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United Kingdom

SEEKING ASYLUM IS NOT A CRIME Detention of people who have sought asylum

Introduction

In order to escape persecution and conflict in their own countries refugees are forced to abandon their homes, their families and their livelihoods.¹ The majority of the 17 million refugees, asylum-seekers² and others of concern to the United Nations High Commissioner for Refugees (UNHCR),³ just cross an international

border to flee to a neighbouring country to reach safety. Some risk hazardous journeys to reach the UK, a country to which they may already have a link through the Commonwealth, language, relatives or a community living there.

The number of asylum claims to industrialized countries, including the UK, is declining. According to UNHCR “the number of people claiming asylum in the UK has dropped 61 per cent over the last two years, back to the levels not seen since the early 1990s”.⁴

In spite of this decline, in recent years, the number of those detained solely under Immigration Act powers in the UK who have claimed asylum at some stage, including families with children, has increased. Currently, capacity in immigration detention facilities, excluding short-term holding facilities,⁵ is 2,672, triple the number of available places when this Government came to power in 1997.⁶

¹ “International law defines a ‘refugee’ as a person who has fled from and/or cannot return to their country due to a well-founded fear of persecution, including war or civil conflict. A refugee is a person who ‘owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country... Article 1, the 1951 Convention Relating to the Status of Refugees’”. See *Information & Briefings - Basic Definitions*, on the UN High Commissioner for Refugees UK website at http://www.unhcr.org.uk/info/briefings/basic_facts/definitions.html.

² “An asylum seeker is a person who has left their country of origin, has applied for recognition as a refugee in another country, and is awaiting a decision on their application.” *Ibid.*

³ “The term refugee is a very specific definition covering only people who have fled their homeland and sought sanctuary in a second country. However, there are millions of people in similar desperate circumstances but who do not legally qualify as refugees and are therefore not eligible for normal relief or protection. Increasingly, UNHCR has provided assistance to some of these groups, including asylum seekers, internally displaced

persons (IDPs), returnees and those in need of temporary or humanitarian protection....” *Ibid.*

⁴ *UK must share, not shift asylum burden*, 8 April 2005 UNHCR statement.

⁵ These are places where people can be detained for up to seven days pending forcible return or transfer.

⁶ *Secure Borders, Safe Haven - Integration with Diversity in Modern Britain*, Presented to Parliament by the Secretary of State for the Home Department, February 2002, para. 4.75, p. 66.

The vast majority of those detained under Immigration Act powers have claimed asylum in the UK at some stage.⁷

Historically, the organization has had concerns about the detention of asylum-seekers in the UK.⁸ In this report, Amnesty International examines the increased use of detention both at the beginning and at the end of the asylum process. The report examines whether the UK meets its obligations with respect to the right to liberty and the right of people to be treated with dignity and humanity under international refugee and human rights law and standards.

While the UK authorities have often claimed that detention is pivotal to their strategy to remove asylum-seekers whose claims have been dismissed, they have also stated that: "... detention would only be used as a last resort".⁹ Amnesty

International found that many people who have sought asylum at some stage are detained at different points of the asylum process and, as this report will show, they are detained even though the prospect of effecting their forcible removal within a reasonable time may be slim.

Amnesty International's anxiety about the UK detention policy and practice is compounded by the influence that the country wields internationally. The UK has the potential to influence human rights protection around the world. Indeed, in the last five years, particularly at European Union level, the UK has been very influential in shaping the debate surrounding asylum-seekers and refugees and ensuring that UK Government policy is reflected in EU Directives relating to asylum.

Furthermore, in this year when the UK occupies the Presidency of the EU and the Presidency of the G8, it will be better positioned than ever to drive its own agenda throughout Europe and beyond. Other countries may be influenced by the UK's example and seek to replicate its policies and practices.

For this report Amnesty International has examined the cases of asylum-seekers who were detained for the duration of the asylum process whose claims were considered under accelerated asylum-determination procedures predicated on detention. At Harmondsworth Immigration Removal Centre (IRC) near London's Heathrow airport, the Home Office aims to make an initial decision within three

⁷ The latest snapshot showed that on 26 March 2005 1,625 persons who had sought asylum at some stage were being detained solely under Immigration Act powers (this excludes persons detained in police cells and persons detained under dual immigration and other powers). "Asylum detainees accounted for 76% of all Immigration Act detainees".

⁸ See *Amnesty International UK, Cell Culture – The Detention and Imprisonment of Asylum-Seekers in the United Kingdom, December 1996*; and *Amnesty International UK, Prisoners without a voice: asylum-seekers detained in the United Kingdom, 1994*.

⁹ See, *Operational Enforcement Manual, Immigration and Nationality Directorate, Home Office*. It "contains guidance and information for Immigration Service officers dealing with enforcement (after-entry) immigration matters". Of its contents, Section A - Illegal Entry, and Section B - Deportation & Administrative Removal are available on the world-wide web at http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/oem.html. However, Section C - Asylum, Human Rights & Racial Discrimination Allegations, Section D - Other

Factors and Section E - Operational Procedures had all not yet been published as of 5 May 2005.

days.¹⁰ Once the application is decided and most likely refused, the applicants continue to be detained during the appeal process pending their forcible removal from the UK.

Among asylum-seekers detained at Oakington Reception Centre -- where claims are fast-tracked -- are those whose claims are processed under the so-called non-suspensive appeals procedure (NSA). The NSA procedure is premised on a list of so-called "safe countries" -- known as the "white list" -- compiled and updated by the UK authorities. Asylum claims from countries featured on this list will be presumed to be "unfounded" and once refused, as the vast majority are, asylum-seekers can be, and in most cases are, automatically denied the right to appeal from within the UK against the refusal of asylum. At this point the applicants can be returned to their country of origin.

Such fast-track procedures predicated on detention are set to increase.¹¹ Amnesty International is concerned about the quality of decisions and procedural safeguards within these "detained accelerated procedures". Speeding up the decision-making process is beneficial only

¹⁰ Almost all of the facilities used to hold people who have sought asylum in the UK have been named Immigration Removal Centres. Notwithstanding this euphemism, it should be made clear from the outset that they are detention establishments in anything but name..

¹¹ With respect to this, in February 2005 the UK authorities announced that a projected target of up to 30 per cent of new asylum applicants would be put through a "fast-track detained process" by the end of the year. See, "*Controlling our borders: Making migration work for Britain - Five year strategy for asylum and immigration*", published on 7 February 2005.

if it is not at the expense of fairness and quality. In addition, the organization considers that the expeditious processing of asylum claims should not be premised on detention. Even the UK authorities have recognized this and have introduced a "non-detained tightly managed approach in the North West". The Government has also stated that "New faster non-detained processes are also being developed and will play a key role".¹²

The report also looks at the cases of those people who were detained once their claim had been dismissed and were considered to be at the end of the asylum process. In this context, three of the people whose stories are cited in this report who had initially been refused asylum, following subsequent submissions on their claims, went on to be recognized as refugees. However, the purpose of this report is not to illustrate that the individuals whose cases are cited are deserving of international protection as refugees. The quality of Home Office initial decision-making in asylum claims was documented extensively in Amnesty International UK's report "*Get it Right: How Home Office Decision Making Fails Refugees*".¹³ The report found that in many cases the quality of Home Office initial decision-making was poor. At that time, one in five refusals of asylum was overturned on appeal.

The purpose of this report is to shed light on the hidden plight of a vulnerable group of people in the UK: those who have

¹² *Ibid.*

¹³ Amnesty International UK, February 2004. Available at http://www.amnesty.org.uk/images/ul/ / Settings_u ser My Documents Amnesty Work AIUK Asylum report 2004.pdf.

sought asylum at some stage and who are detained solely under Immigration Act powers.¹⁴ Detention is an extreme sanction for people who have not committed a criminal offence. It violates one of the most fundamental human rights protected by international law, the right to liberty. In addition, some people will have been detained without charge or trial in their own country, and/or have been subjected to torture, only to be further detained at some stage of the asylum process in the UK.

As part of its research for this report, Amnesty International set out to establish how many people who have sought asylum at some point are detained in the UK under Immigration Act powers. For the first time, in May 2005, the UK authorities produced statistics on the number of asylum-seekers whose claims are fast-tracked and who are detained at Harmondsworth IRC for the duration of the asylum process. Statistics are also available quarterly on asylum-seekers whose claims are processed at Oakington Reception Centre. However, in the course of a year no comprehensive statistics are produced on the number of those who have sought asylum who are held in detention, or the length of time for which they are detained. The official quarterly statistics give a “snapshot” of persons recorded as being in detention in the UK solely under Immigration Act powers on a particular day, with the percentage of those who have sought asylum at any stage, by places of detention, gender and the

¹⁴ The report focuses exclusively on the plight of those who have sought asylum who are held in detention in the UK. It does not consider the rights for people if and when they are released from detention.

length of time spent in detention on that particular day.

Therefore, Amnesty International is concerned that the picture of how many people who have sought asylum and are detained, and the length of detention remain unclear.

Despite requests, the UK authorities have failed to make an accurate picture of this phenomenon publicly available. As noted by the UK Parliament’s Home Affairs Committee in their report on Asylum Removals in April 2003:

A clear picture of the current use of detention, and the reasons why individuals are detained, is not available at the moment because of the lack of relevant statistics. There is currently no data available on how many asylum seekers are detained during the course of a year and for how long, or at what stage of the asylum process. It is therefore difficult to judge whether or not detention really is being used primarily to support removal, as the Government claims.

The Committee went on to recommend that the UK authorities should provide quarterly figures on total numbers detained during the period with lengths of detention.

As a result of its research, Amnesty International suspects that at least 27,000 and 25,000 people who had sought asylum at some stage were detained in 2003 and 2004 respectively for some period of time. This represents a very significant use of detention and immediately raises the

question of whether such prolific use of detention is in compliance with international human rights law.

The UK authorities have argued that detention is necessary to prevent people from absconding at the end of the asylum process. But the organization is concerned that the authorities are using the risk of absconding as justification for detention without a detailed and meaningful assessment of the risk posed by each individual, if any. For example, prior to being detained, those interviewed for this report had, when instructed to do so by the UK authorities, complied with reporting requirements. Therefore, they presented no risk of absconding. Amnesty International's concern about the lack of official data on the risk of absconding was shared by the Home Affairs Committee who in their report on Asylum Removals said that this risk has not been quantified:

in the absence of adequate statistics, it is difficult to know the extent of the problems caused by absconding. The current situation, in which the Home Office simply does not know – even in broad outline – what proportion of failed asylum seekers abscond is unacceptable. It ought to be possible to obtain at least a snapshot of the scale of the problem and we recommend that steps are taken to do this without delay.

Amnesty International's report highlights the denial of justice suffered by many people as a result of the fact that their detention is in many cases inappropriate, unnecessary, disproportionate and,

therefore, unlawful. Whether at the beginning or the end of the asylum-determination process, the individuals concerned may be taken into detention on the basis that a bed is available within the detention estate, rather than on considerations of necessity, proportionality and appropriateness to detain them.¹⁵

Under Immigration Act powers, the UK authorities are empowered to authorize the detention of people who at some stage have sought asylum in the country.¹⁶ No prior judicial authorization of detention is required and there is no prompt and automatic judicial oversight of the decision to detain nor are there automatic judicial reviews of the continuance of detention. In addition, there are no maximum time limits of the length of detention. In light of all of this, Amnesty International is seriously concerned that detention of people who have at some stage sought asylum can continue indefinitely without any automatic judicial intervention.

¹⁵ In its December 1998 report, the Working Group on Arbitrary Detention expressed concern that: "[t]he release of certain persons on account of non-availability of space and the detention of certain other persons whose cases for release are much stronger but who are detained because space is available makes detention dependent on the availability of space, rather than the quality of the applicant's case", *Report of the Working Group on Arbitrary Detention, Addendum - Report on the visit of the Working Group to the United Kingdom on the issue of immigrants and asylum seekers*, E/CN.4/1999/63/Add.3, 18 December 1998, available at

<http://daccessdds.un.org/doc/UNDOC/GEN/G98/052/06/PDF/G9805206.pdf?OpenElement> last visited on 5 May 2005.

¹⁶ The powers of the executive are provided under the Immigration Act 1971 and under successive immigration laws passed in the last 12 years.

This report examines the ability of detainees to challenge their detention, an area where Amnesty International concludes that the UK policy and practice lead to further injustice. Within the UK legislative framework, one of the few avenues open to those detained, who have at some stage sought asylum, is to attempt to secure their release by initiating a bail application. Provisions had been made under the Immigration and Asylum Act 1999 for two automatic bail hearings, but these were never implemented and were, in fact, repealed under the Nationality, Immigration and Asylum Act 2002. The other avenues open to those in detention would be to challenge the lawfulness of their detention through *habeas corpus* or to seek a judicial review of the decision to detain them. However, as the organization found, neither remedy was particularly effective which is evidenced by the fact that they are rarely used.

Amnesty International is further concerned that the difficulties that those who have sought asylum face in accessing justice while in detention have been compounded by the recent restrictions to publicly funded immigration and asylum work. In April 2004, the UK authorities introduced new funding arrangements for legal work on asylum and immigration cases in England and Wales, with the aim of cutting the overall amount of public funding for this area of work. These arrangements have resulted in the withdrawal of established solicitors from this area of work leaving a dearth of expertise. At all stages of the asylum process many are left with little or no access to effective legal advice and representation. This problem is

particularly acute for those in detention who are at the end of the asylum process.

Finally, the report looks at the human cost of the increased use of detention in the UK. Amnesty International found that some asylum-seekers are detained for the duration of the asylum process. Many people who had sought asylum were detained far away from their families, in often remote locations and in grim, prison-like establishments, including cases of individuals who languished in detention. The organization found particularly unacceptable the detention of families, including mothers with children, at times very young ones; victims of torture and other vulnerable individuals.

In light of its research for this report, Amnesty International found that the detention of these people has a terrible human cost, inflicting untold misery on the individuals concerned and their families.

The organization considers that detention is not being carried out according to international standards, is arbitrary and serves little if any purpose at all in the majority of cases where measures short of detention would suffice. Amnesty International urges the UK authorities only to resort to detention when necessary and in strict accordance with international standards.

Terms and information about the UK's asylum processing system

The Immigration and Nationality Directorate at the Home Office is responsible for deciding whether an asylum applicant should be recognized as a refugee under the 1951 UN Convention relating to the Status of Refugees

and granted refugee status.

Other forms of protection

Until April 2003, those who did not qualify for refugee status under the 1951 Refugee Convention, but who were found to be in need of protection on human rights or other compassionate grounds, were granted Exceptional Leave to Remain (ELR). Under the Human Rights Act 1998, which came into force in October 2000, the Home Office considers a human rights claim at the same time as a refugee claim. In April 2003 ELR was replaced by Humanitarian Protection¹⁷ which is granted to anyone who would, if removed, face in the country of return a serious risk to life or physical integrity arising from: the death penalty; unlawful killing; torture or other inhuman or degrading treatment or punishment. A further category, Discretionary Leave to Remain, was created for the Home Secretary to retain the ability to allow some of those who fall outside the Humanitarian Protection Policy to stay on a discretionary basis. Discretionary Leave to Remain will only be considered by caseworkers after a decision has been made to reject the applicant for asylum or Humanitarian Protection.

The majority of asylum-seekers have a right of appeal against the refusal of asylum to the Asylum and Immigration Tribunal from within the UK.¹⁸ A notable exception to this is those whose applications are determined under the non-suspensive appeals procedure (see below).

According to Home Office statistics for 2004, after an initial decision taken by the Home

Office, three per cent of asylum applicants were recognized as refugees, nine per cent were granted humanitarian protection or discretionary leave and 88 per cent were refused. Of those who appealed against the initial decision to refuse asylum, 19 per cent had their appeals against the refusal of asylum allowed.

¹⁷ Letter from Home Office dated 27 February 2003 regarding the ending of Exceptional Leave to Remain policy.

¹⁸ *The Asylum and Immigration (Treatment of Claimants, etc.) Act 2004* introduced a single-tier Tribunal – the AIT to replace the two-tier Immigration Appellate Authority (the adjudicators and the Immigration Appeal Tribunal) which came into force on 4 April 2005.

Methodology

In the course of its research for this report, Amnesty International examined the testimonies of many people who had claimed asylum at some stage and who had been detained solely under Immigration Act powers in the UK. The people whose stories are recounted in this report were individually interviewed by the organization's researchers.

All those interviewed for this report had claimed asylum in the UK at some stage and had been held in detention although they were not in detention at the time they were interviewed by Amnesty International's researchers.

Of those interviewed, some were detained at the beginning of the asylum process under fast-track procedures and then went into long-term detention. Others were detained after their claim for asylum had been rejected. However, a number of the "rejected" asylum applicants had made subsequent asylum claims which were awaiting a decision by the UK authorities at the time they were interviewed for this report. Three of the asylum-seekers whose claims had been dismissed were subsequently recognized as refugees. Amnesty International also interviewed asylum-seekers who, due to an "administrative error", had been detained while they still had an appeal outstanding against an initial refusal of their claim.

Those whose cases are cited in this report came from a variety of countries: Angola, Cameroon, Chad, Côte d'Ivoire, the Democratic Republic of Congo, Iraq,

Israel, Jamaica, Macedonia (the Former Yugoslav Republic of Macedonia), Nigeria and Pakistan.

In the report, the names have been changed and the country of origin is not included to protect the identity of those interviewed.

Between January and March 2005 representatives of Amnesty International visited the following detention facilities where people who have sought asylum are detained:

- Dungavel in Scotland - men, women and children;
- Lindholme - men only;
- Harmondsworth - men only plus fast-track procedures for single men;
- Colnbrook – men only;
- Yarl's Wood – women, children and families plus fast-track procedures for single women;
- Dover – men only;
- Oakington Reception Centre – fast-track procedures for families, single men and women;
- Hydebank Wood Prison, Northern Ireland – women; and
- Crumlin Road Prison, Northern Ireland – men.¹⁹

The two prisons visited in Northern Ireland are run by the Northern Ireland

¹⁹ Although the Crumlin Road Prison is closed, the Northern Ireland Prison Service has a unit which accommodates male immigration detainees known as "the immigration detainee unit" at the former prison on the Crumlin Road.

Prison Service. Lindholme and Dover IRCs are Prison Service establishments and the others are contracted out by the UK authorities and run by private companies.

The organization also visited: Communications House Short-Term Holding Facility in London and short-term holding facilities in Dover Harbour and Colnbrook IRC.

For the purposes of this report focusing on the detention of those who have sought asylum at some stage in the UK, Amnesty International considered the following:

- who is being detained and why, including those being processed under the fast track asylum-determination procedures;
- access to legal advice and representation;
- detention conditions; and
- an accurate picture of the numbers of people who have claimed asylum who are being held in detention, at what stage in the asylum process they are detained and for how long.

Amnesty International spoke to relevant officials at the Immigration and Nationality Directorate of the Home Office (IND). The organization also interviewed staff members in whose care asylum detainees are entrusted, Immigration Officers and representatives of the Independent Monitoring Boards at the majority of detention facilities.²⁰

²⁰ According to the UK authorities, Independent Monitoring Boards perform a “watchdog” role on behalf of Ministers and the general public in

providing a lay and independent oversight of prisons and immigration removal centres.

CHAPTER ONE: THE HUMAN COST OF DETENTION

This report identifies many injustices in relation to people who have claimed asylum at some stage and are detained solely under Immigration Act powers. During the course of its research, Amnesty International interviewed people whose asylum claims had been processed through fast-track procedures who were immediately detained and those who were detained at the end of the asylum process, some of whom made subsequent claims for asylum. In some cases, those who were processed through fast-track procedures were subsequently detained for long periods of time.

Amnesty International found that people were detained far away from their families, in often remote location and in grim, prison-like establishments. Some detention facilities were former prisons such as Dover IRC, others are purpose-built as removal centres. Among the latter, Colnbrook IRC (adjacent to Harmondsworth, the largest of the IRCs) near Heathrow airport, opened in September 2004 and is used purportedly to detain the more “difficult male detainees”. Amnesty International found that it resembled a Category B prison in everything but name with extreme levels of noise on the landings.²¹ Detainees were

locked in their rooms, which were cell-like, between 10pm and 7am.

Harmondsworth IRC too appeared to be run like a prison, although the detainees were not locked in at night at the time of the organization’s visit. At Oakington Reception Centre the segregation unit, known as the Detainee Departure Unit, was not an appropriate setting in which to hold people who are at risk of self-harming.

Dungavel and Lindholme IRCs are in extremely remote locations making it difficult for people to receive visitors, including legal visits. At Yarl’s Wood IRC single women and families are detained. There, Amnesty International saw mothers with very young babies.

At the time of being taken into detention, the individuals concerned were not told how long they would be detained for nor is there any automatic judicial scrutiny of their detention, its reasons and its lawfulness. In addition, there is no statutory time limit for detention. Amnesty International found that many who had claimed asylum were detained for a prolonged period.

People complained about not knowing what was happening with their asylum claim while in detention and that it was difficult for them to pursue their asylum claim. Concern about this was expressed to Amnesty International delegates during their visits to the IRCs where Immigration Officers, members of IRCs’ Independent

²¹ According to HM Prison Service, a Category B prison would be one which holds “[p]risoners for whom the very highest conditions of security are not necessary, but for whom escape must be made very difficult”. See *Prison Service Order Number 0900 – Categorisation and Allocation*, available at <http://www.hmprisonservice.gov.uk/resourcecentre/psispsos/listpsos/>.

Monitoring Boards, as well as members of visiting groups confirmed that the lack of knowledge regarding asylum claims was the main complaint.

Those interviewed told the organization that while in detention they felt abandoned, demoralized and bored. A number of those who had been detained complained of being subjected to verbal abuse including racist, and other derogatory comments, while in detention.²²

Their stories are evidence of the concerns of Amnesty International as outlined in this report. Their stories collectively illustrate the very high human cost of detention. Some of their ordeals overlap and could therefore be featured under more than one of the headings below as illustrations of several of Amnesty International's concerns.²³

Some of those interviewed seemed to experience great difficulty in relaying their stories even months after their release from detention. It appeared that a number of those interviewed were still suffering from severe depression.

Amnesty International considers that the detention of asylum-seekers whose claims are processed through fast-track procedures and those whose asylum claims have been rejected who are detained at the

end of the asylum process, is a hidden problem, kept away from public scrutiny, and rarely discussed. The organization found that detention has caused untold misery. On a day-to-day basis the negative effects of detention manifest themselves in the low morale of those detained, sometimes resulting in self-harm and at an extreme leading to self-inflicted deaths. Amnesty International considers that everyone, even asylum-seekers whose cases have been rejected, should be treated with dignity and humanity. This, regrettably, does not appear to be the case in the UK.

This chapter examines the human cost of detention and documents the stories of some of the people Amnesty International has met during its research. The organization believes that all these cases demonstrate that the human cost of detention in the UK has reached levels which demand an immediate revision by the UK authorities of their policy and practice.

The detention of vulnerable people

While the UK authorities have in place a policy of non-detention of particular vulnerable groups, Amnesty International is concerned that this policy is not carried out in practice. The organization is concerned that those whose age or physical or mental health make them unfit for detention are nevertheless being detained. Amnesty International considers the detention of families, vulnerable people, in particular women with children,

²² In March, a week after Amnesty International had visited Oakington Reception Centre, the *BBC* broadcast a documentary which depicted incidents of overt racism by some centre staff toward asylum-seekers. *Detention Undercover - The Real Story - BBC One*, Wednesday 2 March, 2005 at 21:00 GMT.

²³ Amnesty International has changed the names of all those interviewed to protect their identity. For the same reason any reference to their country of origin has been omitted.

age-disputed children and torture victims to be unnecessary and unjust.²⁴

a. Detention of families

A policy change in 2001 allowed for families with children to be held for longer periods than a few days immediately prior to removal.²⁵

The UK government has stated that family detention is a regrettable but necessary part of maintaining effective immigration control, and that it is used sparingly and for as short a time as possible. NGOs working with detained families argue that there is a gap between stated policy and what happens in practice to families, citing prolonged periods of detention in some cases.²⁶

²⁴ On 26 May 2005, *The Guardian* newspaper reported that a 15-year-old Afghan asylum-seeker had been awarded £ 11,000 in compensation after the UK authorities had admitted that he had been “unlawfully detained” in a detention centre. See “£ 11,000 for asylum seeker”, *The Guardian*, 26 May 2005.

²⁵ The policy change was first announced by the IND’s Detention Services Policy Unit in October 2001, and was further set out in *Secure Borders, Safe Haven*, 2002. “It was previously the case that families would, other than as part of the fast-track process at Oakington Reception Centre, normally be detained only in order to effect removal. Such detention would be planned to take place as close to removal as possible so as to ensure that families were not normally detained for more than a few days. Whilst this covered most circumstances where detention of a family might be necessary, it did not allow for those occasions when it is justifiable to detain families at other times or for longer than just a few days. Accordingly, families may, where necessary, now be detained at other times and for longer periods than just immediately prior to removal”, para. 4.77.

²⁶ In the case of the Ay family, a Turkish mother and her three children were detained at Dungavel IRC for twelve months before being sent to

In addition to being detained because it is considered that they may otherwise abscond, families with children are also liable to be detained at Oakington Reception Centre for the purpose of making an initial decision on their asylum claim. Family units at Dungavel, Yarl’s Wood and Tinsley House IRCs are used for families of asylum-seekers whose claims have been dismissed and who are, therefore, deemed to be at the end of the process and awaiting removal.

There are no figures as to how many children are detained each year, although since September 2003, quarterly snapshots of the number of children detained on a given day have been included in official statistics.

In 2003, Her Majesty’s Inspectorate of Prisons for England and Wales (HMIP) criticized the use of detention for families, following inspections of Tinsley House IRC, Dungavel IRC and Oakington Reception Centre. HMIP recommended that children should not normally be detained, and if detention was used, it should be for no longer than a few days.²⁷

Germany, where they were subsequently granted the right to stay in November 2004.

²⁷ “...the detention of children should be an exceptional measure, and should not in any event exceed a very short period – no more than a matter of days. The key principle here is not the precise number of days – whether it is the seven days we proposed for short-term removal centres in England, or the two weeks beyond which even their educational needs cannot be guaranteed, in spite of the better, and improved, facilities at Dungavel. It is that the welfare and development of children is likely to be compromised by detention, however humane the provisions, and that this will increase the longer detention is maintained.” An Inspection of Dungavel Immigration Removal Centre, October

HMIP also recommended an independent assessment of children as soon as possible after their detention.

Amnesty International considers the detention of families with children to be unnecessary and disproportionate to the objective to be achieved.

Several of those interviewed described the reprehensible way in which they were taken from their homes into detention and the lasting effect it has had on them and their family.

The Hani family

“I felt like an animal. Treated like cattle – like a caged animal – you cannot go out. Checked in your room four times each day. Early in the morning. My child was very frightened – if you don’t open the door they open it with keys”

Sergei and his family were living in Glasgow and prior to being taken into detention he complied with all reporting requirements set by the Immigration Service.²⁸ One year after applying for asylum the family was taken into detention for a total of 17 days in Dungavel IRC in Scotland.

Sergei gave Amnesty International the following account of what happened to him and his family.

Before being taken into detention, they received a visit from two Home Office officials who told them that everything was fine before leaving. Shortly after this visit, one morning at approximately 6am several officials came to their flat. They knocked loudly, shouting “this is the Home Office”. They charged in. Some entered the flat and some remained outside and in the lift. Sergei’s 11-year-old son was asleep and neither he nor his wife was allowed to wake him. Instead, he was woken up by the officials which the boy found extremely traumatic. The officials made his wife go to the toilet with the door open. The family did not understand what was happening. They got dressed and were told they were being sent back to their own country.

The officials gathered their belongings very quickly including documents. They were not told they were going to Dungavel IRC; they were told they were going back to their own country. Sergei was taken in one vehicle handcuffed and his wife and child in the other car.

Upon their arrival at Dungavel IRC the child locked himself in the toilet and refused to come out for a long time. He did not speak to his parents and communicated with them by passing notes to them under the toilet door. The whole experience has left him profoundly distressed; he is seeing a psychologist and finds it difficult to sleep.

The family was subsequently bailed with local sureties. At the time of their interview with Amnesty International, a subsequent claim for asylum was being considered.

2002, HMIP, July 2003, p7, available at <http://www.homeoffice.gov.uk/docs2/ircdungavel03.pdf>.

²⁸ Asylum-seekers whose claims have been rejected are required to report to the authorities.

Since their experience in detention any knock on the door is taken as a threat. Sergei's son is terrified to be taken into detention again.

Eveline and her baby

"I couldn't believe what was happening to me. I couldn't believe I was in Europe"

Eveline is from West Africa and comes from a middle class politically active family. She was arrested and detained for her political activities before escaping and applying for asylum in the UK. She was pregnant before arriving in the UK and her baby daughter was born soon after her arrival in the country. Eveline's asylum claim was rejected and her appeal against this decision was dismissed.

The father of her baby was an EU national living in the UK. Despite this and her being pregnant again, Eveline was detained with her daughter for more than six months.

She gave Amnesty International the following account of what happened to her and her daughter.

She was taken crying from her house in the North of England with her baby daughter by a combination of police and immigration officers to Harmondsworth IRC close to Heathrow airport. Eveline was told that she and her daughter would be sent back to her country of origin the following day. They were then taken to Heathrow airport to be forcibly returned to her own country. But her flight was cancelled and she was returned to Harmondsworth. Her daughter was ill and

Eveline, who at that point was three months pregnant, miscarried in Harmondsworth.

She was then moved to Dungavel IRC in Scotland and was moved between Harmondsworth and Dungavel on several occasions. While Eveline was still in detention, her case was brought to the attention of the media, which led to her cause being championed by a member of the House of Lords.

Due to a series of events, Eveline changed solicitors eventually receiving expert legal advice and representation. She then made a subsequent asylum claim. Again, the Home Office rejected the application.

Eveline was eventually released from detention on bail and went on to win her appeal against the refusal of asylum. She was recognized as a refugee. By the time of her release she and her one-year-old child had spent more than six months in detention.

A judgment in Eveline's case in 2004 regarding the lawfulness of her detention noted that temporary admission had been requested since she had always complied with reporting conditions prior to being detained and had promised to comply with the same conditions if released. However despite this she was not released from detention at that time.

The judge acknowledged that Eveline's story, was "an unfortunate story of very poor administrative decisions compounded by less than competent representation of the claimants". The judge also added:

[This case] is a cautionary tale since it shows that decisions of the defendant's [i.e. the Home Secretary] officials and the appellate authorities can be wrong and that there is a need for a judicial assessment. I say that because the defendant finally recognised that the claimants [i.e. Eveline and her daughter] should be permitted to remain in this country, certainly for a time.....

As a result of Eveline's and her daughter's ordeal, the government was forced to change its policy in relation to detention reviews of cases of families who have sought asylum with children.²⁹

b. detention of torture survivors

Josephine

Amnesty International interviewed asylum-seekers who as torture survivors should never have been detained. Josephine is one such torture survivor.

She gave the following account of what happened to her and her daughter.

Josephine was the wife of a freelance journalist from a central African country. Her husband had fled persecution as a result of his investigative journalism of human rights issues in their country of origin and had sought asylum in the UK.

²⁹ Baroness Scotland stated in the House of Lords that "we have a closer and more frequent review of family-detained cases and ministerial authorisation of detention beyond 28 days". Baroness Scotland, 27 April 2004, *Hansard*, Column 714.

After her husband had fled, in his absence, she had been detained for two weeks, and had subsequently been required to report weekly to the police. On many occasions, she was arrested, and on one occasion she was forced into a metal container and raped by two policemen. She said that after that, "she lost her mind".

Because of repeated harassment from the authorities she was forced to move from her home town to the capital. As a result, she had lost contact with her husband and did not know whether he was alive or dead for two years.

Eventually, Josephine's husband was told where she was. However, he did not know of her plans to travel to the UK. With help, Josephine arrived in the UK in June 2004 with her eight-year-old daughter, and applied for asylum at Heathrow airport.

Josephine and her eight-year-old daughter arrived at 6am. She and her daughter were initially not allowed to use the toilet. She was also not allowed to get a new change of clothes for her daughter from their suitcase. They were not given any food. Josephine was not allowed to contact her husband who was unaware of her arrival. The Immigration Service did not contact him.

On arrival she told the Immigration Service that she had come to join her husband who had sought asylum in the UK. Josephine also explained that, although her and her daughter's pictures appeared in the passport she was carrying, the document was not hers, and that she had used it because it was the only way she could leave her own country.

The Immigration Officer told her that she would have to return to her country of origin. They took her daughter away for questioning separately three or four times.

Then, they were told that they would be taken into detention. Josephine and her daughter left Heathrow airport at 11pm, where they had been since their arrival at 6am. They were taken to Oakington Reception Centre where they arrived at 3am. She said that they were not given any food even then.

She and her daughter were detained at Oakington for 10 days. Josephine's husband was finally told by someone who had travelled with his wife that she was in the UK. However, because of the distance and travel cost between where he was living and where she and their daughter were detained, he was only able to visit them once.

At the time of Amnesty International's interview, she was a client of the Medical Foundation for the Care of Victims of Torture and her claim for asylum was still being considered. She also had a cardiac condition.

Even according to the UK authorities' own standards, Josephine, as a torture survivor, should never have been detained.

Separated children/unaccompanied children who seek asylum

Current Home Office policy states that unaccompanied asylum-seeking children who are under the age of 18 cannot be detained. Policy allows only for detention overnight in exceptional circumstances, until alternative arrangements for their safety are made.

However, young asylum-seekers who state that they are under 18 but whose age is disputed by the Immigration Service or by Social Services may be detained as adults.

Where "reliable medical evidence" or a Social Services age assessment exists to prove that the young person is under 18, they must be "treated as minors and released". However, if the Immigration Service concludes that a young person is an adult and takes the view that s/he is claiming to be a child to secure his/her release from detention, they may continue to detain him/her "until such time as credible documentary or medical evidence is produced which demonstrates they are the age claimed".³⁰

Official guidance to immigration officers also states that age-disputed young people in detention should also be referred to the Refugee Council Children's Panel for advice and support.³¹

At Oakington Reception Centre, Amnesty International was informed that there had been cases concerning age-disputed asylum-seekers whom the UK authorities had originally deemed suitable for detention. The organization was told that there were cases in which the asylum-seekers concerned were obviously minors who should never have been detained in the first place. Even in these cases, it was only after concerns had been raised that the authorities had agreed to bring in social services and doctors to conduct an independent age assessment following which the authorities had decided to release the child asylum-seekers from detention at Oakington.

³⁰ Operational Enforcement Manual, 38.7.3.1, *supra* at note 9.

³¹ The Refugee Council is a non-governmental organization working in the refugee and asylum sector. The Refugee Council's Children's Panel of Advisers works with unaccompanied children under the age of 18 in the UK.

c. detention following a dispute over the age of an asylum-seeker

In Ibrahim's case the authorities did not accept that he was just 17 when he claimed asylum in the UK and he was taken into detention after he had turned 18.

Ibrahim

"I felt ashamed to be in detention and hated the environment. When I came here I didn't think that people would put me again in prison. I'm really honest, I respect the rule... in detention we were locked inside all day. We are not criminal, we are not steal something, we have problem in our country. People give us a welcome with prison."

Ibrahim gave Amnesty International the following account of what happened to him.

He lived with his father and sister in a central African country. His mother was killed in a car accident when he was young. When he was 17, a group of people, civilian and military, came to his house looking for his father. They searched the house and arrested and beat Ibrahim. He later learned that his father was murdered that night. Ibrahim was held in prison for two months, during which time he was tortured, and contracted malaria. Once released, fearing for his life, an agent took Ibrahim via Niger, through Algeria and then on to the UK by boat. Abandoned, alone and frightened he was unaware he was in England. Speaking no

English, with help he found his way to the Home Office. There, he explained that he did not have his passport but presented them with his birth certificate. The authorities did not believe that he was under 18 years of age.

The Refugee Council arranged for him to see a paediatrician for an age assessment (see above), and this doctor agreed that he was 17. Normally, in cases relating to minors, the UK authorities would grant them discretionary leave to remain until the age of 18.³²

In his case, however, he was interviewed by the Home Office regarding his asylum claim. His asylum application was refused and his appeal against this refusal was dismissed. Soon after this, he turned 18. Ibrahim complied with the weekly reporting requirements without ever failing to report. One day in early January 2004, when he went to report he was told by immigration officers that since his appeal had been dismissed he would be detained to enforce his return to his country of origin.

He was very upset, particularly as he was due to sit an exam the following week. He spoke of how he was made to remove his shoes, empty his pockets. *"They check me, check everything, like I am killer, criminal... like I have drugs."*

Ibrahim was taken by van to Tinsley House IRC, with six other people, where he stayed for three days. Then, he was moved to Dover IRC in a van with eight

³² Before discretionary leave to remain expires, it is open to the applicant to make an application for further leave to remain.

other people where he stayed for almost a month. He described Dover IRC as being “*like a big prison*”. Immigration Officers had said to him: “*you have good English now, so we will send you home and you can teach English there*”.

He had none of his belongings with him when he was detained. As he did not have his passport when he arrived in the UK he could not understand how the Immigration Service planned to send him back without a passport.

While he was detained, his friends contacted his MP to raise his case with the Minister of Immigration at the Home Office to ask for his release.

Ibrahim was released on 3 February 2004, and had to report weekly. He told Amnesty International that he was recognized as a refugee and granted Indefinite Leave to Remain several months later.

Since leaving his country, he had had no contact with his sister, and, at the time of his interview with Amnesty International, did not know what had happened to her.

The detrimental effects of detention

Over the years, as well as for this report, Amnesty International has come across large numbers of people who have experienced persecution in their country of origin, including being held in detention, often without charge or trial, only to claim asylum and to be detained in the UK. For the person concerned detention in the UK was totally unexpected and had seriously

deleterious effects on their physical and mental health.

Detainees who have survived torture or serious trauma in their country of origin may be more at risk of self-harm, including death, while in detention. A report by the Medical Foundation for the Care of Victims of Torture published in 2001 examined 17 cases of detained clients whose torture it had documented.³³ The report concluded that there was no indication that the evidence of torture was brought to bear on the decision to maintain detention. The Medical Foundation has stated in evidence to the UK Parliament’s Joint Committee on Human Rights (JCHR) inquiry into human rights and deaths in custody in 2004 that self-harm, including death, among torture survivors in detention remains a real risk.

There are no regularly published figures about the number of self-harm incidents but figures included in the annual reports of some Independent Monitoring Boards (IMBs) indicate the numbers of incidents. In Harmondsworth IRC in 2003, 55 self-harm incidents were recorded in 11 months.³⁴

Groups working with detainees have expressed concern that the level of uncertainty among them about how long they are to be detained, combined with fears about the consequences of return, may exacerbate the risk of self-harm.

³³ *Protection not Prison: Torture survivors detained in the UK*, Dell, S & Salinsky, M, Medical Foundation for the Care of Victims of Torture, 2001.

³⁴ Amnesty International does not know how many of these were people who had sought asylum at some stage.

Michael's, Mark's and Paolo's cases illustrate the mental health effects of detention and how close some detainees come to successfully taking their own lives.

Michael

"I never had mental problems before being detained in the UK. I felt like I was losing my mind."

He gave Amnesty International the following account of what happened to him.

Michael, a political activist, applied for asylum on his arrival to the UK. Michael was initially detained on a criminal charge for which he was acquitted. Following his acquittal, instead of being released, he continued to be detained, at first in prison. His asylum claim was refused and his appeal heard and dismissed without him being present.

He was held in Harmondsworth IRC for over six months. While there, he spent some time in a secure unit³⁵ as he was told he was a threat to everyone.

There were many attempts to forcibly remove him to his own country and during one attempt he was handcuffed with his arms around his neck as he was told by the escort taking him from the detention centre to the airport that he was very violent.³⁶ He claims he was given an

injection to tranquillize him which numbed him, as a result of which he could not move. He was put on the plane but, on witnessing the state Michael was in, the pilot asked for him to be taken off.

During a subsequent attempt to forcibly remove him Michael swallowed a razor blade. He said that a staff member at Harmondsworth hit him when he was returned there after the attempt to forcibly remove him failed. At that point, he made a complaint and said he would press charges against this particular staff member. Immediately after that, Michael was transferred to HMP Wormwood Scrubs.

Michael made nine attempts to kill himself while in detention, including by slashing his wrists and losing a lot of blood as a result.

While detained, he received treatment from a psychologist and a psychiatrist.

Michael was detained solely under Immigration Act powers from April 2003 until he was eventually granted bail in September 2004. At his bail hearing the Immigration Service could not present any evidence that he had been violent to anyone but himself.

At the time of his interview with Amnesty International he lived with his partner, a UK citizen, and their two-year-old son.

³⁵ Secure units accommodate, among others, those individuals who are removed from association either because they are a threat to themselves or to others.

³⁶ In their November 2004 report: *Harm on Removal: Excessive Force against Failed Asylum Seekers* referred to below, the Medical Foundation for the

Care of Victims of Torture expressed concern about dangerous techniques used for restraint

Mark

“It’s so terrible. I passed through many things in my own country but nothing like this. I’ve been released but I’m still in prison. I am walking but my soul is dead.”

Mark gave Amnesty International the following account of what happened to him.

He fled his own country after his family were murdered. He is a Christian and was brought up in a Muslim area. He was studying to be a priest.

Mark applied for asylum on his arrival at Heathrow airport and was detained on arrival at Oakington Reception Centre where his asylum claim was fast-tracked. He was released on temporary admission and subsequently detained once his appeal was dismissed.

Following this, he was detained in Haslar, Harmondsworth, Colnbrook IRCs, and, finally, for 10 months in Dungavel IRC. He said that he tried to kill himself while in detention at Dungavel and elsewhere. He was also sent to Greenock Prison as he was self-harming.

Many bail applications were made on his behalf during his almost 18 months in detention. The authorities attempted to forcibly return him two or three times but he was finally granted bail with sureties in October 2004.

At the time of Amnesty International’s interview, Mark was still on anti-

depressants. He said that due to the long period of time he spent in detention his relationship with his partner had ended.

Mark appeared almost catatonic to Amnesty International’s researchers who interviewed him. He was unable to answer many questions and appeared to be disoriented.

Paolo

“I asked for asylum and ended up in prison. I don’t understand this, until now I felt dead.”

Paolo said that he had been taken into detention for his political activities in his own country. His parents, brothers and wife were killed and he did not know where his two children were. He arrived at Manchester Airport and applied for asylum the following day. Paolo was refused asylum and detained once his appeal against the refusal of asylum was dismissed. Once in detention, he said he had no further legal advice and representation.

He gave Amnesty International the following account of what happened to him.

Paolo spent eight months in total in detention in several different locations, including Haslar and Harmondsworth IRCs.

While in detention he did not understand what was happening to him nor did he understand his legal rights. His plight was compounded by the fact that he did not have a lawyer. Paolo was ill in detention and worried he would be sent back to his

country of origin, the prospect of which he found terrifying.

He applied for bail but was refused. Amnesty International believes that he was eventually granted temporary admission due to his mental health problems.

On the day that Paolo was interviewed by Amnesty International he appeared extremely depressed and seemed to have lost the will to live. At the time of his interview he told the organization's researcher that he was receiving psychiatric help.

Detention in Prison

Despite concern about the use of prisons for immigration detention purposes, the UK authorities continue to use them. A number of people who had claimed asylum, interviewed for this report, had been detained under Immigration Act powers in prisons. Most of them would have been detained in IRCs and transferred to prison at some stage. Some had been transferred to prisons because they had been in detention at Harmondsworth IRC at the time of the disturbance there on 19 and 20 July 2004 following the self-inflicted death of a detainee which led to its temporary closure.³⁷ Others were held in prisons due to mental health reasons for treatment that was not available in the IRCs. In Northern

³⁷ In 2004, a serious disturbance at Harmondsworth IRC resulted in the closure of the centre between July and September. The disturbance followed the discovery of a Ukrainian man who had hanged himself. A week later, a Vietnamese detainee took his own life at Dungavel IRC, where he had been moved after the closure of Harmondsworth.

Ireland, those who have sought asylum when detained are held in prisons.

In addition to the use of prisons in response to particular incidents, concern has been expressed about the transfer to prisons in response to alleged lack of discipline by individuals. According to information received by Amnesty International, in 2002 a Cameroonian human rights activist in immigration detention in the UK, who exposed ill-treatment and human rights abuses in UK detention centres, was repeatedly moved between prisons.³⁸ Reportedly he was later granted refugee status.

Ylli's case illustrates the detrimental effects of detention in prison for people who have claimed asylum.

Ylli

"I don't think there is anything worse than that [i.e. being detained]"

Ylli gave Amnesty International the following account of what happened to him.

Ylli, a 20-year-old ethnic Albanian, was detained in April 2004. He had applied for asylum three days after arrival in 2001 and was detained two and a half years later after his asylum application had been refused and his appeal dismissed. He spent eight months in detention in two prisons. He was granted bail by the High Court

³⁸ *"He publicised unacceptable treatment of his fellow asylum detainees, and was transferred to Belmarsh, Britain's most notorious top-security jail,"* 9 January 2002, <http://www.truefacts.co.uk/articles/nwkelle.html>.

after many failed attempts before an adjudicator. The authorities sought to enforce his return on three occasions.

Ylli said that he had a sister with permission to stay and a brother-in-law and two nephews in UK.

While he was detained his lawyer visited him rarely. Ylli also claimed that nobody ever explained his rights to him.

Ylli said that prison officers at one of the two prisons where he was detained were rude and unpleasant. On Ramadan, for example, one of the warders was obstructive towards his observance of the religious festival and made insulting remarks. Ylli complained to the Governor in person but, at the time of the interview, was not aware of what had happened, if anything, as a result of his complaint.

Ylli also said that there was very limited association time. He was locked up in his cell from 4pm Sunday until 12 noon on Monday.

Prolonged detention

Amnesty International is concerned about the effects of prolonged detention on the mental and physical health of asylum-seekers and those whose asylum claims have been rejected.

In connection with this, it is noteworthy that in January 2005, the Royal College of Psychiatrists in London endorsed the earlier findings of 12 senior doctors in respect of the psychiatric problems of detainees who, at the time, were held under the Anti-Terrorism, Crime and Security Act 2001. The College noted that

serious damage to the health of all the detainees examined by the doctors had occurred and was inevitable under a regime which consisted of indefinite detention. Furthermore, the College referred to the impact on mental health of indefinite detention in other groups, including asylum-seekers noting

“... uncertainty concerning grounds for detention and powerlessness to challenge that detention can contribute to deterioration of mental health. Clinicians were concerned about the progressive deterioration in these individuals’ mental health, which they linked to their lack of knowledge concerning why they are detained as well as their powerlessness to challenge their detention.”

In the course of carrying out its research for this report, Amnesty International was informed about many cases in which people who had claimed asylum at some stage had been detained for prolonged periods of time. Their long-term detention occurred despite the UK authorities’ stated policy that, in all cases, detention must be used sparingly, and for the shortest period necessary. Amnesty International’s researchers interviewed people who had sought asylum and had been detained who were plainly in distress as a result of their detention. George’s case is one such illustration.

At the time when George was taken into detention, in June 2002, a year after his arrival in the UK, the policy of the UK authorities was not to return people to his country of origin. In spite of this, he was

detained for two years in total until June 2004 when he was bailed with three sureties. He had received poor legal advice, as a result of which he had not appeared at his appeal against the refusal of asylum. Long-term detention has had a profoundly detrimental effect on his mental health.

George

“I am a human being. I had a very bad time. I try to be happy. I tried to kill myself many times in detention. I am not dangerous.”

George gave Amnesty International the following account of what happened to him.

He had applied for asylum on entry. His asylum claim was refused and his appeal dismissed. The Immigration Service always knew where he was living prior to being taken into detention. He was awoken at his home by five officers from the police and Immigration service and taken into detention.

Detained for two years in total, George was moved around the detention estate from Harmondsworth IRC where he spent four months to Dover IRC for two months back to Harmondsworth for six months then Dungavel IRC for nine months and finally to Tinsley House IRC for three months before he was granted bail with sureties after many attempts. There had also been six attempts to forcibly return him from the UK. On one occasion the Immigration Service tried to send him to another middle Eastern country where his mother had been born (and who had subsequently died while he was in the UK)

without a travel document but the pilot refused to transport him. Eventually, the consulate of that country confirmed that he was not a citizen of that country.

George had tried to kill himself in Harmondsworth and Dungavel. He stated that he was ill-treated while being escorted in a van from the airport back to Harmondsworth after a failed removal attempt. He complained about the staff in Harmondsworth as they did not tell him what was going on.

George complained that he was profoundly depressed and had stomach problems for which he claimed that he was not receiving medical treatment. Amnesty International sought to arrange for him the financial support to which he was entitled but unaware of. To the organization’s delegates who interviewed him he appeared so depressed as to be barely able to communicate.

Fast-track procedures

a) A faster denial of justice

Amnesty International is concerned about the quality of decisions within the accelerated asylum-determination procedures. Speeding up the decision-making process can be beneficial only if it is not at the expense of quality and fairness. In addition, the organization considers that expeditious processing of asylum claims should not be premised on detention.

The organization is also concerned about the accelerated procedures at Oakington Reception Centre from which asylum

claims will be presumed to be unfounded if the country of origin of the applicant is on the list of so-called “safe countries” also known as “the White List”. Such claims when refused do not attract a right to appeal against the refusal of asylum from within the UK (non-suspensive appeal, NSA).³⁹

The story reproduced below is that of Jean, an asylum-seeker accompanied by her young son. It is a vivid illustration of the multiple denials of justice produced by the NSA procedure for dealing with asylum claims. Jean already had a solicitor at the time of her detention and did not use the on-site legal representation available at Oakington Reception Centre.

Jean

“I felt so stressed. It’s horrible being in detention especially with a child. My child wanted to kill himself he said ‘mummy we’re in prison’.”

Jean gave Amnesty International the following account of what happened to her and her son.

Jean, a lesbian woman from a country where her life had been threatened, came to the UK as a visitor. Her brother, also a homosexual, had been shot dead one evening at their home in the capital by a group of men dressed as police who had entered their house. During the same incident, Jean’s throat had been slit, leaving a long scar, and her girlfriend shot at, though she had managed to escape. All

³⁹ Amnesty International’s concerns about the NSA procedure are outlined in Chapter Four.

this took place in front of her young son who was born after Jean had been raped years earlier. She and her son, then seven years old, applied for asylum in the UK in November 2002.

Jean was instructed to report to the Home Office where one day at 9am she and her son were detained to be taken to Oakington Reception Centre where they arrived at 1am the following day. Jean’s case was determined under the non-suspensive appeals process.

Jean’s asylum application was refused, and she was denied an in-country right of appeal. A judicial review of the decision to treat her case under the non-suspensive appeal procedure was refused. Her solicitor did not apply for her and her son’s release from detention.

A bail application was made by Bail for Immigration Detainees (BID) before the outcome of the judicial review. It failed due to the lack of sureties. While in detention, Jean was requested to cooperate with obtaining a travel document for her son, whose passport had been stolen, so that they could be returned to their country of origin. Jean complied despite her fear of being returned there.

She was kept in detention with her son pending the granting of a travel document by the authorities of her country. Her son, who is of school age, received little education at Oakington. He had been assessed by an educational psychologist prior to being taken into detention after concern had been raised about his disturbed behaviour at school. No further steps had been taken because he stopped

attending school as a result of being taken into detention.

Concerns were expressed by the medical staff at Oakington about Jean's son's mental and physical health. However, the Immigration Service took no action.

Eventually, Jean was referred to a new legal representative so that she could pursue her asylum case. She and her son were released from detention after 143 days, following a successful bail application by her new solicitor. Following further representations by her solicitor Jean was granted an in-country right of appeal.

Jean and her son were finally recognized as refugees in March 2005.

b) How fast are fast-track procedures?

The following cases are those of asylum-seekers whose cases had been processed through fast-track procedures -- processes for applicants whose claims are "suitable for a quick decision" while in detention.⁴⁰ Despite this, they were held for long periods of time in detention.

⁴⁰ The Government's five-year strategy describes the "separate detained fast track process at Harmondsworth IRC for applicants whose claims are suitable for a quick decision. If their claims are refused, a rapid appeals procedure follows before removal." Applicants are detained throughout unless they are taken out of the fast-track process. See Chapter Four.

Lamine

Lamine gave Amnesty International the following account of what happened to him.

Lamine was detained on arrival in the UK and spent 10 and a half months in detention even though his asylum claim was processed through fast-track procedures. He had received poor legal advice and representation and his asylum claim was rejected, his appeal dismissed. He was sent back to his country of origin where the authorities would not let him in and immediately returned to the UK. Lamine was granted bail and released from detention in May 2004.

"If you try to complain, you just get more trouble. Detention is not detention; it's a prison. Because we are black you treat us like this... if you want to stop people from coming here, help Africa to be peaceful. The Immigration Service doesn't respect anyone."

Lamine fled his home in West Africa when his political activities in support of a student organization linked to the former president caused him to fear for his safety. On arrival in the UK, he declared that he was using a false identification document, and immediately claimed asylum.

Lamine was immediately detained and spent a night in Dover IRC before being sent to Harmondsworth for his case to be processed through the fast-track. At Harmondsworth his claim for asylum was refused, and his appeal was also rejected.

Three weeks later, still detained there, he learnt that he was to be sent to Nigeria. Lamine said that he resisted being put on the plane as he had never been to Nigeria, and therefore objected to being sent there. He alleged that escort staff seriously assaulted him in the process of trying to force him to board the plane. They abandoned the attempt to forcibly return him and, after several hours at the airport, took him back to Harmondsworth.

Once back at Harmondsworth, he contacted his solicitor who told him that nothing else could be done for him. For the following two months he tried to get another solicitor to take on his case, but could not find anyone.

Lamine said that, 10 weeks after they had attempted to send him to Nigeria, he was woken in the middle of the night for a flight to take him back to his country of origin. He agreed to cooperate, boarded the plane, and travelled with three escorts. He said that on arrival the authorities there refused to accept the identification that had been provided by the escorts, and that in spite of showing the authorities some papers relating to his asylum claim, they refused to admit him. In the end, he was taken back to the UK, where he was immediately re-detained at Harmondsworth.

Several weeks later, while at Harmondsworth, he was finally able to find a solicitor to take on his case. However, once the legal aid papers had been sorted out he received only one visit from this solicitor. When he called her, she said she was working on the case. However, she did not apply for his release

pending his being issued with valid travel documentation.

Eventually, BID made repeated bail applications on his behalf. Unfortunately, despite receiving notices of bail hearings staff at Harmondsworth failed to arrange for him to attend on four occasions. Therefore, the Adjudicator refused to grant him bail in his absence. On the fifth occasion, he attended the hearing and was released on bail by the Adjudicator who judged his forced return not to be imminent, because of the lack of travel documents.

Meguen

Meguen spent nine months in detention in spite of the fact that his asylum application was fast-tracked.

“everybody’s claim is negative. I stayed there [Harmondsworth] six months and I saw only one person that got a positive decision”

Meguen gave Amnesty International the following account of what happened to him.

Meguen described himself as politically active in his own country. He arrived in the UK in January 2004 claiming asylum on arrival. His asylum application was fast-tracked and he was detained at Harmondsworth IRC. Three days after his initial asylum interview his application was refused. He wanted to provide further evidence for his appeal. He therefore asked his family to send relevant documents. However, when the faxed reply arrived he was told that his name was not on the cover-sheet of the fax and

that, as a result, the documents were thrown in the bin.

Meguen's appeal was dismissed. At that point he told immigration officers that he could not return to his own country and added "*you can send my corpse*".

Subsequently, an attempt was made to forcibly return Meguen. In the course of this, it transpired that the authorities intended to use a copy of a membership card that his family had faxed to the centre as proof of his identity. This was despite the fact that the authorities had previously told him that the very same documents that he needed for his appeal had in fact been destroyed.

Meguen reported that he was assaulted by the escorts taking him from Harmondsworth to the airport. He said that he witnessed the assault of a woman who was also being forcibly returned. Like him, she was handcuffed. The enforced return did not go ahead and he was taken back to the Harmondsworth.

He was in Harmondsworth at the time of the disturbance in July 2004 (see above). He was transferred to Her Majesty's Prison Elmley where he was put on suicide watch and stayed there over two months.

His case should have been decided quickly but he spent more than nine months in detention and was released on temporary admission in September 2004.

The human cost of errors by the immigration authorities

Several of those interviewed were detained when they were told that their appeal rights had been exhausted and that they were thus at the end of the process. They were told they were being detained with a view to enforcing their return to their country of origin. Shafiq's case is an example of a procedural error.

Shafiq

"In Lindholme I was not treated with respect and was frightened."

Shafiq gave Amnesty International the following account of what happened to him.

Through a combination of administrative errors, neither Shafiq nor his solicitor was informed that his appeal had been heard and dismissed.

At this point, in June 2004, Shafiq and his sister were taken into detention from their home by police and immigration officers who banged on the door. He was told his case was over and he was going to be sent back to his country of origin. He complained that he did not know what was happening to him while he was in detention.

Shafiq was detained for 22 days at Campsfield House, Lindholme IRC and Manchester Airport before being released on bail in July 2004. He thinks he was released because they realised they had made a mistake.

Shafiq's solicitor submitted an application for judicial review of the decision to detain but before judgment was given the Home Office admitted a procedural error had been made in his case. At the time of his interview Shafiq was waiting for an appeal hearing against the refusal of asylum.

People who have claimed asylum are human

In the course of its research, Amnesty International came across prejudiced attitudes towards those who had claimed asylum espoused by those working in the system. In addition, the organization received reports of inhumane and aggressive treatment in some cases.

a) Movement around the detention estate

Amnesty International researchers were given examples by those interviewed of being shunted from one IRC to another without any notification. In some cases the transfer took place at night and people were kept for hours in the back of a van. At Dungavel IRC Amnesty International was informed that on one occasion a woman was transferred from the south of England to Scotland only to be transferred back to England the following day.

The majority of those interviewed for this report were transferred from one place of detention to another with some being transferred more than four times.

Patrice

“An innocent like me. Thinking of my family in my country being harassed by the security services. The UK has a reputation for compassion for refugees. I see no reason to be put in prison living with criminals. I am not a criminal I've done nothing wrong.”

Patrice, a practising Christian, had to flee his own country for political reasons leaving his wife and four children in hiding. He did not choose to come to the UK but was helped to escape by members of his church and was accompanied to the UK by a priest. He would have preferred to be in France where his brother has refugee status.

He gave Amnesty International the following account of what happened to him.

Patrice received poor legal advice and representation and was detained after his appeal against the refusal of asylum was dismissed. At 10am the Immigration Service came to his house, got his suitcase and threw in a few things. He says he was *“treated like a dog”* and held in a police cell for 48 hours. He asked to see his lawyer but the request was denied.

Patrice was detained initially for 11 months and during that time was taken to Lindholme IRC in the north of England for two and a half months. He was then transferred to Harmondsworth where he complained that staff were openly hostile and racist and got very depressed while

being held there. He said that there was racist verbal abuse by staff in the other places by one or two bad officers, but in Harmondsworth it was very bad.

He remained in Harmondsworth until the disturbance on 20 July 2004, when he was transferred to HMP Elmley for three weeks and then to Haslar IRC. Patrice was finally granted bail in October 2004, only to be re-detained in November 2004 when he was taken to Colnbrook IRC. He was again released on bail.

As with many of those interviewed, Patrice says the authorities attempted to enforce his return from the UK on seven occasions. He alleges he was ill-treated by escort staff during attempts to return him.

Patrice said that his rights were not respected in detention. He received no information regarding his case and his lawyer never came to see him. He complained that the telephone cards he was given did not last long.

At the time he was interviewed by Amnesty International, Patrice had submitted a subsequent claim for asylum in the UK.

b) Allegations of assault during forcible removals

Amnesty International came across cases of people who had claimed asylum at some stage who were held in detention and whom the authorities had attempted to forcibly return to their countries of origin on many occasions. There have been allegations by the individuals concerned that excessive force was used by the

authorities in attempting to enforce their return.

In November 2004 the Medical Foundation for the Care of Victims of Torture released a report "*Harm on Removal: Excessive Force Against Failed Asylum-seekers*" documenting numerous cases of allegations of assault by escort staff against rejected asylum-seekers during attempts to forcibly remove them from the UK. Amnesty International understands that CCTV cameras have now been installed in escort vans. During a visit to the Immigration and Nationality Directorate, Amnesty International was told by the Home Office that the introduction of CCTV cameras was not as a result of the Medical Foundation's report but that the intention had been to install such cameras to protect escort staff and detainees from unfounded allegations. However, concerns remain that people may be vulnerable to the excessive use of force at the airport.

Amnesty International interviewed several people whose asylum claims had been rejected who complained of being assaulted while being escorted to the airport to be forcibly removed from the UK. The following is such an example.

Cisse

"England is supposed to be a place where human rights are protected, but it's also a place where human rights are violated."

Cisse gave Amnesty International the following account of what happened to him.

Cisse fled his own country in West Africa after the president was assassinated, his family were targeted, his house destroyed and his younger brother killed. He claimed asylum three days after arriving in the UK and at the same time declared that he had used a false passport to enter the country. He was immediately detained and taken to Oakington Reception Centre for his case to be processed under fast-track procedures. He was released after eight days when his lawyer lodged an appeal against the initial refusal of his asylum claim.

Upon release from Oakington, Cisse remained in contact with the Immigration Service, complying with weekly reporting requirements, while waiting to hear about the outcome of his appeal. One day, he was in the street with a friend when his ID was checked by police who, after conferring with the Immigration Service, told Cisse that his appeal had failed.

Cisse was taken into detention at Harmondsworth IRC prior to his forcible return to his country of origin. He said that neither he nor his solicitor had been informed of the date of his appeal hearing or its dismissal before he was detained.

Two days later, the Immigration Service tried to forcibly return Cisse to his country of origin without any of his belongings. The flight was cancelled while he was waiting at the airport. Five days later, he was booked onto another flight to forcibly remove him. This time he resisted being returned without his possessions, and alleged that he was badly beaten by eight escorts from the private company employed to carry out forcible removals.

He complained that as a result of this assault, he was badly bruised, his face was bleeding and he could not stand unaided. He was taken back to Harmondsworth IRC where he was seen by a nurse but had to wait four days before his request to see a doctor was met.

Cisse received poor legal advice and representation. He told the organization that despite contacting his solicitor, he did not receive any visits or assistance, and nearly two months after the last failed attempt to forcibly remove him, he was still detained. He eventually succeeded in finding a new solicitor who visited him once at Harmondsworth but did not take any action to try and get him released or do any work on his case.

Three months after Cisse was detained, the Immigration Service again tried to forcibly remove him, in handcuffs, using three escorts. The removal did not go ahead because the pilot refused to carry a passenger in handcuffs, so he was again taken back to the centre. He tried to persuade his lawyer to apply for bail, but ended up representing himself in a bail application because his solicitor said he would need to pay for the barrister himself.⁴¹

His case also illustrates another concern of Amnesty International, namely, that people are being shunted around the detention estate. In his case, in July 2004 following the disturbance at Harmondsworth IRC, he was moved to HMP Elmley where he stayed for several weeks, before being transferred to Tinsley

⁴¹ This was as a result of restrictions of legal aid. See Chapter Three below.

House IRC for two weeks and then to Dover IRC.

In Dover IRC, an immigration officer explained to him that the authorities in his country of origin were refusing to accept him as they did not accept EU letters (i.e. a form of travel document issued to undocumented people but not accepted by all receiving countries). The officer said that his embassy had refused to re-document him, and that was why he continued to be detained at Dover. In connection with this, he expressed concern that:

“my country doesn’t accept people who are being deported, yet they are still locked up here. It’s not right.”

This illustrates Amnesty International’s concern that detention continues even when there is no prospect of removal due to documentation problems.

Cisse’s first bail application only took place after nine months and was dismissed on the basis that he had refused to cooperate in the attempts to forcibly remove him and had been violent during these attempts. He was distressed because despite presenting medical evidence documenting the assault he had been subjected to by escort staff he was not believed. Instead, the escort staff who counter-claimed that he had assaulted them were believed in the absence of any medical evidence in support of their allegations.

He was notified by the authorities on eight separate occasions that his forcible removal was imminent. Eventually, his solicitor agreed to make a bail application.

This time, the application was successful, and in September 2004 Cisse was released with two sureties of £200 after 10 months and 14 days in detention

Since his release, Cisse says that British people he has met have not been able to believe that he had been locked up all that time in the UK.

Deaths of immigration detainees

There were five deaths in immigration detention recorded between 1989 and mid-2003, four of which were self-inflicted.⁴² In January 2000, a Lithuanian asylum-seeker, known to suffer from a depressive illness, committed suicide in Harmondsworth IRC. In April 2003, an internal Home Office inquiry found that the company running the centre at that time did not have a formal policy to prevent self-inflicted deaths and there was insufficient care of detainees at the centre.⁴³

In 2004, there was a sharp increase in the number of apparently self-inflicted deaths among immigration detainees. Four detainees died in removal centres in 2004; two detainees were found hanged at Harmondsworth and Dungavel IRC, and another died in hospital following an attempt on his life at Colnbrook IRC. A further death occurred at Haslar IRC, and was apparently from natural causes, but allegations followed that the deceased had been ill-treated at another centre in the days before his death. All four men had sought asylum in the UK. There are thought to have

⁴² Memorandum from the Home Office to the Joint Committee on Human Rights, see Ev. 1, Deaths in Custody: Interim Report, HL Paper 12, 26 January 2004

⁴³ See: Liberty, “Official investigation condemns care of suicidal asylum detainee,” 8 April 2003, at <http://www.libertyhuman-rights.org.uk/press/press-releases-2003/suicidal-asylum-detainees.shtml>

been two deaths of immigration detainees in prison in 2002 and a further two in 2003.⁴⁴

In December 2004, the UK parliamentary Joint Committee on Human Rights (JCHR) expressed concern about the increase in the number of deaths of immigration detainees in prisons and removal centres, following an inquiry into deaths in all forms of state detention. Their report notes an increase in recent deaths and highlights the vulnerability of detainees who are *“likely to be vulnerable, with high rates of mental illness and distress, and sometimes with past experience of imprisonment, ill-treatment and torture.”*⁴⁵

The Committee recommended an urgent review of the use of prisons for immigration detainees, with a view to reducing the numbers of detainees held in prison, with particular reference to those at risk of suicide or self harm. The JCHR stated: *“It is a matter of concern that despite a Home Office policy decision [to end the use of prisons for immigration detainees], a relatively significant number of potentially vulnerable people, who are either unconvicted or have completed any sentence of imprisonment, are being held in an inappropriate prison environment.”*⁴⁶

⁴⁴ Memorandum from the Prison Service to the Joint Committee on Human Rights, see Ev. 29, Deaths in Custody: Interim Report, HL Paper 12, 26 January 2004

⁴⁵ Deaths in Custody, Joint Committee on Human Rights, Third Report of Session 2004-5, HL Paper 15-1, HC 137-1, 8 December 2004, p 28.

⁴⁶ *Ibid*, p 39.

CHAPTER TWO: DETENTION IN THE UK

The international legal framework

Under international refugee law and standards the detention of asylum-seekers is the exception and should normally be avoided.⁴⁷ Asylum-seekers whose claims are being considered are entitled to a presumption of liberty under international refugee law and standards.

In addition, asylum-seekers are entitled under international standards to be presumed as deserving of protection unless and until their application for asylum is dismissed as a result of a fair and efficient asylum-determination process which fully meets internationally-recognized standards for refugee protection.

Once an asylum applicant's claim has been dismissed following such process, the individual concerned is considered as not deserving of protection under international refugee law. It is at this stage

⁴⁷ See, in particular, UNHCR ExCom 44 (Conclusion on Detention of Refugees and Asylum-Seekers adopted in 1986). "...(b) Expressed the opinion that in view of the hardship which it involves, detention should normally be avoided. If necessary, detention may be resorted to only on grounds prescribed by law to verify identity; to determine the elements on which the claim to refugee status or asylum is based; to deal with cases where refugees or asylum-seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim asylum; or to protect national security or public order...", available at <http://www.unhcr.ch/cgi-bin/texis/vtx/home/openssldoc.htm?tbl=EXCOM&id=3ae68c43c0&page=exec>.

that people whose asylum claims have been dismissed can lawfully be detained to remove them from the territory in safety and dignity.

However, detention must be necessary. In this context, necessity means that non-custodial alternatives would not suffice. The resort to detention must also be for the shortest possible time and with a view to forcibly removing the individual concerned within a reasonable time. Detention cannot be justified simply on grounds of wanting to enforce the expulsion of someone from the state's territory. The authorities must demonstrate that there exists a reasonable prospect of enforcing the expulsion of the person concerned from their territory and that they are pursuing with due diligence expulsion arrangements. In this context, reasonable means within a reasonable time. Therefore, states cannot detain people indefinitely.

Relevant international standards

The international community has elaborated a number of particular principles and standards specific to refugees and asylum-seekers.⁴⁸ The right to seek sanctuary from persecution is enshrined in international law. Article 14(1) of the Universal Declaration of Human Rights (UDHR) provides that "*everyone has the right to seek and to enjoy in other countries asylum from persecution*". The source of international refugee law and standards is foremost the 1951

⁴⁸ Appendix II contains a summary of all relevant international standards relating to refugees and asylum-seekers.

Convention relating to the Status of Refugees (Refugee Convention) and its 1967 Protocol relating to the Status of Refugees which are both binding on States Parties. Other internationally-recognized standards, which are adopted by consensus and are regarded as authoritative in the field of refugee rights, are the Conclusions adopted by the intergovernmental Executive Committee of the Programme of the United Nations High Commissioner for Refugees (EXCOM Conclusions), and the 1999 UNHCR Guidelines on applicable Criteria and Standards relating to the Detention of Asylum-Seekers (UNHCR Guidelines).

At a regional level, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) provides

⁴⁹ In addition, more detailed safeguards for the rights of those in detention and the duties of Member States are found in non-treaty standards adopted by consensus by UN Member States. These have the authoritative value and persuasive force of their adoption by political bodies such as the UN General Assembly, even though they do not have the power of treaties, except insofar as they reflect customary international law. These include the UN Standard Minimum Rules for the Treatment of Prisoners; the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; and the UN Rules for the Protection of Juveniles Deprived of their Liberty. Appendices I and II contain a detailed breakdown of specific provisions within those legal instruments and related case-law.

⁵⁰ According to Article 5(1)(f) of the ECHR, for example, detention of asylum-seekers and of those whose asylum claims have been dismissed can lawfully take place only in very limited circumstances: to prevent an unauthorized entry or to effect removal. Article 5 states: "(1) Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: [...] (f) the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

binding legal standards which are enforceable through the European Court of Human Rights (ECtHR). Although the ECHR contains no specific provisions relating to the treatment of asylum-seekers and refugees, its Article 3, which enshrines the prohibition of torture or other ill-treatment, has been interpreted by the ECtHR as protecting individuals against expulsion to countries where they face torture or other ill-treatment.

The international standards relating to the detention of asylum-seekers are sourced from a whole body of international law instruments, from the broad human rights standards applicable to all groups of people to the specific instruments designed to protect asylum-seekers and refugees. Together with the general human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR) and the ECHR, the Refugee Convention, EXCOM Conclusions and UNHCR Guidelines provide ample basis for arguing that asylum-seekers should not be detained and that detention is an exceptional measure, subject to severe limitations.

Freedom from arbitrary arrest or detention is a basic human right. General human rights law includes a series of measures to ensure that all individuals, including refugees and asylum-seekers, are not arbitrarily or unlawfully deprived of their liberty. Sources of international law governing detention include the UDHR, the 1951 Refugee Convention and its 1967 Protocol, the ICCPR and the Convention on the Rights of the Child (CRC).⁴⁹

At a regional level, Article 5 of the ECHR, which enshrines the right to liberty and security, protects all persons, including those who have sought asylum, against arbitrary detention. Article 5 safeguards the right to liberty and prescribes the narrow circumstances in which the deprivation of liberty might be justified.⁵⁰

The UK, like the majority of refugee-receiving countries in the world, is party to all the relevant legal instruments and is, therefore, bound by them. Amnesty International expects the UK to uphold those standards and to interpret them in “good faith”.

When is detention lawful?

Depriving people of their liberty is a measure of grave consequences which, according to international law, should only be resorted to in exceptional circumstances. Since the consequences for the individuals concerned are so severe, deciding whether or not someone’s detention is lawful (both under national and international law) and justified is of crucial importance.

At the heart of the international legal norms relating to the right to liberty is the protection against arbitrary detention.⁵¹ Arbitrariness has a number of aspects. Firstly, the power to detain must be clearly granted in national law which must itself comply with relevant international human rights law. Secondly, it is clear that the law must be “sufficiently precise and ascertainable” so as to enable the individual to acquaint herself/himself with the legal rules applicable to her/him and to regulate her/his conduct in accordance with the rules.⁵² Thirdly, the detention must be for one of the authorized purposes.⁵³ Fourthly, the detainee must also have access to a “judicial or other

authority”, that is, “a judicial or other authority which is duly empowered by law and has a status and length of mandate affording sufficient guarantees of competence, impartiality and independence” capable of granting an administrative or judicial remedy.⁵⁴ In particular, the deprivation of liberty may be of an arbitrary nature when the person concerned is not granted some or all of the following: “[a]ny asylum-seeker or immigrant placed in custody must be brought promptly before a judicial or other authority”;⁵⁵ “[t]he decision [to detain] ... must be founded on criteria of legality established by the law”;⁵⁶ and “[a] maximum period should be set by law and the custody may in no case be unlimited or of excessive length”.⁵⁷

A deprivation of liberty will be contrary to international legal standards where it is arbitrary in its motivation or effect.⁵⁸ Motivation in this sense means the reasons given as justification for the detention. Even if the detention is properly motivated, it may be arbitrary if it is disproportionate to the attainment of its purpose.⁵⁹ The connection between the detention and the legitimate purpose permitted by Article 5(1) of the ECHR should not be tangential or theoretical but substantial and proportionate. In deciding whether to deprive a person of her/his liberty the authorities are expected to take into

⁵¹ It is clear from the consistent case-law of the ECtHR that the essence of the protection provided by Article 5(1) is the prevention of detention that is arbitrary.

⁵² See *Amuur v France*, judgment of the ECtHR (1996) 22 EHRR 533, at para. 50.

⁵³ Article 5(1)(f) of ECHR, for instance, authorizes detention in an immigration context, i.e. to prevent illegal entry or to enforce removal.

⁵⁴ *Deliberation No. 5 - Situation regarding immigrants and asylum-seekers*, Report of the Working Group on Arbitrary Detention, Annex II, E/CN.4/2000/4, 28 December 1999.

⁵⁵ *Ibid*, Principle 3.

⁵⁶ *Ibid*, Principle 6.

⁵⁷ *Ibid*, Principle 7.

⁵⁸ See *Winterwerp v the Netherlands*, judgment of the ECtHR (1979) 2 EHRR 387, paras 37-39.

⁵⁹ *Ibid*, at para. 39.

account factors such as past behaviour,⁶⁰ risk of absconding, whether less severe measures than detention have been considered and found to be insufficient,⁶¹ and the effectiveness of detention.⁶²

The power to detain and the reasons for detention

The legal framework for the treatment of immigrants, asylum-seekers and refugees in general in the UK is very complex and not the focus of this report. However, in order to understand some of Amnesty International's concerns, it is necessary to examine the basics of the domestic legal framework and of the policies which detained people, who have sought asylum in the country, confront.

Under UK law detention does not need to be ordered or sanctioned by a court. Powers to detain people who have applied for asylum -- either as soon as they have lodged their application or once their claim has been dismissed -- as well as powers to detain other non-UK nationals, stem from provisions of the Immigration Acts and are very widely drawn. Immigration officers and the Home Office officials have powers to detain those who are subject to immigration control, including asylum-seekers and people whose asylum claims have been dismissed.⁶³

⁶⁰ *Cesky v the Czech Republic*, judgment of ECtHR of 6 June 2000.

⁶¹ *Litwa v Poland*, Judgment of ECtHR, 4 April 2000 para. 98; *Tomasi v France*, judgment of the ECtHR (1992) 15 EHRR 1.

⁶² *Bouamar v Belgium*, judgment of the ECtHR (1987) 11 EHRR 1.

⁶³ Immigration officers' powers to detain those subject to immigration control are set out in

There are no statutory criteria for detention; each case must be looked at on its merits.⁶⁴ Instructions as to who can be detained and why are set out in the Operational Enforcement Manual.⁶⁵

Stated UK policy allows for detention to be used to prevent absconding, to establish identity, to remove people from the UK at the end of their asylum or immigration case and for the purposes of making a decision on a claim for asylum that is deemed to be "straight forward" and therefore "capable of being decided quickly".⁶⁶

Schedule two, para. 16 of the Immigration Act 1971 as amended; analogous detention powers of the Secretary of State are provided in section 62 of the Nationality, Immigration and Asylum Act 2002.

⁶⁴ "The use of detention is considered on a case by case basis after careful consideration of the facts in each case. Consideration will always be given to an individual's record of compliance and contact with the Immigration Service in order to inform the decision to detain." Des Browne MP, at the time Minister for Immigration, letter to the NGO Bail for Immigration Detainees (BID), 11 November 2004.

⁶⁵ *The Operational Enforcement Manual*, cited at note 9 *supra*.

⁶⁶ "An asylum claimant may also be detained to establish identity or basis of claim, or in cases where there is reason to believe he will fail to comply with any conditions attached to the grant of temporary admission or release. Asylum claimants whose claims have been refused may be detained to effect removal if there is reason to believe they will fail to comply with the conditions of temporary release.", see Chapter 5 - Special Types of Case, the Asylum Process Manual (APM). The APM "constitutes the Immigration and Nationality Directorate's official staff instructions relating to the operational processes for handling asylum claims and asylum-related applications", available at http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/operational_processes/chapter_5_-_special.html.

There is no upper or lower age for being detained as asylum-seekers or immigrants in UK law.

Attempting to increase forced returns: expansion of the immigration detention estate

In recent years, the UK authorities have focused on increasing the number of forced returns of asylum applicants whose claims have been dismissed and others who, purportedly, have no right to remain in the country.

The policy to forcibly return an increasing number of asylum-seekers whose claims have been dismissed has resulted in an increase in the number of people in detention, on the basis that detained people are easier to remove.

For example, in 2002 a Government White Paper stated that:⁶⁷

Detention has a key role to play in the removal of failed asylum seekers and other immigration offenders. To reinforce this we shall be redesignating existing detention centres, other than Oakington Reception Centre, as 'Removal Centres'. Detention remains an unfortunate but

⁶⁷ A white paper is a precursor to a legislative Bill, which itself precedes an Act of Parliament, i.e. a piece of legislation. A white paper is a statement of policy on the subject before the bill is introduced; or the bill may simply be presented without any prior announcement. See Factsheet L1, Legislation Series Revised March 2003, at <http://www.parliament.uk/documents/upload/101.pdf>.

*essential element in the effective enforcement of immigration control. The primary focus of detention will continue to be its use in support of our removals strategy.*⁶⁸

Ministers have made clear that an expanded detention estate is seen as key to facilitating this process. For example, in November 2004, the then Home Office Minister Des Browne stated: "removal capacity will soon be three times 1997 levels. This will help us meet the target we set out in September, to ensure that by the end of 2005 the monthly number of removals exceeds the number of unfounded asylum claims".⁶⁹

In February 2005, the UK authorities confirmed their intention to continue to use immigration detention as a key plank of their asylum policy, even though the numbers of new asylum-seekers arriving in the UK are falling.⁷⁰ The Home Office five year strategy for asylum and immigration: *Controlling our borders: Making migration work for Britain*, published on 7 February 2005, announced a further 300 detention places by 2007.⁷¹

⁶⁸ See *Secure Borders, Safe Haven*, para. 4.75.

⁶⁹ Des Browne, Home Office Press Release, Ref. 354/2004, 16 Nov 2004.

⁷⁰ "Asylum applications fell in the last quarter of 2004 by two per cent, and remain at the second lowest level since 1997", *Asylum applications continue to fall*, Home Office press release, 22 February 2005.

⁷¹ *Controlling our borders: Making migration work for Britain*. Charles Clarke sets out five year Strategy for Immigration and Asylum, Home Office press release, 7 February 2005, cited at note 11 *supra*.

The focus on forced returns has resulted in policy shifts to allow for the enforced removal and detention of certain vulnerable groups whose departure from the UK was previously not enforced. In October 2001, policy was changed to allow for longer periods of detention for children in families and in September 2004, it was announced that those aged 65 or over would not be exempt from attempts to remove them from the UK.⁷²

Where people are detained

At the start of 2005, nine so-called IRCs and Oakington Reception Centre are being used to detain those who have sought asylum in the UK at some stage.⁷³ Those asylum-seekers detained at the beginning of the asylum process can be detained while their claims are put through accelerated asylum-determination procedures operated at Harmondsworth IRC, Oakington Reception Centre and Yarl's Wood IRC (for more information on this see Chapter Four below). A number of so-called short-term holding facilities are also in operation.⁷⁴

⁷² An Immigration Service Interim Operational Instruction, issued to the Enforcement and Removals Directorate of IND on 17 September 2004 states "policy has changed with regard to our ability to remove people aged 65 and over, who otherwise have no basis of stay in the United Kingdom. Previous policy was that as a general rule, we did not enforce the departure of those aged 65 or over... There is now no specified upper age limit."

⁷³ Although Oakington is called a Reception Centre, it is run under Detention Centre Rules and is a locked centre; people are detained there under Immigration Act powers.

⁷⁴ Short-term holding facilities include reporting centres in major cities around the country, holding rooms at ports, and the facilities at Colnbrook IRC near Heathrow.

With the exception of Haslar, Dover and Lindholme IRCs, which are run by the prison service, all Removal Centres are operated by private companies, contracted out by the Immigration and Nationality Directorate (IND).⁷⁵

Mainstream prisons are also used in the UK to house people who have sought asylum. In October 2001 the Government gave an undertaking that the detention in prisons of people who had some stage sought asylum would cease from 25 December 2001. However, only six weeks after that date, a large part of the newly-opened Yarl's Wood Detention Centre in Bedfordshire was destroyed by fire⁷⁶ and it was announced that, as a result, the use of prisons would be re-introduced.⁷⁷ Similarly, in July 2004, nearly 200 detainees were moved from Harmondsworth IRC to prisons across the country when the Centre had to be closed temporarily following a disturbance.

⁷⁵ On 29 June 2004, the Minister announced that detention facilities at Dover and Haslar would be transferred to the control of IND and that detention at Lindholme would be phased out and its use returned to a mainstream prison. Home Office press release, Ref 218/2004, 29 June 2004.

⁷⁶ The incident was a response to the alleged mistreatment of a female detainee who had reportedly been denied access to health care and prevented from joining prayer sessions.

⁷⁷ The Secretary of State, David Blunkett, on 24 February 2002, stated that "...detainees with a history of violent or criminal behaviour and those considered a danger to safety have been transferred to prison". *Hansard*, House of Commons debates, 25 February 2002, C 442. Criteria for transfers from removal centres to prisons, Detention Services, June 2002 "detainees may exceptionally be moved to prisons on security or control grounds..." (see Appendix 6, *Challenging Immigration Detention – a best practice guide*, Bail for Immigration Detainees, Immigration Law Practitioners' Association, Law Society of England and Wales, October 2003).

Since that time, prisons have continued to be used to detain people who have claimed asylum at some stage. Ninety people who had sought asylum at some stage were held in prisons on 25 December 2004.⁷⁸ UK government policy remains that prisons may be used for all immigration detainees, including those who have claimed asylum at some stage, for reasons of security and control.

In Northern Ireland, there are no dedicated detention facilities, and all immigration detainees are held in prisons.⁷⁹ This state of affairs has resulted in the routine use of prison accommodation for men, women and children who have sought asylum at some stage.⁸⁰ In a report published in February 2004, the House of Commons Northern Ireland Affairs Committee endorsed calls for urgent measures to be taken to deal with immigration detainees, including those who have sought asylum at some stage, outside the prison system.⁸¹

⁷⁸ *Asylum Statistics: 4th Quarter 2004 United Kingdom*, Home Office Research Development and Statistics Directorate, February 2005, Table 11.

⁷⁹ At the time of Amnesty International's conducting its research for this report, Hydebank Wood Prison and a unit which accommodates male immigration detainees on the site of the Crumlin Road Prison (NB the actual prison is not in operation any longer) were used to hold immigration detainees.

⁸⁰ In the course of its research for this report an Amnesty International delegate interviewed people who had sought asylum at some stage and had been detained in prison in Northern Ireland.

⁸¹ House of Commons Northern Ireland Affairs Committee, *The separation of paramilitary prisoners at HMP Maghaberry*, Second Report of Session 2003–04, Volume I, para. 23, p. 53.

The truth about numbers

Amnesty International and other organizations have called on the UK authorities to provide a true picture of the annual numbers of those detained under Immigration Act powers who have sought asylum at some stage in the UK.

The Home Office does produce quarterly statistics providing a snapshot figure indicative of the number of people detained on a given day under Immigration Act powers who have sought asylum at some stage. For example, according to the official statistics, on 25 December 2004 around 78 per cent of those held in detention under Immigration Act powers had sought asylum.

The snapshot figures of 2004 indicated that there were 1,330 people who had sought asylum detained on a given day during the first quarter; 1,385 in the second quarter; 1,105 in the third quarter; and 1,515 in the final quarter. Notably, because of the quarterly nature of the snapshot figure, someone who had sought asylum could be detained for up to 89 days and their detention would still go unreported.

In addition, it is known that on 25 December 2004, 500 (33 per cent) of asylum detainees had been in detention for 14 days or less, 365 (24 per cent) for 15 to 29 days, 290 (19 per cent) for one month to less than two months, 155 (10 per cent) for two months to less than four months,

and 200 (13 per cent) for four months or more.⁸²

However, despite these statistics, there is a notable lack of transparency in relation to the exact number of those detained in the UK throughout the year, once their asylum claim has been dismissed and about the length of their detention. The quarterly official statistics show persons recorded as being in detention in the UK solely under Immigration Act powers on a particular day, by places of detention, by gender and the length of time spent in detention on that particular day. Therefore, Amnesty International is concerned that the picture of how many people who have sought asylum and are detained, and their length of detention remain unclear. The figures made available with respect to Oakington Reception Centre and Harmondsworth IRC are the exception to this.⁸³ In May 2005, the UK authorities produced statistics on the number of asylum-seekers fast-tracked and detained at Harmondsworth IRC during 2004 and the first quarter of 2005. Statistics are also available quarterly on asylum-seekers

whose claims are processed at Oakington Reception Centre.

Amnesty International has concluded that the Home Office quarterly statistics belie the true scale of the detention of those who have sought asylum in the UK. Through its own research for this report, Amnesty International believes that thousands of people who have sought asylum are being detained for varying lengths of time each year, including some who are detained for lengthy periods of time.

The Home Office has confirmed to the organization that all those detained under Immigration Act powers, including those who have sought asylum at some stage, are allocated a “detention coordination” reference number when initially detained which should remain with the detainee throughout their detention period and any subsequent detentions. It is the Detainee Escorting and Population Management Unit (DEPMU) which allocates the detention coordination reference number for operational purposes. This number records the year in which the person is originally taken into detention and is used for the purpose of managing the detention and escorting of detained individuals.

The exception to this, according to information provided by the Immigration and Nationality Directorate, are asylum-seekers detained at Oakington Reception Centre who are then given temporary admission. They are not allocated a “detention coordination” reference. No separate record is kept and the port reference is used instead unless they are re-detained pending their forcible removal from the UK or because they are

⁸² *Asylum Statistics: 4th Quarter 2004, United Kingdom*, Home Office Research Development and Statistics Directorate, February 2005, p 10.

⁸³ For example, the latest set of official statistics indicates that during the first quarter of 2005 there were 1,400 asylum-seekers held in Oakington Reception Centre. In addition, for the first time, these statistics reveal that 365 asylum-seekers were detained during the first quarter of 2005 at Harmondsworth IRC while their claims were being fast-tracked. For more information about Amnesty International’s concerns about the detention of asylum-seekers while their claims are fast-tracked see Chapter Four below. For the latest set of official statistics, see *Asylum Statistics: 1st Quarter 2005 United Kingdom*, Home Office Research Development and Statistics Directorate, May 2005.

transferred to be detained elsewhere in the immigration removal estate.⁸⁴

At each of the IRCs the organization was given a register of those detained on the day of its visit.⁸⁵ At some of the IRCs the registers provided to Amnesty International included the detainees' detention coordination number.

The Home Office also confirmed that 34,908 detention coordination reference numbers were issued in 2003 and 32,026 were issued in 2004. Using a median of 78 per cent -- derived from above-mentioned official quarterly statistics for 2003 and 2004 -- Amnesty International suspects that at least 27,000 people who had at some stage sought asylum were detained in 2003 and, similarly, that upwards of 25,000 individuals were detained in 2004, some possibly just overnight and others for prolonged periods of time.⁸⁶

Because the authorities only release the above-mentioned snapshot statistics, Amnesty International is unable to work out how long each individual was detained. The length of detention could range from anything between one day and over a year.

⁸⁴ According to information provided to Amnesty International by the Immigration and Nationality Directorate at the Home Office, from January to December 2003, 8,799 detainees and from January to December 2004, 7,741 detainees passed through Oakington Reception Centre and approximately 50 per cent of them would have been allocated a Detention Coordination reference number.

⁸⁵ It was explained that this information was faxed through to the DEPMU daily. Some IRCs sent these figures three times per day. However, there was no uniformity in the way that the statistics in each IRC were produced.

⁸⁶ These figures exclude those people who had been detained in previous years and were still in detention in these years.

In the absence of official statistics regarding exact length of detention per individual, it is impossible to verify whether detention coordination numbers from previous years meant that an individual was detained continuously or had, at some stage, been released from detention and re-detained, keeping the same detention coordination number. Amnesty International interviewed people who had sought asylum and who had been detained for more than one year, including George whose story was recounted earlier and who told the organization that he had been detained for two years.

Amnesty International is gravely concerned about the non-availability of official statistics to give a full picture of the number of people who have at some stage sought asylum and are being held in detention, including for prolonged periods of time, with limited opportunity, in practice, to bring their detention to an end.

Amnesty International believes that the Home Office should provide a full statistical picture of the number of those who have sought asylum and are detained each year, either while their claim is being considered or once dismissed. In contrast, for example, the UK authorities are able to produce full and accurate statistics and projections about the number of people detained within the criminal justice system.

Concern about the exact number of those who have at some stage sought asylum and are in detention was also noted by the Parliamentary Home Affairs Committee in their report on Asylum Removals in April 2003:

A clear picture of the current use of detention, and the reasons why

individuals are detained, is not available at the moment because of the lack of relevant statistics. There is currently no data available on how many asylum-seekers are detained during the course of a year and for how long, or at what stage of the asylum process. It is therefore difficult to judge whether or not detention really is being used primarily to support removal, as the Government claims.

The organization believes that the reality is a system in chaos. The picture the authorities wish to paint to the public is that asylum applicants whose claims are without merit are refused quickly and expeditiously removed having spent the least possible time in detention.

Conversely, Amnesty International believes that many who have sought asylum at some stage are languishing in detention for long periods of time only to be released on bail or temporarily admitted as with some of the cases cited earlier.

According to Home Office statistics, during 2004, 12,430 asylum applicants and 2,285 dependants were removed from the UK. However, this figure includes those departing voluntarily following enforcement action initiated against them and 570 principal asylum applicants and 75 of their dependants who departed voluntarily under the Voluntary Assisted Return and Reintegration Programme (VARRP) of the International Organisation for Migration (IOM).⁸⁷

⁸⁷ “The IOM offers assistance for asylum seekers who want to return permanently to their country of

In conclusion, Amnesty International’s research findings concerning the truth about numbers should be considered in light of the UK authorities’ stated intention that detention is primarily used to support their “removal” strategy for those asylum-seekers whose claims have been dismissed.

The organization is concerned that people who have committed no crime are being detained. In addition, Amnesty International believes that many asylum applicants whose claims have been dismissed are taken into detention purportedly on the basis that their detention is necessary in order to forcibly return them to their country of origin.

However, many end up not being removed and are eventually released, including some after prolonged periods in detention. Therefore, legitimate questions arise as to whether the UK authorities are giving adequate consideration to non-custodial alternatives before resorting to detention. Indeed, all those interviewed for this report had been released from detention at the time of their speaking to Amnesty International. Thus, this begs the question of why they were held in detention in the first place and why their detention was considered necessary.

origin. The VARRP is open to asylum seekers of any nationality, whose asylum claim is under one of the following criteria: - Waiting for a Home Office decision - Refused by the Home Office - Appealing against the asylum decision - Withdrawn asylum application - Given ELR (Exceptional Leave to Remain)”, *What is VARRP?* available at <http://www.iomlondon.org/varrp.php>, last visited on 22 May 2005.

CHAPTER THREE: JUSTICE DENIED

Seeking asylum is not a crime

In the course of its research, Amnesty International came across prejudiced attitudes towards detained people who had sought asylum espoused by those working in the system. The organization frequently heard negative views regarding people who had sought asylum, including perceptions that they had committed an offence. Negative attitudes towards those who have sought asylum are compounded by recent legislation.⁸⁸ Seeking asylum, however, is not a crime. On the contrary, people claiming asylum in the UK – like elsewhere – are exercising a right which is enshrined in international law.

Amnesty International believes that, in accordance with international standards on refugee protection, people whose claims for asylum are rejected, whether at first

instance or when all domestic avenues have been exhausted, are entitled to be treated with fairness and dignity and should not be penalized for exercising their right to seek asylum.

The biased view of asylum-seekers the organization came across represents a grossly unfair slight on people who are entitled under international standards to be presumed as deserving of protection unless and until their application for asylum is dismissed as a result of proceedings which fully meet internationally-recognized standards for refugee protection and due process of law.

Amnesty International considers that the presumption that people deserve protection should extend beyond initial decisions dismissing claims for asylum up to the time when all avenues of appeal have been exhausted.

In this context, the detention of those who have at some stage sought asylum reinforces the widely-held belief that they are untrustworthy individuals who have done something wrong – that is, sought asylum.

A judge of the High Court of England and Wales expressed a similar concern in relation to an asylum-seeker whose subsequent claim for asylum had been dismissed because a negative inference had been drawn from the fact that she was in detention and her removal was

⁸⁸ Recently introduced legislative provisions criminalize the lack of possession of “an immigration document” which “satisfactorily” establishes the identity of the asylum-seeker concerned and her/his nationality or citizenship. “Entering United Kingdom without passport, &c.”, section 2, Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. By 19 March 2005, there had 148 convictions arising from these provisions (*Hansard* 4 April 2005, written answers). In Amnesty International’s experience people fleeing persecution often resort to using forged documents as they are unable to approach their authorities in order to obtain valid travel documents (see Article 31 of the 1951 UN Refugee Convention). Section 35 of the above-mentioned Act also made it a criminal offence for a person to refuse to co-operate with the UK authorities in their attempts to obtain a travel document for that individual.

considered “imminent”.⁸⁹ Amnesty International fears that such bias may be prevalent across the system.

The organization is also concerned that these negative views may deleteriously affect the way in which people who have at some stage sought asylum are treated by those in whose care they are entrusted within the immigration detention estate. People have complained to Amnesty International of being treated harshly, disrespectfully, in humiliating ways, including by being taunted on account of their race or religion and of being treated in other discriminatory ways. Almost all of those who were interviewed by the organization for this report, whose stories are recounted earlier, have made similar complaints.

No maximum time limit to detention

Like others subject to immigration control, people who have sought asylum should never be detained indefinitely simply on account of the dismissal of their claim. International law demands that there must be a reasonable prospect of effecting the removal or deportation of the individual concerned for his or her detention to be lawful.⁹⁰ Guideline 7 (Obligation to release where the removal arrangements are halted) of the *Twenty guidelines on forced return* of the Council of Europe states that “[d]etention pending removal

shall be justified only for as long as removal arrangements are in progress. If such arrangements are not executed with due diligence the detention will cease to be permissible.”⁹¹ Detention cannot be indefinite and the prospect of removing the individual concerned must be a reasonable one.⁹²

Under domestic legislation, the UK authorities have the power to detain pending removal. The authorities must be able to show that the individual concerned “is being detained with a view to his [or her] removal”⁹³ and that they are actively taking steps to effect such removal.

Detention for other purposes (such as deterrent to others where detention is not necessarily for the purposes of removal of the individual concerned) is not compatible with Article 5 [of the ECHR, guaranteeing the right to liberty]. It is important for Human

⁹¹ See Appendix III.

⁹² This was reiterated by the House of Lords in *A (FC) and others (FC) v Secretary of State for the Home Department* [2004] UKHL 56. In the leading opinion, Lord Bingham stated that “In *R v Governor of Durham Prison, Ex p Hardial Singh* [1984] 1 WLR 704 it was held, in a decision which has never been questioned (and which was followed by the Privy Council in *Tan Te Lam v Superintendent of Tai A Chau Detention Centre* [1997] AC 97), that such detention was permissible only for such time as was reasonably necessary for the process of deportation to be carried out. Thus there was no warrant for the long-term or indefinite detention of a non-UK national whom the Home Secretary wished to remove. This ruling was wholly consistent with the obligations undertaken by the United Kingdom in the European Convention on Human Rights, the core articles of which were given domestic effect by the Human Rights Act 1998.”

⁹³ Chapter 38 of the Operational Enforcement Manual, para. 38.1.1.1.

⁸⁹ *R (On the application of Konan) v Secretary of State for the Home Department* (2004) [2004] EWHC 22 (Admin), QBD (Admin Ct) 21 January 2004, per Mr Justice Collins.

⁹⁰ See *Chahal v. United Kingdom*, Judgment of 5 Nov. 1996, ECtHR, Series A, No. 22.

*Rights Act 1998 purposes that it can be shown that progress is being made towards removal.*⁹⁴

The detention of people who have sought asylum in the UK, however, is not subject to maximum time limits.

As a result of its research, Amnesty International is concerned that in many cases of detention of people who have sought asylum at some stage the UK authorities cannot demonstrate that there is a reasonable prospect that removal will take place within the shortest possible period of time.

Limbo, hopelessness and inadequate channels of communication and facilities

One of the most repeated complaints that people who had sought asylum at some stage raised with Amnesty International was that, while being detained, they had no idea of what was happening to them, both in relation to their asylum claims and the reasons for their detention. In addition, many were not aware of their rights or the legal avenues open to them to seek to bring their detention to an end, including by challenging its lawfulness.⁹⁵

Part and parcel of the right to seek asylum as recognized by international refugee law is access to, and receipt of, adequate and timely information from the authorities about the asylum claim. In addition, anyone deprived of his or her liberty has a

right to know the reason for their detention, and to be informed of the avenues to bring one's detention to an end.

In each case, those who have at some stage sought asylum and are in detention are given written reasons for their detention using a check-list in a tick-box form. The Detention Centre Rules, a statutory instrument which governs the processes in the centres, state that the reasons contained within the form are supposed to be explained in the detainees' own language. However, the organization is concerned that this may not be happening in practice, contrary not only to the Detention Centre Rules but also to relevant international law and standards. Former detainees have, for example, expressed their concern to Amnesty International that they had not been provided with a detailed explanation of the decision to detain them.

Immigration officers located within IRCs have no involvement in the process of examination of asylum claims of those who have at some stage sought asylum and are in detention. After 28 days, cases are reviewed by the Management of Detained Cases Unit (MODCU) at the IND (with the exception of families with children whose cases are reviewed before then). Therefore, on-site immigration officers simply function as a conduit for information between those in charge of making decisions concerning asylum claims and asylum applicants. Similarly, officers within IRCs do not instigate detention.

In this context, those who have at some stage sought asylum and had been in detention expressed their frustration to Amnesty International at the lack of

⁹⁴ *Ibid.*

⁹⁵ For more on this see below.

information they received from the authorities about the status and progress, if any, of their claim.

Amnesty International is concerned that in addition to being detained, those who have at some stage sought asylum are not promptly receiving up-to-date, accurate, impartial, detailed and well-reasoned information regarding their asylum claims, their detention and about the legal avenues available to them to seek to regain their freedom. The organization considers that such a failure amounts to a denial of justice to which many detained are being subjected and contributes to a feeling of hopelessness and insecurity on the part of those detained.

To make matters worse, Amnesty International considers that in a number of respects the facilities in some of the IRCs visited by the organization were inadequate and, therefore, capable of detrimentally affecting people's ability to pursue their asylum claims and the legal avenues open to them to seek to bring their detention to an end.⁹⁶ For example, there was no internet access at any of the IRCs visited by Amnesty International, with the exception of Dover IRC where limited internet access was provided in the shop although it was expensive. The organization was informed that a pilot scheme to provide internet access would be in operation from May 2005 at Yarl's Wood IRC. Phone cards were also expensive and unevenly priced throughout the detention estate, although people could send faxes free of charge.

⁹⁶ See below for Amnesty International's concerns relating to the legal avenues available to people in detention to attempt to bring it to an end.

Amnesty International is further concerned that the country information provided to people held within the IRCs which may be of use to them in the pursuit of their asylum claims was limited to the country reports produced by the Home Office. The organization notes that such information is not independent and, in any event, in a number of cases the reports provided were out-of-date.

Who is detained? The "bed lottery"

In light of its research, Amnesty International believes that one of the main reasons why the detention of many people who at some stage sought asylum is arbitrary is because it is premised on the availability of beds (i.e. the detention capacity in terms of bed numbers) within the immigration detention estate, rather than on considerations of necessity, proportionality and appropriateness, and therefore, lawfulness. The organization considers that this is also the case as far as detention in the context of the accelerated asylum-determination procedures is concerned.⁹⁷

Amnesty International was provided with information concerning the allocation of beds by DEPMU.⁹⁸

The organization is concerned that the UK authorities are targeting those individuals

⁹⁷ For the organization's concerns about detention within the fast-track, please see Chapter Four below.

⁹⁸ The Detainee Escorting and Population Management Unit (DEPMU) checks availability, allocates beds in the detention estate and carries out the transfer in the majority of cases.

who fully comply with reporting requirements. Amnesty International is also concerned that some people, including those who had been fully complying with reporting requirements, would suddenly be taken into detention.

For example, during a visit to an enforcement unit and short-term holding facility in London, Amnesty International's researchers were told that on any given day there was capacity for up to eight people to be taken into detention as they came in to comply with their reporting requirements. Furthermore, UK officials made it clear to the organization's researchers that the individuals concerned would have no prior warning of this.

Once the person targeted as suitable for detention comes to report, he or she would be taken to the short-term holding facility and a so-called "mitigating circumstances" interview would take place. UK officials explained to Amnesty International that the purpose of this interview is to ascertain whether there was anything unknown to the authorities which may mitigate against a decision to detain, such as, for example, in the case of a woman, a pregnancy since the previous time of reporting, or a pending legal challenge of which the authorities were not aware.

Paradoxically, this may mean that people who shared the same characteristics in terms of their asylum claims, as well as their reporting records vis-à-vis the authorities, may be treated completely differently. For example, one person may be taken into detention, literally from one day to the next without any prior warning, simply on the basis that a bed has become available, while another person would not

because the beds available on that day had already been filled.

In light of the above, Amnesty International believes that the arbitrary nature of the decision to detain amounts to a "bed lottery".

"Special operations"

As stated above, Amnesty International was provided with information concerning bed allocation. This included beds technically made available for special "operations" geared at the detention of people of certain nationalities. With respect to this, Amnesty International learnt, for example, that the second phase of a special operation, code-named "elucidate", targeting Chinese nationals was ongoing at the time of conducting its research. Immigration officials explained to the organization's researchers that the process of obtaining valid travel documents for Chinese nationals had been considerably speeded up following an "agreement" with the Chinese authorities. As a result, the UK authorities were targeting Chinese nationals with "no right to stay in the UK" for detention, including those whose asylum claims had been dismissed, so that their forced return to China could be carried out.

In light of the above, Amnesty International has concluded that people are being targeted for detention on the basis of their nationality through, for example, "operations" such as "elucidate". The organization considers that targeting individuals for detention on the basis of their nationality is arbitrary and represents another profound denial of justice which

those who apply for asylum today in the UK may be at risk of.

Is all this detention necessary?

A vast number of people who have at some stage applied for asylum end up being detained each year, some for prolonged periods of time. This raises the legitimate question: are all these people being detained in compliance with international and domestic human rights law?

In the context of the research carried out for this report, Amnesty International interviewed a number of people who had all been detained. Some of them had spent long periods of time in detention and then had gone on to be recognized as refugees. Some were eventually granted temporary admission into the UK; while others were eventually released on bail. At the time of going to print, a number of those interviewed by Amnesty International were mounting challenges for unlawful detention, while one had already succeeded.⁹⁹ The question then is: how many others among the vast number of those in detention have been unjustly detained?

According to the UK authorities, the normal detention criteria for detaining asylum-seekers are “initially, whilst identity and basis of claim is established; because of a risk of absconding; to effect

removal; or as part of a fast-track asylum process”.¹⁰⁰

Despite the prescribed circumstances described above under which detention would be lawfully warranted, detention is being resorted to in an increasing number of cases in which Amnesty International believes these criteria are not being met.

For example, the perceived risk of absconding is a key rationale for detention at the end of the asylum process, and is a common justification in individual cases. It is very common for the Immigration Service to refuse to grant Temporary Admission, or to oppose bail, on the basis that the applicant is likely to abscond. The view of an official as to whether a person may abscond may be a subjective judgment that is not necessarily based on previous behaviour. For example, a lack of contacts in the UK may be put forward as a reason to deem someone a high abscond risk even if they have previously reported as required.

The UK authorities were unable to provide Amnesty International with any concrete evidence of this perceived risk of absconding. For example, no official statistical research or estimates are publicly available with respect to how many people lose contact with the immigration authorities each year. In addition, there are no figures about the numbers of those who, having been detained and then released, subsequently fail to keep in contact.

⁹⁹ For another example, see “£ 11,000 for asylum seeker”, *The Guardian*, cited at note 24 *supra*.

¹⁰⁰ Simon Barrett, Assistant Director at the Immigration and Nationality Directorate, Home Office, in charge of the Detention Services Policy Unit, statement of November 2004 made in the case of *ID v Home Office* [2005] EWCA Civ 38.

Amnesty International considers that the lack of any data regarding the perceived risk of absconding for those whose asylum claims have been dismissed seriously undermines the UK authorities' case for detention. With respect to this, the House of Commons Home Affairs Committee has recommended that there be further work to consider the issue of absconding.¹⁰¹ However, at the time of writing, it remained the case that no information on absconding was available.

Amnesty International seriously doubts that in the majority of cases, detention can be justified by reference to a risk of absconding. The organization interviewed people who had sought asylum and who had been detained reportedly on the basis of the authorities' assertion that they presented a risk of absconding while, in fact, the individuals concerned had been complying fully with reporting requirements prior to being detained. The organization is particularly concerned that decisions to detain, purportedly justified by the authorities on the grounds of a risk of absconding, are not being taken on the basis of a detailed case-by-case assessment. Such assessment should consider whether compliance by the individual concerned could be ensured as

effectively by resorting to non-custodial measures.¹⁰²

Under relevant international law, deprivation of liberty must be a means of last resort which is lawfully justified only when nothing else but detention would do. Amnesty International is concerned that instead the authorities are resorting to the detention of people who have sought at some stage asylum routinely, using the risk of absconding as an excuse.

In light of its research, the organization has concluded that in many cases it is likely that detention on grounds of absconding is in fact arbitrary.

It is not only the improper use of the risk of absconding as a justification for detention that Amnesty International is concerned about. In the course of its research, the organization came across cases of people who had claimed asylum

¹⁰¹ The Home Affairs Committee in their report on Asylum Removals of April 2003 said that this risk has not been quantified: *in the absence of adequate statistics, it is difficult to know the extent of the problems caused by absconding. The current situation, in which the Home Office simply does not know – even in broad outline – what proportion of failed asylum-seekers abscond is unacceptable. It ought to be possible to obtain at least a snapshot of the scale of the problem and we recommend that steps are taken to do this without delay.*

¹⁰² Guideline 6(1) of the Council of Europe's *Twenty guidelines on forced return*, adopted in May 2005 by the Committee of Ministers states: "Guideline 6. Conditions under which detention may be ordered 1. A person may only be deprived of his/her liberty, with a view to ensuring that a removal order will be executed, if this is in accordance with a procedure prescribed by law and if, after a careful examination of the necessity of deprivation of liberty in each individual case, the authorities of the host state have concluded that compliance with the removal order cannot be ensured as effectively by resorting to non-custodial measures such as supervision systems, the requirement to report regularly to the authorities, bail or other guarantee systems..." However, please note that "[w]hen adopting this decision, the Permanent Representative of the United Kingdom indicated that, in accordance with Article 10.2c of the Rules of Procedure for the meetings of the Ministers' Deputies, he reserved the right of his Government to comply or not with Guidelines 2, 4, 6, 7, 8, 11 and 16", footnote one to the Guidelines.

whose detention was patently unlawful. This was so because while detention had been lawful to begin with, it had at some point ceased to be necessary, and had, therefore, become arbitrary and disproportionate at a later stage. For example, asylum applicants whose claims have been dismissed may lawfully be detained for the purpose of carrying out their forced return to their country but their detention becomes unlawful if, because of difficulties in their country of origin, or for bureaucratic reasons, there are delays in obtaining valid travel documents. At a certain point, detention cannot be said to be for the purpose of effecting their forced return and its continuance is unlawful.

Amnesty International also came across a number of cases involving people who at some stage had sought asylum and who were undocumented. In this context, some individuals who had been in detention, or were in detention, at the time of the organization's visits, were people who had been languishing in detention due to difficulties in obtaining valid travel documents to enforce their expulsion following a negative final decision on their asylum application.

With respect to a number of these cases, Amnesty International found that the UK authorities knew, or should have known, that the difficulties in obtaining valid travel documents were not as a result of failure of the individuals concerned to cooperate. This was the case whether or not the person agreed to cooperate with the process of obtaining a valid travel document. In the majority of these cases the difficulties lay instead with the country which was responsible for issuing the

travel document. Specifically, Amnesty International was told of excessively bureaucratic systems in place in some countries.¹⁰³ In addition, certain countries would not accept people being returned with an EU letter (i.e. a form of travel document issued to undocumented people but not accepted by all receiving countries).

Amnesty International came across people whom the authorities had detained irrespective of this objective difficulty, including cases in which the person concerned had been detained for months.

In a similar vein, in its December 1998 report, the WGAD noted:

The Working Group came across instances where persons had been detained for long periods of time awaiting deportation. In many cases, countries of origin are reluctant or unwilling to accept their nationals, and the implementation of the deportation order takes a long time. Frequently, the person concerned does not have valid documentation for the issuance of a passport or entry permit.¹⁰⁴

It would appear that little, if anything, has changed since then.

Amnesty International is also seriously concerned about the detention of families

¹⁰³ India, China and Algeria are examples of such countries.

¹⁰⁴ *Report of the Working Group on Arbitrary Detention, Addendum - Report on the visit of the Working Group to the United Kingdom on the issue of immigrants and asylum seekers*, cited at note 15 *supra*.

who have sought asylum in the UK and questions its necessity. In the course of its research the organization came across cases of mothers detained with their young children. For example, at Yarl's Wood IRC the organization's researchers saw a young woman with what appeared to be a new-born baby.

Also, at Yarl's Wood, Amnesty International inquired after what appeared on first impression to the organization's researchers to be a family comprising of two adults and two children who had just been brought to the centre. The officials, however, explained that this was not in fact a family but a man and his son and a woman and her baby who lived in the same house. Upon further inquiry, the officials clarified that other members of each respective family had not been taken into detention because they had not been in the house at the time. In light of this, Amnesty International considers that the individuals concerned should not have been detained and that the authorities' actions failed to take into account the family circumstances and the right to respect for private and family of the persons concerned.¹⁰⁵

Lack of access to legal advice and representation

Since April 2004, as a result of cuts in publicly funded legal aid for asylum cases,¹⁰⁶ “[a]ccess to competent and

¹⁰⁵ Among other relevant international human rights standards, Article 8 of the ECHR guarantees the right to respect for private and family life. See Appendix I.

¹⁰⁶ In April 2004, the Department for Constitutional Affairs (DCA) and the Legal Services Commission (LSC) introduced a new regime for public funding

independent legal advice is becoming more, not less, difficult as fewer private practitioners offer legally aided advice and representation.”¹⁰⁷

In light of its research, Amnesty International found that this was particularly the case for people who had sought asylum and were detained.

With respect to this, a report for the Mayor of London entitled *Into the Labyrinth: Legal advice for asylum-seekers in London*, published in February 2005, notes that recent legal aid reforms have made it extremely difficult to find legal advisers to take on cases of people whose asylum claims have been dismissed. Under a heading ‘Indefinite detention and access to legal advice’ the report states: “Detainees must still meet the merits test to qualify for legal aid; this applies to funding for legal representatives to challenge their detention as well as advice about the asylum claim. As a result, some people in detention can be deprived of any legal representation.”¹⁰⁸

For example, in order for a legal representative to proceed with a publicly funded bail application, they must apply a ‘merits test’ which involves assessing the

in asylum and immigration cases. The new contracts place a reduced financial threshold on the amount of time that can be spent on asylum applications, and most requests for extensions to this limit must be made to the LSC.

¹⁰⁷ Report on a Full and Announced Inspection of Dover Immigration Removal Centre, 1 – 5 March 2004 by HM Chief Inspector of Prisons.

¹⁰⁸ *Into the Labyrinth: Legal advice for asylum-seekers in London*, February 2005 p. 79, available at http://www.london.gov.uk/mayor/refugees/docs/labyrinth_report.pdf.

chances of success in the hearing.¹⁰⁹ The current test means that public funding can only be used if the prospect for success is assessed as over 50 per cent, unless “the case is of overwhelming importance to the client, concerning the life, liberty or physical safety of the client or family...”.¹¹⁰ Arguably, those in detention could all be considered to meet this test.

Amnesty International is also concerned that the list of legal representatives providing services in the asylum field available in the libraries of some of the IRCs visited by the organization’s delegates was out-of-date and did not reflect the fact that, as a result of the cuts in legal aid, many law firms are no longer providing publicly funded services in this area of the law.

Amnesty International also found that the plight of many of those who have sought asylum at some stage was exacerbated either by the poor quality of legal advice and representation to which they had access while in detention or by the complete lack of such advice and representation. With respect to this, the organization came across many in detention who had been abandoned by their legal representative after being detained.

Amnesty International is concerned that those detained who have at some stage sought asylum are often unable to pursue their cases and challenge the lawfulness of their detention effectively because they are

either poorly legally represented and advised or because they have no legal representation and advice at all. Lack of effective legal assistance also affects people’s chances of being granted bail.

Almost everybody interviewed by Amnesty International, including those who had sought asylum and who had been in detention, legal representatives, members of visitors groups, as well as immigration officials and members of independent monitoring boards in a number of IRCs, identified legal representation and advice -- either on account of its poor quality or because of the lack thereof -- as one of the main complaints. The organization was told by a variety of sources that legal representatives had failed to provide supporting evidence on their clients’ behalf or had otherwise not done enough for them.

BID, a small NGO working to enable detainees to challenge their detention, has produced a Notebook on Bail which aims to inform people of the bail process, and also to enable them to prepare and present a bail application without a legal representative. BID has established this project because of the serious dearth of legal representation available to detainees. Some detainees have secured their liberty by representing themselves. However, Amnesty International, in agreement with BID, does not believe that it is reasonable that detainees should be expected to go to court on their own and the self-representation option is not an alternative to legal representation.

The organization also considers that the remoteness of most of the IRCs has a

¹⁰⁹ The merits test for use of controlled legal representation (CLR) is contained in Rule 5, Section 5, General Civil Contract

¹¹⁰ See *Challenging Immigration Detention – a best practice guide*, cited at note 77 *supra*, p 46.

detrimental effect on the ability to pursue asylum claims and/or on people's ability to challenge the lawfulness of their detention and/or apply for bail. For example, at Dungavel IRC, the organization was told that some of those who had at some stage sought asylum, and had been detained, had previously had legal advice and representation while in detention in England but were not in receipt of it as a result of their being moved to Scotland. At Lindholme IRC near Doncaster in Northern England, Amnesty International researchers were told that there was only one firm of solicitors in the area that was active in the immigration and asylum field.

Furthermore, the organization considers that the chances of access to competent legal representation and advice can be detrimentally affected by people being moved within the detention estate. This has been noted at a judicial level where a woman whose asylum claim had been dismissed was transferred from Harmondsworth IRC to Dungavel IRC in Scotland. Such transfer, in the Judge's view, created

*real difficulties for the claimants in pursuing their legal remedies, particularly as there was a jurisdictional problem in that they were now in custody in Scotland so that bail applications and judicial review of the detention might have had to be dealt with there.*¹¹¹

¹¹¹ *R (on the application of Konan) v Secretary of State for the Home Department*, cited at note 89 *supra*, para 13.

Amnesty International considers that poor legal advice and representation or the lack thereof amount to another fundamental denial of justice suffered by people who have sought asylum and who are detained under Immigration Act powers.

Legal avenues to challenge detention in the UK

If justice is not to be denied, any potential injustice must be challengeable in a court of law. As recognized in the Chief Adjudicator's Guidelines on bail "[a]s detention is an infringement of the applicant's human right to liberty, [a court] has to be satisfied to a high standard that any infringement of that right is essential."¹¹²

Those who have sought asylum and who are detained under Immigration Act powers are not automatically brought before a judicial authority that authorizes their detention. The decision to detain is taken by the executive alone. The judiciary has no say in this decision. There is also no automatic judicial oversight of whether the individual concerned should indeed be detained in the first place.¹¹³ And finally, there is no maximum time limit on the length of detention for those held under Immigration Act powers. Amnesty International considers that if the onus was on the UK authorities to justify the lawfulness, proportionality and necessity of detention,

¹¹² Chief Adjudicator's Guidance Notes on Bail, 3rd edition May 2003.

¹¹³ The detained person has a right to apply to be released on bail and/or challenge the decision to detain him/her (see below).

in many cases, they would fail to discharge it.

There is no statutory presumption of liberty in relation to immigration detainees, including those who have sought asylum, as there is in relation to those detained within the criminal justice system. Practice in the UK contrasts sharply with international standards. In connection with this, in its December 1998 report, the WGAD expressed concern about the potential for arbitrary deprivation of liberty and the lack of judicial oversight of detention.¹¹⁴

International law requires that any person deprived of his or her liberty should be able to take proceedings by which the lawfulness of one's detention is decided speedily by a court.¹¹⁵ Under UK domestic law, such a right is guaranteed and detainees, including those who have sought asylum at some stage, can challenge their detention by exercising

their right to a judicial review of the decision to detain them or to continue to detain them. They can also apply for *habeas corpus*, thereby challenging the lawfulness of their detention.¹¹⁶ *Habeas corpus* is a judicial remedy whereby it is asserted "that detention is unlawful, and not just unreasonable or the wrong decision as may be alleged when arguing for temporary admission or bail".¹¹⁷

Detention under Immigration Act powers may be challenged in certain circumstances, in particular when the detainee has long ago exhausted all appeal rights in relation to her/his asylum claim but no action has been taken to forcibly remove him or her, or where it is not clear to which country he or she can be expelled. A challenge to continued detention can also be based on the fact that while the detainee is ostensibly being held pending forcible removal, there is in fact no realistic prospect of expulsion being effected within a reasonable period because of difficulties in obtaining valid travel documents.

However, Amnesty International is concerned that both *habeas corpus* and judicial review proceedings are rather perfunctory and cursory in nature in such cases. Neither allows the courts to examine in detail the merits of the decision

¹¹⁴ The WGAD stated: "[t]he functioning of the legal regime on occasion makes the restriction on liberty and free movement sufficiently prolonged that it might in specific instances result in arbitrary deprivation of liberty", and recommended that: "[e]ach decision to detain should be reviewed as to its necessity and its compliance with international legal standards by means of a prompt, oral hearing by a court or similar competent independent and impartial review, accompanied by the appropriate provision of legal aid. In the event that continued detention is authorized, detainees should be able to initiate further challenges against the reasons for detention." WGAD report, *supra* at note 15, paras. 18(a) and 29 respectively.

¹¹⁵ Article 5(4) ECHR provides "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful". Article 9 of the ICCPR contains an analogous provision.

¹¹⁶ Under the Habeas Corpus Act 1816, any person held in detention by the authorities can apply to the High Court for a writ of *habeas corpus*. The Court is then obliged to examine the validity of the detaining authorities' power to detain the individual, i.e. to decide whether the individual's detention is lawful. See also *Cell Culture – The Detention & Imprisonment of Asylum-seekers in the United Kingdom*, Amnesty International UK, 1996, p. 23.

¹¹⁷ See *Challenging Immigration Detention – a best practice guide*, *supra* at footnote 77, p.21.

to detain or to continue detention. In light of this, the organization considers that both mechanisms are of limited value in challenging the lawfulness of the detention of those who sought asylum at some stage.

In any event, in practice these two mechanisms are not used very often, and applications for release on bail remain the most commonly used method available to those detained under Immigration Act powers to attempt to secure their release from detention.

Amnesty International is concerned the UK authorities have attempted in the past to assert that bail proceedings were the appropriate context for determining the lawfulness of a detention.¹¹⁸ Indeed, this assertion was made as early as July 1998 in their White Paper “Fairer Faster and Firmer – A Modern Approach to Immigration and Asylum”, where they stated:

It is proposed that the judicial element should be by way of bail hearings about seven days after initial detention, followed by a further hearing for those not granted bail on the first occasion. We will consult with the judicial authorities and others on the detail of this proposal. It is not straightforward and will have considerable resource implications as, on present volume,

about 200 bail hearings a week would need to be managed.

In 1999, the UK authorities legislated to provide automatic bail hearings at seven and 35 days of detention, heralding the changes on the basis that the UK would be introducing extra “judicial safeguards”.¹¹⁹

Automatic bail hearings would not have made up for the lack of automatic judicial oversight of the decision to detain since bail proceedings do not consider the lawfulness of detention. Indeed, the granting of bail is premised on the lawfulness of detention.¹²⁰ Nonetheless, the measures were welcomed by NGOs and practitioners working in the asylum sector as providing some extra protection for detainees. A further improvement followed in 2000 when it was announced that public funding would be made available for legal representation in bail hearings. However, the provision of automatic hearings was never implemented and was repealed later by the

¹¹⁹ “[Detention] is necessary in a small number of cases, but there must be proper safeguards. Part III fulfils the commitment in the White Paper to introduce a more extensive judicial element in the detention process. That will be achieved by introducing routine bail hearings for those detained under immigration legislation.” The Rt. Hon. Jack Straw MP, 2nd Reading of the 1999 Immigration and Asylum Bill (Act), 22nd February 1999, *Hansard*, Col 39

¹²⁰ “Even though a bail hearing may be provided, as promised by the Government in the White Paper, this would not be an effective substitute for an independent review whereby the reasons for a decision to detain would be challenged. Consequently, asylum-seekers may have no effective opportunity to challenge the reasons for detention, as a bail hearing would only examine reliability of surety and its relationship to the applicant.” WGAD report cited *supra* at note 15, para. 18(h).

¹¹⁸ *R (On the application of Konan) v Secretary of State for the Home Department* (2004) [2004] EWHC 22 (Admin), QBD (Admin Ct), cited at note 89 *supra*. Amnesty International agrees with the observations of Mr Justice Collins that such assertion is completely groundless.

2002 Nationality and Immigration Asylum Act.

Obstacles to seeking release from detention by a bail application

Those charged with considering a bail application have the power to grant bail to those detained under Immigration Act powers. However, they have no power to determine the lawfulness of detention. As stated above, the granting of bail to a detainee is premised on the lawfulness of his or her detention given that breaches of the bail conditions can result in the revocation of bail and return to detention. As held, for example, by the European Commission of Human Rights in *Zamir v United Kingdom*,¹²¹ the right to apply for bail is not the same as the right to take legal proceedings to have the lawfulness of one's detention determined speedily by a court.

The ability of people who have sought asylum to apply for bail theoretically provides them with a mechanism for challenging their continued detention. However, the bail process is for many neither accessible nor transparent. Information about the right to apply for bail in English is included on the 'tick box' form provided to those detained under Immigration Act powers containing the reasons for their detention. In a joint report by Asylum Aid and BID about women's experiences of detention a woman commented: "[t]he information on bail is in the small print. Also, by the time you get the letter in detention, your state of

mind is such that you don't always take it in. They don't explain it to you."¹²²

A low level of awareness and a lack of access to interpreters and translated material may be further barriers to accessing bail mechanisms, as identified by the Inspectorate of Prisons.¹²³ The consequences of the cutbacks in legal aid discussed earlier are likely also to have had a negative impact.

For those who are aware of the right to a bail application, and who have a legal representative to assist them, Amnesty International is concerned that sureties are often demanded. There is no requirement in legislation for those detained under Immigration Act powers applying for bail to have sureties, and guidance to Adjudicators issued in 2003 reminds them that "sureties are only required where you cannot otherwise be satisfied that the applicant will observe the conditions you may wish to impose". This position is an improvement on previous stated policy which was ambiguous about the requirement for sureties. The demand for sureties remains an obstacle for those seeking release on bail.

¹²¹ (1983) 40 D.R. 42 at 59 (Paragraph 109).

¹²² *They took me away: Women's Experiences of Immigration Detention in the UK*, Sarah Cutler and Sophia Ceneda, Bail for Immigration Detainees and Asylum Aid, August 2004, p 53

¹²³ For example, the HMIP report on Tinsley House in 2002 states that "...detainees were not informed of their legal rights".

CHAPTER FOUR: ACCELERATED ASYLUM- DETERMINATION PROCEDURES - JUSTICE DENIED FASTER

Fast-track procedures and detention

In tandem with a policy to step up forcible removals, asylum policy has increasingly focused on procedures devised to deal with asylum claims more “speedily”. A government white paper in 1999 emphasized a commitment to a “fairer, faster, firmer” approach to asylum claims and in March 2000 Oakington Reception Centre was opened to detain asylum-seekers and process their claims in seven days. Initially used for people with “manifestly unfounded” claims, the centre then began to be used for fast-tracking so-called ‘straightforward’ cases.

The Nationality Immigration and Asylum Act 2002 introduced the power for the UK authorities to certify an application as “clearly unfounded” and removed the right of appeal from within the UK for asylum-seekers whose claims had been rejected at first instance. This is referred to as the non-suspensive appeal procedure (NSA). Amnesty International’s concerns about the NSA procedure are further discussed below under the section on the Oakington Reception Centre.

In April 2003, the UK Government extended the use of fast-track asylum processes, introducing a super fast-track process for single men at Harmondsworth

IRC.¹²⁴ Unlike Oakington, where detainees can be released after a negative first-instance decision while they exercise their rights of appeal -- except for those whose claims have been considered through the NSA procedure -- at Harmondsworth IRC single male asylum-seekers remain detained throughout the asylum-determination process. The system imposes a very tight timetable for decision-making, with the asylum interview with the Home Office and the decision given within a matter of days (see below).

The *Five Year Strategy* announced plans to introduce a “detained fast track process” for single women at Yarl’s Wood IRC in May 2005.¹²⁵ It also projects that by the end of 2005, up to 30 per cent of new asylum applicants will be put through a “fast track detained process”.¹²⁶

The criteria for “detained fast-track procedures” are set out in the so-called “Fast Track Processes Suitability List”

¹²⁴ The process was introduced by a Statutory Instrument and subject to *The Immigration and Asylum Appeals (Fast Track Procedure) Rules 2003*. In addition to fast-tracking the initial claim it provides for an accelerated appeals procedure. See below under the section on Harmondsworth IRC for more details.

¹²⁵ This will operate along the same timetable as that of Harmondsworth IRC.

¹²⁶ *Controlling our borders: Making migration work for Britain - Five year strategy for asylum and immigration*, cited at note 11 *supra*.

which the UK authorities update from time to time. As of November 2004, the list comprised 56 countries, including 14 countries on the designated list under Section 94 of the Nationality, Immigration and Asylum Act 2002 whereby asylum applications rejected at first instance are subjected to the NSA procedure (see below).¹²⁷

According to the Fast Track Processes Suitability List, “[a]ny [asylum] claim may be fast tracked where it appears after screening to be one that may be decided quickly, whatever the nationality of the claimant, subject to the qualifications set out below....”¹²⁸

It appears that the Fast Track Processes Suitability list could apply to the majority of asylum applicants as the criteria are so broad.

The Court of Appeal of England and Wales and the Appellate Committee of the House of Lords (the Law Lords) examined the issue of detention of asylum-seekers at

¹²⁷ See “New Fast Track Process Suitability List”, 17 November 2004, letter from Ian Martin, Deputy Director, Home Office, Immigration and Nationality Directorate addressed to Paul Newell and others. As of November 2004, the list included Cameroon, Chad and Côte d’Ivoire.

¹²⁸ Unsuitable cases for fast-track processes are: pregnant women of 24 weeks and above; any medical condition which requires 24 hour nursing or medical intervention; disabled applicants except the most easily manageable; anybody identified as having an infectious/contagious disease; anybody presenting with acute psychosis, e.g. schizophrenia and requiring hospitalisation; anybody presenting with physical and/or learning disabilities requiring 24 hour nursing care; unaccompanied minors; age dispute cases where the applicant’s appearance does not strongly suggest that he/she is over 18 and any case which does not appear to be one in which a quick decision can be made.

Oakington for the purpose of making a decision on an asylum claim in the case of *Saadi*.¹²⁹ The Law Lords ruled that detention was lawful for a short time of seven to 10 days, and that use of detention was a proportionate response to the need to process a large number of cases.¹³⁰ This decision is cited by the UK authorities as the basis for the lawfulness of detaining asylum-seekers for the sole purpose of deciding their claims quickly.

However, administrative and procedural delays can mean that in some cases the asylum-determination process is not as fast as the name would suggest, and asylum-seekers may be held in detention for significant periods of time. The then Home Office Minister Des Browne stated that while decisions at Oakington are given within the seven-to-10 day timescale, for NSA cases the majority of decisions take 14 days.¹³¹ Such cases will

¹²⁹ *R v SSHD ex parte Saadi and others* [2002] UKHL 41.

¹³⁰ “It is regrettable that anyone should be deprived of his liberty other than pursuant to the order of a court but there are situations where such a course is justified. In a situation like the present with huge numbers and difficult decisions involved, with the risk of long delays to applicants seeking to come, a balancing exercise has to be performed. Getting a speedy decision is in the interests not only of the applicants but of those increasingly in the queue. Accepting as I do that the arrangements made at Oakington provide reasonable conditions, both for individuals and families and that the period taken is not in any sense excessive, I consider that the balance is in favour of recognising that detention under the Oakington procedure is proportionate and reasonable. Far from being arbitrary, it seems to me that the Secretary of State has done all that he could be expected to do to palliate the deprivation of liberty of the many applicants for asylum here.”
Per Lord Slynn of Hadley, *ibid*, para 47.

¹³¹ “...the need to ensure a really sharp focus on quality decision making...means that we cannot

include children, despite the recommendation of HM Inspectorate of Prisons that their detention should be limited to no more than a few days.

Furthermore, there is evidence that cases of vulnerable people are not withdrawn from the fast-track procedures despite guidance that such cases are not suitable for fast-tracking, for example, young people whose age is disputed by the Immigration Service.

The vast majority of fast-track asylum claims are initially refused. At Oakington Reception Centre, for example, during the first quarter of 2005, 99 percent of initial claims were refused.¹³² The Home Office has recently made publicly available for the first time, the data for the fast-track at Harmondsworth. For 2004 the refusal rate on initial decisions was 100 per cent, and for the first quarter of 2005, the refusal rate was 99 per cent.¹³³

The UK authorities see the high refusal rate as evidence of the high number of “unfounded” asylum claims. However, non-governmental organizations are concerned that the system is set up to refuse people, and that the tight timescale

renders fair decision-making almost impossible.

*Implicit in such processes is the notion that from the outset cases dealt with under these processes are bound to fail and do not warrant the investment of careful consideration. This is reflected in the blanket refusal of cases dealt with under these processes. Very fast decision making processes such as in Oakington and Harmondsworth enable the Immigration and Nationality Directorate to reduce substantially the average time taken to process all initial decision cases.*¹³⁴

There is particular concern about the potential for unfairness for survivors of torture who may not build a relationship in the time allowed to feel able to disclose experiences of torture crucial to their case. A report by the Asylum Rights Campaign notes “it may be extremely difficult to obtain and serve medical reports within the narrow timeframe available”.¹³⁵

In 2004, the Refugee Legal Centre mounted a legal challenge to the super fast track process, arguing that the system was too fast to be fair and seeking a four-day, rather than a three-day, timetable for the Secretary of State’s decision in fast track cases. The challenge did not succeed in changing the timetable. However, the Court of Appeal of England and Wales has

always make decisions and serve them within the original seven to ten day target time scale. While we are able to do this in over 95 percent of non-NSA Oakington claims, our experience has shown us that NSA claims take slightly longer, with the majority of decisions being made and served within 14 days.” Des Browne MP, Minister for Immigration, Written Statement on Fast Track Asylum and Detention Policy, *Hansard*, 16 Sept 2004 : Column 157.

¹³² *Asylum Statistics: 1st Quarter 2005 United Kingdom*, Home Office Research Development and Statistics Directorate, May 2005, table 15.

¹³³ *Ibid* tables 19 and 17.

¹³⁴ Refugee Legal Centre submission to the National Audit Office Study on Asylum: Deciding applications for asylum, July 2003.

¹³⁵ *Providing Protection in the 21st Century*, Asylum Rights Campaign, 2004, p 30.

now required the Home Office to develop a clearly stated procedure setting out the circumstances in which deadlines should be extended for a flexible approach to the three-day initial decision-making process.

Despite the fact that fast-track procedures involve the seriously detrimental sanction of depriving people of their liberty, the UK authorities' wide powers to detain provide significant discretion for achieving the policy objective of speeding up the asylum process. On 20 September 2004, the then Home Office Minister Des Browne set out a revised fast-track process detention policy in a statement to parliament. The Minister outlined the government's intention to be flexible as to the time scale for decision-making even though people are all the while detained.

*We will continue to detain for the purpose of deciding the claim quickly, even beyond the 10 to 14 day time scale, unless the length of time before a decision can be made looks like it will be longer than is reasonable in all the circumstances. Continued detention may also be merited in some cases irrespective of decision time scale, where our general detention criteria apply.*¹³⁶

In accordance with relevant international standards,¹³⁷ asylum-seekers are entitled to have their claims considered expeditiously and efficiently. Amnesty International

¹³⁶ Des Browne MP, Minister for Immigration, Written Statement on Fast Track Asylum and Detention Policy, *Hansard*, 16 Sept 2004:Column 158.

¹³⁷ Executive Committee of the Programme of the UNHCR, ExCom Nos. 65 and 68.

acknowledges that prompt decisions can reduce the uncertainty and psychological suffering of applicants. However, this only applies if processing is fair and includes access to procedural safeguards. Speeding up the decision-making process is beneficial only if it is not at the expense of quality and fairness. The organization is concerned that fast-track processes lead to the majority asylum claims being rejected.

Amnesty International also considers that the fast-track procedures at Harmondsworth, Oakington and Yarl's Wood are unjust because they are premised on detention. The organization considers that the quick processing of asylum claims does not have to be based around the applicant being detained. In fact, the UK authorities have introduced a "non-detained tightly managed approach in the North West" and "[n]ew faster non-detained processes are also being developed and will play a key role", according to their five-year strategy.¹³⁸

Amnesty International believes that many asylum-seekers are detained to permit the Home Office to make a quick decision on straightforward claims, the main factor being the asylum-seekers' nationality. The organization believes that the use of fast-track procedures, where the time limits are so tight, is not conducive to fair decisions and that asylum-seekers are detained for administrative convenience.

Amnesty International was told that there are 200 ring-fenced beds in the detention estate for rejected asylum applicants who have been through the fast-track process at either Harmondsworth or Oakington to go

¹³⁸ See, "Controlling our borders: Making migration work for Britain - Five year strategy for asylum and immigration", cited *supra* at note 11.

into longer term detention. In this context, the organization came across asylum-seekers whose claims had been considered and dismissed through the fast-track process at Harmondsworth who had then gone into longer term detention.

The fast-track procedures at Oakington Reception Centre

At Oakington, asylum-seekers are detained while their claims are considered at first instance. Applications are supposed to be processed in seven to 10 days. Uniquely within the immigration detention estate, publicly funded legal advice and representation are provided on site by the Immigration Advisory Service and the Refugee Legal Centre.

For those detained at Oakington whose claims are fast-tracked, once the initial decision on the asylum claim has been reached and in most cases resulting in a refusal, asylum-seekers who have a right of appeal from within the UK, may be released at this stage and given temporary admission.

On the day of Amnesty International's visit to Oakington there were 99 detained asylum applicants of 32 different nationalities whose claims were purportedly "straightforward" and had been deemed "suitable for a quick decision" who were detained while their claims were processed under the fast track.

While at Oakington, Amnesty International was told about the case of a woman who, allegedly, had suffered such a violent sexual assault in her country of origin, so as to cause her severe

discomfort which, in turn, had made it difficult for her to sit on a chair in an upright position. She was manifestly not suitable for detention. Despite such visible signs of discomfort, her claim was initially classified as suitable for detention within the fast-track procedure at Oakington and the authorities agreed to take her out of it only when she secured an appointment with the Medical Foundation for the Care of Victims of Torture.

Among the asylum-seekers whose claims are fast-tracked and who are detained at Oakington Reception Centre are those who originate from a country on the so-called "White List", a list of purportedly "safe" countries - compiled and updated by the UK authorities - from which asylum claims will be presumed to be "unfounded".¹³⁹ Under the expedited NSA procedure, most asylum-seekers are automatically denied the right to appeal against an initial decision rejecting their asylum claim while still in the UK. At this point, they can be forcibly returned from Oakington to their country of origin or placed in longer term detention.

Amnesty International is opposed to the NSA procedure because it is based upon a presumption that asylum claims from applicants from countries featured on the "white list" are unfounded. The organization considers that the NSA procedure is incompatible with internationally-recognized standards for refugee protection. Amnesty International believes that, in accordance with such standards, an asylum claim should not be prejudged on the basis of the country from

¹³⁹ The 2002 Nationality Immigration and Asylum Act gives powers to add more countries by Order.

which asylum is being sought. Instead, each asylum claim should be considered on its own individual merits, and every asylum-seeker who applies for asylum in the UK should be entitled to appeal against an initial decision to refuse her or his claim while still in the UK.

In the course of its research, Amnesty International found that, in addition to asylum-seekers from so-called “white list” countries, asylum applicants who are not from countries featured on this list could, nevertheless, have their claims processed through the expedited NSA asylum-determination procedure if the UK authorities considered that their claims were “unfounded”.

At Oakington, lawyers representing asylum-seekers in the NSA procedure told Amnesty International that the UK authorities have taken asylum-seekers out of the expedited NSA procedure and put them into the fast-track at Harmondsworth, (where applicants have a right of appeal against the refusal of asylum from within the UK), if they feared that the asylum applicant concerned had grounds to mount a challenge by way of judicial review against her/his being subjected to the NSA procedure. Concern was expressed about the UK authorities’ expediency in resorting to taking cases of detained asylum-seekers out of the NSA procedure to avoid potential judicial scrutiny of the procedure as a whole.¹⁴⁰

¹⁴⁰ The inclusion of a country on the “White List” is challengeable by way of judicial review. Recently the High Court declared the inclusion of Bangladesh on the “White List” as unlawful. *R (on the application of Zakir Husan) v Secretary of State for the Home Department* (2005) [2005]

The Super Fast-track at Harmondsworth IRC

The UK Government’s five year strategy states that the “separate detained fast track process at Harmondsworth IRC [is] for applicants whose claims are suitable for a quick decision. If their claims are refused, a rapid appeals procedure follows before removal.” There is an on-site appeals hearing centre for appeals to the Asylum and Immigration Tribunal (AIT). Applicants are detained throughout unless they are taken out of the fast-track process. There are 180 ring-fenced beds for single male fast-track asylum applicants at Harmondsworth IRC with an intake of nine cases a day into the fast track. On the day of Amnesty International’s visit on 7 February 2005, there were 150 detained asylum-seekers whose claims were being processed in the fast-track.

The organization was told that if the fast-track bed allocation for the day is full, then the asylum applicant may be sent to Oakington Reception Centre or given Temporary Admission. Amnesty International also understands that, in some circumstances, if the daily allocation is full, the asylum-seeker could be given Temporary Admission and told to report back to the authorities and then be taken into detention once a bed becomes available. It was also acknowledged that the decision to detain asylum-seekers at either Harmondsworth or Oakington -- and subject them to the fast-track processes operated at these IRCs -- boiled down to bed availability.

EWHC 189 (Admin); 24/2/2005, Mr Justice Wilson.

The organization was told that 50 per cent of asylum applicants processed through the Harmondsworth IRC fast-track are port applicants with a further 50 per cent being referred by local enforcement units or the Home Office asylum screening units.

There are 30 Home Office caseworkers at Harmondsworth and Amnesty International was told that each caseworker is allocated two to three cases each week. Co-ordinated by the Legal Services Commission there is a duty rota for publicly funded legal representatives who act on behalf of detained asylum-seekers.

Each asylum applicant is allocated a case worker (who deals with the case from beginning to end), an interpreter if necessary, and a solicitor. The asylum interview is carried out on day two of the process.¹⁴¹ It is rare for the solicitor not to be present at the interview; however, the solicitor is not usually present when the decision on the claim is delivered to the applicant normally on day three. The caseworker's decision is looked at by a senior executive officer. An appeal against a refusal of asylum is likely to be determined by day 10. If the appeal is dismissed, there is a three-day time limit

¹⁴¹ At Harmondsworth, Amnesty International learnt that, in certain circumstances, asylum-seekers may be unrepresented at their asylum interview and may, in fact, not have had access to any legal advice prior to the interview itself. This would happen, either because the asylum-seeker concerned chose not to avail him/herself of the presence and advice of a legal representative on the duty scheme, or because a pre-existing legal representative had not been able to meet the strict time-table imposed. Either way, the asylum interview would take place regardless of the fact that the asylum-seeker concerned had not had any access to legal advice.

for lodging an application for the appeal to be reconsidered by the Tribunal.

On the day of the organization's visit to Harmondsworth IRC, Amnesty International was told that since fast-track procedures at Harmondsworth commenced in April 2003, just under 2,000 initial decisions had been taken with seven applicants granted refugee status and one humanitarian protection. Ninety-eight per cent had received a refusal on their initial decision of which 78 per cent had appealed. Over 20 appeals against the refusal of asylum had been allowed but of those dismissed, very few had been given further permission to appeal the Immigration Appeals Tribunal (NB the new single-tier AIT had not yet started functioning at the time of the organization's visit to Harmondsworth).

Over half of "unfounded" cases are forcibly removed within 42 days of the application being made and over 85 per cent within about three months. Amnesty International was told that the UK authorities consider such a rate of forcible removals to be a "success". Conversely, the organization is concerned that three months in detention awaiting removal is a severe sanction.

Amnesty International believes that the time constraints imposed within the super fast-track procedures operated at Harmondsworth make it impossible for the procedure to be a fair one, and therefore, the organization considers that adherence to such a strict time-table, in and of itself, represents a denial of justice for the individuals concerned.

Amnesty International considers that the arbitrariness of the system is laid bare by

the acknowledgment that detention within the fast-track processes is determined first and foremost by bed availability given that the Fast Track Processes Suitability List is so flexible that almost anybody could satisfy its criteria.

In light of these findings, Amnesty International considers that the UK authorities' decision to fast-track asylum claims, which triggers detention of asylum-seekers at Harmondsworth IRC, Oakington Reception Centre and Yarl's Wood IRC is nothing less than a lottery. Amnesty International considers that the absence of a cases by case examination of the necessity, proportionality and appropriateness of detention makes it unlawful under relevant international law and standards.

CONCLUSIONS

Amnesty International found that many who have sought asylum in the UK are detained at different stages of the asylum process and, as this report has shown, they are detained even though the prospect of effecting their enforced return within a reasonable time may be slim. In addition, notwithstanding the authorities' stated commitment to detaining people for the shortest possible time, Amnesty International is concerned that many are languishing in detention.

Amnesty International considers that -- where premised on detention -- fast-track asylum-determination procedures are unjust. Under international refugee law and standards the detention of asylum-seekers is the exception and should normally be avoided. Asylum-seekers whose claims are being considered are entitled to a presumption against detention. The use of detention in the fast-track processes is contrary to this presumption. The organization is also concerned that some of these applicants end up in long-term detention.

Furthermore, given that almost all asylum claims processed through the "detained fast-track procedures" are refused, Amnesty International is concerned that these asylum-determination processes are unfair.

The UK authorities wish to portray the situation as one in which the vast majority of people who are in detention are individuals whose asylum claims are

without merit and who are detained to effect their enforced return.

Instead, Amnesty International found that the situation was more complex. All those that the organization interviewed for this report had been in detention and had been released by the time they spoke to its representatives. Those detained at the end of the asylum process told the organization that at the time when they had been taken into detention they had been fully complying with reporting restrictions and had not attempted to abscond. Amnesty International is concerned that the UK authorities are targeting for detention those individuals who fully comply with reporting requirements. With respect to this, it is worth noting that the authorities have not produced any research to back up their assertions on the risk of absconding for those whose asylum claims have been rejected.

There is no automatic judicial oversight of the decision to detain people who have sought asylum in the UK. Those so detained have a right to apply for release on bail. Those charged with considering a bail application have the power to grant bail to the detained individual. However, they have no power to determine the lawfulness of the detention.

Amnesty International considers that if the onus to justify the lawfulness, proportionality and necessity of detention was on the UK authorities, they would not be able to discharge it in many cases. This situation is compounded by the lack of

statutory time limits on the length of detention, leading to the possibility of indefinite detention.

Amnesty International found that detention for those who had sought asylum at some stage in the UK was arbitrary because it was a lottery dependent on the availability of beds within the detention estate, rather than being based on considerations of necessity, proportionality and appropriateness. This was the case whether the individuals involved had had their asylum application fast-tracked, or were at the end of the process. The organization found that the detention criteria are so broad that almost any person who had sought asylum at some stage could be at risk of being detained under Immigration Act powers.

Amnesty International also found that detention was protracted, caused untold suffering, was unnecessary and, ultimately, in many cases failed to fulfil the authorities' stated purpose of removal and was thus unlawful. With respect to this, the organization suspects that possibly twice as many people who have sought asylum are being detained as are being forcibly returned from the UK.

The detention of people who have sought asylum in the UK remains a hidden plight. The UK authorities only produce snapshot figures of who is in detention on a given date, but do not produce comprehensive statistics of how many people are detained in the course of a year, at what stage of the process, or the length of their detention.

With the exception of Oakington Reception Centre where publicly funded

legal advice and representation are available on site, pursuing claims once in detention has been made more difficult due to the curtailment of publicly funded legal aid. Amnesty International is concerned that those in detention were often unable to pursue their asylum claim and/or challenge the lawfulness of their detention effectively because they were either poorly legally advised and represented, or because they had had no legal representation and advice at all. This also affected people's chances of being granted bail.

In addition, the remote location of some of the places of detention was having a deleterious effect on people's ability to maintain contact with the outside world, including with family members and legal representatives, and was also negatively affecting their ability to pursue their claims and/or attempts to bring their detention to an end. All of this was compounded by the fact that people were frequently moved around the detention estate from one centre to another.

Deprivation of liberty for those who have committed no criminal offence is a severe sanction that should only be used following a case by case examination of strict necessity, proportionality and appropriateness.

Among those who had sought asylum and were detained solely under Immigration Act powers, the organization interviewed people who had fled torture in their own country; families with young children; mothers alone with their children; people at serious risk of self-harm; and people manifesting symptoms of severe

depression. Their detention was seriously detrimental to their well-being.

RECOMMENDATIONS

Amnesty International is opposed to the detention of asylum-seekers except in the most exceptional circumstances as prescribed by international and regional law and standards, including the *UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers*. Detention will only be lawful when the authorities can demonstrate in each individual case that it is necessary and proportionate to the objective to be achieved, that it is on grounds prescribed by law, and that it is for one of the specified reasons which international and regional standards recognize as legitimate grounds for detaining asylum-seekers.

Amnesty International also opposes the detention of people who have claimed asylum and whose claims have been dismissed by the authorities, unless, for example, the detaining authorities can demonstrate that there is an objective risk that the individual concerned would otherwise abscond, and that other measures short of detention, such as reporting requirements, would not be sufficient.

With respect to both categories, detention should also be for the shortest possible time. In addition anyone held in detention must be promptly brought before a judicial authority and be provided with an effective opportunity to challenge the lawfulness of the decision to detain him/her.

Amnesty International urges the UK authorities only to resort to detaining those who have sought asylum in exceptional circumstances and only when it is lawful.

Should the UK authorities continue to detain people who have sought asylum, in light of its research for this report, Amnesty International urges that, as a minimum, the following recommendations be immediately implemented:

- there should be a statutory presumption against detention;
- alternative non-custodial measures, such as reporting requirements, should always be considered before resorting to detention;
- there should be a statutory prohibition on the detention of vulnerable people who have sought asylum, including: torture survivors, pregnant women, those with serious medical conditions, the mentally ill and the elderly;
- there should be a statutory prohibition on the detention of unaccompanied children;
- criteria for detention should be clearly set out on a statutory basis;

- the decision to detain should always comply with relevant international standards pertaining to the lawfulness of detention;
- the decision to detain should always be based on a detailed and individualized assessment, including the personal history of, and the risk of absconding presented by, the individual concerned. Such assessment should consider the necessity and appropriateness of detention, including whether it is proportionate to the objective to be achieved;
- each decision to detain should be automatically and regularly reviewed as to its lawfulness, necessity and appropriateness by means of a prompt, oral hearing by a court or similar competent independent and impartial body, accompanied by the appropriate provision of legal aid;
- detention should always be for the shortest possible time;
- there should be a statutory maximum duration for detention which should be reasonable in its length. Once this period has expired the individual concerned should automatically be released;
- there should be a statutory prohibition for those who have sought asylum at some stage and who are held solely under Immigration Act powers to be held in prison;
- any allegations of racism, ill-treatment and other abuses of those held in detention should be investigated immediately in compliance with relevant international standards and those responsible should be dealt with appropriately, including when warranted, by being brought to justice;
- people who have sought asylum and are detained should be granted access to publicly funded legal aid, interpreters, doctors, non-governmental organizations, members of their families, the UNHCR and should be able to communicate freely with the outside world;
- unnecessary and gratuitous movement of people who have sought asylum within the immigration detention estate should be avoided;
- detailed statistics of the total number of people who have sought asylum at some stage and who are detained solely under Immigration Act powers should be provided each year, noting at what stage of their asylum application they were detained, the duration of their detention, the location of their detention, their movements within the immigration detention estate, their age if under 18 and over 65, and their gender;

- independent research should be commissioned and official data produced and made publicly available on the risk of absconding, in particular for those whose asylum claims have been dismissed.

In light of Amnesty International's concerns about the detention of asylum-seekers whose claims are being processed under the fast-track procedures operated at Harmondsworth IRC, Oakington Reception Centre and, most recently, at Yarl's Wood IRC, the organization calls on the UK authorities to implement the following recommendations as a matter of urgency:

- the Government should abandon its planned increase of the capacity of the detention estate, in particular its stated intention to increase to up to 30 per cent the number of new asylum applicants whose claims will be fast-tracked while they are held in detention;
- there should be a presumption against the detention of asylum-seekers whose claims are being processed. If detention is resorted to, it should be in strict compliance with relevant international refugee law and standards;
- asylum claims should be determined expeditiously and fairly on the basis of their individual merits. The timetable for fast-track procedures must ensure that the decision-making process is fair and that the expedited nature of the determination is not at the expense of quality or procedural fairness;
- any presumption that asylum claims may be deemed "unfounded" solely on the basis of the country from which asylum is being sought -- as is currently the case with the list of "safe countries", the so-called "White List" -- must be abandoned;
- in compliance with international standards, all asylum claims should be processed through a fair and effective asylum-determination procedure which includes an "in-country" right of appeal against the refusal of asylum. Legislation providing for non-suspensive appeals should be repealed.

Appendix I

General International Human Rights Standards Relating to Detention

Freedom from arbitrary detention	
Standards	Interpretation and guidelines relevant to immigration detention
<p>“No one shall be subject to arbitrary arrest, detention or exile.” UDHR, Article 9</p> <p>“Everyone has the right to liberty and security of the person. No one shall be subject to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as established by law.” ICCPR, Article 9(1)</p> <p>“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social</p>	<p>International human rights law does expressly or implicitly provide limits to immigration detention. It is clear that most norms in international human rights law apply to all those within a state party’s jurisdiction, regardless of nationality or immigration status. The Human Rights Committee confirmed that Article 9(1) and other important guarantees laid down in this article apply to all deprivations of liberty, including in cases related to immigration control. (General Comment No. 8/1982)</p> <p>According to the Human Rights Committee, the meaning of “arbitrary” is to be given a broad application, which goes beyond mere unlawfulness to encompass “inappropriateness, injustice and lack of predictability”. (Communication No.305/1988)</p> <p>In a landmark immigration case, the Human Rights Committee confirmed this approach and stated that while it was not arbitrary <i>per se</i> to detain a person requesting asylum, “remand in custody could be considered arbitrary if it is not necessary in all the circumstances of the case, for example to prevent flight or interference with evidence: the element of proportionality becomes relevant in this context. In any event, detention should not continue beyond the period for which the State can provide appropriate justification. For example, the fact of illegal entry may indicate a need for investigation and there may be other factors particular to the individual such as the likelihood of absconding and lack of co-operation, which may justify detention for a period. Without such factors detention may be considered arbitrary, even if entry was illegal.” (Communication No.560/1993)</p> <p>The Human Rights Committee further articulated the concept of proportionality observing that even an absconding risk does not provide justification for prolonged detention as there are “less invasive means of achieving the same end, that it to say, compliance with State party’s immigration policies, by, for example, the imposition of reporting obligations, sureties or other conditions”.</p>

<p>origin, property, birth or other status.”</p> <p>ICCPR, Article 2</p> <p>“Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:</p> <p>(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.”</p> <p>ECHR, Article 5(1)</p> <p>“Everyone has the right to seek and enjoy in other countries asylum from persecution.”</p> <p>UDHR, Article 14</p>	<p>(Communication No.900/1999).</p> <p>This view is reflected in UNHCR Guidelines according to which there should be a presumption against detention of asylum-seekers. It should only take place after a full consideration of all possible alternatives. In assessing whether detention is necessary, account should be taken of whether it is reasonable to do so and whether it is proportional to the objectives to be achieved. If judged necessary, it should only be imposed in a non-discriminatory manner for a minimal period. (Guideline 3)</p> <p>Unlike the ICCPR, the ECHR sets out an exhaustive list of permissible, therefore presumably non-arbitrary, grounds for detention. Whilst immigration detention is a deprivation of liberty that is justified under Article 5(1)(f), its scope has been clearly limited by case-law. The European Court of Human Rights held that “any deprivation of liberty should be in keeping with the purpose of Article 5, namely to protect the individual from arbitrariness”. It also established a due diligence standard in relation to detention under Article 5(1)(f), which ‘will be justified only for as long as deportation proceedings are in progress. If such proceedings are not prosecuted with due diligence, the detention will cease to be permissible under Article 5(1)(f) (<i>Chahal v UK</i> (1996) 23 EHRR 413). Article 5 is engaged also in the process of examination of those seeking to enter to claim asylum where the conditions of confinement are of sufficient severity or the confinement is unduly prolonged and disproportionate (<i>Amuur v France</i> (1996) 22 EHRR 533). In a recent case the European Court confirmed that ‘it is not enough simply to establish that one of the grounds for detention under Article 5(1)(a) to (f) is made out, detention must also be necessary. And detention will not be necessary unless the authorities can show that other measures short of detention were considered.’ (<i>Litwa v Poland</i>, 4 April 2000).</p> <p>The UN Working Group on Arbitrary Detention, a body set up by the UN Commission on Human Rights, has declared that “article 14 of the Universal Declaration of Human Rights guarantees the right to seek and to enjoy in other countries asylum from persecution. If detention in the asylum country results from exercising this right, such detention might be ‘arbitrary’”. This view is shared by UNHCR which also notes the fundamental difference between the position of asylum-seekers and that of other immigrants. Essentially, asylum-seekers may not be in a position to comply with the legal formalities for entry as would ordinary immigrants. States are encouraged to take this into account, as well as the fact that asylum-seekers have</p>
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	<p>often had traumatic experiences, in determining any restrictions on freedom of movement based on illegal entry or presence. (Guideline 2).</p>
<p>Right to control by a court of the legality of the detention</p>	
<p>“Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order for that court to decide without delay on the lawfulness of his detention and order his release if the detention is not lawful”.</p> <p>ICCPR, Article 9(4)</p> <p>Similar guarantees are contained in ECHR, Article 5(4)</p>	<p>International human rights law requires the domestic basis for detention to be subject to initial and periodic review on the merits. The Human Rights Committee has confirmed this approach stating that ‘[e]very decision to keep a person in detention should be open to review periodically so that the grounds justifying detention can be assessed’ and that ‘the court review of the lawfulness of detention under article 9, paragraph 4, [of the ICCPR] which must include the possibility of ordering release, is not limited to mere compliance of the detention with domestic law. While domestic legal systems may institute differing methods for ensuring court review of administrative detention, what is decisive for the purpose of article 9, paragraph 4, is that such review is, in its effects, <i>real and not merely formal.</i>’ (Communication No.560/1993)</p> <p>The Human Rights Committee has also interpreted that ‘without delay’ means “delays must not exceed a few days”. (General Comment No.8/1982)</p>

<p>The Body of Principles stress the importance of independent supervision of detention. According to Principle 4 “[a]ny form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority”.</p> <p>Further, Principle 11 states that “[a] person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority’ and that a ‘judicial or other authority shall be empowered to review as appropriate the continuance of detention.”</p> <p>In addition to initial, automatic hearing to review the basis of detention, Principle 32 provides that “a detainee is shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain release without delay, it is unlawful.” Also, the detaining authority “shall produce without unreasonable delay the detained person before the reviewing authority.” Furthermore, “[t]hese proceedings must be simple and expeditious and at no cost for detained persons without adequate means.”</p>	<p>The Body of Principles clarify that the word ‘a judicial or other authority’ means a judicial or other authority under the law whose status and tenure shall afford the strongest possible guarantees of competence, impartiality, and independence.</p> <p>UNHCR Guidelines confirm the importance of independent and substantive review of the detention decision. Accordingly, if detained, asylum-seekers should be entitled: (iii) to have the decision subjected to an automatic review before a judicial or administrative body independent of the detaining authorities. This should be followed by regular periodic reviews of the necessity for the continuance of detention, which the asylum-seeker or his/her representative would have the right to attend; (iv) to challenge the necessity of the deprivation of liberty at the review hearing, either personally or through a representative, and to rebut any findings made. Such a right should extend to all aspects of the case and not simply the executive discretion to detain. (Guideline 5)</p>
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Right to be informed of the reasons for detention

<p>“Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of the charges against him.” ICCPR, Article 9(2) and Principle 10</p> <p>“A detained person...shall receive prompt and full communication of any order of detention, together with the reasons therefor” (Principle 11), and with ‘information on and an explanation of his or her rights and how to avail himself of such rights” (Principle 13).</p>	<p>This safeguard is reflected in UNHCR Guidelines which provide that, if detained, asylum-seekers should be entitled (i) to receive prompt and full communication of any order of detention, together with the reasons</p>
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	<p>for the order, and the rights in connection with the order, in a language and in terms they understand. (Guideline 5).</p>
<p>Right to legal assistance</p>	
<p>“In the determination of any criminal charges against him, everyone shall be entitled...in full equality: (b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; (d) ... to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.” ICCPR, Article 14(3)</p> <p>The importance of this procedural safeguard for all detainees is clearly reflected in Principle 17, according to which “[a] detained person shall be entitled to have the assistance of a legal counsel. If the detainee does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient funds to pay.”</p> <p>Rule 93 of the Standard Minimum Rules further clarify that “[f]or the purpose of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser...” and that ‘interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official’ (a requirement also contained in Principle 18).</p>	<p>The Human Rights Committee considers that lawyers should be able to counsel and to represent their clients in accordance with their established professional standards and judgement without any restrictions, influences, pressures or undue interference from any quarter. (HRC General Comment No.13/1984)</p> <p>UNHCR Guidelines provide that, if detained, asylum-seekers should be entitled (ii) to be informed of the right to legal counsel. Where possible, they should receive free legal assistance. (Guideline 5)</p>
<p>Right to communicate with family and the outside world</p>	
<p>Principle 16 of the Body of Principles provides that “promptly after arrest and after each transfer from one place of detention or</p>	<p>UNHCR Guidelines make specific reference to the</p>

<p>imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment of the transfer and of the place where he is kept in custody.” Such notification shall be made “without delay”.</p> <p>Rule 92 of the Standard Minimum Rules provides that a detainee “shall be allowed to inform immediately his family of his detention.”</p> <p>Principle 19 provides that a detained or imprisoned person “shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations”.</p> <p>Principle 20 provides that “if a detained or imprisoned person so requests, he shall if possible be kept in a place of detention reasonably near his usual place of residence”.</p> <p>Rule 37 of the Standard Minimum Rules requires that visits by family and reputable friends be allowed at “regular intervals”.</p> <p>Principle 18 stipulates that “[n]o suspension or restriction of access to a legal counsel may be allowed save in exceptional circumstances, to be specified by law or lawful regulations when it is considered indispensable by a judicial or other authority in order to maintain security and good order.” However, according to Principle 15 even in such exceptional circumstances “communication with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.”</p>	<p>applicable norms and principles of international law and standards on the treatment of detainees. They emphasize in particular that detained asylum-seekers should (iv) have the opportunity to make regular contact and receive visits from friends, relatives, religious, social and legal counsel. Facilities should be made available to enable such visits. Where possible such visits should take place in private unless there are compelling reasons to warrant the contrary. (Guideline 10)</p> <p>Detained asylum-seekers should also have the right (v) to contact and be contacted by the local UNHCR Office, available national refugee bodies or other agencies and an advocate. The right to communicate with these representatives in private, and the means to make such contact should be made available. (Guideline 5)</p>
<p>Right to access medical care</p>	
<p>Principle 24 requires that a “proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission” to the place of custody and “thereafter medical care and treatment</p>	<p>The UNHCR Guidelines are of assistance on the appropriate standards for unaccompanied elderly persons, torture or trauma victims, and people with a mental or physical disability. Due to the psychological damage caused by detention, active consideration of possible alternatives should</p>

<p>shall be provided whenever necessary.” This care and treatment “shall be provided free of charge”.</p> <p>Principle 25 provides the right to “petition a judicial or other authority for a second medical examination or opinion” and Principle 26 requires that written records of medical examinations be kept, and that access to such records be ensured.</p> <p>Rule 24 of the Standard Minimum Rules is more emphatic as it stipulates an automatic examination of every prisoner.</p>	<p>precede any order to detain asylum-seekers who are particularly vulnerable. If vulnerable individuals are detained, this should only be on the certification of a qualified medical practitioner that detention will not adversely affect their health and well-being. In addition there must be regular follow-up and support by a relevant skilled professional. Such detainees must also have access to medical services including hospitalization and counselling, should it become necessary. (Guideline 7)</p> <p>In addition, the Guidelines emphasize that asylum-seekers should undergo an initial screening at the outset of detention to identify trauma or torture victims for treatment and should have the opportunity to receive appropriate medical treatment, and psychological counselling where appropriate. (Guideline 10)</p>
<p>Guarantees of accountability and oversight</p>	
<p>Record keeping is a vital element in ensuring that detainees' rights are respected. Principle 12 requires, among other things, that precise information concerning the place of custody be recorded and communicated to the detained person or his/her counsel.</p> <p>Principle 29 provides that “places of detention shall be visited regularly by qualified and experienced persons” in order to “supervise the strict observance of relevant laws and regulations”. These prison inspectors are to be “appointed by and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment”. Any detained or imprisoned person “shall have the right to communicate freely and in full confidentiality” with the prison inspectors.</p>	
<p>Right to access a complaint mechanism</p>	
<p>Principle 33 of the Body of Principles requires that a system be available to investigate complaints about mistreatment, in particular torture or other cruel, inhuman or degrading treatment. It provides that a detained person or his counsel (or a family member) shall have the right to make such complaints to the authorities responsible for the place of detention and to higher authorities (and when necessary, to appropriate authorities vested with reviewing or remedial powers). Every complaint “shall be promptly dealt with and replied to without undue delay”. If the complaint is “rejected, or in case of inordinate</p>	<p>UNHCR Guidelines emphasize that asylum-seekers should have access to a complaints mechanism (grievance procedure), where complaints may be</p>

<p>delay, the complainant shall be entitled to bring it before a judicial or other authority”. It also emphasizes that no complainant shall suffer prejudice for making a complaint. The UN Convention against Torture also requires that complaints of torture or other ill-treatment be investigated (Article 12).</p> <p>Principle 30 requires that disciplinary offences be specified by law or lawful regulations and published. It also requires that detainees “shall have the right to be heard before disciplinary action is taken” and “shall have the right to bring such action to higher authorities for review”.</p>	<p>submitted either directly or confidentially to the detaining authority. Procedures for lodging complaints, including time limits and appeal procedures, should be displayed and made available to detainees in different languages. (Guideline 10)</p>
<p>Right to human conditions of detention</p>	
<p>“All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.” ICCPR, Article 10.</p> <p>“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” ICCPR, Article 7 (also ECHR, Article 3, Convention against Torture)</p> <p>Principle 6 repeats the internationally recognized prohibition of torture and other cruel, inhuman or degrading treatment or punishment. It states that the term “cruel, inhuman or degrading treatment or punishment should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any</p>	<p>UNHCR Guidelines set out agreed practices for detained asylum-seekers, in the limited circumstances in which such detention is justified:</p> <p>Men should be segregated from women, and children from adults, except where they are part of a family group.</p> <p>Separate detention facilities should be used to accommodate asylum-seekers. The use of prisons should be avoided. If separate detention facilities are not used, asylum-seekers should be accommodated separately from convicted criminals or prisoners on remand. There should be no co-mingling of the two groups. Asylum-seekers should have the opportunity to conduct some form of physical exercise through daily indoor and outdoor recreational activities.</p> <p>Asylum-seekers should have the possibility to continue further education or vocational training.</p> <p>Asylum-seekers should have the opportunity to exercise their religion in practice, worship and observance and to receive a diet in keeping with their religion.</p>

of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time”.	Asylum-seekers should have access to basic necessities such as beds, shower facilities, basic toiletries, etc. (Guideline 10)
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APPENDIX II

International refugee law and standards

Prohibition of detention or other restrictions on the basis of illegal entry or presence	
<p>“The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.”</p> <p>Refugee Convention, Article 31(1)</p> <p>“The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularised or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.”</p> <p>Refugee Convention, Article 31(2)</p>	<p>UNHCR considers that, consistent with Article 31 of the 1951 Refugee Convention, detention should only be resorted to in cases of necessity. The detention of asylum-seekers who come “directly” in an irregular manner should, therefore, not be automatic nor should it be unduly prolonged. This provision applies not only to recognized refugees but also to asylum-seekers pending determination of their status.</p> <p>The expression “coming directly” in Article 31(1) of the 1951 Refugee Convention covers the situation of a person who enters the country in which asylum is sought directly from the country of origin, or from another country where his or her protection, safety and security could not be assured. It is understood that this term also covers a person who transits an intermediate country for a short period of time without having applied for, or received, asylum there. No strict time limit can be applied to the concept "coming directly" and each case must be judged on its merits. Similarly, given the special problems faced by asylum-seekers, there is no time limit which can be mechanically applied to the expression "without delay".</p> <p>(Guidelines, Introduction)</p>
<p>The limited circumstances in which detention of asylum-seekers may be resorted to are prescribed by the Executive Committee of the Programme of the UNHCR. The Committee expressed the opinion that “in view of the hardship which it involves, detention should normally be avoided. If necessary, detention</p>	<p>UNHCR states emphatically that the reasons listed in EXCOM Conclusion 44 are the <i>only</i> ones to justify the detention of asylum-seekers.</p> <p>(i) relates to cases where identity may be undetermined or in dispute</p> <p>(ii) means that the asylum-seeker may be</p>

<p>may be resorted to only on grounds prescribed by law to verify identity; to determine the elements on which the claim to refugee status or asylum is based; to deal with cases where refugees or asylum seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim asylum; or to protect national security or public order.”</p> <p>EXCOM Conclusion No.44/1986</p> <p>Conclusion 44 also makes clear that all decisions to detain must be subject to due process: “...detention measures taken in respect of refugees and asylum seekers should be subject to judicial or administrative review”. It also states that: “...the conditions of detention must be humane. In particular, refugees and asylum seekers shall, whenever possible, not be accommodated with persons detained as common criminals.”</p>	<p>detained exclusively for the purposes of a <u>preliminary interview</u> to identify the basis of the asylum claim. This would involve obtaining essential facts from the asylum-seeker as to why asylum is being sought and would not extend to a determination of the merits or otherwise of the claim. This exception to the general principle cannot be used to justify detention for the entire status determination procedure, or for an unlimited period.</p> <p>(iii) What must be established is the absence of good faith on the part of the applicant to comply with the verification of identity process. As regards asylum-seekers using fraudulent documents or travelling with no documents at all, detention is only permissible when there is an intention to mislead, or a refusal to co-operate with the authorities. Asylum-seekers who arrive without documentation because they are unable to obtain any in their country of origin should not be detained solely for that reason.</p> <p>(iv) relates to cases where there is evidence to show that the asylum-seeker has criminal antecedents and/or affiliations which are likely to pose a risk to public order or national security should he or she be allowed entry.</p> <p>UNHCR explicitly cautions against states using detention to deter future asylum-seekers, or to dissuade those who have commenced their claims from pursuing them. Such a policy would be contrary to the norms of refugee law.</p> <p>(Guideline 3)</p>
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<p>Standards applicable to asylum seeking children</p>	
<p>The Convention on the Rights of the Child (CRC) is the primary source of standards for asylum-seeking children. The relevant applicable standards derive from:</p>	<p>With specific reference to the CRC, the UNHCR Guidelines strongly recommend that unaccompanied minors should not, as a general rule, be detained. Where possible they should be released into the care of family members who already have residency within the asylum</p>

<p>Article 2 which requires that States take all measures appropriate to ensure that children are protected from all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians or family members;</p> <p>Article 3 which provides that in any action taken by States Parties concerning children, the best interests of the child shall be a primary consideration;</p> <p>Article 9 which grants children the right not to be separated from their parents against their will;</p> <p>Article 22 requires that States Parties take appropriate measures to ensure that minors who are seeking refugee status or who are recognized refugees, whether accompanied or not, receive appropriate protection and assistance;</p> <p>Finally, Article 37 by which States Parties are required to ensure that the detention of minors be used only as a measure of last resort and for the shortest appropriate period of time.</p>	<p>country. Where this is not possible, alternative care arrangements should be made by the competent child care authorities for unaccompanied minors to receive adequate accommodation and appropriate supervision. Residential homes or foster care placements may provide the necessary facilities to ensure their proper development, (both physical and mental), is catered for while longer term solutions are being considered.</p> <p>All appropriate alternatives to detention should be considered in the case of children accompanying their parents. Children and their primary caregivers should not be detained unless this is the only means of maintaining family unity.</p> <p>If none of the alternatives can be applied and States do detain children, this should, in accordance with Article 37 of the Convention on the Rights of the Child, be as a measure of last resort, and for the shortest period of time.</p> <p>If children who are asylum-seekers are detained at airports, immigration-holding centres or prisons, they must not be held under prison-like conditions. All efforts must be made to have them released from detention and placed in other accommodation.</p> <p>If this proves impossible, special arrangements must be made for living quarters which are suitable for children and their families.</p> <p>During detention, children have a right to education which should optimally take place outside the detention premises in order to facilitate the continuation of their education upon release.</p> <p>Provision should be made for their recreation and play which is essential to a child's mental development and will alleviate stress and trauma. Children who are detained benefit from the same minimum procedural guarantees as adults.</p> <p>A legal guardian or adviser should be appointed for unaccompanied minors.</p>
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Appendix III

Twenty guidelines on forced return¹⁴²

Adopted by the Committee of Ministers of the Council of Europe in May 2005

The Committee of Ministers,

Recalling that, in accordance with Article 1 of the European Convention on Human Rights, member states shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of the Convention;

Recalling that everyone shall have the right to freedom of movement in accordance with Article 2 of Protocol No. 4 to the Convention;

Recalling that member states have the right, as a matter of well-established international law and subject to their treaty obligations, to control the entry and residence of aliens on their territory;

Considering that, in exercising this right, member states may find it necessary to forcibly return illegal residents within their territory;

Concerned about the risk of violations of fundamental rights and freedoms which may arise in the context of forced return;

Believing that guidelines not only bringing together the Council of Europe's standards and guiding principles applicable in this context, but also identifying best possible practices, could serve as a practical tool for use by both governments in the drafting of national laws and regulations on the subject and all those directly or indirectly involved in forced return operations;

Recalling that every person seeking international protection has the right for his or her application to be treated in a fair procedure in line with international law, which includes access to an effective remedy before a decision on the removal order is issued or is executed,

1. Adopts the attached guidelines and invites member states to ensure that they are widely disseminated amongst the national authorities responsible for the return of aliens.

2. Considers that in applying or referring to those guidelines the following elements must receive due consideration:

a. none of the guidelines imply any new obligations for Council of Europe member states. When the guidelines make use of the verb "shall" this indicates only that the obligatory character of the norms corresponds to already existing obligations of member states. In certain

¹⁴² When adopting this decision, the Permanent Representative of the United Kingdom indicated that, in accordance with Article 10.2c of the Rules of Procedure for the meetings of the Ministers' Deputies, he reserved the right of his Government to comply or not with Guidelines 2, 4, 6, 7, 8, 11 and 16.

cases however, the guidelines go beyond the simple reiteration of existing binding norms. This is indicated by the use of the verb “should” to indicate where the guidelines constitute recommendations addressed to the member states. The guidelines also identify certain good practices, which appear to represent innovative and promising ways to reconcile a return policy with full respect for human rights. States are then “encouraged” to seek inspiration from these practices, which have been considered by the Committee of Ministers to be desirable;

b. nothing in the guidelines shall affect any provisions in national or international law which are more conducive to the protection of human rights. In particular, in so far as these guidelines refer to rights which are contained in the European Convention on Human Rights, their interpretation must comply with the case-law of the European Court of Human Rights;

c. the guidelines are without prejudice to member states' reservations to international instruments.

Chapter I – Voluntary return

Guideline 1. Promotion of voluntary return

The host state should take measures to promote voluntary returns, which should be preferred to forced returns. It should regularly evaluate and improve, if necessary, the programmes which it has implemented to that effect.

Chapter II – The removal order

Guideline 2. Adoption of the removal order

Removal orders shall only be issued in pursuance of a decision reached in accordance with the law.

1. A removal order shall only be issued where the authorities of the host state have considered all relevant information that is readily available to them, and are satisfied, as far as can reasonably be expected, that compliance with, or enforcement of, the order, will not expose the person facing return to:

a. a real risk of being executed, or exposed to torture or inhuman or degrading treatment or punishment;

b. a real risk of being killed or subjected to inhuman or degrading treatment by non-state actors, if the authorities of the state of return, parties or organisations controlling the state or a substantial part of the territory of the state, including international organisations, are unable or unwilling to provide appropriate and effective protection; or

c. other situations which would, under international law or national legislation, justify the granting of international protection.

2. The removal order shall only be issued after the authorities of the host state, having considered all relevant information readily available to them, are satisfied that the possible interference with the returnee's right to respect for family and/or private life is, in particular, proportionate and in pursuance of a legitimate aim.

3. If the state of return is not the state of origin, the removal order should only be issued if the authorities of the host state are satisfied, as far as can reasonably be expected, that the state to which the person is returned will not expel him or her to a third state where he or she would be exposed to a real risk mentioned in paragraph 1, sub-paragraph a. and b. or other situations mentioned in paragraph 1, sub-paragraph c.

4. In making the above assessment with regard to the situation in the country of return, the authorities of the host state should consult available sources of information, including non-governmental sources of information, and they should consider any information provided by the United Nations High Commissioner for Refugees (UNHCR).

5. Before deciding to issue a removal order in respect of a separated child, assistance – in particular legal assistance – should be granted with due consideration given to the best interest of the child. Before removing such a child from its territory, the authorities of the host state should be satisfied that he/she will be returned to a member of his/her family, a nominated guardian or adequate reception facilities in the state of return.

6. The removal order should not be enforced if the authorities of the host state have determined that the state of return will refuse to readmit the returnee. If the returnee is not readmitted to the state of return, the host state should take him/her back.

Guideline 3. Prohibition of collective expulsion

A removal order shall only be issued on the basis of a reasonable and objective examination of the particular case of each individual person concerned, and it shall take into account the circumstances specific to each case. The collective expulsion of aliens is prohibited.

Guideline 4. Notification of the removal order

1. The removal order should be addressed in writing to the individual concerned either directly or through his/her authorised representative. If necessary, the addressee should be provided with an explanation of the order in a language he/she understands. The removal order shall indicate:

- the legal and factual grounds on which it is based;
- the remedies available, whether or not they have a suspensive effect, and the deadlines within which such remedies can be exercised.

2. Moreover, the authorities of the host state are encouraged to indicate:

- the bodies from whom further information may be obtained concerning the execution of the removal order;
- the consequences of non-compliance with the removal order.

Guideline 5. Remedy against the removal order

1. In the removal order, or in the process leading to the removal order, the subject of the removal order shall be afforded an effective remedy before a competent authority or body composed of members who are impartial and who enjoy safeguards of independence. The

competent authority or body shall have the power to review the removal order, including the possibility of temporarily suspending its execution.

2. The remedy shall offer the required procedural guarantees and present the following characteristics:

- the time-limits for exercising the remedy shall not be unreasonably short;
- the remedy shall be accessible, which implies in particular that, where the subject of the removal order does not have sufficient means to pay for necessary legal assistance, he/she should be given it free of charge, in accordance with the relevant national rules regarding legal aid;
- where the returnee claims that the removal will result in a violation of his or her human rights as set out in guideline 2.1, the remedy shall provide rigorous scrutiny of such a claim.

3. The exercise of the remedy should have a suspensive effect when the returnee has an arguable claim that he or she would be subjected to treatment contrary to his or her human rights as set out in guideline 2.1.

Chapter III – Detention pending removal

Guideline 6. Conditions under which detention may be ordered

1. A person may only be deprived of his/her liberty, with a view to ensuring that a removal order will be executed, if this is in accordance with a procedure prescribed by law and if, after a careful examination of the necessity of deprivation of liberty in each individual case, the authorities of the host state have concluded that compliance with the removal order cannot be ensured as effectively by resorting to non-custodial measures such as supervision systems, the requirement to report regularly to the authorities, bail or other guarantee systems.

2. The person detained shall be informed promptly, in a language which he/she understands, of the legal and factual reasons for his/her detention, and the possible remedies; he/she should be given the immediate possibility of contacting a lawyer, a doctor, and a person of his/her own choice to inform that person about his/her situation.

Guideline 7. Obligation to release where the removal arrangements are halted

Detention pending removal shall be justified only for as long as removal arrangements are in progress. If such arrangements are not executed with due diligence the detention will cease to be permissible.

Guideline 8. Length of detention

1. Any detention pending removal shall be for as short a period as possible.
2. In every case, the need to detain an individual shall be reviewed at reasonable intervals of time. In the case of prolonged detention periods, such reviews should be subject to the supervision of a judicial authority.

Guideline 9. Judicial remedy against detention

1. A person arrested and/or detained for the purposes of ensuring his/her removal from the national territory shall be entitled to take proceedings by which the lawfulness of his/her detention shall be decided speedily by a court and, subject to any appeal, he/she shall be released immediately if the detention is not lawful.
2. This remedy shall be readily accessible and effective and legal aid should be provided for in accordance with national legislation.

Guideline 10. Conditions of detention pending removal

1. Persons detained pending removal should normally be accommodated within the shortest possible time in facilities specifically designated for that purpose, offering material conditions and a regime appropriate to their legal situation and staffed by suitably qualified personnel.
2. Such facilities should provide accommodation which is adequately furnished, clean and in a good state of repair, and which offers sufficient living space for the numbers involved. In addition, care should be taken in the design and layout of the premises to avoid, as far as possible, any impression of a "carceral" environment. Organised activities should include outdoor exercise, access to a day room and to radio/television and newspapers/magazines, as well as other appropriate means of recreation.
3. Staff in such facilities should be carefully selected and receive appropriate training. Member states are encouraged to provide the staff concerned, as far as possible, with training that would not only equip them with interpersonal communication skills but also familiarise them with the different cultures of the detainees. Preferably, some of the staff should have relevant language skills and should be able to recognise possible symptoms of stress reactions displayed by detained persons and take appropriate action. When necessary, staff should also be able to draw on outside support, in particular medical and social support.
4. Persons detained pending their removal from the territory should not normally be held together with ordinary prisoners, whether convicted or on remand. Men and women should be separated from the opposite sex if they so wish; however, the principle of the unity of the family should be respected and families should therefore be accommodated accordingly.
5. National authorities should ensure that the persons detained in these facilities have access to lawyers, doctors, non-governmental organisations, members of their families, and the UNHCR, and that they are able to communicate with the outside world, in accordance with the relevant national regulations. Moreover, the functioning of these facilities should be regularly monitored, including by recognised independent monitors.
6. Detainees shall have the right to file complaints for alleged instances of ill-treatment or for failure to protect them from violence by other detainees. Complainants and witnesses shall be protected against any ill-treatment or intimidation arising as a result of their complaint or of the evidence given to support it.
7. Detainees should be systematically provided with information which explains the rules applied in the facility and the procedure applicable to them and sets out their rights and obligations. This information should be available in the languages most commonly used by those concerned and, if necessary, recourse should be made to the services of an interpreter.

Detainees should be informed of their entitlement to contact a lawyer of their choice, the competent diplomatic representation of their country, international organisations such as the UNHCR and the International Organization for Migration (IOM), and non-governmental organisations. Assistance should be provided in this regard.

Guideline 11. Children and families

1. Children shall only be detained as a measure of last resort and for the shortest appropriate period of time.
2. Families detained pending removal should be provided with separate accommodation guaranteeing adequate privacy.
3. Children, whether in detention facilities or not, have a right to education and a right to leisure, including a right to engage in play and recreational activities appropriate to their age. The provision of education could be subject to the length of their stay.
4. Separated children should be provided with accommodation in institutions provided with the personnel and facilities which take into account the needs of persons of their age.
5. The best interest of the child shall be a primary consideration in the context of the detention of children pending removal.

Chapter IV – Readmission

Guideline 12. Cooperation between states

1. The host state and the state of return shall cooperate in order to facilitate the return of foreigners who are found to be staying illegally in the host state.
2. In carrying out such cooperation, the host state and the state of return shall respect the restrictions imposed on the processing of personal data relating to the reasons for which a person is being returned. The state of origin is under the same obligation where its authorities are contacted with a view to establishing the identity, the nationality or place of residence of the returnee.
3. The restrictions imposed on the processing of such personal data are without prejudice to any exchange of information which may take place in the context of judicial or police cooperation, where the necessary safeguards are provided.
4. The host state shall exercise due diligence to ensure that the exchange of information between its authorities and the authorities of the state of return will not put the returnee, or his/her relatives, in danger upon return. In particular, the host state should not share information relating to the asylum application.

Guideline 13. States' obligations

1. The state of origin shall respect its obligation under international law to readmit its own nationals without formalities, delays or obstacles, and cooperate with the host state in determining the nationality of the returnee in order to permit his/her return. The same obligation is imposed on states of return where they are bound by a readmission agreement

and are, in application thereof, requested to readmit persons illegally residing on the territory of the host (requesting) state.

2. When requested by the host state to deliver documents to facilitate return, the authorities of the state of origin or of the state of return should not enquire about the reasons for the return or the circumstances which led the authorities of the host state to make such a request and should not require the consent of the returnee to return to the state of origin.

3. The state of origin or the state of return should take into account the principle of family unity, in particular in relation to the admission of family members of the returnees not possessing its nationality.

4. The state of origin or the state of return shall refrain from applying any sanctions against returnees:

- on account of their having filed asylum applications or sought other forms of protection in another country;
- on account of their having committed offences in another country for which they have been finally convicted or acquitted in accordance with the law and penal procedure of each country; or
- on account of their having illegally entered into, or remained in, the host state.

Guideline 14. Statelessness

The state of origin shall not arbitrarily deprive the person concerned of its nationality, in particular where this would lead to a situation of statelessness. Nor shall the state of origin permit the renunciation of nationality when this may lead, for the person possessing this state's nationality, to a situation of statelessness which could then be used to prevent his or her return.

Chapter V – Forced removals

Guideline 15. Cooperation with returnees

1. In order to limit the use of force, host states should seek the cooperation of returnees at all stages of the removal process to comply with their obligations to leave the country.

2. In particular, where the returnee is detained pending his/her removal, he/she should as far as possible be given information in advance about the removal arrangements and the information given to the authorities of the state of return. He/she should be given an opportunity to prepare that return, in particular by making the necessary contacts both in the host state and in the state of return, and if necessary, to retrieve his/her personal belongings which will facilitate his/her return in dignity.

Guideline 16. Fitness for travel and medical examination

1. Persons shall not be removed as long as they are medically unfit to travel.

2. Member states are encouraged to perform a medical examination prior to removal on all returnees either where they have a known medical disposition or where medical treatment is required, or where the use of restraint techniques is foreseen.

3. A medical examination should be offered to persons who have been the subject of a removal operation which has been interrupted due to their resistance in cases where force had to be used by the escorts.

4. Host states are encouraged to have "fit-to-fly" declarations issued in cases of removal by air.

Guideline 17. Dignity and safety

While respecting the dignity of the returnee, the safety of the other passengers, of the crew members and of the returnee himself/herself shall be paramount in the removal process. The removal of a returnee may have to be interrupted where its continuation would endanger this.

Guideline 18. Use of escorts

1. The authorities of the host state are responsible for the actions of escorts acting on their instruction, whether these people are state employees or employed by a private contractor.

2. Escort staff should be carefully selected and receive adequate training, including in the proper use of restraint techniques. The escort should be given adequate information about the returnee to enable the removal to be conducted safely, and should be able to communicate with the returnee. Member states are encouraged to ensure that at least one escort should be of the same sex as that of the returnee.

3. Contact should be established between the members of the escort and the returnee before the removal.

4. The members of the escort should be identifiable; the wearing of hoods or masks should be prohibited. Upon request, they should identify themselves in one way or another to the returnee.

Guideline 19. Means of restraint

1. The only forms of restraint which are acceptable are those constituting responses that are strictly proportionate responses to the actual or reasonably anticipated resistance of the returnee with a view to controlling him/her.

2. Restraint techniques and coercive measures likely to obstruct the airways partially or wholly, or forcing the returnee into positions where he/she risks asphyxia, shall not be used.

3. Members of the escort team should have training which defines the means of restraint which may be used, and in which circumstances; the members of the escort should be informed of the risks linked to the use of each technique, as part of their specialised training. If training is not offered, as a minimum regulations or guidelines should define the means of restraint, the circumstances under which they may be used, and the risks linked to their use.

4. Medication shall only be administered to persons during their removal on the basis of a medical decision taken in respect of each particular case.

Guideline 20. Monitoring and remedies

1. Member states should implement an effective system for monitoring forced returns.
2. Suitable monitoring devices should also be considered where necessary.
3. The forced return operation should be fully documented, in particular with respect to any significant incidents that occur or any means of restraint used in the course of the operation. Special attention shall be given to the protection of medical data.
4. If the returnee lodges a complaint against any alleged ill-treatment that took place during the operation, it should lead to an effective and independent investigation within a reasonable time.

Appendix

Definitions

For the purpose of these guidelines, the following definitions apply:

- State of origin: the state of which the returnee is a national, or where he/she permanently resided legally before entering the host state;
- State of return: the state to which a person is returned;
- Host state: the state where a non-national of that state has arrived, and/or has sojourned or resided either legally or illegally, before being served with a removal order;
- Illegal resident: a person who does not fulfil, or no longer fulfils, the conditions for entry, presence in, or residence on the territory of the host state;
- Returnee: any non-national who is subject to a removal order or is willing to return voluntarily;
- Return: the process of going back to one's state of origin, transit or other third state, including preparation and implementation. The return may be voluntary or enforced;
- Voluntary return: the assisted or independent departure to the state of origin, transit or another third state based on the will of the returnee;
- Assisted voluntary return: the return of a non-national with the assistance of the International Organization for Migration (IOM) or other organisations officially entrusted with this mission;
- Supervised voluntary return: any return which is executed under direct supervision and control of the national authorities of the host state, with the consent of the returnee and therefore without coercive measures;
- Forced return: the compulsory return to the state of origin, transit or other third state, on the basis of an administrative or judicial act;

- Removal: act of enforcement of the removal order, which means the physical transfer out of the host country;
- Removal order: administrative or judicial decision providing the legal basis of the removal;
- Readmission: act by a state accepting the re-entry of an individual (own nationals, third country nationals or stateless persons), who has been found illegally entering, being present in or residing in another state;
- Readmission agreement: agreement setting out reciprocal obligations on the contracting parties, as well as detailed administrative and operational procedures, to facilitate the return and transit of persons who do not or no longer fulfil the conditions of entry to, presence in or residence in the requesting state;
- Separated children: children separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives.