

RESPONSE BY THE JOINT COUNCIL FOR THE WELFARE OF IMMIGRANTS TO THE UK BORDER AGENCY REVIEW ALTERNATIVES TO CHILD DETENTION

Joint Council for the Welfare of Immigrants (“JCWI”) is an independent, voluntary organisation working in the field of immigration, asylum and nationality law and policy. Established in 1967, JCWI provides legally aided immigration advice to migrants and actively lobbies and campaigns for changes in immigration and asylum law and practice. Its mission is to promote the welfare of migrants within a human rights framework.

Introduction

We welcome this opportunity to input into this review in the light of the Coalition commitment to ending the detention of children for immigration purposes.

Our brief submission on this review is split in three sections. In part one we set out seven undisputed facts about the detention of children. These show that the practice of detaining children is inhumane, ineffective and costly. As such we believe that it should be brought to an end (even in exceptional cases) forthwith.

In part two we set out an approach that could address UKBA’s immigration control concerns whilst simultaneously respecting human rights principles. In short we advocate a ‘case management approach’ broadly structured along the lines of the ‘Swedish model.’ This would entail leaving all immigrant families with children *within their communities* until such time as they are either removed or voluntarily depart. A menu of different options would be available for the UKBA - reporting, the use of bonds/sureties, and electronic tagging in very high risk cases (this menu would exclude the separation of children from families for immigration purposes). These powers could be deployed on a case by case basis on the basis of risk, and according to statutory rules rooted in human rights principles.

In part three we argue that unless the case management approach is embedded into broader structural reforms it is unlikely to be successful from the point of view of cost effective immigration enforcement. Accordingly the above reforms need to be accompanied by: (a) a rolling 'regularisation scheme' that could cater for families who have been in the UK for a number of years or who cannot be returned in the foreseeable future, (b) an improvement in the initial decision making process in relation to asylum applications, (c) an appropriately funded legal aid system and (d) the heeding of advice by international agencies i.e. UNHCR about the safety of certain countries in the context of the removal of migrants from the UK and (e) a careful reconsideration of the detention provisions in the Draft Immigration Bill. These provisions considerably expand the scope for detention of children.¹

i. The use of administrative detention in relation to immigrant children

There is extensive literature and research on the detention of children for immigration purposes. Seven key points to emerge from this are:

- The UK detains a substantial number of children for immigration purposes – 1000 per annum²
- Under half of the children that are detained are actually removed, and 629 of them are placed back into the community³
- Children are frequently not detained as a last resort and for the shortest time possible⁴

¹ See submissions by JCWI on part 5 of the Draft Immigration Bill available at <http://www.icwi.org.uk/Resources/JCWI/JCHRANDDRAFTBILLSUBS02%2003%2010.pdf>

² Home Affairs Committee, *the Detention of Children in the Immigration System*, HC 73, 29 November 2009, p.3.

³ HC Deb, 17 June 2010 C230WH.

⁴ 11 Million, *The arrest and detention of children subject to immigration control*, April 2009.

- The evidence is that detention harms children and babies⁵
- The justification for detention – the prevention of absconding/ a general deterrent tool does not stand up. There is no evidence that families with children systematically disappear⁶, and recent research now shows that domestic policies are insignificant in influencing destination choices - at least in the case of asylum seekers⁷
- Detention is expensive. The cost of detaining a family for between 4-8 weeks can lie in the region of £20,000.⁸
- Detention of children for immigration purposes raises significant concerns from the perspective of the UK's international human rights obligations,⁹ and the principles that underlie these. It does contribute meeting the outcomes for children under the Every Child Matters Framework.

In the light of the above our view is that children, including those cases involving age disputes should simply not be incarcerated for immigration purposes. In the case of the latter there should be no detention at least until such time as there has been an independent assessment of adulthood - this may involve awaiting the outcome of legal proceedings.¹⁰

⁵ Royal College of Paediatrics and Child Health, *Intercollegiate Briefing Paper: Significant Harm- the effects of administrative detention on the health of children, young people and their families*, December 2009.

⁶ Home Affairs Committee, the Detention of Children in the Immigration System, HC 73, 29 November 2009, para 3, p.5.

⁷ H Crawley, *Chance or Choice, understanding why asylum seekers come to the UK*, Refugee Council, January 2010.

⁸ Home Affairs Committee, the Detention of Children in the Immigration System, HC 73, 29 November 2009, p.7, para.12.

⁹ UN Convention on the Rights of the Child (1989), Arts 37, 3.1.

¹⁰ *A v London Borough of Croydon & Anor; M v London Borough of Lambeth & Anor* [2009] UKSC 8.

ii. Alternatives

Whilst we realise that at least one potential option would be to separate children from either one or both parents, we do not believe that this is a satisfactory or desirable option in any circumstances. This would be contrary to the spirit, and in some cases the text of international human rights obligations. It can also be expected to generate similar levels of hardship, entail significant cost, and generate legal challenges.

We are aware that there is a more general move towards 'case management oriented approaches' as a replacement for detention in countries such as Sweden, Australia and Belgium. These have widely been considered to offer a more effective and humane approach than the status quo in the UK.

Variations on the case management approach have been trialled in the UK. The general feeling has been that they have - at least from the point of view of facilitation of voluntary removal - been unsuccessful. This in part arguably stems from the fact that they were initiated at the end of the process rather than at the outset as in the cases above, were not embedded in wider structural reforms of the immigration/asylum system, and as BID and the Children's Society point out were badly organised with large scale confusion about referrals.¹¹

Our preferred option would be a 'case management' model that leaves families with immigrant children within their communities rather than in secure centre/semi secure centres. Case owners would have a menu of options available to them. These would include powers for electronic tagging, reporting restrictions, and bonds/sureties. These could be deployed on a case by case basis according to risk, but also according to published rules and guidelines that are rooted in a human rights framework.

¹¹ The Children's Society, *An evaluative report on the Milbank Alternative to Detention Pilot*, May 2009

As with other case management approaches the possibility of voluntary return could be built into the asylum process. In our view in order for this to be successful discussions about this would need to be built into the asylum process from the inception of cases. So far as the take up of voluntary reform goes, this could only ultimately be successful if it were accompanied by wider structural reforms that engender trust by immigrants in the immigration and asylum system more generally so that it is seen to be fair.

iii. Wider structural changes

We believe that if UKBA is to ultimately deal effectively with the issue of detention of children - and immigration enforcement more generally in a cost effective, human rights friendly way it must examine the broader structural failings in the present system. These are the cause of much difficulty, and give rise to the need detention and others modes of enforcement. This in itself could form the basis of a lengthy paper, however four key points are:

- The need for an on-going regularisation scheme confined to families with children in cases where they have remained in the UK for several years
- The improvement of initial decision making in asylum cases through extending early access to legal advice. This could be achieved through the extension of the Solihull Early Access project, and through the exploration of an independent decision making body as is the case in Canada
- The need for adequately funded legal services, with appropriate payment mechanisms with a view to ensuring that cases can be adequately prepared thus minimising the need for costly appeals, and the deployment of immigration enforcement powers during those processes
- The generation of greater trust in the immigration system. To some extent this could be achieved by the above, but it also requires heading advice on returns by

international agencies e.g. by the UNHCR. The most effective case management system in the world will not facilitate voluntary return to countries like Iraq. It also requires a re-examination of the criminalisation of asylum through e.g. prosecution for the use of false papers etc.

- The need to review the provisions in the Draft Immigration Bill as these significantly expand the opportunities for detaining children.