



Yarl's Wood Befrienders

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Yarl's Wood Befrienders visit those held at Yarl's Wood Immigration Removal Centre, aiming to affirm human dignity and restore self-esteem by listening and offering befriending support. Yarl's Wood Befrienders have been visiting at Yarl's Wood since its opening in 2001.

Yarl's Wood Immigration Removal Centre

Yarl's Wood IRC has the capacity to hold around 400 detainees. It has two units for women, an admission unit and a smaller unit for couples and families with adult dependents. It is the main facility for the detention of women in the UK. From February 2012 it will also incorporate a short-term holding centre for males who have been detained upon arrival in the country, whilst they undergo an initial screening process.

Thematic Report on Immigration Detention

Submission by Yarl's Wood Befrienders to the UN Special Rapporteur on the Human Rights of Migrants

Yarl's Wood Befrienders' submission to the Special Rapporteur is based on its direct work with immigration detainees at Yarl's Wood Immigration Removal Centre and incorporates evidence from other reports relating to detention conditions at Yarl's Wood in particular. Whilst we would like to acknowledge several positive developments at Yarl's Wood, we remain strongly opposed to the use of immigration detention, particularly in the indefinite, universal form in which it has come to be used in the UK. We will therefore focus on those practices which are of particular concern to us and which impact severely on the lives of those we visit. Foremost amongst these concerns are long-term detention, the detention of pregnant women, the treatment of vulnerable women, the detention of victims of trafficking and the use of the Detained Fast Track in assessing women's asylum applications.

Recent Developments at Yarl's Wood

A recent report conducted by the Chief Inspector of Prisons noted a number of positive changes at Yarl's Wood. He noted an increased range of activities and education opportunities, an excellent physical environment, a generally respectful and enthusiastic attitude by staff and a good response to complaints. Particularly welcome was the end of child detention at Yarl's Wood, "given [the Inspectorate's] long-standing concerns about the adverse impact that detention has on children."¹ However, the "good conditions in which most women were held did not disguise the ultimately difficult and stressful purpose of their detention"² and the Inspector concluded by stating that "concerns remain, particularly about how the needs of vulnerable women are met."³ We aim to address these concerns and others in the pages which follow.

Long-term detention

Although the statistics suggest that women do not tend to be detained for the extreme lengths of time men are, we remain concerned by the long-term detention of women, particularly those who have children in the UK.

Government figures for the financial year 2010-2011 show that 106 women leaving the detention estate during this period had been detained for more than 6 months, 15 of these for between one and two years and five for more than two years.⁴

¹ Report on an announced inspection of Yarl's Wood Immigration Removal Centre 4–8 July 2011 by HM Chief Inspector of Prisons, Introduction.

² *ibid*, Introduction

³ *ibid*, Introduction

⁴ Damian Green, Minister of State for Immigration, Home Office, Hansard 25 Oct 2011: c148W

The policy of the UK government is not to separate children from their sole carer for the purposes of immigration detention. If a family unit includes both parents, one of these may be taken into detention, but a single parent will not be separated from his/her children at the time of detention. However, if the parent is imprisoned for a criminal offence, the children may be placed into the care of the social services or another family member at this point. If detention is maintained after the completion of the criminal sentence, the separation of parent and child for a specified time becomes an indefinite separation.

An inspection by the Independent Chief Inspector of the UKBA⁵ found that 97% of Foreign National Prisoners (FNPs) who the UKBA are seeking to deport are being transferred straight into immigration detention upon completion of their sentence. The Chief Inspector criticised this as being in contradiction with the published policy presuming release. He also noted a marked increase in the length of detention of FNPs, from an average of 143 days in February 2010 to an average of 190 days by January 2011.⁶

In 2011, Yarl's Wood Befrienders visited six ex-Foreign National Prisoner women with children in the UK. All but one (83%) were detained for more than six months, with two (33%) detained for more than a year, of whom one (17%) was held for a period of more than two years. Of the six detainees, only two (33%) were removed from the UK, whilst four (67%) were released. This raises strong questions as to the necessity and appropriateness of detention in the first place.

Pregnant Women

In October 2011, the Minister of State for Immigration, Damian Green, admitted to the House of Commons that the number of pregnant women detained for immigration purposes is not currently monitored.⁷

According to the minister, "The UK Border Agency's published guidance makes clear that pregnant women should not normally be detained. The exceptions to this general position are where removal is imminent."⁸ However, according to the Chief Inspector of Prisons, Nick Hardwick, "Too many pregnant women, who should only have been held in exceptional circumstances, were detained in [Yarl's Wood]."⁹ At the time of his inspection, seven pregnant women were being held at Yarl's Wood and in the five files which were inspected, "only one of the monthly review letters mentioned pregnancy, and even that suggested the pregnancy was disputed, even though it had been confirmed for some time."¹⁰ These

⁵ Independent Chief Inspector of the UK Border Agency, *A thematic inspection of how the UK Border Agency manages foreign national prisoners*, November 2011, 6.15

⁶ *ibid.* 6.6

⁷ Damian Green, Minister of State for Immigration, Home Office, Hansard 25 Oct 2011: c148W

⁸ Damian Green, Minister of State for Immigration, Home Office, Hansard 16 Jan 2012, c465W

⁹ Report on an announced inspection of Yarl's Wood Immigration Removal Centre 4–8 July 2011 by HM Chief Inspector of Prisons, Introduction.

¹⁰ Report on an announced inspection of Yarl's Wood Immigration Removal Centre 4–8 July 2011 by HM Chief Inspector of Prisons, HE.20

findings strongly suggest that the fact of a woman's pregnancy is not being taken into account when reviewing the appropriateness of detention. In 2011, Yarl's Wood Befrienders visited seven pregnant women. They were detained for an average of 88 days. Four of them (57%) were eventually released, one (see case study below) only after she suffered a miscarriage during the 20th week of her pregnancy.

Case Study: N, Nigeria

N, who told the Befrienders how she had been brought into the UK aged 15 to work in domestic servitude, was eight weeks pregnant when she was detained. She was experiencing intermittent bleeding from an early stage in her pregnancy and was prescribed inappropriate anti-malarial prophylaxis. Removal directions were cancelled by a judicial review yet her detention was maintained for another three months, despite there being no imminent prospect of removal. During this time she was very anxious and, due to her detention, had no choice as to when or what she would eat. As a result, she was forced to eat food she did not like and at times when she did not feel hungry. In the 20th week of her pregnancy, N lost her baby. She gave birth to her still-born son in Bedford Hospital without friends or supporters around her, and with an escort present for much of the labour. N was released from detention four days later.

Victims of Trafficking

The Poppy Project, who work with women who have been trafficked into the UK, report they have come into contact with 180 victims of trafficking detained at Yarl's Wood¹¹ since 1st April 2009, when the UK adopted the *Council of Europe Convention on Action against Trafficking in Human Beings*.

In 2011, Yarl's Wood Befrienders visited 18 women raising issues of trafficking, many of whom we referred on to the Poppy Project ourselves. In our experience, victims of trafficking are not only being detained in breach of policy, but often criminalised for possessing false documentation as well.

Case Study: M, Malawi

M told the Befrienders how she was married off to her older sister's husband at the age of 12 after her sister died in childbirth. She suffered violence, rape and forced abortion. A friend of her father's helped her to escape to the UK, via an agent. However, after arriving in the UK, she was forced to work prostitution. She worked in a brothel for two months before a client helped her escape. She contacted the Poppy Project in order to seek help. M applied for asylum but was placed in the Detained Fast Track (see below), which is supposed to process only straightforward cases upon which a quick decision can be made. Immediately after her asylum interview, her case was dropped by her legally-aided solicitor and she was

¹¹ London Evening Standard, *Scandal of Trafficked Women held in UK*, 21st Oct 2011

left to appeal alone. Her appeals failed and M was returned to Malawi. She contacted the Befrienders and said how terrible things were for her there after returning.

Victims of Torture and Traumatized Detainees

Chapter 55 of the UK Border Agency's Enforcement Instructions and Guidance states that the following groups of people (amongst others), "are normally considered suitable for detention in only very exceptional circumstances":

"those suffering from serious medical conditions which cannot be satisfactorily managed within detention"

"those suffering serious mental illness which cannot be satisfactorily managed within detention"

"those where there is independent evidence that they have been tortured"¹²

However, the process which is supposed to safeguard against the detention of those falling within these categories, known as Rule 35, has been roundly criticised as inadequate by NGOs, who demanded an audit of the process. Significant administrative failings were uncovered by the audit¹³, yet no analysis was conducted as to why, in 91% of cases of files audited, detention was maintained after the submission of a Rule 35 report. The organisation Medical Justice said of the audit:

*"The audit report's action plan is all about mechanisms to monitor administrative processes only – little more than window dressing. There are no planned changes to fix the fundamental failures ; UKBA caseworkers are not medically qualified to interpret medical evidence, in many cases Rule 35 reports are not generated within 24 hours of detaining, often they are not generated at all, are regularly written by a nurse rather than a registered GP, some fail to document scars, symptoms, and illness correctly or to express a medical opinion whereby review by UKBA caseworkers is rendered meaningless."*¹⁴

Those held in immigration detention have little chance to obtain reports assessing their scarring or mental trauma by independent means. Therefore, they are reliant on the detention centre healthcare staff to document their scarring or their mental and physical health. However, the recent inspection at Yarl's Wood revealed that there was "little

¹² UKBA Enforcement Instructions and Guidance, <http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/chapter55.pdf?view=Binary> accessed 29/1/12

¹³ Detention Centre Rule 35 Audit, 4th Feb 2011, <http://www.ind.homeoffice.gov.uk/sitecontent/documents/aboutus/reports/detention-centre-rule-35-audit/det-centre-rule-35-audit?view=Binary> accessed 29/1/12

¹⁴ Medical Justice, Press Release: 4th March 2011, <http://www.medicaljustice.org.uk/mj-reports,-submissions,-etc./press-releases/1718-ignored-detention-centre-medical-reports-means-torture-survivors-left-to-rot-040311-.html> accessed 29/1/12

proactive engagement with detainees over health concerns”¹⁵ and that “health services staff appeared to have little understanding of the purpose [of Rule 35 Reports].”¹⁶ Furthermore, “Many Rule 35 reports (relating to fitness to detain and experience of torture) did not include sufficient information and many UKBA replies were poor. The process was not providing the intended safeguards for vulnerable detainees.”¹⁷

The Detained Fast Track

Women’s asylum claims are often extremely complex and the issues involved are sometimes very different to those involved in applications by men. The UK Border Agency (UKBA)’s decision-making in women’s asylum applications is very poor, as evidenced by Asylum Aid’s report *Unsustainable* (2011), with as many as 50% of initial decisions being overturned at appeal.¹⁸ The report found that, although gender-related persecution can engage the Refugee Convention on the grounds of membership of a particular social group (PSG), the UKBA “ignored PSG entirely in the majority of cases based solely on gender-related persecution.”¹⁹

It would therefore appear vital that women are given sufficient time in which to prepare an asylum claim and early access to legal advice in case their application is wrongly refused and they need to go to appeal. However, many women are placed in the Detained Fast Track (DFT). The DFT process allows a detainee to meet their solicitor only the day before their asylum interview²⁰, with a decision being made two days later. In the experience of Yarl’s Wood Befrienders, many applicants are dropped by their solicitors at this stage. A report by Detention Action into the DFT cited Ministry of Justice figures for January-September 2010 stating that 63% of DFT appellants were unrepresented at appeal.²¹

The fast-tracked process in operation at Yarl’s Wood had a grant rate of only 4% in 2008²², compared with 31% for female applicants in the mainstream asylum system.²³ The UKBA would argue that this proved that their screening system ensured only straightforward cases entered the DFT. However, Detention Action found that “the relevant information was not available at the screening stage”²⁴ and The Joint Committee on Human Rights stated that “the decision to detain an asylum-seeker may be arbitrary because it is based on

¹⁵ Report on an announced inspection of Yarl’s Wood Immigration Removal Centre 4–8 July 2011 by HM Chief Inspector of Prisons, HE.30

¹⁶ *ibid*, HE.19

¹⁷ *ibid*, HE.44

¹⁸ Asylum Aid, *Unsustainable: the quality of initial decision-making in women’s asylum claims*, Jan 2011, p.5

¹⁹ *ibid*. p.6

²⁰ UKBA Detained Fast Track Operational Instructions, published April 2005, viewed on 10/11/11 at http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/guidance/Detained_fast_track_process1.pdf?view=Binary

²¹ Detention Action, *Fast Track to Despair: The unnecessary detention of asylum seekers*, May 2011, p.28

²² Human Rights Watch, *Fast-Tracked Unfairness: Detention and Denial of Women Asylum Seekers in the UK*, Feb 2010, p.29

²³ *ibid*, p.15

²⁴ Detention Action, *Fast Track to Despair: The unnecessary detention of asylum seekers*, May 2011, p.30

assumptions about the safety or otherwise of the country from which the asylum-seeker has come.”²⁵ Indeed, in 2008, 26% of cases entering the DFT at Yar’s Wood were subsequently deemed unsuitable and removed from the process.²⁶ It is not clear whether the cases were removed by UKBA case-owners themselves or after action by legal representatives. Legal representatives interviewed by Human Rights Watch for their report *Fast Tracked Unfairness* indicated it was generally the latter.²⁷ Whatever the case, there is clearly a failing at the screening stage and vulnerable asylum seekers are being unnecessarily detained and having their recourse to due process infringed.

Flexibilities do exist in the DFT schedule, allowing for extra time to prepare the appeal, but often these provisions are refused, leading to a lack of evidence before the Immigration Judge:

Case Study: A, Pakistan

A, a Muslim, eloped to the UK with a Christian Pakistani who was coming to study in the UK. He became abusive and the marriage broke down. He withdrew his sponsorship, leaving her with no leave to remain in the UK. A claimed asylum because her father threatened to kill her if she returned to the family home. A was placed in the DFT and her solicitor requested more time in order to obtain an expert report. However, this request was turned down, A’s asylum application was refused and her subsequent appeals were dismissed.

The intensive, inquisitorial nature of the DFT is clearly not suitable for many vulnerable women, particularly those who have fled security forces in their home countries. However, some are still placed in it inappropriately:

Case Study: B, country of origin withheld

B received death threats from government security forces in her country of origin. She fled to the UK and claimed asylum. Despite a history of depression, her detention in the DFT was maintained. B was often deeply distressed when we visited her. Her claim was decided on the basis of a five-hour interview in which she said afterwards she could not think straight. She noted afterwards a number of discrepancies in her own account. Her solicitor dropped her case before her appeal and she was eventually returned to her country of origin.

DFT is used to process all types of claim: those who claim upon arrival, those who present themselves at the Asylum Screening Unit in Croydon and those who claim asylum only when encountered by police or immigration officers. The UKBA insist that an asylum seeker must make their claim at the earliest available opportunity, or their credibility will be damaged.²⁸

²⁵ JCHR, *The Treatment of Asylum Seekers, Tenth Report of Session 2006-07*, Volume 1, p7

²⁶ Human Rights Watch, *Fast-Tracked Unfairness: Detention and Denial of Women Asylum Seekers in the UK*, Feb 2010. p.30

²⁷ *ibid.* p.30

²⁸ Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, Section 8.

Detaining those who actively request protection both erodes asylum seekers' trust in the authorities and discourages others from making claims.

Case Study: C, Gambia

C, who had fled gender-related persecution in her country of origin, went to the Asylum Screening Unit to claim asylum after being advised by a community organisation to consult a solicitor. She was immediately detained at Yarl's Wood and placed on the DFT. Her solicitor was no longer able to act due to the distance. She expressed her confusion at having been placed in the DFT, saying: "I did everything I was supposed to do but they still detained me." C was refused asylum and failed at appeal, but a new solicitor took up her case and, due to a delay in removing C, was able to obtain the evidence necessary to lodge a fresh claim. Six months after being detained, C was released and has since been given refugee status.

Recommendations

Yarl's Wood Befrienders believes that the UK should take the following steps:

1. The DFT should be abolished in its entirety. Failing that, the DFT should be abolished for women as the UKBA has shown itself to be incapable of making sustainable decisions in women's asylum claims.
2. If the DFT is to be maintained, the UKBA's screening process should be completely overhauled to avoid inappropriate referral into the DFT. The UKBA should provide detailed statistics of the reasons why applicants are eventually removed from the DFT. Those claiming asylum at port of arrival or voluntarily making appointments at the Asylum Screening Unit in Croydon should never be placed on the DFT.
3. The UKBA should ensure that the "exceptional circumstances" under which it detains vulnerable individuals really are exceptional, rather than the norm, as appears to exist today.
4. Greater care must be taken in identifying victims of torture and trafficking. If independent evidence is lacking, it should be actively sought by the UKBA itself, rather than placing the onus on the applicant to obtain it.
5. Mothers of minor children and expectant mothers should not be detained for more than three days, or seven days in exceptional circumstances, in line with the limit now applied to the detention of children.²⁹
6. Pregnant women should not be detained under any circumstances.

²⁹ UKBA Operating Standards for Pre-Departure Accommodation, <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/op-standards-pre-departure/op-standards-pre-dep/op-standards.pdf?view=Binary>, accessed 11/11/11.