

amnesty international

UNITED KINGDOM

Detention of people who have sought asylum – Executive Summary¹

June 2005

AI Index: EUR 45/019/2005

In order to escape persecution and conflict in their own countries refugees are forced to abandon their homes, their families and their livelihoods. The majority of the 17 million refugees, asylum-seekers and others of concern to the United Nations High Commissioner for Refugees (UNHCR), cross an international border and seek safety in a neighbouring country. 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. In spite of this decline, in recent years, the number of those detained solely under Immigration Act powers² 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 facilities³ is 2,672, triple the number of available places when the current government came to power in 1997. The vast majority of those detained under Immigration Act powers have claimed asylum in the UK at some stage.

Amnesty International has long been concerned about the detention of people who have sought asylum in the UK. This report examines the increased use of detention both at the beginning and at the end of the asylum process and questions whether the UK is meeting 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.

Amnesty International's concern about UK detention policy and practice is compounded by the country's potential to influence human rights protection around the world. Particularly in 2005, when the UK occupies the Presidencies of both the European Union (EU) and the G8 group of countries, it will be better positioned than ever to make its influence felt throughout Europe and beyond.

The UK authorities have often claimed that detention is pivotal to their strategy to

¹ This report summarizes a 94-page document (35,794 words), *United Kingdom - Seeking asylum is not a crime: detention of people who have sought asylum* (AI Index: EUR 45/015/2005) issued by Amnesty International on 20 June 2005. Anyone wishing further details or to take action on this issue should consult the full document.

² The powers of the executive are provided under the Immigration Act 1971 and under successive immigration laws passed in the last 12 years.

³ These are places where people can be detained for up to seven days pending forcible return or transfer.

remove asylum-seekers whose claims have been dismissed. They have also stated that: “detention would only be used as a last resort”. 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 chances of effecting their forcible removal within a reasonable time may be slim.

This report examines the hidden plight of those who have sought asylum in the UK and are detained solely under Immigration Act powers.⁴ 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.

For this report Amnesty International examines the cases of asylum-seekers who were detained for the duration of the asylum process and whose claims were considered under accelerated asylum-determination procedures premised on detention.

Such fast-track procedures, where the applicant is automatically detained, are set to increase. Amnesty International is concerned about the quality of decisions and procedural safeguards within these procedures.

The report also looks at the cases of people who were detained once their claim had been dismissed and were considered to be at the end of the asylum process.

⁴ The report focuses exclusively on the plight of those who have sought asylum and are held in detention in the UK. It does not consider the rights of people if and when they are released from detention.

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. However, although limited statistics for certain detention facilities are available, in the course of a year no comprehensive statistics are produced on the number of asylum claimants who are held in detention, or the length of time for which they are detained. Therefore, Amnesty International is concerned that no clear picture exists of how many people who have sought asylum are detained or for how long.

The UK authorities have argued that detention is necessary to prevent people from absconding at the end of the asylum process. But Amnesty International is concerned that the authorities are using the risk of absconding as justification for detention without a detailed and meaningful assessment of the risk, if any, posed by each individual.

This report highlights the denial of justice suffered by many people as a result of their detention being in many cases effectively arbitrary and, therefore, unlawful. Individuals are often taken into detention on the basis that a bed is available within the detention estate, rather than on considerations of necessity, proportionality and appropriateness.

This report also examines the ability of detainees to challenge their detention and concludes that UK policy and practice in this regard lead to further injustice.

Under Immigration Act powers, it is the executive who authorizes the detention of people who have sought asylum. No judicial authorization 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 on the length of detention. In light of all of this, Amnesty International is seriously concerned that detention of people who have sought asylum can continue indefinitely without any automatic judicial intervention.

In April 2004, the UK authorities introduced new funding arrangements for legal work on asylum and immigration cases in England and Wales, which have resulted in the withdrawal of established lawyers from this area of work, leaving a dearth of expertise. Many who have sought asylum are now left with little or no access to effective legal advice and representation. This problem is particularly acute for those in detention.

Finally, the report looks at the human cost of the increased use of detention in the UK.

Amnesty International 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. The organization urges the UK authorities only to resort to detention when necessary and in strict accordance with international standards.

The human cost of detention

Amnesty International interviewed people whose asylum claims had been processed through fast-track procedures who were detained as soon as they applied for asylum. The organization also interviewed people who were detained at the end of the

asylum process, some of whom made subsequent claims for asylum.

Amnesty International found that many people were detained far away from their families or friends, in often remote locations and in grim, prison-like establishments. Some detention facilities are former prisons, others are purpose-built as removal centres.

At the time of being taken into detention, the individuals concerned were not told for how long they would be detained.

Those interviewed told Amnesty International that while in detention they felt abandoned and demoralized. Several of them complained of being subjected to racist and other verbal abuse while in detention.

Some interviewees experienced great difficulty in relaying their stories even months after their release from detention. A number of them appeared to be suffering from severe depression.⁵

In theory, the UK has a policy of non-detention of particular vulnerable groups. However, Amnesty International is concerned that those whose age or physical or mental health or circumstances make them unfit for detention are nevertheless being detained.

Detention of families

The UK government has stated that family detention is a necessary part of

⁵ 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. The cases cited are from accounts given to Amnesty International by people who had sought asylum and who had been held in detention solely under Immigration Act powers.

maintaining effective immigration control, and that it is used sparingly and for as short a time as possible. Organizations 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.

Families with children are liable to be detained while an initial decision on their asylum claim is made. Other families whose claims have been dismissed and are deemed to be at the end of the process and awaiting forcible removal may also face detention. There are no comprehensive figures as to how many children are detained each year.

In 2003, Her Majesty's Inspectorate of Prisons for England and Wales (HMIP) criticized the detention of families and recommended that children should not normally be detained, but that if detention was used it should be for no longer than a few days. 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.

This following stories were recounted to Amnesty International by some of the people Amnesty International has met during its research. The organization believes that these cases demonstrate the human cost of detention.

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 was arrested and detained for her political

activities before escaping and applying for asylum in the UK. She was pregnant at the time of her arrival in the UK and her baby daughter was born soon afterwards. 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.

Eveline and her baby daughter were taken from their house in the north of England to Harmondsworth Immigration Removal Centre (IRC),⁶ close to Heathrow airport. Eveline was told that they would be sent back to their country of origin the following day. They were taken to Heathrow airport but their flight was cancelled and they were returned to Harmondsworth. Eveline's daughter was ill and Eveline, who was three months pregnant, miscarried in Harmondsworth.

They were moved on several occasions between Harmondsworth and Dungavel IRC in Scotland. She was eventually released from detention on bail and went on to win her appeal and be recognized as a refugee. A 2004 judgment regarding the lawfulness of Eveline's 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. Despite

⁶ 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.

this she was not released from detention at that time. As a result of the ordeal of Eveline and her daughter, the government was forced to change its policy on detention reviews of families with children who seek asylum.

Detention of torture survivors

Josephine

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

Josephine is the wife of a freelance journalist from a central African country. Her husband had fled persecution and sought asylum in the UK. After her husband fled, Josephine was arrested on many occasions and on one occasion was raped by two policemen. She said that after that she "lost her mind".

With help, Josephine and her eight-year-old daughter arrived in the UK in June 2004 and applied for asylum at Heathrow airport. Josephine was not allowed to contact her husband, who was unaware of her arrival. The Immigration Service did not contact him.

Josephine explained that the passport she was carrying was not hers but that she had used it because it was the only way she could leave her own country.

An Immigration Officer told her that she would have to return to her country. Her daughter was taken away for questioning separately three or four times.

They were then both taken into detention. They were detained at Oakington Reception Centre for 10 days.⁷ Josephine's

⁷ Although Oakington is called a Reception Centre, it is run under Detention Centre Rules and is a

husband finally learnt from someone who had travelled with Josephine that she was in the UK.

At the time of Amnesty International's interview, Josephine 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.

Detention following a dispute over the age of an asylum-seeker

Normally, in cases relating to minors, the UK authorities would grant them discretionary leave to remain until the age of 18.

In the case of Ibrahim, described below, the authorities did not accept that he was just 17 when he claimed asylum in the UK. He was not given discretionary leave to remain and he was taken into detention after he had turned 18.

Ibrahim

"I felt ashamed to be in detention and hated the environment"

Ibrahim lived with his father and sister in a central African country. When he was 17, a group of people came to his house looking for his father. They 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.

Once released, fearing for his life, Ibrahim was taken by an agent via Niger, through Algeria and then on to the UK by boat. Abandoned, alone and frightened he was

locked centre; people are detained there under Immigration Act powers

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. An independent paediatrician who examined Ibrahim agreed that he was 17.

Nevertheless, Ibrahim 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, he turned 18.

Ibrahim unfailingly complied with the weekly reporting requirements. One day in January 2004, when he went to report he was told by immigration officers that since his appeal had been dismissed he would be detained and returned to his country of origin. He was held at Dover IRC, which he described as being “like a big prison”, for almost a month.

While he was detained, his friends contacted his MP. Ibrahim was released on 3 February 2004. He was recognized as a refugee several months later.

The detrimental effects of detention

Over the years Amnesty International has come across many people who have escaped persecution in their own country only to be detained upon claiming asylum in the UK.

Detainees who have survived torture or serious trauma in their own country are more at risk of self-harm, including death, while in detention. Groups working with detainees express 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.

There are no regularly published figures about the number of self-harm incidents but figures included in the annual reports of some IRCs’ Independent Monitoring Boards give some indication. For example, in Harmondsworth IRC in 2003, 55 self-harm incidents were recorded in 11 months.⁸

Mark

“I am walking but my soul is dead.”

Mark fled his own country after his family was murdered. He applied for asylum on his arrival at Heathrow airport and was detained at Oakington Reception Centre where his asylum claim was fast-tracked. He was released on temporary admission but detained again when his appeal was dismissed.

He was detained in Haslar, Harmondsworth, and Colnbrook IRCs before spending 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.

The authorities attempted to forcibly return him to his own country two or three times before 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 the

⁸ Amnesty International does not know how many of these were people who had sought asylum at some stage.

Amnesty International researchers who interviewed him. He was unable to answer many questions and appeared to be disoriented.

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.

George

At the time when George was taken into detention, in June 2002, the policy of the UK authorities was not to return people to his country of origin. In spite of this, he was detained until June 2004 when he was bailed. Long-term detention has had a profoundly detrimental effect on his mental health.

During his two years in detention, George was moved several times. During that time the UK authorities made six attempts to forcibly remove him from the UK. On one occasion the Immigration Service tried to send him to another Middle Eastern country without a travel document but the pilot refused to transport him.

George tried to kill himself in Harmondsworth and Dungavel. When Amnesty International interviewed George, he appeared so depressed as to be barely able to communicate.

Fast-track procedures

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. Furthermore, the expeditious processing of asylum claims should not be premised on detention.

Amnesty International is also concerned about the accelerated procedures at Oakington Reception Centre, where asylum claims will be presumed to be unfounded if the country of origin is on the list of so-called “safe countries”, also known as the “white list”. There is no right of appeal from within the UK against a negative decision on such claims. This is known as the non-suspensive appeal (NSA) procedure.

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, 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 by a group of men dressed as police. During the same incident, Jean’s throat had been slit, leaving a long scar, and her girlfriend was shot at, though she managed to escape. All this took place in front of her young son, who was born after Jean had been raped. She and her son, then seven years old, applied for asylum in the UK in November 2002.

Jean and her son were detained and taken to Oakington Reception Centre. Her case was determined under the NSA procedure.

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 NSA procedure was unsuccessful.

She was kept in detention with her son pending the granting of a travel document by the authorities of her country. Her son received little education at Oakington.

Eventually, Jean and her son were released from detention after 143 days, following a successful bail application by a new lawyer. Following further representations Jean was granted an in-country right of appeal and she and her son were recognized as refugees in March 2005.

Allegations of ill-treatment

Amnesty International heard several allegations of escort staff using excessive force during attempted forcible returns.

Cisse

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, but released after eight days when his lawyer lodged an appeal against the initial refusal of his asylum claim.

Cisse remained in contact with the Immigration Service while waiting to hear about the outcome of his appeal. One day, he was in the street when his ID was checked by police who, after conferring with the Immigration Service, told Cisse that his appeal had failed. Cisse told Amnesty International that neither he nor his lawyer had been informed of the date of his appeal hearing or its dismissal. He was taken into detention at Harmondsworth IRC.

Two days later, the Immigration Service tried to forcibly return Cisse to his own country without any of his belongings. However, the flight was cancelled and he was booked onto another flight five days later. He resisted being forcibly removed 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 to see a doctor.

Another attempt was made to forcibly remove him, in handcuffs, but the pilot refused to carry a passenger in handcuffs.

Cisse's first bail application was dismissed on the basis that he had refused to cooperate and had been violent during the attempts to forcibly remove him. 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.

Cisse was eventually released on bail in September 2004 after more than 10 months in detention.

The legal framework for detention of people who have claimed asylum at some stage

Under international refugee law 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 of

liberty. 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 process.

Once an asylum applicant's claim has been dismissed following such processes, the individual concerned is considered as not deserving of protection under international refugee law. It is at this stage that people whose asylum claims have been dismissed can lawfully be detained to remove them from the territory in safety and dignity.

However, detention should only be used when 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. The authorities must demonstrate that there exists a prospect of enforcing the expulsion of the person concerned from their territory within a reasonable time and that they are pursuing with due diligence expulsion arrangements. Therefore, states cannot detain people indefinitely.

When is detention lawful?

According to international law, depriving people who have not committed a crime of their liberty should only be resorted to in exceptional circumstances.⁹

⁹ 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 Universal Declaration of Human Rights (UDHR), the 1951 UN Refugee Convention and its 1967 Protocol, the International

A key safeguard against arbitrary detention is for each decision to detain to be reviewed automatically and regularly as to its lawfulness, necessity and appropriateness by means of a prompt oral hearing by a court or similar competent, independent and impartial body.

International legal standards aim to protect against arbitrary detention. The authorities are expected to take into account factors such as past behaviour, risk of absconding, whether less severe measures than detention have been considered and found to be insufficient, and the effectiveness of detention.

Under UK law, immigration officers and 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. There are no statutory criteria for detention.

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 deemed to be straightforward and capable of being decided quickly. There is no upper or lower age for being detained as asylum-seekers or immigrants in UK law.

Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC). At a regional level, Article 5 of the European Convention on Human Rights (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.

Increasing forced returns

In recent years, the UK authorities have focused on increasing the number of forcible removals of asylum applicants whose claims have been dismissed and others who, purportedly, have no right to remain in the country. This policy has resulted in an increase in the number of people in detention, on the basis of the assertion that detained people are easier to remove.

Government ministers have made clear that an expanded detention estate is seen as key to facilitating this process. In February 2005, despite falling numbers of new asylum-seekers, the Home Office announced a further 300 detention places by 2007.

Where people are detained

At the start of 2005, nine so-called IRCs and Oakington Reception Centre were being used to detain those who have sought asylum in the UK. A number of so-called short-term holding facilities were also in operation.

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 by the Immigration and Nationality Directorate.

Mainstream prisons are also used to house people who have sought asylum. According to Home Office statistics, 90 people who had sought asylum were held in prisons on 25 December 2004.

In Northern Ireland, there are no dedicated detention facilities; all immigration

detainees are held in prisons.¹⁰ In February 2004 the House of Commons Northern Ireland Affairs Committee endorsed calls for immigration detainees to be dealt with outside the prison system.

The truth about numbers

The Home Office produces quarterly statistics providing a snapshot figure of the number of people detained on a given day under Immigration Act powers who have sought asylum. 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 for the four quarters of 2004 ranged from 1,105 people who had sought asylum detained on a given day, to 1,515. Because of the quarterly nature of the snapshot figure, some people could be detained for up to 89 days and their detention would still go unreported.

Despite these statistics, there is a notable lack of transparency regarding the exact number of those detained throughout the year or the length of their detention. The only exceptions are Oakington Reception Centre and Harmondsworth IRC, for which some more detailed figures for those whose asylum applications are fast-tracked are available.

Amnesty International has concluded that the Home Office quarterly statistics belie the true scale of detention of those who have sought asylum at some stage and believes that thousands of people are being

¹⁰ 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.

detained each year, some of them for lengthy periods.

All those detained under Immigration Act powers are allocated a “detention coordination” reference number when initially detained which should remain with the detainee throughout their detention period and any subsequent detentions. This number records the year in which the person is originally taken into detention and is used to manage the detention and escort of detained individuals.

The exception to this, according to information provided by the Immigration and Nationality Directorate, are asylum-seekers detained at Oakington who are then given temporary admission.

Based on figures produced by the Home Office, Amnesty International suspects that at least 27,000 people who had sought asylum at some stage were detained in 2003 and 25,000 in 2004.¹¹ Because the authorities only release snapshot statistics, Amnesty International is unable to calculate how long each individual was detained. In the absence of official statistics it is also impossible to verify whether an individual has been detained continuously or released at some stage and re-detained.

Amnesty International is gravely concerned about the non-availability of official statistics giving a full picture of the number of people held in detention, including for prolonged periods. This concern has been echoed by the Parliamentary Home Affairs Committee.

¹¹ These figures exclude those people who had been detained in previous years and were still in detention in these years.

Amnesty International believes that the reality is a system in chaos and that many asylum-seekers are languishing in detention for long periods of time only to be released on bail or temporarily admitted.

In addition, Amnesty International believes that many asylum applicants detained in order to be forcibly returned end up not being removed and are eventually released. This prompts the question of why their detention was considered necessary in the first place. Therefore, questions arise as to whether the UK authorities are giving adequate consideration to non-custodial alternatives before resorting to detention.

Justice denied

Seeking asylum is not a crime

In 2004 a judge of the High Court of England and Wales expressed concern that an asylum-seeker’s claim had been dismissed because a negative inference had been drawn from the fact that she was in detention. Amnesty International fears that such bias may be prevalent across the system.

In the course of its research, Amnesty International came across negative views expressed by officials regarding asylum-seekers, including perceptions that they had committed an offence. Seeking asylum, however, is not a crime. On the contrary, people claiming asylum are exercising a right which is enshrined in international law.

Amnesty International considers that the presumption that people seeking asylum deserve protection should extend until all avenues of appeal have been exhausted.

Amnesty International is also concerned that these negative views affect the way in which asylum-seekers are treated within the immigration detention estate.

No maximum time limit

There is no statutory maximum time limit for detention under Immigration Act powers.

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.

Amnesty International is concerned that in many cases the UK authorities cannot demonstrate that there is a reasonable prospect that removal will take place within the shortest possible period of time, as required under international law.

Inadequate communication

Under international refugee law asylum-seekers have the right to access and receive adequate and timely information about their asylum claim. This was not the experience of many of those that Amnesty International interviewed¹². In addition, anyone deprived of their liberty has a right to know the reason for their detention, and to be informed of the avenues available for them to seek to bring the detention to an end. Amnesty International is concerned that adequate effort is not being made to explain to detainees in their own language the reasons for their detention, contrary not only to stated detention centre rules but also to international law and standards.

¹² The one exception to this is at Oakington Reception Centre, where, 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.

The “bed lottery”

For many detained asylum applicants, their detention is arbitrary in that it is determined by the availability of beds rather than by considerations of necessity, proportionality and appropriateness.

During a visit to an enforcement unit and short-term holding facility in London, Amnesty International was 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. From what the organization’s researchers were told, Amnesty International infers that one person may be taken into detention without any prior warning simply on the basis that a bed has become available, while another would not because the beds available on that day had already been filled. Amnesty International believes that the arbitrary nature of this system amounts to a “bed lottery”.

“Special operations”

At different times the UK immigration authorities conduct “special operations” geared towards detaining -- for the purpose of removal -- people of certain nationalities. An operation targeting Chinese nationals was ongoing at the time that Amnesty International was conducting its research for this report. Immigration officials explained that the process of obtaining valid travel documents for Chinese nationals had been considerably speeded up following an “agreement” with the Chinese authorities.

Amnesty International considers the targeting of individuals for detention on the basis of their nationality to be arbitrary and a profound denial of justice.

Is all this detention necessary?

According to the UK authorities, the normal criteria for detaining asylum-seekers are: to establish identity and the basis of the claim; where there is a risk of the claimant absconding; to effect removal; or as part of a fast-track asylum process. However, Amnesty International believes that detention is increasingly being used in cases in which these criteria are not met.

For example, 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 UK authorities were unable to provide Amnesty International with any concrete evidence of this perceived risk. No official statistics or estimates are available on how many people lose contact with the immigration authorities each year. 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.

Amnesty International is also concerned that in some cases people who were lawfully detained to begin with continue to be detained after the circumstances change. Asylum-seekers whose claims have been dismissed may lawfully be detained for the purpose of carrying out their forced removal, but their detention becomes unlawful if, for example, there are

prolonged delays in obtaining valid travel documents.

Lack of access to legal counsel

Since April 2004, cuts in publicly funded legal aid for asylum cases have particularly affected those asylum claimants who are detained.

Lack of effective legal assistance affects detainees' ability to pursue their cases or challenge the lawfulness of their detention, and prejudices their chances of being granted bail.

Amnesty International heard from a variety of sources about legal representatives who had failed to provide supporting evidence on their clients' behalfs or who had abandoned their clients after they had been detained.

The remoteness of most of the IRCs similarly restricts detainees' ability to pursue asylum claims or to seek justice. For example, some detainees at Dungavel IRC in Scotland were no longer in receipt of the legal assistance they had had in England. Access to competent legal assistance is also disrupted by the movement of detainees around the detention estate.

Accelerated procedures and detention – justice denied faster

Asylum policy has increasingly focused on procedures devised to deal with asylum claims more "speedily". In March 2000, Oakington Reception Centre opened to detain asylum-seekers and process their claims in seven days.

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).

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. Unlike Oakington, where detainees can be released after a negative first-instance decision while they appeal (except for those under 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.

In May 2005, a “detained fast-track” process started for single women at Yarl’s Wood IRC.¹³ Plans were also announced for enabling up to 30 per cent of new asylum applicants to be put through the “detained fast-track procedure” by the end of 2005.

The criteria for “detained fast-track procedures” are set out in the so-called “Fast Track Processes Suitability List”, maintained by the UK authorities. These criteria are very broad and could apply to the majority of asylum applicants.

In 2002, the Law Lords ruled that detention of asylum-seekers for the purpose of making a decision on an asylum claim was lawful for a period of seven to 10 days, and that use of detention was a proportionate response to the need

¹³ This will operate along the same timetable as that of Harmondsworth IRC.

to process a large number of cases. 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 mean that in some cases the asylum-determination process is not fast. The Home Office has 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.

There is evidence that members of vulnerable groups who by the UK government’s own guidelines should not be detained, including young people whose age is disputed, are not being withdrawn from the fast-track procedures.

Amnesty International is concerned that the vast majority of fast-track asylum claims are initially refused. For example, at both Oakington and Harmondsworth, 99 per cent of initial claims were refused during the first quarter of 2005.¹⁴

The UK authorities see the high refusal rate as evidence of the high number of “unfounded” asylum claims. However, there is concern that the tight timescale renders fair decision-making almost impossible.

There is particular concern about the predicament of survivors of torture who may not be able, in the time allowed, to disclose experiences of torture crucial to their case.

¹⁴ *Asylum Statistics: 1st Quarter 2005 United Kingdom*, Home Office Research Development and Statistics Directorate, May 2005, tables 15, 17 and 19.

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 decisions in super fast-track cases. The challenge did not succeed in changing the timetable. However, in a parliamentary statement in September 2004 the Home Office set out a revised fast-track process detention policy, indicating the government's intention to be flexible with regards to the time scale for decision-making (even though people would be detained for the duration of the process).

Amnesty International acknowledges that prompt decisions can reduce the uncertainty and psychological suffering of applicants. However, this only applies if the procedures are fair.

Amnesty International believes detention is not necessary for the quick processing of asylum claims and is concerned that many asylum-seekers are being detained for administrative convenience.

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

The fast-track procedures at Oakington Reception Centre

At Oakington, asylum-seekers are detained while their claims are considered at first instance. Once the initial decision on a

fast-tracked asylum claim has been reached, in most cases resulting in a refusal, those asylum-seekers who have a right of appeal from within the UK may be released and given temporary admission.

Among the asylum-seekers whose claims are fast-tracked at Oakington Reception Centre are those who originate from a country on the "white list". Under the NSA procedure, these applicants can then be forcibly returned to their country of origin with no opportunity to appeal against a refusal of their claim from within the UK. They can also be placed in longer-term detention at this stage.

Amnesty International opposes the presumption within the NSA procedure that asylum claims made by applicants from "white list" countries are unfounded. The organization believes that, in accordance with internationally recognized standards for refugee protection, an asylum claim should not be prejudged on the basis of the country from which asylum is being sought. Each claim should be considered on its own merits, and every asylum-seeker who applies for asylum in the UK should be entitled to appeal from within the UK against an initial decision to refuse their claim.

Furthermore, Amnesty International learnt that, in addition to asylum-seekers from so-called "white list" countries, asylum applicants who are not from countries featured on this list could have their claims processed through the expedited NSA procedure if the authorities considered their claims to be "unfounded".

The super fast-track at Harmondsworth IRC

The "detained super fast-track process" at Harmondsworth IRC is for applicants

whose claims are considered suitable for a quick decision. It includes a rapid appeals procedure which operates while people continue to be detained prior to forcible removal if their claim is dismissed. There is also an on-site facility for appeals to be reconsidered by the Asylum and Immigration Tribunal. Applicants are detained throughout the process.

There are 180 beds ring-fenced for single males at Harmondsworth IRC, with an intake of nine cases a day into the fast-track procedures. On the day of Amnesty International's visit in February 2005, there were 150 detained asylum-seekers whose claims were being fast-tracked.

If the fast-track bed allocation for the day is full, then the asylum applicant may be sent to Oakington Reception Centre. In some circumstances they could be given temporary admission and then re-detained once a bed becomes available.

There are 30 Home Office caseworkers at Harmondsworth, each given two to three cases a week. There is also a duty rota for publicly funded legal representatives who act on behalf of detainees.

Each asylum applicant is allocated a caseworker, an interpreter if necessary, and a lawyer. The asylum interview is carried out on day two of the process and a decision on the claim is normally delivered on day three. An appeal against a refusal of asylum is likely to be determined by day 10. If the appeal is dismissed, the detainee has three days in which to apply for the appeal to be reconsidered by the Tribunal.

Amnesty International was told that since fast-track procedures at Harmondsworth commenced in April 2003, nearly 2,000 initial decisions had been taken. Just seven

applicants had been granted refugee status, and one humanitarian protection. Ninety-eight per cent had received a refusal on their initial decision, of whom 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 permission to appeal to the Immigration Appeals Tribunal. (The new single-tier Asylum and Immigration Tribunal had not yet started functioning at the time of Amnesty International's visit to Harmondsworth IRC.)

Over half of "unfounded" cases were forcibly removed within 42 days and over 85 per cent within about three months. The UK authorities consider such a rate of forcible removals to be a "success". Amnesty International is concerned that three months in detention awaiting removal is a severe sanction.

Amnesty International believes that the imposed time constraints make it impossible for the super fast-track procedure to be fair, resulting in a denial of justice for the individuals concerned.

Conclusions

The UK authorities claim 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". Despite this, Amnesty International found that many people who have been detained after seeking asylum in the UK are languishing in detention.

Under international refugee law and standards, asylum-seekers whose claims are being considered are entitled to a presumption against detention. The use of detention in fast-track asylum-

determination procedures is unjust and contrary to this presumption.

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

The UK authorities portray the situation as one where most people in detention are individuals whose asylum claims are without merit and who are detained to effect their forcible removal from the country. However, the situation is more complex. Amnesty International interviewed many people who had been detained and then released. Amnesty International is concerned that the UK authorities are targeting for detention those individuals who fully comply with reporting requirements. It is worth noting that the authorities have not produced any research to back up their assertions on the risk of absconding.

While those detained have a right to apply for release on bail, bail proceedings are not the legal avenue by which the lawfulness of detention can or should be determined. In fact, a granting of bail is premised on the lawfulness of detention.

Amnesty International considers that the onus should be on the UK authorities to justify the lawfulness, proportionality and necessity of detention in each case. Amnesty International considers that 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.

Amnesty International found that in many cases detention may be arbitrary, because

it is determined by the availability of beds. In addition, the detention criteria are so broad that almost any person who has sought asylum is at risk of being detained under Immigration Act powers.

Amnesty International found that detention was protracted, unnecessary, caused untold suffering and was in many cases unlawful since it failed to fulfil the authorities' stated purpose of removal. Amnesty International suspects that possibly twice as many people are being detained as are being forcibly removed from the UK.

The plight of people who have sought asylum in the UK and been detained remains a hidden one. The UK authorities do not produce comprehensive statistics on the number of people detained in the course of a year, at what stage of the process, or the length of detentions.

Those in detention are often unable to pursue their asylum claim effectively, challenge the lawfulness of their detention or apply for bail, due to the curtailment of publicly funded legal aid. (The exception is Oakington Reception Centre where publicly funded legal advice and representation are available on site.)

The remote location of some of the places of detention restricts people's contact with the outside world, impeding their ability to pursue their claims or bring their detention to an end. This is compounded by the fact that people are frequently moved from one detention centre to another.

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

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.

This report summarizes a 94-page document (35,794 words), *United Kingdom - Seeking asylum is not a crime: detention of people who have sought asylum* (AI Index: EUR 45/015/2005) issued by Amnesty International on 20 June 2005. Anyone wishing further details or to take action on this issue should consult the full document. An extensive range of our materials on this and other subjects is available at <http://www.amnesty.org> and Amnesty International news releases can be received by email:

http://www.amnesty.org/email/email_updates.html

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