



End Child Detention Now: Submission to the Home Office Review into ENDING THE DETENTION OF CHILDREN FOR IMMIGRATION PURPOSES.

28 June 2010

Background

End Child Detention Now is a citizens' campaign formed in 2009 with the sole purpose of ending the immigration detention of children in the United Kingdom. End Child Detention Now is coordinated by a group of unpaid volunteers who include media professionals, academics, teachers and voluntary sector consultants with experience of direct work with families who have been in immigration detention in the UK.

During the course of the campaign, End Child Detention Now has secured nearly 5,000 signatures on the No10 Petition website calling for an end to child immigration detention in the first seven months, together with hundreds more handwritten signatures which have been twice presented to No 10 Downing Street. With the support of former MP Chris Mullin, End Child Detention Now has helped to secure the signatures of 121 MPs from all parties in support of Early Day motion 139 in the last parliament calling on the then Labour government to end the immigration detention of children. We have coordinated letters opposing the detention of children that have been published in the national press and signed by major faith leaders, and prominent writers and actors. We also continue to collaborate with numerous allied campaigns, religious organisations, child welfare bodies, and refugee and asylum support organisations.

Summary

We are conscious that a number of other agencies and organisations have direct experience of working with detained asylum seeker families, so in what follows we reprise the key evidence that has been presented in the last twelve months on the significant harm that even short periods of detention can have on children and young people. We agree with Dr Julian Huppert, MP for Cambridge, in the recent House of Commons debate on alternatives to child detention when he said,

'The main alternative that I can think of to detaining 1,000 children a year is not to detain them'.

That must be our starting point. It is for the UKBA and the other national and local government bodies along with relevant charities, voluntary agencies and campaign

organisations to develop humane alternatives that keep this objective at the front of all the review's deliberations.

We argue that the lack of adequate legal representation for families who wish to make an asylum claim or appeal against a refusal of asylum lies and the long delays in resolving cases lies at the root of the problem. Another issue is the lack of contact with families or information on assisted voluntary return prior to the issuance of removal notices.

We note the absence of a 'children's rights first' culture within the UKBA, despite the provisions of Section 55 of the 2009 Borders, Citizenship and Immigration Act and the appointment of a Children's Champion. This problem has been exacerbated by an institutional culture within the Home Office, the UKBA and among previous ministers of state that the maintenance of a detention regime is an essential deterrent against those who may make unfounded asylum claims in future.

End Child Detention Now believes that all those involved in considering alternative arrangements to detention must agree a clear distinction between the need to ensure the welfare and best interests of the child and the UK government's legitimate objective in maintaining an effective asylum and immigration policy. As Sir Al Aynsley-Green has stated, this requires a change of mindset from a culture of 'deny, detain, deport' to one which removes the adversarial aspect of case management, grants leave to remain to those who require the United Kingdom's protection and supports and compassionately facilitates the return of those who do not.

The Current Circumstances in which Children are Detained

Mr Keith Vaz, the former and newly elected Chairman of the Home Affairs Select Committee citing his Committee's report on child immigration detention, told the House,

On average, such children spend more than a fortnight-15.58 days-in detention, but detention for up to 61 days is not uncommon. On 30 June 2009-the last date for which the Home Affairs Committee had information on children in detention-10 of the 35 children in detention at that time had been held for between 29 and 61 days (Hansard 17 June 2010 Col 214 WH).

Her Majesty's Chief Inspector of Prisons found that at least a third of child inmates are detained for more than a month. The Immigration Law Practitioners Association found in each of the years 2004 to 2007 that a number of children had been detained in excess of 100 days with one child having spent a shocking 190 days in detention. The former Children's Commissioner for England has also stated that, '[w]e remain very concerned at the length of detention experienced by significant numbers of children and are not convinced that this is always "for the shortest appropriate period of time" as required by the UNCRC'.

Damian Green has stated that

... in some cases we may still have to have recourse to holding families for a short period before removal-where keeping the family together is seen as being in the best interests of the children, which of course must be the paramount concern (Hansard 17 June 2010 Col 214 WH).

The UN Convention on the Rights of the Child does not stipulate a time limit beyond which it would be unreasonable to hold a child, but the government must take account of the overwhelming medical evidence that even quite short periods of detention can cause long-term anxiety, behavioural problems, and psychological trauma.

Harm to Children

There is authoritative, irresistible and mounting evidence from the Children's Commissioner for England, The Independent Monitoring Board for Yarl's Wood, health professionals, welfare and rights groups, academics and inspectorates that children are being consistently and routinely harmed in detention.¹ Particular examples include but are not limited to

- The practice of seizing families in dawn raids, which can severely traumatise children. One child we know of, aged 3 when detained, is still terrified of uniformed men eighteen months after the event. Other direct testimonies collected by 11 Million and Bail for Immigration Detainees confirm that children exhibit anxieties of this nature long after their release.
- Being transported in security vehicles lacking any hygienic facilities. We know of a case where two siblings aged 18 months and 2 years were held for 16 hours in a locked van prior to deportation to Turkey.
- Being imprisoned. Removal centres have the appearance and procedures of prisons and are perceived by children as such. The perimeters are surrounded by electric fences and razor wire. Children are routinely and compulsorily photographed, fingerprinted and searched. In Yarl's Wood, to get to their rooms, children have reported having to pass through several locked doors.
- A lack of parental control over meals and mealtimes and a lack of sterilizing equipment for bottle-feeding. Some children and babies experience weight loss in detention.

¹ Independent Monitoring Board, Yarl's Wood Immigration Removal Centre 2008 Annual Report, pp.11-12, HMIP (2008) see above, HMIP (2009) *Report on an Unannounced Short Follow-up Inspection of Tinsley House Immigration Removal Centre, 13-15 July 2009* (London, HM Chief Inspector of Prisons), Aynsley-Green, A. (2005) *An Announced Visit to Yarl's Wood Immigration Removal Centre 31st October 2005*, available at:

http://www.ncadc.org.uk/archives/field%20newszines/oldnewszines/Old%2051-100/newszine66/Yarlwood_children_commissioner.pdf accessed 04.11.09.

Lorek, A., Ehntholt, K., Nesbitt, A., Way, E., Githinji, C., Rossor, E. And Wickramasinghe, R. (2009) 'The Mental and Physical Health Difficulties of Children Held Within a British Immigration Detention Center: A Pilot Study', *Child Abuse and Neglect*, 33:573-585.

- A lack of provision for children with special needs.
- Inadequate educational facilities for children who are detained for more than a few days. Having just two classes covering all year groups from reception to Year 12 severely compromises the learning development and educational opportunities of all children.
- Inadequate health care. The former Children’s Commissioner for England reported in his last visit to Yarl’s Wood last year that while some provision had improved, the standard of health care available to children and families in detention falls below that available in the NHS, and that oversight of health standards was poor or non-existent.²
- The effect of detention on parents. Adults who are detained may have been imprisoned, tortured and raped in their country of origin. Being held in a secure facility can be extremely distressing, causing steep decline in mental health and parenting ability. The impact of this change in their parents can be very upsetting to children.
- Safeguarding failures. A recent report by the Local Safeguarding Children’s Board with responsibility for Yarl’s Wood IRC found that safeguarding arrangements for the children were ineffective and none of the agencies involved in the administration of the facility gave adequate weight to the particular vulnerability of children in detention.³

In short, immigration removal facilities like Yarl’s Wood have created an institutional detention culture in which the human and welfare rights of the child and his or her parents have come a poor second to the operational and administrative priorities of the UK Border Agency and its contractors.

The head of this review and of Detention and Criminality at the UKBA, Mr David Wood, told the Home Affairs Select Committee last year that the threat of absconding was not the primary reason for the detention of families. Deterrence appears to be the main concern:

I do feel that our immigration policy would be in difficulty if we did not have the ability to detain them [families] because it would act as a significant magnet and pull to families from abroad to come to the United Kingdom because, in effect, once they got here they could just say, ‘I’m not going’. Whilst issues are raised about absconding, that is not our biggest issue. It does happen but it is not terribly easy for a family unit to abscond.⁴

² 11 MILLION, The Children’s Commissioner for England’s follow up report to The Arrest and Detention of Children Subject to Immigration Control 2, February 2010.

³ <http://www.telegraph.co.uk/comment/personal-view/7837282/Yarls-Wood-immigration-centre-treated-children-in-a-shameful-way.html>

⁴ Oral evidence submitted to the Home Affairs Committee, 16 September 2009, available www.parliament.the-stationery-

We and a number of other organisations are troubled by the fact that the current review is still very much framed in terms of what is best for maintaining a tough message to would-be future asylum applicants rather than securing the best interests of the children who happen to be in the care of the United Kingdom's authorities *regardless of their or their parents' immigration status*.

The Home Affairs Select Committee quite rightly described Yarl's Wood as a prison, and it should be a priority of the new coalition administration to close its doors to children and families for good.

Family Separation

We are concerned about the new government's mixed messages on separating families. In the House of Lords, Dame Pauline Neville-Jones said

We certainly aim not to separate families from children or children from families. The noble Lord is quite right, and I think the House would agree, that this is not an ideal form of detention. I cannot say categorically how we will work it out, but the aim is certainly to keep families together (Hansard 2 Jun 2010 : Column 253).

But Immigration Minister, Damian Green, later stated in the Westminster Hall debate

...there will remain difficult cases where solutions will have to be found and where enforced removals are likely to continue. That approach could involve separating different members of a family and reuniting them before departure, so that some family members stay in the accommodation they are used to. However, I recognise that that approach would be hugely contentious and has its own practical difficulties (Hansard 17 Jun 2010: Column 214)

It is regrettable that Mr Green did not take the opportunity to rule out separation of families from the range of alternatives that the review will consider, as End Child Detention Now wrote in an article for The Guardian on 28 May 2010, the forcible separation of children from their parents

...would be to substitute one form of state child abuse with another, and would not only be contrary to article 8 of the European convention on human rights, it would be opposed, one would hope, by every local safeguarding children board and director of social services in the country – not least because it would make social workers complicit in damaging rather than protecting the welfare of the child.

Assisted Voluntary Returns

In Sir Al Aynsley-Green's most recent report on Yarl's Wood Immigration Removal Centre—which he continues to describe as 'no place for a child'—the then-Commissioner notes that of the ten families interviewed in relation to Assisted Voluntary Return (AVR), 'only two families remembered receiving information

about voluntary departure'. He also confirmed that, 'some families reported being arrested at the same time as being served with the notice from the court that their appeal had been dismissed. This clearly does not provide the window for reflection on AVR called for in our recommendation...'⁵

The 11 Million report concurs with the research literature and our own experience in confirming that many families first learn that their initial asylum application has been rejected when they are arrested and served with a removal notice.⁶ Families detained in this manner are generally booked onto planes within 48 hours. There is no question of being able to accept resettlement support.

A typical example is the case of a mother from Turkey whose release from Yarl's Wood we were eventually able to secure. Mrs A was detained on a Monday by UKBA officials without her young son following which she fell into a catatonic state. She continued to be separated from her 2-year-old son for a period of 4 days, and was only reunited with him in detention on the Thursday of that week. They were booked onto a plane to Turkey for the following Monday at 6.55am. At no time was an offer of assistance with resettlement made. She and her son now have indefinite leave to remain.

The UK Border Agency's initiatives on implementing alternatives to the detention of children, including the current Glasgow pilot

An independent report into the Kent pilot study found that the evaluation, which was a core part of the project, was poorly conceived and executed.⁷ The current Glasgow pilot is welcomed, but we are concerned that the criteria for success are still dependent on securing voluntary removal rather than whether families are remaining in the accommodation provided for them (i.e. not absconding).

The previous government appeared to be lukewarm in its support for the Glasgow Pilot and the UKBA has been far from enthusiastic hitherto about its success given that none of the four families, as Meg Hillier admitted in the recent Westminster Hall debate, had chosen to return voluntarily while she was in office (Hansard 17 Jun 2010 : Column 227WH).

Sir Al Aynsley-Green rightly warned the Home Affairs Select Committee that the Glasgow Pilot was too limited in terms of its evaluation criteria and small in terms of the number of families involved to extrapolate its success or failure in a UK wide context.

⁵ 11 MILLION, The Children's Commissioner for England's follow up report to The Arrest and Detention of Children Subject to Immigration Control 2, February 2010.

⁶ For example BID (2009) *Out of Sight, Out of Mind: Experiences of Immigration Detention in the UK* (BID).

⁷ Nandy. L. (2009) *An Evaluative Report on the Millbank Alternative to Detention Pilot* (The Children's Society and BID).

Models of good practice from other jurisdictions and relevant current research

Where children and families are treated with humanity and dignity and are allowed to remain in the community, the evidence from Australia shows that there is a higher degree of compliance and voluntary return rates. Australia previously detained more than 4,000 from 2000 to 2005. Since 2005, however, the Australian government has used community based case management for these groups. Case managers work with clients to explore all possible options and outcomes, and also in partnership with community agencies and legal representatives. Figures from the Hotham Mission Asylum Seeker Project pilot show a 99% compliance rate.⁸

Sweden also has a system of casework where families reside in flats located around a central office. This system has been reviewed as successful in terms of cost, providing support and ensuring compliance.⁹ However, such a system would only be appropriate in the case of newly arriving families seeking asylum who are subject to the current fast track process. Where a *prima facie* case for asylum or international protection is found, families should be allowed to have their cases decided within the community at large and their children allowed access to regular educational, welfare and health services.

Lack of Legal Support

In 2008, the European Commissioner for Human Rights, Thomas Hammarberg, expressed deep concerns at the serious reduction of legal aid provided to asylum seekers in the United Kingdom.¹⁰ It is therefore encouraging that the new government has rightly identified the issue of families' access to legal representation as an important factor in improving the current system.

But at the same time the government has refused to intervene to save the largest provider of free legal advice to asylum seekers and migrants in the UK—Refugee and Migrant Justice—from closure due to a cash flow crisis that is a direct result of changes to legal aid payments that have been imposed by the Legal Services Commission. Over 900 unaccompanied minors and thousands of vulnerable families now have no legal representation, while other publicly funded law firms simply do not have the capacity to absorb such a massive case-load, meaning that families

⁸ International Detention Coalition (2009) *Case Management as an Alternative to Immigration Detention: The Australian Experience* available at www.idcolaition Accessed 07.10.09

⁹ Bercow, J., Dubs, A. And Harris, E. (2006) *Alternatives to Immigration Detention of Families and Children* a Discussion Paper for the All Party Parliamentary Groups on Children and Refugees (No Place for a Child Campaign).

¹⁰ Memorandum by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe following his visits to the United Kingdom on 5-8 February and 31 March-2 April 2008. <https://wcd.coe.int/ViewDoc.jsp?id=1339037&Site=CM>

could be returned to danger without having had the opportunity to put their case properly before an immigration tribunal or to appeal against a decision.

As Mike Lewis, Chief Executive of the Welsh Refugee Council recently wrote in a communication to End Child Detention Now, 'The loss of this excellent organisation leaves a gap which it will be hard to fill.' The Archbishop of Canterbury, Dr Rowan Williams believes 'Lives will be put at risk and there are likely to be many more miscarriages of justice - which are already common in our asylum system.'¹¹

Outside London the provision of publicly funded legal support to asylum seeking families and unaccompanied minors is sparse to the point of non-existence, and the closure of RMJ's regional offices simply spells disaster for families who have nowhere else to go. As Dr Susan Mitchell, the vice-chair of Refugee Action York and a consultant psychiatrist who has worked with victims of torture says

Access to the specialist legal representation that RMJ has provided is an essential element of a fair and just asylum system. The RMJ office in Leeds has provided invaluable help to asylum seekers in York and we fear for those in the future who may now have nowhere else to turn for this potentially life-saving support.

The intended consequence of the NASS dispersal policy means that the vast majority of asylum seeker families have been placed outside the capital. The government must therefore put in place measures to ensure that every family who is making an asylum claim has access to an independent case worker (on the Australian and Swedish models) and appropriate legal advice that is tailored to the complexities of the individual case and not the 'one size fits all' model currently favoured by the LSC which makes it impossible for lawyers to discharge their responsibilities to clients in a professional manner in many cases.

ECDN believes that by ensuring the availability of early good quality legal advice and independent case management, the government will actually save money in the long term by avoiding lengthy and expensive detention and legal costs resulting from appeals against poor initial decisions and screening interviews.

Conclusion

The review into *Ending The Detention of Children for Immigration Purposes* offers a unique and welcome opportunity to move away from the previous government's policy of treating parents who refuse to return voluntarily after their asylum claims have been dismissed as being solely responsible for their family's enforced detention.

¹¹ <http://news.bbc.co.uk/1/hi/uk/10208666.stm>

