refugee council
policy response

# Refugee Council Submission:
# Joint Committee on Human Rights' Inquiry into the Treatment of Asylum Seekers

September 2006

Other Refugee Council publications are available at www.refugeecouncil.org.uk
Registered charity no. 1014576 registered company no. 2727514 Registered address: 240-250 Ferndale Road London SW9 8BB

## About the Refugee Council

The Refugee Council is the largest 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 respond to the Joint Committee on Human Rights Inquiry into the Treatment of Asylum Seekers. Our submission focuses on the human rights of children and young people seeking asylum in the UK, and the human rights issues raised by the experience of asylum seekers with healthcare needs. We endorse the submission of the Inter Agency Partnership in relation to accommodation and support[1].

# 1. Introduction

1.1. Whilst we recognise this inquiry is focused on treatment of asylum seekers in the UK, we feel it is important to acknowledge the impact that the UK's border controls are having on the right to seek asylum itself. The right to seek and enjoy asylum from persecution is a fundamental human right, enshrined in Article 14 of the Universal Declaration of Human Rights, and elaborated in the 1951 Refugee Convention. Yet today, there is no legal way for a refugee to enter the UK to exercise this right. [2] As a result, seeking asylum in the UK is becoming ever more perilous, with refugees forced into the hands of people smugglers and traffickers, or taking incredible risks to cross continents and reach safety. We have appended our memorandum of evidence for the Home Affairs Select Committee's Inquiry into Immigration Control should you wish to consider this matter in more depth.

# 2. Children seeking asylum in the UK

### 2.1.1. **Unequal protection: UN Convention on the Rights of the Child and 2004 Children Act**

We are concerned that the government continues to maintain a reservation to the UN Convention on the Rights of the Child in relation to children subject to immigration control, despite sustained criticism from the Committee on the Rights of the Child[3], UK and international NGOs and the Joint Committee on Human Rights itself, which noted in its 2005 report:

*'the practical impact of the reservation goes far beyond the determination of immigration status, and leaves children subject to immigration control with a lower level of protection in relation to a range of rights which are unrelated to their immigration status.'*

---

[1] Refugee Council is a member of the Inter Agency Partnership, along with Refugee Action, Migrant Helpline, Refuge Arrivals Project, Scottish Refugee Arrivals Project, Scottish Refugee Council and Welsh Refugee Council.

[2] There is no provision in UK Immigration Rules for people overseas to be granted a visa to come to the UK to apply for asylum. In theory, overseas consular authorities can refer an entry clearance application to the Home Office in the UK in situations where the refugee is outside his country of origin and can demonstrate a prima facie case that his/her circumstances meet the definition of the 1951 Refugee Convention; that he has close ties with the UK; and that the UK is the most appropriate country of refuge. These rules are contained in the Asylum Policy Instructions. However, as highlighted in a recent study 'these instructions are not widely known and the authorities have no policy of actively promoting awareness about their existence and the possibility of applying for asylum from abroad. In practice, due to the very limited number of persons concerned (less than 10 cases each year…), the Protected Entry Procedure has very low priority for the authorities.'

[3] 'The Committee remains concerned that the State party does not intend to withdraw its wide-ranging reservation on citizenship, which is against the object and purpose of the Convention' Concluding Observations of the Committee on the Rights of the Child, October 2002.

*2.1.2.* We believe that recent attempts by the UK government to 'interpret' the UNCRC in domestic asylum policy only serve to illustrate the need for asylum seeking children to have the full protection of the Convention. By way of example, the 2006 Asylum Policy Instruction on Children interprets the best interests principle as follows:

> ***'Best interests** – Article 3 requires the best interests of the child to be a primary consideration in all actions concerning children. The best interests of the child should be considered in all actions taken by IND, and may mean balancing conflicting rights and interests. In practice this means that children/young people should have a timely resolution to their claim in order to provide some certainty about their future'*

2.1.3. Best interests determinations are child and context specific. The notion that 'in practice' all asylum seeking children's best interests can be reduced to 'a timely resolution' of their asylum claim runs counter both to the principle and to decades of good practice in child protection and child welfare social work.

2.1.4. This reservation has consistently been used to enable policymaking that discriminates against asylum seeking and refugee children, most notably the exclusion of immigration agencies from the duty to safeguard and promote the welfare of children set out at section 11 of the 2004 Children Act. We urge the Committee to continue to press for the reservation to be withdrawn, on the grounds that it is damaging to the safety and welfare of asylum seeking children and young people in the UK.

## 2.2. **Detention**

Refugee Council believes that detention of children for the purposes of immigration control breaches Article 5 of the ECHR, Articles 3 and 37 of the UNCRC and the UN Rules on Juveniles Deprived of their Liberty. Taken together, these standards mean that detention of children can only be considered when absolutely necessary and used as an exceptional measure of last resort.

2.2.1. The most comprehensive review of detention and alternatives to detention, published by UNHCR and covering practices in thirty-four states makes it clear that in destination states such as the UK, there is no evidence to support the claim that detention of asylum seekers is necessary whilst claims are determined, and little evidence that detention is necessary for those whose claims have been refused[4].

2.2.2. The numbers of children detained by the UK, the length of detention, and the comparatively low correlation between detention and immediate removal, all clearly demonstrate that detention is not being used as a measure of last resort. With this in mind, Refugee Council, believes that no child should be detained for the purposes of immigration control, whether alone or as part of a family.

2.2.3. Separated children

Refugee Council works with many young people whose age is disputed by IND staff. Whilst there is a process by which this decision can be reviewed, its immediate impact is that the young person is treated as an adult and may be detained[5].

---

[4] Field, O (2006) Alternatives to Detention of Asylum Seekers and Refugees, UNHCR

[5] The impacts of a decision to dispute an applicant's age run well beyond the use of detention. Children's claims have more flexible timescales, separate APIs inclusive of child specific forms of persecution and guidance on assessing the credibility of children: putting a child into the adult determination process leaves them at risk of refoulement. Likewise, separated children are supported under the Children Act 1989 by Local Authorities able to meet their care and welfare needs: NASS is not designed to support separated children safely.

2.2.4. Specialist Advisers from our Children Panel frequently attend asylum screening interviews with separated children, and in our experience the decision to dispute a young person's stated age is often made on the basis of a brief visual inspection. In 2005, the Home Office 'age disputed' 2,425 young people, but failed to provide comparable statistics for the numbers of young people subsequently identified as children. Refugee Council has collated evidence on age disputed applicants detained in a single Immigration Removal Centre, Oakington, and found that of 275 applicants assessed by Cambridgeshire Social Services, 150 were positively identified as children (55%).

2.2.5. Further, Refugee Council is aware of several young people subject to the Dublin II Regulation who have been detained and removed as adults without a proper age assessment taking place. This is of particular concern given that the Regulation stipulates separated children should have their claim for asylum determined in the first EU state where they make an asylum claim, unlike adults, who have their claim determined in the first state they pass through.

2.2.6. Refugee Council believes that the UK should adopt the precautionary principle, and not detain age disputed young people until their age has been properly and fully determined. Further, we believe that the practice of Immigration Officers and Screening Officers should be monitored to ensure that they are following IND policy and treating the applicant as a minor in 'borderline cases[6]'.

2.2.7. Children in families

Over the last four years the number of children detained in immigration removal centres has increased significantly, and snapshot figures indicate that over 2,000 children were detained in 2005. Some families are detained for significant periods: of the 540 children who left detention in quarter four of 2005, 70 had been held for 15-29 days, and 25 for between one and two months.

2.2.8. Successive reports by NGOs, and by Her Majesty's Inspectorate of Prisons, have documented the damaging effect of detention on children, the inadequate conditions in which children are held, and serious weaknesses in child protection procedures in immigration removal centres.

Refugee Council, as part of the *No Place for a Child* coalition[7], urges the Committee to recommend that the practice of detaining children in families be ended.

## 2.3. **Destitution**

Prior to 2004, asylum seeking families with children under the age of 18 remained entitled to accommodation and support after their asylum claims were refused. In 2004, the Government introduced a provision at section 9 of the Asylum and Immigration (Treatment of Claimants) Act, requiring NASS and Local Authorities to terminate support for these families unless this would lead to a breach of ECHR rights. The stated aim of this policy was to 'encourage' families to sign up for voluntary assisted return.

2.3.1. Between April 2005 and the present time, section 9 has only been applied to 116 families in three pilot areas: Central/East London, Greater Manchester and West Yorkshire. Refugee Council has worked with families affected by the pilot in London and Yorkshire, and was one

[6] IND Policy when Age is in Dispute http://www.ind.homeoffice.gov.uk/applying/asylumapplications/10902 (accessed 20/9/2006).
[7] Other members are Bail for Immigration Detainees, Save the Children Fund UK, Scottish Refugee Council and Welsh Refugee Council. See http://www.noplaceforachild.org/

of the agencies (along with Refugee Action) funded by NASS to do outreach work with the families as part of the evaluation process[8].

2.3.2. The families we worked with were desperate and terrified. Over a third of the adults had health problems, and eighty percent had significant mental health needs, ranging from diagnosed psychiatric disorders to people so distressed they wept throughout advice sessions. Many families disappeared, and those who remained in their accommodation were barely able to survive: liable to eviction at any time, dependent on one off payments from their Local Authority and food parcels from charities. We believe that at least four children were placed in Local Authority care as a consequence of the policy.

2.3.3. Refugee Council believes that section 9 is incompatible with human rights standards, in particular Articles 3 and 8 of the ECHR, extremely damaging for children and families, and unnecessary for the purposes of immigration control. We urge the Committee to recommend the immediate repeal of s9, using the power provided at s44 of the Immigration, Asylum and Nationality Act 2006. Further, we ask the Committee to recommend a welfare casework approach to working with those whose asylum claims have been refused[9].

2.4. **Access to education**

The Refugee Council believes that many asylum seeking children (both separated children and children here as part of a family) experience significant difficulties accessing appropriate education. In some cases, this may amount to a breach of the European Convention on Human Rights (Protocol 1, Article 2), European Council Directive 2004/83/EC, Article 27 of which states that minors must have full access to education 'under the same conditions as nationals'[10] and section 14 of the Education Act 1996.

2.4.1. Asylum seeking children frequently experience severe delays and difficulties in obtaining a school place. This problem particularly affects, but is not confined to, children aged between 14 and 16 years of age. In research recently conducted by the Refugee Council, accessing a place was identified as one of the most significant problems encountered by children of this age[11], supporting previous research in 2002 which estimated that as many as 2,100 asylum seeking children were unable to find a school place.[12]

2.4.2. A small minority of these children cannot access mainstream education at all. In some Local Authorities they are educated in local colleges which offer specialised courses, whilst in others children are educated in 'other than at school' provision which significantly limits access to the curriculum. Refugee Council has worked with children being educated in Pupil Referral Units, solely on the basis of local mainstream schools refusing them a place.

2.4.3. Finally, many asylum seeking children are unable to benefit from Educational Maintenance Allowance (EMA), a benefit widening the participation of young people from lower income families in post 16 full time education. In England, Wales and Northern Ireland, children who have arrived here seeking asylum are not eligible for this allowance

---

[8] Attached please find Refugee Council's witness statement for KvAsylum Support Adjudicators and Secretary of State for the Home Office, with detail of our casework.

[9] Refugee Council believes the model employed by Hotham Mission in Melbourne demonstrates that positive caseworking both ensures protection needs are met and immigration decisions complied with, all within a humanitarian framework. See http://asp.hothammission.org.au/ .

[10] The 'Qualification Directive': *On minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise needs international protection and the content of the protection granted.*

[11] McKenna, N (2005) *Daring to dream: Raising the achievement of 14 to 16 year old asylum-seeking and refugee children and young people*, London, Refugee Council.

[12] Rutter, J (2003) *Working with Refugee Children,* York, Joseph Rowntree Foundation.

unless they have been granted refugee status or humanitarian protection[13]. The practical effect of this is to deny EMA to young people whose claims have yet to be determined, the majority of separated children, who usually given Discretionary Leave to age 18, and to young people whose claims have been refused, but are still living in the UK.

2.4.4. Education makes a key contribution to long term outcomes for children and young people, wherever they and their family settle. The Refugee Council believes that asylum seeking young people should have equal entitlement to both education, and benefits supporting education, as UK nationals.

### 2.5. Guardianship for separated children

In its 2003 Green Paper, *Every Child Matters* the government rightly identifies separated asylum seeking children as children 'in greatest need'[14]. Despite this, no agency or individual is charged with assessing and representing their best interests both in respect of their asylum claim and their care and welfare whilst in the UK, a position which in our view is incompatible with Article 30(1) of European Council Directive 2004/83/EC.

2.6. Refugee Council believes that in order to protect the rights of these uniquely vulnerable children, an independent body should be established, tasked with providing legal guardians for all separated children in the UK. The guardians should perform a role similar to that undertaken by CAFCASS for children involved in child welfare proceedings, but exercising additional functions to ensure that all parties involved with the child seek the best possible solution to the crisis facing them.

## 3. Human rights and healthcare for asylum seekers

*3.1.* The right to health is recognised in a wide range of international human rights instruments, and is most exhaustively defined in Article 12 of the International Covenant on Economic, Social and Cultural Rights, Article 12 of which states that *'The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health'.*

3.1.1. Article 12 requires states to take steps to '*achieve the full realisation'* of the right to health, with particular reference to key areas including still birth and infant mortality rates, prevention, control and treatment of diseases and Article 12(2)(d) *'The creation of conditions which would assure to all medical service and medical attention in the event of sickness'*

3.1.2. Further, the Covenant *'proscribes any discrimination in access to healthcare and underlying determinants of health, as well as to the means and entitlement for their procurement, on grounds …national or social origin….civil, political, social or other status'* (General Comments on the ICESR).

### 3.2. Health needs of asylum seekers and refugees

Evidence suggests that approximately 20 per cent of asylum seekers have health problems that make their day to day life difficult[15]. In addition to having similar health needs to UK nationals from other socio-economically deprived groups, asylum seekers' health is affected by conditions in their country of origin, the experience of flight, and the poverty and uncertainty they live with

[13] The Scottish Executive has amended their Graduate Endowment, Student Fees and Support Regulations to comply with the EC directive to extend entitlement to all those granted subsidiary protection, including those with discretionary leave and exceptional leave.

[14] Department for Education and Skills (2003) *Every Child Matters*, Cm 5860, London, HMSO, para 2.50.

[15] Burnett, A. Peel, M. (2001). 'Asylum seekers and refugees in Britain: Health needs of asylum seekers and refugees.' *BMJ* 322, pp.544-547.

on arrival on the UK[16].

3.2.1. Women, children and torture survivors are particularly vulnerable. Lack of access to antenatal care, poor nutrition and traumatic experiences all contribute to a maternal mortality rate significantly above UK average.[17] The use of sexual abuse and rape as a form of torture is common, and asylum seeking women may have both psychological and physical health needs arising from this experience[18]. It is estimated that over 80,000 women and girls in the UK have undergone female genital mutilation (FGM), and many asylum seeking women have sexual and reproductive health needs as a result. Asylum seeking children experience a range of physical problems associated with malnutrition and disease in their countries of origin, exacerbated by poor housing and poverty in the UK.[19] Between 5 and 30 per cent of asylum seekers have been tortured, and have significant health and mental health care needs as a result. Torture survivors can experience direct physical symptoms related to fractures, crushed bones, or head injuries, as well as physical symptoms which are caused by intense stress and depression.[20]

3.2.2. Finally, the experience of persecution, flight, and life in the UK, all contribute to the mental health needs of asylum seekers.

*'Past experiences of torture, rape, death of loved ones, social upheaval, detention and other forms of persecution give rise to intense 'crisis emotions' such as fear, grief and shame and these experiences can both cause mental health problems, or exacerbate pre-existing conditions. Mental distress is a taboo subject in some refugee producing countries, so problems may have been left untreated, and are subsequently intensified with the further trauma of relocation. Once in the UK, the stress caused by poverty, living in a hostile environment and attempting to adapt to a new society can themselves cause or contribute to significant mental health problems. Symptoms include: disturbed sleep, anxiety attacks, violent outbursts, self harm, erratic behaviour and extreme mood swings. The despair people often feel can also trigger them to re-experience past trauma, which in the extreme can lead to Post-Traumatic Stress Disorder (PTSD). Sadly, asylum seekers and refugees are among the highest risk categories for suicide in the UK'.*
Kelley, N and Stevenson, J (2006) *First Do No Harm: Denying healthcare to asylum seekers whose claims have been refused*, London: Refugee Council

3.3. **Access to healthcare**

On arrival in the UK, accessing healthcare is seldom if ever a priority, even for asylum seekers with complex health needs. In the critical period after arrival, asylum seekers are understandably focused on the claim for asylum, and securing basic housing and support for themselves and their family. Most asylum seekers will have very limited understanding of the UK system or their healthcare entitlements, beyond the basic information available through Home Office funded induction programmes.

3.3.1. In our experience, once asylum seekers are aware of their health rights they can find it difficult, if not impossible; to find a GP practice that will register them as patients. Whilst asylum seekers' entitlement to primary services is clear, GP's discretion in managing their patient caseload appears to create a barrier to realising that entitlement in practice. GP registration is the gateway to NHS care, and without this, asylum seekers' health needs may go unmet, they may miss out on routine preventive care such as screening or

[16] Woodhead, D. (2000), *The Health and Well Being of Asylum Seekers and Refugees,* The King's Fund: London.
[17] British Medical Association. (2001). *Asylum Seekers and health - A British Medical Association and Medical Foundation for the Care of the Victims of Torture dossier*. [Internet] October 2001. Available at: www.bma.org.uk/ap.nsf/Content/Asylumseekershealthdossier [Accessed 09 May 2006]
[18] Peel, Dr. M. (Ed.)(2004). *Rape as a Method of Torture*. The Medical Foundation for the Care of Victims of Torture: UK.
[19] British Medical Association. (2002). *Asylum seekers: meeting their healthcare needs*. BMA: London.
[20] Burnett and Peel: 2001.

immunisations, or be forced into inappropriate use of NHS services, particularly Accident and Emergency.

3.3.2. The shortfall in interpreting services presents a significant barrier to asylum seekers in need of health care.[21] Without access to an interpreter, many asylum seekers are completely unable to get the healthcare they need and translated information, where available, is of limited use. Amongst some groups of asylum seekers such as women, and people from primarily oral cultures[22], literacy levels may be very low and interpreting essential.

3.3.3. Finally, mainstream NHS services can be insensitive to the cultural or gender norms of the asylum seeking population, and specialist services are scarce. In areas such as mental health care, this presents particular challenges as '*prescribing and administering appropriate treatment for psychological problems and mental illness is much more problematic when there are conceptual and linguistic difficulties in describing symptoms, and cultural differences in the perception of mental health*'[23]

3.4. **Denial of secondary healthcare to asylum seekers whose claims are refused**

In 2004 the Government introduced the *NHS (Charges to Overseas Visitors) (Amendment) Regulation*, requiring NHS trusts to charge refused asylum seekers for secondary care. The regulation applies to all asylum seekers whose claims have been refused, including those on s4 support that the government acknowledges cannot return to their country of origin, and those who come from countries such as Somalia, or Sudan, where return is manifestly unsafe.

*3.4.1.* Despite being justified as necessary to prevent 'health tourism' and 'abuse' of NHS resources, the Health Select Committee noted that '*no evidence exists to objectively quantify the scale of the abuse, either in relation to HIV or more generally'* and that *'by the Department's own admission, these changes have been introduced without any attempt at a cost-benefit analysis, and without the Department having even a rough idea of the numbers of individuals that are likely to be affected.*[24]'

3.4.2. The impact of the regulation has been to leave desperately vulnerable asylum seekers without access to necessary care. Refugee Council has worked with a number of women (including young women under the age of 18) who have been refused maternity care, some of whom have subsequently given birth without the benefit of medical assistance. We have worked with adults with life threatening illnesses such as stomach cancer; disabled torture survivors, frail elders, all of whom are told they can only have the healthcare they need if they are able to pay thousands of pounds.

3.4.3. Refugee Council's experience suggests that the regulation is also have unintended consequences. We have worked with many people who have been wrongly denied primary or secondary care, due to health practitioners misunderstanding the regulation. This is further exacerbating the problems of finding a GP for our clients set out in more detail above.

3.4.4. We urge the Committee to recommend the Government reinstate health care rights for asylum seekers whose claims have been refused, and expand access to interpreting, health advocacy and culturally appropriate services in order to ensure that the health rights of refugees and asylum seekers can be realised in line with Article 12 of the ICESR.

---

[21] BMA:2002.

[22] Such as the Somali community: Somali has only existed in written form since 1972.

[23] BMA:2002

[24] Health Select Committee's (2005) Third Report of the Session 2004/5 on New Developments in Sexual Health and HIV/AIDS Policy, HMSO: London.

For more information, please contact:

Nancy Kelley
Head of UK and International Policy
Refugee Council
240/250 Ferndale Road
London SW9 8BB
nancy.kelley@refugeecouncil.org.uk
0207 3461171