country information for better initial decisions
- Implement EU Directives in a way that improves UK asylum processes
- Make asylum appeals fair by ensuring legal representation and make all appeals suspensive of removal action
- Recognise the needs of women, separated children, torture survivors and asylum seekers with health needs and make the process accessible and fair to them
- End the restrictions that prevent failed asylum seekers from accessing secondary health care, and ensure primary care is accessible and free to all asylum seekers until they have status or leave the UK
- End the use of detention for families, enforce existing detention rules and policy so that vulnerable people are not detained and implement legal safeguards to prevent arbitrary detention
- Introduce a removals policy that is fair, is independently assessed, and adheres to basic standards of safety, sustainability and dignity
- Ensure voluntary returns are a choice and monitor and evaluate the outcome of voluntary returns
- Inform public attitudes on asylum by taking political leadership in defence of the right to seek asylum and encourage fair and balanced media reporting of asylum issues

## About the Refugee Council

The Refugee Council is the largest charity in the UK providing help and advice to asylum seekers and refugees. We campaign for their rights and help them rebuild their lives in safety.

### Introductory comments

The Refugee Council believes the Independent Asylum Commission (IAC) is an important and valuable initiative. We support the Commission's approach of regional hearings, which have captured experiences and evidence from around the UK, and welcome the efforts made to facilitate and receive testimony from refugees and asylum seekers themselves.

We anticipate that the independent report produced by the Commission will be an important opportunity to take a fresh look at policies and practices that are unjust, distressing and humiliating for people seeking asylum, and diminish us all by occurring in our society.

We welcome the focus on identifying credible and workable ideas for reform and look forward to using the Commission's recommendations to help achieve changes in practice and policy.

We would be happy to provide further information on any of the points raised in our submission.

### Refugee Council concerns and recommendations

During the course of the Commission's work, the Refugee Council has contributed evidence at oral hearings and has worked jointly with the Refugee Children's Consortium to put forward information and recommendations relating to refugee children. This written submission summarises our key concerns, and makes suggestions for the Commission to consider as recommendations for action. Our concerns about asylum support, accommodation and Section 4 are not set out in this submission, but have been submitted on the Refugee Council's behalf by the Inter-Agency Partnership (IAP).

**Section A** contains suggestions concerning areas not specifically mentioned by the Commission in the invitation to submit evidence.

**Section B** sets out our concerns and recommendations, arranged under the headings provided by the Commission.

Where relevant, we have provided links to the relevant policy material or research on the Refugee Council website at [www.refugeecouncil.org.uk](http://www.refugeecouncil.org.uk)

## Section A

The Refugee Council believes that some fundamental changes need to be made to address the failures of the current asylum system. We hope that the Commission's final report and future work will highlight the following four key points:

1. **The importance of the international principle of asylum and the need to protect and defend it.**
2. **The need to treat asylum seekers with dignity and fairness.**
3. **The severe consequences of government policy, which results in the destitution of thousands of rejected asylum seekers.**
4. **The importance of reinstating the entitlement to work for asylum seekers.**

We note that the inquiry by the parliamentary Joint Committee on Human Rights published in March 2007 sets out many useful recommendations. The government response to this report has been inadequate and we hope that the Commission will reiterate many of the points made by the JCHR.

In addition, we hope that the Commission will consider the following recommendations when preparing its final report.

1. **Consider the case for an independent asylum determination system:** *Providing Protection in the 21<sup>st</sup> Century*, a report by the Asylum Rights Campaign in 2004, concluded that an independent panel should carry out a comprehensive and systematic review of the whole asylum system, and that reform should be focused on establishing clear and simple procedures, concentrating on well-resourced, quality initial decision making. *Providing Protection* also recommended that a consultation on establishing an independent asylum determination system be undertaken. The Refugee Council remains of the view shared among members of the Asylum Rights Campaign in 2004, that an independent asylum determination system for the UK should be considered.
2. **Change government policy and rules so that all asylum seekers are entitled to a level of support that meets their needs and prevents extreme poverty, and destitution:** The Refugee Council believes that the systematic exclusion of asylum seekers from the means to support themselves and live in dignity must be addressed and that asylum seekers should be:
  - Entitled to work from arrival
  - Eligible for equivalent benefits to UK citizens and their families, for example income support
  - Entitled to primary and secondary health care

We are appalled that the government has maintained a system of vouchers for those on Section 4 support, and believe these should be abolished and replaced with cash support for all asylum seekers until their case is granted or they leave the UK.

3. **Recognise refugee and asylum seeker status as protected categories in any future Single Equality Act and public duty, and in the remit of the Commission for Equality and Human Rights:** The Refugee Council believes that any future Single Equality Act and public duty need to recognise refugee and asylum seeker status as protected categories. As our response to the government consultation on this issue in September 2007 notes, good practice has been built up, particularly under the race equality stream and it is important to build on this. However, refugees and asylum seekers can face additional barriers compared to ethnic minority people in the UK and these need to be taken into account. We also recommend that refugees and asylum seekers are explicitly included in the remit of the Commission for Equality and Human Rights.

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4. **Ensure that the forthcoming Simplification Bill is a genuine opportunity for positive change:** In June 2007 the Border and Immigration Agency (BIA) issued a consultation document setting out how it plans to proceed with rationalising immigration legislation. We understand that the BIA plans to have a further more detailed consultation at the end of 2007 and to legislate in the autumn of 2008. Although consolidation of the existing legislation is extremely welcome, and long overdue, we are concerned that the government's planned process of simplification may focus on speed and ease of processing immigration cases rather than ensuring the protection of refugee and human rights. The initial consultation did not refer to human rights or refugee protection in its draft principles. It is not clear at this stage what the future overall framework will look like, but we urge the Commission to take account of this opportunity for positive change when it develops its recommendations.
  
5. **Ensure that the introduction of a new independent immigration inspectorate constitutes an effective and independent mechanism for oversight:** The Refugee Council welcomes the introduction of the new independent inspectorate, which was debated in the passage of the UK Borders Bill (now Act). We believe this change represents an important opportunity to ensure refugees and asylum seekers have access to an effective protection system, so that the BIA's activities really are 'fair, effective, transparent and trusted'. We hope the Commission will take the opportunity to review the role of this inspectorate, and urge the government to make sure it is an effective mechanism. We urge the Home Office to base the objectives for the new body on those set out by the Home Affairs Select Committee in their July 2006 report:
 

*"We recommend that the Government establish an Independent Immigration Inspectorate with oversight of every stage of immigration control: overseas, at the border, in-country, enforcement (including detention) and appeals. It should be looking for high-quality decisions, active management, clear lines of responsibility and reporting, easy communication within and across authorities, meaningful statistics, effective and non-distorting targets, excellent customer service and promotion of good race relations. The Inspectorate must be independent, properly resourced and with the authority to make recommendations to which the Government has to respond."* (para. 603)
  
6. **Extend the remit of the Independent Police Complaints Commission to cover all agencies and activities involved in the detention and removal process:** We urge the Commission to draw attention in its final report to the new remit of the IPCC, to have oversight of BIA activities. The oversight of the IPCC is to be welcomed. However, the complaints procedure needs to be sufficiently robust to be able to respond to incidents during removals, as these happen very quickly and the victim and witnesses may be removed from the UK. We are also concerned that the jurisdiction needs to embrace all the agencies engaged in the detention and removal process, in particular those privately contracted to carry out immigration functions. We have suggested there should be an advisory group involving refugee community organisations to provide support and feedback to IPCC and that there should be regular monitoring and reporting of BIA's response to IPCC recommendations. We hope that these matters will be addressed in the coming months, but if they are not, we hope the Commission will consider them in its recommendations.
  
7. **Change government policy and rules so that all asylum seekers can access language learning from arrival:** The removal of automatic ESOL and further education funding for asylum seekers in 2007 was a major blow to their ability to function and communicate effectively during the time when their claim is being considered. Asylum seekers are prevented from working and asylum support is only 70 percent the rate of income support. As such, they cannot be expected to pay for English courses. We welcome the decision of the Learning and Skills Council (LSC) to continue funding for asylum seekers aged 16 to 18 and to

reinstate eligibility if a person's claim or appeal is still outstanding after six months. However, our experience has confirmed the importance of early entry onto English language courses for all ages. We recognise that the Home Office is starting to address the large backlog of unresolved asylum claims and that initial decisions are being made more quickly. However, a significant number of claims fall outside of the target period. In addition, about a fifth of appeals are successful. We are also concerned about the number of asylum seekers whose claims have been refused and who cannot be returned. We are pleased that this is now recognised and LSC funding for ESOL will be made available for people on Section 4 support. However, we believe that:

- asylum seekers should be eligible for LSC funding up to level 3 from the date of their claim
- asylum seekers should be considered as home students for fees purposes
- asylum seekers who turn 19 and are on a waiting list should be eligible for funding at their chosen college when a place becomes available
- asylum seekers should not be subject to registration charges
- the evidence required for asylum seekers and people on Section 4 support to demonstrate eligibility should be kept simple and workable.

**See:** Refugee Council briefing, September 2007 'ESOL and Further Education Funding Changes 2007/8 announced by the Learning and Skills Council'

<http://www.refugeecouncil.org.uk/policy/briefings/2007/esolfunding.htm>

- 8. Develop activities and services that recognise that integration begins on arrival, and is crucial to achieving cohesive communities:** The Refugee Council believes that integration takes place from arrival and is a two-way and multi-faceted process. Successful integration benefits everyone, and contributes to the development of safe and cohesive communities. We believe that the current restrictions on asylum seekers mean that their integration is hindered, causing them distress and isolation and leading to community tensions in some areas of the country. If people are subsequently granted permission to remain in the UK their integration from that point is often delayed by their experiences of exclusion when they were pursuing their case. We believe that refugee community organisations (RCOs) play a particularly important role in providing support to those in the asylum process, and help people to integrate. They should be supported to sustain and develop this role.

The Refugee Council's research report on experiences of integration, published in October 2007, is a two year qualitative research project looking at the social aspects of refugees' integration, particularly in relation to how these were experienced in two different localities, Haringey and Dudley, and across different groups of refugees and asylum seekers. (See <http://www.refugeecouncil.org.uk/policy/position/2007/integration.htm>) This research provides powerful evidence of the barriers to integration faced in particular by asylum seekers, who are excluded by law from key activities (work, training, education) that would enable them to develop social networks and integrate. The report concludes that national policy on integration and asylum policy must be changed, so that asylum seekers are not excluded from society while their cases are being processed and concluded. We would urge the Commission to highlight to government the impact on community cohesion of systematically excluding people from society.

- 9. Grant refugees indefinite leave to remain, not time-limited five year status and take steps to ease the transition from asylum seeker to refugee:** We would urge the Commission to consider a recommendation concerning the introduction of a qualifying period for indefinite leave to remain (ILR) for refugees which took effect from 30 August 2005. Before this date, refugees received ILR. However, refugee status is now granted for an initial five years and is subject to active review, which will include a re-assessment of the safety of the refugee's country of origin. It is unclear how many active reviews have taken place so far and what the process will be for challenging any decision that someone no longer needs

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international protection. However, we are deeply concerned that refugees with five year limited leave may face further distress and anxiety about the permanence of their status in the UK, and may well be placed at a further disadvantage when seeking employment, training, housing and rebuilding their lives. We recommend that refugees should be given ILR when they are granted status, and should not be subject to automatic review. We also know from our work that the granting of refugee status gives rise to a series of difficult issues for many people, as they have only 28 days to arrange a move from the asylum support system to mainstream support, housing and entitlements. We believe that the SUNRISE programme is making some contribution to easing this transition, but it is not available to everyone and is time-limited. We hope that the new Refugee Integration and Employment Services now being developed will improve on this situation, and hope that the Commission will take the opportunity to highlight the need for adequate support for people when their case is successful.

- 10. Drop the English language requirements for those with limited leave who are applying for settlement or indefinite leave to remain (ILR):** We are concerned about the impact of the government's decision that from 2 April 2007 all people seeking to live in the UK permanently will have to pass English language and knowledge of life in the UK tests. This brings settlement/ILR in line with the requirements for gaining British nationality. Asylum seekers granted refugee status after 30 August 2005 are affected by these changes. The changes mean that refugees applying for ILR after a successful review will need to have passed the Life in the UK test if at ESOL Entry level 3 or above, or gained an approved ESOL qualification with citizenship materials at a local college if below Entry level 3. Refugees who have not satisfied one of the above will be given an additional two years leave to do so. We are currently waiting to hear from the Home Office as to their plans beyond this point. The Refugee Council considers it unreasonable and potentially discriminatory to restrict ESOL funding for refugees, while at the same time insist on satisfying English language requirements as part of the granting of ILR. We disagree fundamentally with English language and knowledge of life in the UK tests being compulsory for refugees. The granting of asylum is fundamentally about providing protection and ILR should be given on this basis alone. Once a refugee has had a successful review, they are de facto given indefinite protection as their status will not be reviewed again. To insist on satisfying further requirements not relevant to this decision is unfair. It should be the choice of refugees whether or not to seek citizenship. It is only at this stage that English language requirements would be significant. We recommend that refugees should receive ILR automatically following a successful review of their status after five years or earlier.

## Section B

### 1. Access to the asylum determination process

#### Interception and border controls

The Refugee Council is concerned that in an era of tightened border controls and an increasingly sophisticated range of tools available to states to manage who enters their territories, little has been done to make our borders, or those of other European countries, 'protection sensitive' so that people fleeing persecution can access UK territory.

- The UK has seen a 72% fall in asylum applications since the peak in 2002, whilst the global refugee population has increased. We believe it is likely that the exporting of the UK's border and increasingly stringent border controls has played a role in the reduction of asylum claims.
- Interception and border control measures are ostensibly part of the fight against illegal immigration. Unfortunately, in the absence of legal routes to the UK to claim asylum, many refugees are forced to use illegal methods in order to reach a safe country. The Refugee Council is concerned that UK border control measures do not discriminate between those who need protection and those who do not.
- The right to seek and enjoy asylum is enshrined in a number of international refugee and human rights instruments, including the Universal Declaration of Human Rights. The 1951 Convention on the status of refugees establishes the prohibition on directly or indirectly sending persons to a place where they may face torture, inhuman or degrading treatment or punishment – otherwise known as *non-refoulement*. States that prevent refugees from reaching their territory, through interception and diversion, may well be in breach of the obligation of *non-refoulement*.
- Border control and interception activities include:

**Visa restrictions** imposed as a result of increased refugee flows from a particular country or region. The list of countries whose nationals require visas to enter the UK includes a number of refugee producing states. Afghanistan, China, Iran and Somalia – the top four asylum applicant nationalities in the first half of 2007 – all appear on the visa list. However, the Refugee Convention recognises that refugees will often be unable to secure proper documentation to leave their country.

**Carrier sanctions** of up to £2,000 per passenger, on any transport carrier caught bringing improperly documented passenger into the UK. Carrier sanctions are troubling from the point of view of refugee rights as they may well obstruct people genuinely at risk from arriving in a safe country. We are also concerned that sanctions require employees such as check-in staff and cabin crew to act as border guards.

**New detection technology**, including heartbeat detectors, scanners, passive millimetre wave machines, carbon dioxide probes and search dogs are all used to detect migrants stowed away on carriers.

**Juxtaposed controls** take the form of UK immigration officers conducting full immigration controls on passengers heading for the UK. If an immigration officer suspects that a properly documented individual intends to make an asylum claim, they would be refused leave to enter the UK, irrespective of the merits of their claim. The UK has essentially exported its border control overseas without exporting its duty to protect refugees.

**Airline liaison officers** and immigration liaison officers are UK immigration officers posted to international airports and diplomatic missions overseas. They provide on-the-spot advice to help carriers identify fraudulent travel documents and inadequately documented passengers, as well as gathering regional intelligence on the illegal movement of people. They are posted to countries such as Kenya, Sri Lanka, Bangladesh, Russia and Romania, where human

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rights abuses are well documented, and from which refugees originate or transit. By intercepting people within their country of origin, the activities of ALOs and ILOs may leave refugees exposed to the very government they attempted to escape from.

**Biometric technology**, such as iris scans and fingerprinting, is used to tackle the forging of identity documents and visas and reduce 'abuse' of the UK asylum system.

## **Recommendations for action**

- 1.1 The UK has a duty to uphold its obligations under international refugee and human rights law and must interpret and implement all its treaty obligations in good faith.
- 1.2 The UK government must take action to make accessing a safe country less dangerous for asylum seekers by incorporating provisions to protect refugees' and asylum seekers' rights into all initiatives to tackle irregular immigration.
- 1.3 The UK must ensure that all intercepted persons are treated in a safe and humane manner, and provided with the necessary information about claiming asylum, in a format and language they can understand.
- 1.4 When migrants are intercepted by UK border officials in a third country, the UK must take responsibility for identifying people with protection needs and ensuring that they have access to an adequate refugee determination system. If a refugee is intercepted in a country that cannot guarantee adequate standards of protection, the UK must take responsibility for her protection and transfer her to UK territory for determination of her asylum claim.
- 1.5 Interception policies must be flexible enough to respond to the fact that many refugees have to resort to clandestine entry in order to obtain sanctuary. Refugees must not be penalised for using forged or inadequate documentation.
- 1.6 The UK must ensure that migration control is undertaken in a spirit of shared responsibility for people in need of protection and that its activities do not contribute to the significant pressures faced by other members of the international community.
- 1.7 Visas should not be imposed specifically to prevent asylum seekers from reaching a state's territory. In emergency situations, the UK should work with other member states to consider suspension of visa requirements to enable people to flee an area of conflict or severe human rights abuses. In emergency cases, people at risk of persecution should be able to approach a UK consular authority to apply for a humanitarian visa.
- 1.8 Where the UK operates immigration controls overseas, it must accept a corresponding responsibility to examine requests for asylum. Where an individual has a need for international protection and has grounds for not seeking asylum in the country of interception, they should be permitted to enter the UK for the determination of their asylum claim.
- 1.9 Immigration and airline liaison officers should be properly trained to recognise a request for international protection and to act upon it. Screening processes should be sensitive to the needs of vulnerable people, particularly those who are unable to articulate their protection needs. The government must provide ILOs with clear guidelines and training on international refugee and human rights instruments and should draw on the expertise of the UNHCR and NGOs.
- 1.10 The UK must facilitate independent scrutiny, by UNHCR and NGOs, of all interception practices. The UK should produce data on its border control activities, including the number of individuals intercepted and the number identified as having protection needs.

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- 1.11 In its relationships with EU and third countries, the UK must establish a protection-oriented approach to cooperation on migration issues. The UK should clarify its legal responsibilities with regard to cooperation in European border control mechanisms and ensure transparency and accountability. In its dealings with countries of origin and transit, the UK should provide encouragement, resources and support for less developed countries to develop effective status determination procedures.

## **2. Operation of the asylum determination process**

### **New Asylum Model**

Since April 2007, all new asylum claims have been processed under the end-to-end New Asylum Model (NAM). Individual Case Owners are managed regionally to deliver the asylum process, manage the transition to integration for those granted status, and ensure removal from the UK of those whose asylum claim is unsuccessful. There are some positive elements to the new process, for example a single point of contact through the Case Owner and a commitment to a speedier determination process. However, we are concerned that NAM can be too quick (and therefore unfair) and that parts of the joined up process are not functioning effectively, undermining the system. There are also a number of long-standing issues that have not been addressed in the changes to the asylum system and continue to affect the quality of initial decision making, in particular the quality of country information on which decisions are based.

### **Case Resolution**

Asylum applications made prior to April 2007 are being dealt with by the Case Resolution Directorate at the BIA. A programme to resolve the cases of those who have been in the UK in limbo for significant periods is necessary and long overdue. We hope that the government will take a humane and pragmatic approach to those who remain in the UK, and will work collaboratively with local authorities and the voluntary sector to ensure fair and clear processes.

### **European Directives**

The move towards the introduction of the common European asylum system continues to have an impact on the UK asylum system. In October 2007, the BIA consulted on the implementation of the procedures directive in the UK. The Refugee Council has asked the government to use the opportunity of implementation to address ongoing concerns about access to legal representation at the initial interview and at appeal and review stages, particularly with regard to asylum seekers detained in the fast track determination process. We have also expressed our concern regarding the guarantees for unaccompanied minors, which fail to ensure legal representation. We believe it is important that the UK's implementation of EU Directives is monitored and reviewed, to ensure that positive change is happening and that the UK is adhering to European standards.

### **Case resolution - key concerns:**

- The BIA has created the Case Resolution Directorate to deal with the backlog of unresolved cases, estimated to be around 450,000 files, of those who claimed asylum before April 2007.
- This is a positive development and provided the process is implemented fairly and transparently, could be a welcome end to the years of limbo experienced by many.
- Initial signs in some parts of the UK indicate the BIA is taking a pragmatic and humane approach to families who have been here a long time, granting many indefinite leave to remain. There are challenges for refugees, local authorities and support organisations, to manage the transition from asylum support to the mainstream, but many of these can be addressed with coordinated action and clear communication from the BIA.
- We are concerned that those granted ILR under the case resolution programme are currently not eligible for support and advice on the transition from asylum status to the mainstream by SUNRISE.
- We have concerns about the coherence of the BIA's approach to some of the so-

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called 'legacy cases'. In particular, there is evidence that clients are confused about their rights and the process. The BIA has given a clear message that people should wait to be contacted by letter, when they will be asked to complete a questionnaire. However, enforcement activity is continuing alongside the case resolution process and pilots such as Clannebor in Leeds are working with seemingly arbitrarily selected groups of families to seek voluntary returns (including of Iranian and Zimbabwean families) when similar cases are being granted indefinite leave to remain. We would like to see prompt and full information for clients, and a clearer pathway into accessing legal representation for those who are without it.

- The issue of destitution remains at crisis point, and is affecting many thousands of people whose cases fall to be dealt with under the case resolution process. This process is estimated to continue until at least 2011, so there are many years of misery left for those whose files are at the bottom of the pile, yet who have no safe or sustainable route of return to their home country. We have partnered with Refugee Action, Amnesty International and others through the Still Human, Still Here campaign to call for the right to work, provision of equivalent benefits and an end to the humiliation of vouchers for those supported under Section 4 but there has been little movement by the government so far.

### **NAM - key concerns<sup>2</sup>:**

- It is difficult to assess the outcomes of the NAM due to the absence of detailed figures for the cohort of applications processed under NAM, in particular the grant rate at initial decisions, the rate of success at appeal, and the percentage of new asylum claims that are being processed in detention.
- The Refugee Council is particularly concerned that the introduction in October 2007 of fixed legal aid fees for asylum and immigration legal representation will exacerbate the problems asylum seekers experience finding legal representation, undermining any positive aspects of NAM.
- We are disappointed issues about the quality of country information on which Case Owners are making decisions have not been addressed (this is reflected in the high number of decisions overturned at appeals – see section on appeals below).
- Whilst the majority of the recommendations made by the UNHCR quality initiative have been accepted, a significant number have not been implemented yet.
- We are disappointed that despite speedier asylum processes, and research by UNCHR into 34 states published in 2006, showing that asylum seekers generally don't abscond in the country where they wish to claim asylum<sup>3</sup>, the UK government has included in NAM the detained fast track at Yarl's Wood Immigration Removal Centre for single women and Harmondsworth IRC for men. The BIA aims to process up to 30 percent of new asylum claims in detention. We are opposed to a process that deprives people of their liberty for the convenience of the state to make a quick decision on a case deemed to be 'straight forward'. We are also concerned that the speed of the detained elements of NAM appear to make it nearly impossible to succeed in an asylum claim: 99 percent of cases are refused at initial decision and between three and six percent win at appeal, compared to success rates in the non-detained process of around 75 percent refusal at initial decision, and 20 to 25 percent success rate at appeal.
- For those in the NAM process who are not detained, there is a heavy emphasis on 'contact management' and the reporting requirements can be onerous and difficult to meet, particularly for those with children or disabilities.
- We are concerned that despite the regionalisation of the BIA and the introduction of NAM, there has been no progress on expanding the number of locations at which people who wish to claim asylum can lodge their application. It remains the case that people must travel to the Asylum

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<sup>2</sup> The section on separated children below outlines our concerns about NAM and children.

<sup>3</sup> Field, O and Edwards, E (2006) Alternatives to the Detention of Asylum Seekers and Refugees, Legal Protection Policy Research Series, UNHCR.

Screening Unit in Croydon or Liverpool. In many cases, people do not have the money or the knowledge to make this journey safely and may spend a number of nights on the street before their claim can be lodged.

- Client feedback on any aspect of NAM has so far been limited, and has not been proactively sought by BIA. The Refugee Council conducted a limited survey of 110 clients' experiences of the non-detained elements of NAM (from August 20<sup>th</sup> – September 4<sup>th</sup> 2007) through our offices in Birmingham, Ipswich, Leeds and London. The findings showed positive and negative experiences of NAM. Four key areas are highlighted below:

**a) Case Owner role:** people were not always able to name their Case Owner and many said they had trouble contacting them. The one-to-one link does not appear to work in many cases and some feel there is still a culture of refusal.

*"The general attitude of my Case Owner was good and polite, but it seems to me that she was there to refuse the case. NAM tries to give a positive impression, but in reality the system only making refusal."*

Other clients made positive comments, for example:

*"The Case Owner was very helpful. I knew who to contact if I had a problem. I felt comfortable."*

**b) Speed of the process:** the first few days of the NAM process are very intensive, and some people struggled to cope. Around a quarter of respondents said that they did not feel they had adequate time to get information to present their case and therefore did not feel they had an adequate hearing. Some felt distressed by the length of the interview. However, others felt pleased with the system.

*"My interview was over six hours which is too long and exhausting, the questions asked were over 200 and hard, they should reduce the interview times."*

Other clients made positive comments, for example:

*"I was happy about it; the interview was good."*

**c) Access to legal advice:** 29 percent of respondents only saw their legal representative after their substantive interview rather than before. This highlights the truncated nature of the process and suggests that the system does not allow the flexibility to ensure people receive legal advice before their interview. Other respondents raised concerns about finding a legal representative, and concerns about the quality of the representation provided.

*"Solicitor failed to turn up at court on two occasions and could not be contacted by the court clerk - I have now sent a complaint to the OISC."*

*"I don't have a solicitor yet and now I am struggling to find one."*

**d) Reporting/ 'signing on':** 65 percent of the 92 people who were reporting weekly took over two hours to report each time, and 37 percent took over three hours. This is onerous in terms of both cost and time, and client feedback so far suggests reporting should be made more user-friendly.

*"I don't have the money for the bus fare and it's too far and tiring."*

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*"My pushchair was refused on the bus."*

The Refugee Council will be putting these experiences to the BIA and seeking improvements.

## **Recommendations for action**

### **Case Resolution**

- 2.1 The case resolution process should be transparent and fair, and legal representation should be available for those whose cases are being processed.
- 2.2 Enforcement action aimed at detaining and removing families, and pilots such as Clannebor, which are led by the Enforcement Directorate and focus solely on voluntary return, should cease until all families have been given a chance to have their case assessed by case resolution.
- 2.3 Those granted indefinite leave to remain should be able to access services provided by SUNRISE to help them manage the transition from asylum support to the mainstream.

### **New Asylum Model**

- 2.4 The BIA should ensure that people can access the asylum process by making provision for claims to be lodged regionally, or by facilitating safe transfer to Croydon or Liverpool, and extending the opening times of these offices so that people are not left waiting overnight or during weekends or public holidays.
- 2.5 The BIA should urgently review the public availability of management statistics concerning the cohort of asylum applications processed under the NAM. The BIA should work with the Asylum and Immigration Tribunal (AIT) and the Legal Services Commission (LSC) to ensure that robust and standardised data is collected across the process, and includes information on legal representation, percentage of new asylum claims processed in detention and outcomes of appeals.
- 2.6 The BIA should review the target of processing 30 percent of new asylum claims in detention, first published in the government's 2005 five year strategy *Controlling our borders: making migration work for Britain*. The BIA should work towards reducing and avoiding wherever possible the use of detained processes for determining asylum claims.
- 2.7 The BIA and the Legal Services Commission (LSC) and the Scottish Legal Aid Board should work together to ensure that asylum seekers are able to access adequate legal representation and advice.
- 2.8 The quality of country information should be improved, in cooperation with the Advisory Panel on Country Information.
- 2.9 The views of 'users' of the asylum determination system, particular those people whose are being dealt with under the NAM, should be sought systematically and their feedback used to improve the system and deal with procedural flaws.

### 3. Operation of the asylum appeals process

- Appeals remain a vital oversight mechanism to address errors in the initial decision making process. We are concerned that the high number of initial decisions overturned at appeal indicates that initial decision making is not robust.
- The Refugee Council is concerned that difficulties accessing legal representation leave many people without representation at their appeal. Some people who are unable to find publicly-funded assistance are paying privately, and we are concerned that the standard of service provided is very poor in some cases.
- The number of countries where the success at appeal rate remains large is significant. For example, in the second quarter of 2007, of those appealing to the AIT, initial decisions were overturned in the case of 51 percent of Somali nationals, 47 percent of Sudanese nationals, 41 percent of Gambian nationals, 35 percent of Ethiopian nationals, and 41 percent of Eritrean nationals. This indicates a poor level of initial decision making.
- We are concerned about the non-suspensive appeals (NSA) process whereby certain categories of asylum seekers are deemed to be from safe countries and so they must pursue any appeals against a refusal of their case from outside the UK. Whilst asylum seekers can challenge the decision by the Secretary of State to certify their case as clearly unfounded, this requires active legal representation which is not available to all, and can be particularly difficult to access in detention where many NSA cases are processed.

### Recommendations for action

- 3.1 All appeals should suspend removal action.
- 3.2 All asylum seekers should be able to access legal representation for their appeal. It is not efficient use of the court's time nor in the interests of justice to have appellants trying to represent themselves. Alternatively, the merits test for legal aid funding at appeals should be revised to ensure that cases are only refused funding if they are bound to fail.
- 3.3 Urgent attention should be given to the situation in the detained fast track, where levels of representation at appeal appear very low and the success rate is very low. Given the speed of the detained fast track, we believe the case for automatic representation is strong and in the interests of justice.

### 4. Treatment of vulnerable groups in the asylum process

The Refugee Council believes that the current asylum system does not effectively respond to the needs of vulnerable groups, and that victims of torture, those with serious physical and mental health needs, those with HIV, and unaccompanied children are liable to find it very difficult to access justice. These groups are also hardest hit by the harsh elements of the process and are the most likely to need particular services and support to enable them to get fair treatment and live in safety and dignity (see also the section below on health). We are concerned that women also face particular barriers in making their asylum claim, and that women's experiences of persecution may be dismissed by decision makers. Those who have experienced sexual violence and rape may feel unable to disclose their experiences to their legal representative or their Case Owner and often disbelieved if they provide this information at a later stage in their case. This is a particular problem in accelerated procedures such as the detained fast track.

#### Separated children

We are particularly concerned about the ability of separated children to secure protection in the UK, for the following reasons:

- **The applicability of the system to children:** The Refugee Council's concern at *Page 14 of 26*

the ability of the asylum process to appropriately respond to the international protection needs of children was most recently expressed in our response to the government's consultation paper *Planning better outcomes and support for unaccompanied asylum seeking children* (<http://www.refugeecouncil.org.uk/policy/responses/2007/refugeechildrenewsservices.htm>). In this response we express our disappointment that this paper chose not to radically overhaul the asylum process and once again thought about how the process responds to children's experience by additions to or concessions within an adult asylum system. We are concerned that government policies towards this group are increasingly harsh and that any concessions or protection they enjoy while they are children are undermined by the failure to recognise that this vulnerability remains into adulthood, revealing a lack of understanding as to the true experiences of these children.

- **The quality of decision making on applications from children:** The Refugee Council has been highlighting the poor quality of decision making on children's asylum claims for many years. The BIA itself has acknowledged its limitations on a number of occasions; it is therefore of particular concern that the low recognition rate for children's asylum claims is given as justification for policy change in this area. We would recommend that independent research is commissioned by the Home Office to investigate to what extent the UK's asylum system and those working within it are fully capable of understanding and responding to child specific persecution. This research should also consider the impact that a lack of child specific country guidance has upon decision making, the extent to which issues relating to credibility or an understanding of how children express themselves has an impact on decision making and the extent to which a temporary leave policy has undermined responsible decision making.
- **Temporary leave policies and restrictions on appeal rights:** The specific 'Unaccompanied Asylum Seeking Children discretionary leave' policy should be examined in detail as we are concerned that although this policy prevents the removal of children while they are under 18 it has also had negative effects. The Refugee Council believes that this policy has served to reduce the meaningful examination of an asylum claim from an unaccompanied child. Furthermore, the application of this policy means that many unaccompanied children are not entitled to an appeal at the time of a refusal, by virtue of the Nationality, Immigration and Asylum Act 2002, section 83, which limits an appeal to those granted Discretionary Leave of twelve months or more. As well as delaying the opportunity to discuss a decision in detail, which arguably disadvantages the appellant, it usually means that children are over the age of 18 by the time their appeal is heard, which has serious implications for the substance of the appeal as well as upon the young person's ability to access legal aid (controlled legal representation).
- **Dublin regulation:** The Refugee Council's concerns about the impact of this regulation, which results in children being removed from the UK to other Member States, on unaccompanied children are set out in our briefing. <http://www.refugeecouncil.org.uk/policy/briefings/2006/unaccompaniedchildren.htm> We remain concerned that the best interests of the child are not a primary consideration in the application of this regulation and that despite evidence to the contrary, the BIA remains of the opinion that the reception directive (Council Directive 2003/9/EC on laying down minimum standards for the reception of asylum seekers) is sufficient protection for vulnerable children moving across child care jurisdiction; practice that would usually require substantial specialist input.
- **Legal help:** In addition to our concerns about the availability, funding and quality of legal help generally, we are concerned at the low level of legal representatives specialising in children's work.
- **Age disputes:** The serious failure of BIA staff and local authority social workers to adhere to guidance, professional standards and in some cases, the law is well documented in recent research conducted by ILPA.<sup>4</sup> The Refugee Council believes that this is at least in part due to a

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<sup>4</sup> Crawley, H (2007), *When is a child not a child? Asylum, age disputes and the process of age assessment*, ILPA

general distrust of asylum seekers, reflected in the language used when discussing age disputed applicants which is invariably of 'abuse of the system'.

- **Funding and oversight of the care provided to unaccompanied children by local authorities:** The Refugee Council believes that the standards of care provided to unaccompanied children, particularly those aged 16 and 17, are undermined by the funding arrangements established and administered by the Home Office. We believe that as the department responsible for policy development on children as well as the oversight of services delivered by local authorities to unaccompanied children, the Department for Children, Schools and Families should also be responsible for funding.

## Recommendations for action

- 4.1 A system to assess the international protection needs of children and respond to their long term needs should replace the current approach based on additions to and concessions within an adult asylum system.
- 4.2 A review of the quality of decision making on children should be undertaken and should inform future policy and practice development in BIA.
- 4.3 Section 83 of the Nationality, Immigration and Asylum Act 2002 should be repealed so that appeals can be made by those granted Discretionary Leave for less than twelve months.
- 4.4 The more liberal application of the merits test for children established by the Legal Services Commission in 2005 should be applied to appeals on applications made by children regardless of the date of the appeal hearing.
- 4.5 The Dublin regulation should only be applied in children's cases where a removal would be in the child's best interests, as allowed by the regulation and practised by several EU member states.
- 4.6 Where removal is to take place under the Dublin regulation contact between the departments within member states responsible for care of the child should be mandatory and facilitated by the departments responsible for implementing the regulation.
- 4.7 Training and accreditation for legal representatives assisting children with asylum claims should be developed and introduced with no further delay.
- 4.8 All agencies and individuals should adhere to current law, policy and guidance when dealing with age disputed applicants, including benefit of the doubt and principles of confidentiality. A new independent system for resolving age disputes should be developed, reflecting recommendations in the 2007 ILPA research report.
- 4.9 Funding of local authorities should be administered by the Department for Children, Schools and Families and reflect the reality of the cost of the care provided, regardless of age.

## Health

Many asylum seekers arrive with health needs as a result of their situation or experiences of persecution in their country of origin or in transit to the UK. These health needs will vary according to age, gender, social status, experiences of sexual violence and torture, mental health and experiences in the UK. It is the experience of the Refugee Council that many asylum seekers struggle to access adequate care at all stages of the process and that the asylum system may exacerbate existing health problems.

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We are also concerned that those with HIV may be unable to access the care they need.

We are particularly concerned about the denial of health care to people who have been refused asylum. The introduction of the NHS Charging for Overseas Visitors Regulations has had a disastrous impact on failed asylum seekers who need hospital care. *First do no harm: denying healthcare to people whose asylum claims have failed*, published by the Refugee Council in June 2006

(<http://www.refugeecouncil.org.uk/policy/position/2006/healthcare.htm>) shows how hospitals are turning away some of the most vulnerable and impoverished people in the UK to suffer and in some cases to die. We are violating the basic human right to health care and we are excluding people because of their inability to pay. Patients denied treatment for cancer and pregnant women forced to give birth alone at home are among the cases highlighted in the report, which calls on the government to restore access to hospital care for asylum seekers whose claims have failed, and on the Health Select Committee to conduct an inquiry into the impact of the regulations across England and Wales.

The Refugee Council is very concerned that there is a looming threat of changes to entitlement to primary health care. We are wholly opposed to such a move, and would urge the Commission to highlight this issue as a priority.

### **Recommendations for action**

- 4.10 Asylum seekers should remain eligible for primary and secondary health care until their case is successful, or they leave the UK.
- 4.11 The Health Select Committee to conduct an inquiry into the impact of the regulations across England and Wales.

## **5. Detention of asylum seekers**

The Refugee Council is opposed to the detention of asylum seekers and believes that the current use of detention during and at the end of the asylum process is disproportionate and unnecessary. We believe it is wrong that there is no time limit on how long asylum seekers can be detained, and that administrative detention on such a scale can happen without scrutiny by an independent body. In particular, we are concerned about the following issues:

- We have evidence from our own work at Oakington Immigration Reception Centre and from contact with ex-detainees, that existing law and policy on detention is not followed in many cases. As a consequence, age-disputed children, pregnant women, survivors of torture, those with serious health problems and those whose removal from the UK is not imminent, are all detained. (Our experiences at Oakington were presented to the Commission at a hearing in March 2007, and a copy of the speech is attached at Appendix 1)
- We condemn the use of detention for families, and believe that children should not be detained. Detention can never be in the best interests of the child and children are harmed by detention.
- As we have commented above, we see no place for the detained fast tracking of asylum applications in the UK asylum process.
- We are concerned that when detained, people cannot access adequate legal representation either to resolve outstanding legal issues on their asylum claim, or to exercise their right to apply for bail to get out of detention.
- We are concerned that the recent introduction of video links for the purposes of hearing bail applications may further undermine the fairness of the bail process, and we believe bail hearings should be heard with the applicant present in the court, unless the applicant requests a video link.
- There have been repeated reports by HM Inspector of Prisons highlighting inadequate welfare arrangements and a systematic failure to deal with concerns about detention.
- We are concerned about the treatment of detainees, during detention and during removal attempts.
- Detention has a negative impact on health and welfare of detainees, particularly

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where it is prolonged and where someone has pre-existing health conditions that are exacerbated by detention. There is considerable and mounting evidence that health needs are not met in detention.

## **Recommendations for action**

- 5.1 There should be an end to the detention of families, and if alternatives are necessary to maintain contact with families at the end of the asylum process these should be developed.
- 5.2 Detained fast tracking of asylum claims should end.
- 5.3 There should be a fundamental overhaul of the use of detention to ensure that basic safeguards are introduced, including a time limit on detention, an automatic independent legal review of the decision to detain, automatic legal representation for all detainees and regular independent reviews of detention if it is maintained.
- 5.4 Health services in detention centres should be subject to oversight by the Health Care Commission and the Department of Health.

## **6. Material support and accommodation for asylum seekers**

The Refugee Council supports the submissions to the Commission being made by the Inter-Agency Partnership (IAP), which represents the views of the five agencies contracted to provide asylum support services (Refugee Council, Refugee Action, Migrant Helpline, Scottish Refugee Council, Welsh Refugee Council).

Please see the IAP submission for details of concerns and recommendations for action regarding asylum support.

## **7. Removal of refused asylum seekers**

The Refugee Council believes that if removals are to be enforced of people without protection needs, they must be safe, sustainable and dignified. We are opposed to the current policy of enforcing removals to areas that are not safe, and where it will be impossible for returnees to make a life, for example Iraqis and Darfuris.

## **Areas of concern**

### **Determination and decisions to remove**

- Decision making appears in many cases to still be carried out within a culture of disbelief where decisions are made on the basis of credibility and where questions seem designed primarily to find a reason to refuse cases rather than to reach an objective assessment of their circumstances. In many instances, this may call into question the safety of those who are removed or are otherwise compelled to return.
- There are a number of countries where there is generalised violence and the rule of law is ineffective. In October 2002 the government announced the ending of country wide policies of granting exceptional leave to people from countries where return would be unsafe. This has left a situation where the government feels compelled on principle to coerce people to return in the face of strong evidence about the widespread and indiscriminate dangers.
- Currently many people live in a state of limbo in the UK, lacking any legal status or entitlement to work or benefits, unlikely to be removed or unable to return to their country of origin. *Page 18 of 26*

During this period people are frequently denied health care for painful or distressing conditions that do not constitute an emergency.

- The Refugee Council is opposed to current government policy which seeks to return people to countries emerging from long periods of conflict where conditions are not yet sufficiently stable and there is a high risk of resumption of conflict in the near future. As well as the effect on the individuals and families concerned, enforced returns may also undermine any fragile peace, reconciliation and stabilisation efforts underway in the country of return. Ministers from the Governments of Afghanistan and Iraq appealed to EU and other developed countries not to enforce returns to their countries due to the major reconstruction and other challenges facing them. The UK government has chosen to ignore these requests.
- The UK government is negotiating agreements with governments who have poor human rights records in order to enable the UK to remove people who fear torture or persecution. These agreements include diplomatic assurances that torture and inhuman treatment will not occur. So far agreements have been signed with Jordan and Libya. We are extremely concerned that these assurances will not be respected and about the lack of transparency and accountability on how they will be used. The government has also signed general readmission agreements with other states, such as Iraq.

### **Process and methods**

- We have concerns about enforcement action without warning in the early hours of the morning, the unwarranted use of force (including the abuse of handcuffs causing injury), and the difficulties faced by those facing removal in retaining hold of possessions and documents during the process. We are also concerned about evidence of harm on removal and the inadequacy of complaints mechanisms to address cases where alleged assaults have taken place.
- The majority of forced return actions, including detention, transfers, and escort on airlines, take place away from public scrutiny. It is particularly important that alleged assaults and mistreatment is effectively investigated and evidence of bad practice is acted upon immediately. The Complaints Audit Committee annual report for 2006/7 on the BIA published in November 2007 called for a fundamental overhaul of complaints processes, describing the existing process as ineffective and lacking impartiality.<sup>5</sup>
- Refusals at appeal may be followed by a hasty removal of people, often without warning and carried out at unsocial hours making it difficult for individuals to access legal advice or pursue any possible legal challenge. In addition, we are concerned that Enforcement officials may pursue removals of a certain nationality in anticipation of potentially adverse findings at appeal.

### **Monitoring**

- The Refugee Council is concerned that the removal process itself can draw attention of the authorities to a returnee. It is not uncommon for people to be escorted on their removal and to be handed over, together with their documents, to the immigration authorities on arrival in the country of return. Their fates often remain unknown but we are concerned that some people are then detained; there is no mechanism for monitoring eventual outcomes. The UK government rarely knows whether a person has arrived safely to their destination in the country of return or whether she or he has been able to re-integrate into the community. In the Zimbabwean case of AA the Asylum & Immigration Tribunal identified serious shortcomings in the UK's practice in relation to assessing the safety of countries of return, and monitoring of returnees. The government needs to take active measures in order to be able to satisfy itself that those that it returns are safe.

### **Recommendations for action**

- 7.1 Removals should only be considered where the individual has been through a fair and comprehensive asylum determination procedure, which is case specific and includes

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<sup>5</sup> <http://www.ind.homeoffice.gov.uk/6353/aboutus/cacreport0607.pdf>

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consideration of all compelling and compassionate circumstances.

- 7.2 Access to support and other entitlements should not be used as tools to coerce return. People whose asylum claim has been rejected and/or who are awaiting removal should continue to be entitled to support and to health care up until the point of removal and also be allowed to work.
- 7.3 The UK government should cease removing people to states where there is reason to believe torture will be used against the individuals concerned.
- 7.4 All UK agreements with other Governments on the readmission of their nationals should be subject to open and transparent scrutiny.
- 7.5 Decisions about the safety of return to specific countries should be made by an independent country information body and should not be compromised by media or political concerns.
- 7.6 Returns should not undermine or jeopardise the fragile recovery of countries.
- 7.7 People should not be returned to face internal displacement.
- 7.8 Vulnerable groups should not be returned to situations where appropriate care is not available.
- 7.9 Procedures should ensure that individuals are not placed at risk by the process of removal.
- 7.10 A proposal to return any child (mandatory or voluntary) should not be implemented until a full independent assessment has taken place of the ability of a family or guardian to adequately protect the child upon return.
- 7.11 The government should develop mechanisms for monitoring the outcome of both forced and voluntary returns.
- 7.12 The operations of the BIA's Enforcement Directorate should be more transparent and accountable.
- 7.13 All Removal Centres should have welfare officers to assist individuals to sort out their affairs.

### **Voluntary return**

The Refugee Council believes that if someone does not have a case to remain in the UK, voluntary departure should be explored in preference to forced removals. We also believe those who decide to return should be given independent and trusted support and information to make an informed decision.

- We welcome the commitment from the government and Home Office to assisted voluntary return. Providing assistance can help returnees to rebuild their lives and make return feasible and sustainable. However, assisted voluntary return cannot meet the protection needs of refugees fearing persecution nor can it overcome dangers inherent to unsafe conditions.
- We are concerned that asylum seekers are coerced through destitution into taking up assisted voluntary return when it is not safe for return. For example, although the Home Office has yet to enforce removals to central or southern Iraq in the last three years, asylum seekers from the region whose applications have been refused are left without any support unless they sign up for voluntary return, and subsequently return to Iraq within three months.

### **Recommendations for action**

- 7.14 Sign up for voluntary return should be a genuine choice, not a response to destitution and impossible living conditions imposed by the UK government.

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- 7.15 To make assisted voluntary return work better we recommend that asylum seekers be allowed to work, learn English and benefit from training. These activities enhance the prospects of return being sustainable and successful.
- 7.16 We recommend independent evaluation of the assisted voluntary return programmes to examine the effectiveness of assistance provided, and the sustainability and safety of returns. When commissioning evaluation the Home Office should seek to ensure recommendations from refugee agencies and refugee communities are, where reasonable, met.
- 7.17 We note the need for monitoring, independent of government and IOM, of returns under the assisted voluntary return programmes.

## **8. Public attitudes to asylum**

### **Public opinion on asylum - key concerns:**

- The Refugee Council believes that there are many people in the UK who are concerned about the fate of those fleeing persecution, and who believe refugees should be given protection. Many communities around the country are dealing with the consequences of destitution, detention and enforcement and are providing valuable support to asylum seekers.
- However, despite many positive attitudes in many communities, in general public opinion remains largely negative and the debate about asylum is often hostile.
- There is a lack of political leadership about the positive contribution made by refugees and the political and legislative agenda sends out negative messages about asylum which are then reflected in the media and public opinion.
- Increasingly, public opinion draws little distinction between issues of asylum and the broader immigration debate, which can have negative consequences for progress on asylum issues.
- Public opinion remains particularly hostile concerning access to public services, such as housing and schools.

### **Media coverage - key concerns**

- The Refugee Council believes that, despite some improvements in reporting on asylum issues, and asylum itself becoming less prominent in the media, media coverage remains disproportionately negative.
- However, there are some excellent examples of good coverage of these issues, for example by the Independent and the Guardian, and some recent progress has been made in traditionally negative national press outlets: the Times ran a campaign in summer 2007 calling for the government to offer asylum to Iraqis working for the British armed forces; the Daily Mail ran a story in early 2007 following the detention of Morgan Tsvangirai criticising the UK government for attempting to deport Zimbabwean asylum seekers.
- We are pleased that the use of terminology has improved following the creation and implementation of the Press Complaints Commission (PCC) guidance note on reporting asylum and refugee issues. The Refugee Council recently successfully complained to the PCC about an inaccuracy in a Daily Express article.
- We are particularly concerned about the links made between asylum, crime and terrorism. Asylum has been disproportionately linked with terrorism in the media, which has been shown to stir up public hostility towards asylum seekers and refugees. *The impact of anti-terrorism measures on refugees and asylum seekers in Britain* published in February 2007 by the Refugee Council explores refugees' and asylum seekers' views and experiences of the impact of anti-terrorism measures on their lives. Ten focus groups were held across Britain, with a total of 67 participants from refugee and asylum seeking communities. The report found that refugees and asylum seekers are afraid of terrorist attacks and want to support measures to prevent such attacks. They see no difference between their and the general public's fear and condemnation of terrorism. At the same time, refugees seem to be more affected by terrorist threats, *Page 21 of 26*

as they display multi-dimensional fears that include the fear of being victimised by public, police and policy responses to terrorism. Refugees' fears are also heightened by experiences of violence in their countries of origin.

([http://www.refugeecouncil.org.uk/policy/position/2007/prisoners\\_terrorism.htm](http://www.refugeecouncil.org.uk/policy/position/2007/prisoners_terrorism.htm) )

- Our experience of media work suggests that there is still limited scope for promoting positive images of asylum seekers and refugees in national print and broadcast media. However, positive stories are more often carried by local and regional media outlets and we feel this is an area for potential positive development.

### **Asylum and politics - key concerns**

- It is largely accepted among the main political parties that the UK should continue to accept refugees, although there is the potential for demands for a review of the Refugee Convention to be reiterated. However, there is a real lack of political leadership in relation to promoting and defending the principle of asylum, and political rhetoric tends towards addressing concerns regarding abuse of the system and removal.
- There have been six pieces of asylum legislation in eleven years. We believe that this level of policy-making has led to considerable unease about the efficacy of the asylum system.
- Attempts by opposition parties to use asylum and immigration to score political points have largely been unsuccessful at a national level. Locally and regionally, however, there is evidence that the asylum issue has been successfully used by right wing parties in political campaigning.

### **Recommendations for action**

- 8.1 The government should demonstrate active political leadership on this issue. In light of its continuing commitment to the 1951 UN Refugee Convention, placing an obligation on signatory states to accept refugees, some effort towards defending and upholding this decision would be in the interests of the government, asylum seekers and refugees themselves, and successful integration and community cohesion.
- 8.2 The legislative pace must be slowed, to calm public fears that the system is 'out of control'. The policy-making process should draw a clear distinction between asylum and immigration. An independent body responsible for the asylum process would help to rebuild public confidence in the system, and allow decisions to be taken that were aimed at ensuring people who were in need of protection were able to access it.
- 8.3 Editors must take an active responsibility for ensuring that media outlets are not inciting fear and hostility amongst the public towards asylum seekers and refugees. We are opposed to the curbing of press freedom, but believe that the media must report these issues accurately and responsibly.
- 8.4 Politicians should recognise the impact policy decisions have on public opinion of asylum seekers and refugees. Use of detention, for example, suggests that asylum seekers are criminals who pose a risk to society and promotes the idea they are not to be trusted. Improvements in tone and language when discussing asylum are welcome, but should be matched with policy decisions that do not widen the gulf between those seeking asylum and the public.

***Prepared by the International and UK Policy Section at the Refugee Council, November 2007***

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I'm speaking on behalf of the Refugee Council and I'm currently the Operations Manager of the Refugee Council's team actually working on site in Oakington Detention Centre. Although the Refugee Council believes that detention should only be used in the most exceptional circumstances, the organisation made a strategic decision in the year 2000 to work on site at Oakington to compliment the two legal NGOs by giving independent welfare support and advice, to every fast track client entering and leaving Oakington, 7 days a week.

In response to the pressure of client needs, over the last 7 years we have developed the role into acting as independent welfare advocates: improving access to on site and off site services; improving two-way communication between the Home Office or Centre Management and the client, including raising grievances; independently scrutinising detention practices and advocating for change in policy.

We have had a unique opportunity to give face-to-face welfare advice sessions; with on site interpreters; to every client within 48 hours of their arrival, during their stay and on exit from the centre and we are the only team in the detention estate offering a formal independent system of welfare advice to assist clients.

I would like to make three key points and these are:

1. The need for independent scrutiny and early intervention in welfare issues
2. The lack of independence of the Home Office "Contract Monitor" and weaknesses in the role of the Home Office on site Contact Management Team
3. Poor practice that fails to prepare clients for release and prevent their destitution

1) Firstly: The need for independent scrutiny and early independent intervention in welfare issues

A clear example of the need for independent scrutiny comes from joint NGO work on age disputed children held in detention at Oakington. The Immigration Nationality Department's (IND) own guidelines when the fast track began were that in borderline age disputed cases the applicant should be given the benefit of the doubt and be treated as a minor.

A reasoned assessment of age is absolutely crucial to any disputed child as unaccompanied children are not liable to detention.

Despite IND's guidelines the reality experienced by our organisation has been entirely different. For example in just one month in May 2003, 49 age disputed children were detained at Oakington, 6% (6.4%) of the intake. Even more disconcerting, with the introduction of the Nationality, Immigration and Asylum Act 2002, was that any age disputed child from one of the so-called "safe countries", who was not given opportunity for their age to be assessed by social work professionals pre or during detention could be removed to their country of origin as a potential child without any allowance being made for their vulnerability or without ensuring adequate reception facilities.

Joint working with NGO's on site and a persistent engagement with Cambridge Social Services (CSSD) and IND over 5 years has led to the commitment by CSSD to age assess on site within 24-48 hours of referral. In 2005 alone, 241 age disputes held in detention at Oakington were jointly



referred to CSSD for age assessment and of the assessments undertaken a staggering 61% (60.84%) were accepted as children. The children were potentially unlawfully detained, based on a perfunctory visual age assessment by an immigration officer at port.

We have now ensured that vulnerable children are released into the care of social services early in the process and within 48 hours of a referral.

The Home Office announced a change of policy in November 2005 during the civil action regarding the potential unlawful detention of two age disputed young people at Oakington. (D and Z)

On the 26<sup>th</sup> of January this year the Home Secretary John Reid had to admit that the approach to the detention in disputed age cases, prior to the policy change in November 2005, did not strike the balance between on the one hand the interests of firm and fair immigration control and on the other hand the importance of avoiding the detention of unaccompanied children. Costs to the government in terms of damages regarding unlawful detention could be as much as £15,000 per child.

Another clear example of the need for effective, independent scrutiny relates to Refugee Council research in 2005, highlighting the extent of failures to adequately screen individuals to assess their suitability for detention in relation to medical fitness or evidence of torture. This was submitted to the solicitor representing cases D and K that ensured The Secretary of State for the Home Department was subsequently ordered to comply with detention centre rules.

I therefore submit that to ensure independent scrutiny is the most beneficial for the individual client and in order to influence broader policy, it is critical that independent welfare advocates have early access to clients in the detention process. This allows direct intervention and collation of evidence on trends of poor practice.

2) My second point relates to the first and this is: The lack of independence of the Home Office "Contract Monitor" and weaknesses in the role of the Home Office on site, Contact Management Team.

The Home Office point to the Contract Monitor's role in scrutinising detention practice and ensuring contractual compliance of the Home Office and Centre Management – but the Monitor is employed by the Home Office. This flags up a clear conflict of interest, how difficult it must be to be tasked to hold your own Home Office colleagues to account especially those of senior grade. Furthermore, only one or two individuals perform this role and the site comprises over 352 beds. This is clearly inadequate; the scope of the task for two individuals makes the role ineffective.

An added complexity is that since May 2006 the individuals in this "Contract Monitor" role are also part of the newly formed "Contact Management Team". This team is part of the detention process itself and would for example serve removal directions or movements orders as part of their role under Detention Services. Where for example is the check and balance in the system to ensure that clients are served removal directions by using interpreters or that clients are given adequate warning of moving to another centre.

At Oakington there are six Detention Services personnel (including the two Contract Monitors) managing 306 bed spaces, with up to 40-50 transfers in one day. Oakington's client intake includes an increasing number of complex cases including foreign nationals – but delays in processes for example, are not the responsibility of the Detention Services on site team as they are not caseworkers. In our experience the team is only a conduit for information, with no delegated responsibility to ensure good management of clients.

I would therefore submit that those with delegated responsibility for the Secretary of State to monitor systems are not independent nor sufficiently resourced and as a result do not protect those in the detention estate from poor operational practice. There is an increasing distance between

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those making operational decisions *off site* and those managing the bed spaces *on site*.

3) My third and final point relates to: Poor practice that fails to prepare clients for release and prevent their destitution:

The need to prepare clients for release is clearly promoted by Her Majesty's Inspectorate of Prisons.

We are the only team in the detention estate giving a comprehensive welfare briefing allowing clients the choice to apply for support and accommodation before release, and also giving a full briefing on exit explaining for example: access to healthcare or education, where to go for further advice in the community, what to do if circumstances change and how to apply for a ticket to get to a Medical Foundation appointment or appeal hearing. Clients at other centres are given a ticket on exit without a full welfare briefing and sometimes without any safeguards in place to prevent them becoming destitute.

Without this formal welfare service enabling clients to apply for an address there are two further key detrimental impacts on clients.

Firstly some clients will be prevented from challenging their detention. Solicitors off site are often very unaware of the possibility of section 95 or section 4 accommodation and how to access it and will often refuse to help a client apply for bail on the grounds that the client does not have an address. This potentially blocks a client's right to challenge his or her continued detention.

Secondly once Detention Services wishes to grant temporary admission the client's release can be delayed, as there is no independent welfare advocate available to help the client apply for an address. We have received referrals from Detention Services locally and from other centres to assist in this matter.

I therefore submit that there is a need for qualified independent welfare advocates to give every client an exit briefing and to assist clients in accessing accommodation and support in order to; prevent destitution, to enable efficient release after the decision to grant Temporary Admission is made and to ensure that that clients are not hindered in challenging their detention.

In conclusion I have highlighted the need for:

1. Independent welfare advocates supporting individual clients at each stage of their detention but in particular emphasising the importance of early intervention in welfare issues and the scrutinising of detention practices more broadly;
2. A more effective 'Contract Monitor' function that is independent and appropriately resourced and a Contact Management Team with a higher level of responsibility for client processes on site;
3. And thirdly independent welfare exit briefings for all clients, including assistance in accessing accommodation and support.