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Detention of asylum-seeking children

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Immigration detention and the lack of transparency, accountability and oversight of its use is having a devastating impact on asylum-seeking children in the United Kingdom.

Immigration detention in the UK

In the United Kingdom, people seeking asylum, and their children, can be detained at any stage of their asylum claim under the provisions of the 1971 Immigration Act. The use of immigration detention is increasing; by Spring 2003 there will be 4000 detention places. Detainees are entitled to apply for bail so that they may live at liberty while their applications for asylum are processed, but there are no automatic bail hearings. There are considerable obstacles to obtaining release from detention and basic procedural guarantees that would ensure protection from arbitrary detention are not in place. As a result, people who have committed no crime, including children and vulnerable adults with mental and physical health problems, are being deprived of their liberty. Detention is often for long periods, without access to review by a court. Many people are detained on arrival and remain detained in breach of their human rights and often without access to appropriate medical facilities or legal advice.

Bail for Immigration Detainees (BID) is a charity that exists to provide a dedicated free bail service to detained asylum seekers. We work to improve access to bail for asylum seekers, to raise awareness of detention issues and to press for improvements in policy and practice. In BID’s experience, immigration detention is being used in an arbitrary way and there is a lack of accountability in relation to decisions to detain. For this reason, we have grave concerns about the use of detention for children and consider that the problems with the detention process have a disproportionately high impact on children.

Children in immigration detention

Children can be made subject to the detention of one or both of their parents. They may also be directly affected by the detention of one of their parents, in cases where the family is split by detention. There are no statistics published as to how many children are detained each year, no information as to the duration of that detention, nor on the stage of the asylum process at which they were detained. However, it is clear from recent policy developments that the use of detention for children within asylum-seeking families is increasing.

At the time of writing, family units were in operation at detention centres at Harmondsworth, Dungavel and Oakington. There were family units at the Yarl’s Wood Centre before its temporary closure in April 2002 following the devastating fire there in February.

‘Firmer, Faster, Fairer’, the Government White Paper published in 1998 stated that the detention of families should be “effected as close to removal as possible so as to ensure that families are not normally detained for more than a few days”. In an unwelcome shift in policy, the recent White Paper ‘Secure Borders, Safe Haven’ raises the option of detention in other circumstances: “Families may, where necessary, now be detained at other times and for longer periods than just immediately prior to removal”¹. As is the case for all immigration

¹ Para 4.77, *Secure Borders, Safe Haven, Integration with Diversity in Modern Britain*, p 67 (Feb 2002)

detainees, there are no legal safeguards to prevent children and their families from being held for longer periods in detention at the discretion of immigration officials without just cause. There is no evidence cited in the White Paper as to the need to detain families or as to why this practice should now be deemed appropriate or proportionate. It is BID's experience that families are extremely unlikely to abscond and no Home Office information is available to suggest otherwise.

Opposition to the detention of children

An increase in the use of detention for families raises fundamental questions in relation to the welfare and rights of children. It is difficult to envisage how detention facilities can offer children, many of whom have sought refuge here from extreme trauma and distress, the support they need. Uniformed staff run detention centres, which are characterised by gates, locks, cameras and restrictions on movement. Provision for play, education and health facilities are limited. BID reject the argument that by improving staff training and available facilities, detention of children will be more acceptable. Detention can never be in the best interests of a child.

The view that the detention of children should be prohibited was expressed by the United Nations High Commission for Refugees in their response to the proposals in the White Paper:

Children can achieve the protection and care they need in an environment where their special psychological, religious, cultural and recreational needs are met, and their physical safety, emotional stability and overall development are safeguarded. For these reasons, UNHCR is unequivocally opposed to the detention of children who are seeking asylum... UNHCR is concerned that the intention to detain families ... could result in measures that depart from international standards as outlined in Executive Committee Conclusion No. 44 (1986) and further elaborated in UNHCR's Guidelines.²

The UK's reservation to the 1989 Convention on the Rights of the Child (CRC) excludes asylum seekers and others without leave to enter the UK from the convention's protection. The Government defends this reservation on the basis that the rights of asylum-seeking children are protected adequately without the application of the Convention³, but it is clear that children in immigration detention are not enjoying the provisions of Article 37 (D) of the CRC which states:

Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority and to a prompt decision on any such action.

Recent examples of cases known to BID illustrate the ways in which children are subject to detention in an arbitrary way.

A female asylum seeker was detained with her teenage daughter. Her husband and their other child had arrived in the UK shortly before and were on temporary admission. Both the mother and father had ongoing and recent asylum applications and there was no evidence to suggest that either parent was more or less likely to abscond than the other. BID listed a bail

² UNHCR *Comments UK White Paper on Asylum and Immigration: "Secure Borders, Safe Haven"* UNHCR BO London; 18 March, 2002

³ For more information, see *In the Matter of the United Kingdom Reservation to the UN Convention on the Rights of the Child*, Nicolas Blake QC and Sandhya Drew, legal opinion prepared for Save the Children UK, 30 November 2001

application and enquired about the reasons for detention. The mother and daughter were released on temporary admission to join the rest of the family 2 days before the bail hearing, after one month of detention.

D was detained with her 18 month old child when removal directions were set to her home country. A judicial review was lodged but the decision to detain maintained. No bail application had been made by her legal representatives. BID made further representations to the Immigration Service relating to the child's well being and approached the medical centre at the detention centre for confirmation of the situation. The doctor had concerns about the child's apparent "failure to thrive" and referred the child to a paediatrician. The mother and child were released shortly afterwards having spent 4 months in detention.

Unaccompanied and disputed minors

The government's policy is that unaccompanied minors must only ever be detained in very exceptional circumstances and then only overnight.⁴ However, this is insufficient in protecting unaccompanied minors from detention. This is due to the considerable difficulties and delays which arise where the Immigration Service does not accept that the person in question is a minor, as "where an applicant claims to be a minor but their appearance strongly suggests that they are over 18, the applicant should be treated as a adult."⁵ Not only are they then treated as an adult, but an adult who the Immigration Service considers to be practising deception and therefore someone who is more likely to be detained. Even where the detainee provides evidence of their age, such as a birth certificate, they may be detained whilst the Immigration Service checks with the country of origin whether or not the document is genuine.

There is an instruction to give the applicant "the benefit of the doubt" but with a requirement for "credible and conclusive medical evidence"⁶, lengthy delays can occur before the issue is resolved. In several BID cases, minors have been detained whilst the Immigration Service disputes their claim despite evidence to support their claim.

B was born in 1984. He arrived in the United Kingdom and was immediately detained in April 2001. B's medical notes disclose that he had been raped prior to arrival. They also disclose that the Immigration Service had sought the advice of the medical centre after detainee had said that he would kill himself. B had a birth certificate, which he presented to the Immigration Service who refused to accept this evidence. B was interviewed by the Home Office about his asylum claim, despite the evidence showing that he was a minor. B's asylum claim was refused in May 2001. B was granted unconditional bail in August 2001.

The impact on children where detention splits families

Detention has a detrimental impact on children where the head of the family is detained, leaving the detainee's partner and dependants to cope without them. The distress, uncertainty and frustration of lengthy periods of detention are compounded by practical difficulties including the cost of visiting and problems in accessing adequate legal advice.

E travelled to the United Kingdom in December 2000 with his wife and two children and claimed asylum. The whole family were detained for a short period at a police station on arrival and then E's wife and children were granted temporary admission while E was transferred to HMP Rochester. E's asylum case was refused and he lodged an appeal. E's wife

⁴ Operation Enforcement Manual, 2/5/2002, para. 38.7.3.1

⁵ Ibid.

⁶ Ibid.

had a serious disability and was left to look after the two children without any assistance. This also placed great stress on E. An application for temporary admission was refused in January 2001 without any reasons being given. A further application for temporary admission was made in February 2001. This was refused on the grounds of E's manner of entry to the United Kingdom (which was in a lorry with his family) and an alleged incident of failing to cooperate with the Immigration Service. A bail hearing was listed for February 2001. Temporary admission was granted the day before the hearing.

F travelled to the United Kingdom at the beginning of 2001, with his wife who was pregnant at the time. F and his wife claimed asylum on arrival. However, when they approached social services for assistance, this was refused. F and his wife had to attend the Home Office on several further occasions before their asylum claims were correctly registered. F's wife gave birth approximately one month after their arrival. F was interviewed by the Home Office and then detained at Rochester at the beginning of 2001. An application for temporary admission was refused in February 2001 on the basis of prior immigration history, including claiming asylum in two identities. After the refusal of F's asylum claim by the Home Office, F's wife and young son had to walk 4km to sign on at the local police station, due to lack of money for transport. The asylum support worker for F's wife and son expressed her concern at the effect F's detention was having on his son. Bail was granted, in February 2001, on £10 recognizance.

Conclusions and the way forward

There can be no justification in our society for depriving children of their liberty when they are here to seek protection. Basic procedural guarantees which would ensure that children had some protection from arbitrary detention are lacking. Furthermore, there is no evidence to suggest that this expensive and damaging process is necessary or proportionate. As such, it is BID's view that children should never be held in immigration detention.

It is clear that research needs to be conducted into the impact of detention on the physical and mental health of children, and into the impact on family life where one parent is detained. Independent research will provide opportunities for raising awareness and exerting a responsible influence on policy makers. It will also provide evidence that may be of use in court when a bail application is made. As awareness grows of the use of immigration detention for children, it is our hope that pressure will build on the Government to stop subjecting children to immigration detention.

BID will continue to try to obtain release for asylum seekers currently detained, and will use our direct experience to highlight, wherever possible, the treatment of refugee children.

These children have no voice and we all have a responsibility to speak out on their behalf.

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