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GOVERNMENT PROPOSALS ON ASYLUM-SEEKERS AND VISITORS

Briefing for debate on the Asylum and Immigration Appeals Bill 1992

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ILPA

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The government proposals for dealing with asylum-seekers and for removing other rights of appeal are to be found in four documents:

1. The Asylum and Immigration Appeals Bill, first published on 22 October 1992 and reprinted with amendments on 13 January 1993
2. Draft immigration rules on asylum, issued by the Home Office
3. Draft Asylum Appeals (Procedure) Rules, issued for consultation by the Lord Chancellor's Department
4. Press statements issued by the Home Office.

It is not possible to discuss the implications of the Bill, which was debated in the House of Commons on 2 November 1992 and 11 January 1993 and in the House of Lords on 26 January 1993, without reference to the other documents. This briefing therefore relates the Bill's provisions to the proposed immigration and appeals procedure rules and matters dealt with in the press statements. It does not deal with the housing provisions (clauses 4 and 5 and Schedule 1 of the Bill) which fall outside JCWI and ILPA's remit and will be dealt with in briefings from other organisations.

JCWI and ILPA's main concerns about the current asylum proposals can be summarised as follows:

*** unfair and unsafe appeal procedures**

Under the Bill and the procedure rules, asylum-seekers have extremely limited rights of appeal. They have to exercise this right within impossibly tight time limits (within two days of the assumed receipt of a refusal decision in many cases). They, or their representatives, may need to put the case for appeal without seeing the evidence on which the Home Office has decided to refuse.

see section 5 of this briefing

*** unsafe determination procedures**

Applying for asylum will be more hazardous for some of those who apply on arrival and for all of those who apply while they are already in the UK. Under the immigration rules, people applying on entry can be refused without substantive consideration of their individual cases if the Home Secretary believes they can be returned to a third country, or if they are 'part of a group' of people who are allegedly outside the criteria of the UN Convention. Under the Bill, people who apply while already legally in the UK, for example as students, will risk losing the right to remain here to complete their studies if they make an asylum application which is refused.

see section 5 of this briefing

*** decision-making criteria**

The provisions of the Asylum Bill are retrospective, and can apply to people who made their applications many years ago but due to Home Office inefficiency have not yet had them determined. The draft immigration rules on asylum lay down a series of criteria which the Home Secretary must take into account, some of which contravene the UN Convention and *Handbook*. The UN High Commission for Refugees has stated that it is 'of the opinion that the draft provisions do not ensure the full implementation of the 1951 Convention in the UK and some of them appear to vary from internationally adopted principles relating to asylum and the protection of refugees.' The special adjudicators hearing appeals will also be bound by the provisions of these rules. The Bill does not include any criteria for the grant of exceptional or compassionate leave to remain. People fleeing from civil war, for example from the former Yugoslavia, would not qualify to remain under these procedures.

see section 6 of this briefing

*** detention**

The Immigration Act 1971 gives a power of unlimited detention for people whose claims are under consideration or have been refused. The Home Secretary's press statement in November 1991 promised 300 extra detention places for asylum-seekers awaiting removal. UN guidelines say that asylum-seekers should not routinely be detained; the dangers of doing so are evident from the fact that four asylum-seekers have died in detention since 1987.

see section 10 of this briefing

*** fingerprinting**

The case for fingerprinting asylum-seekers has not been made by the Home Office. Asylum-seekers may have legitimate fears about the use to which this information will be put, especially as the Bill contains no provisions about to whom and for what purpose manually-held information can be revealed.

see section 3 of this briefing

*** immigration changes**

The removal of rights of appeal for visitors, prospective students and students on short courses is unnecessary and unjust and will be racially discriminatory in effect. They will lead to more refusals, and to more unjust refusals, and will have a serious effect on the family life of black and minority ethnic communities in the UK. The Home Office press statement about administrative procedures will do nothing to remedy the basic injustice.

see section 8 of this briefing

This Bill is slightly altered from the Asylum Bill proposed in 1991. But it does not provide adequate safeguards for refugees and asylum-seekers and will create more problems for settled communities. It needs substantial amendment, as at present it does not meet the UK's obligations under international conventions.

THE ASYLUM AND IMMIGRATION APPEALS BILL

1. Clause 1

...defines a person's claim for asylum as being 'a claim made (whether before or after the coming into force of this section) that it would be contrary to the UK's obligations under the Convention for him to be removed from, or required to leave, the UK'.

1.1 This clause is retrospective, so that the Bill's provisions can affect people whose claims have still not been decided, having been delayed for months or years by the Home Office.

1.2 The definition of a claim for asylum is very restrictive and could cause great danger to asylum-seekers. The UN Convention defines a refugee, but does not define asylum. The Convention definition does not include many important situations, for example, a state of disturbance or civil war in the country of origin. The Bill does not mention many other relevant international instruments the UK has signed, for example the European Convention on Human Rights, which in Article 3 forbids torture or inhuman or degrading treatment, or the UN Convention against Torture, Article 3 of which forbids the expulsion of people to a territory where they may be tortured. The definition of an asylum claimant must be broadened, to include people needing asylum for all possible reasons.

2. Clause 2

...provides that nothing in the immigration rules...shall lay down any practice which would be contrary to the Convention

This was an amendment from the Committee stage of the previous Bill, and means that the immigration rules and the way they are enforced will be justiciable in the courts in the light of the Convention and the UN's own guidelines for its implementation. But the draft rules still retain a provision (paragraph 10) that 'if an applicant is part of a group whose claims are clearly not related to the criteria for refugee status in the Convention and Protocol he may be refused without examination of his individual claim'. The Convention requires each case to be assessed individually, and the UN High Commission for Refugees was concerned about this. It would appear that para 10 may well be *ultra vires* the Bill; it should therefore be removed.

3. Clause 3

...provides for fingerprinting of people who have made asylum claims (which, under clause 1, includes those who made claims before the coming into force of the Act) and their dependants (3(1))

...gives immigration and police officers the power to arrest without warrant anyone who fails to comply with the fingerprinting requirement in order to ensure compliance (3(5))

...says that fingerprints are to be destroyed either within a month of the person being granted settlement or after ten years; and that at that time the Home Secretary shall also take steps to prevent access to any computer-held information relating to fingerprints.

3.1 These procedures criminalise asylum-seekers and render them liable to arrest and refusal of asylum if they do not comply. The clause as drafted contains no safeguards for access to or availability of the information demanded.

3.2 At present, the only people who can be required to be fingerprinted are people who have been charged with an imprisonable criminal offence. It is not a criminal offence to apply for asylum. The Home Office claims that this measure is necessary to prevent multiple applications and alleged social security fraud, but has not provided evidence to show the scale of such activities. The need for it is therefore unproven, and rests on unsubstantiated allegations which appear to link all asylum-seekers to abuse and fraud. The Home Office has still not made it clear how in practice the alleged fraud would be detected.

3.3 This clause contains no right of subject access to manually held information, no requirement that the applicant give consent for the release of such information and no restrictions on the purposes for which, or the individuals or organisations to whom, this information may be made available. Those could include, for example, the authorities of the country from which the asylum-seeker is fleeing, which in many cases keep fingerprint information on passports and identity cards. They could also include officials from other foreign governments, officials from other UK government departments, police officers investigating unrelated matters, or relatives, acquaintances or members of the same community as the applicant. Computer-held data is subject to the Data Protection Act, with requirements for subject access (unless information is held in connection with a criminal investigation) and the requirement that other data users be registered. Even the Schengen Convention requires that information about an asylum applicant be made available only with his or her consent and solely for purposes and to authorities connected with determining the asylum application. In Committee stage on the previous Bill, the Minister indicated that access to fingerprint records would only be granted 'when specific permission has been given for a specific purpose'. If that is so, the purposes and potential users should be specified in legislation or delegated legislation.

3.4 If asylum-seekers refuse to, or are afraid to, have their fingerprints taken, they can be arrested without warrant by a police or immigration officer in order to comply with the requirement. Under the draft immigration rules on asylum (para. 6) refusal to report for fingerprinting is a matter which may be taken into account in making a decision on the applicant's asylum application, even though it bears no relation to the substance of the claim and could indeed reflect a legitimate fear of authority and systems of control. This provision should therefore be removed, particularly as the Bill already includes sanctions on those who do not report for fingerprinting.

3.5 The Bill specifies that asylum-seekers and their dependants may be fingerprinted. An amendment provides that another adult must be present when a child is fingerprinted but the Home Office has not stated any lower age limit for fingerprinting children. This provision is at odds with the UN Convention on the Rights of the Child, which requires states to act positively towards vulnerable refugee children.

4. Clause 7

...allows the Home Secretary to curtail the leave of anyone who applies for asylum while s/he has limited leave to remain in the UK and whose asylum application is refused (6(1))

...provides for the detention of such a person (7(4))

4.1 This means that people who apply for asylum while legally in the UK (for example as visitors or students) risk being deported without being able to complete their visit or studies here if they apply for asylum and this is rejected.

4.2 Leave may be curtailed if the applicant 'does not meet the requirements of the rules under which leave was granted'. An amendment to the previous Bill, supported by a former immigration minister, Sir Timothy Raison, that the curtailment provisions should not apply to students on recognised courses gained widespread support but was not accepted by the government. There is no right of appeal under this Act against a decision to curtail leave. The consequences of this are considered below, under clause 8.

5. Clauses 8 and 9 and Schedule 2

deal with rights of appeal for asylum-seekers. They need to be read with the draft Asylum Appeals (Procedure) Rules. The key provisions in those instruments are:

...time limits for appealing against adverse decisions are to be within two days of the date of the decision in many cases (Draft Procedure rules para 5(2))

...in other cases, people will have 10 working days in which to lodge appeals (para 5(1)). All appeals to the Immigration Appeal Tribunal must be made within five days of receipt of the special adjudicator's decision (para 13(2))

...all appeals must be lodged on the prescribed forms (para 5(3) and 13(3))

...there are no transitional provisions, implying that the accelerated appeals procedures will be retrospective, and apply to those who made claims before the Bill comes into effect

...if asylum-seekers contest a refusal of asylum, they will also lose full rights of appeal on any other matter (for example against a refusal to remain on grounds of marriage, or against a deportation decision); they will all be dealt with by the special adjudicator (Schedule 2 (2))

...at any stage in the procedure, the Secretary of State may certify that a case is 'without foundation' if he believes the case does not fit into the terms of the Convention or is 'otherwise frivolous or vexatious' (Schedule 2 (4(1))

5.1 Time limits for appeals

5.1.1 The two-day limit applies when people who applied for asylum at a port are handed a refusal decision personally. This will apply mainly to people who are detained. In discussion in Committee, the Minister confirmed that it is intended that it should apply only to people whose cases have been considered 'unfounded' by immigration officials. They are less likely to have been able to contact any legal representative for help and advice in appealing and are less likely to be able to do so in time. At present, many asylum-seekers are detained in Pentonville prison, where it takes over two weeks to fix a legal visit. People will simply be unable to exercise their right of appeal.

5.1.2 At best, an asylum-seeker and his or her representative will have two days to arrange to meet (with interpretation if necessary) and try to identify on what evidence the Home Office has based its refusal decision and lodge an appeal.

5.1.3 It should be remembered that the Bill's provisions may be retrospective, and that therefore people who have waited 2 years or more for the Home Office to make a decision may be required to respond to this in 2 days. There are no time limits set on the Home Office's decision-making procedures; though Ministers have promised that an increase in staff will lead to swifter decisions, there is nothing in the Bill or the draft rules to bind them to this; yet applicants are given a timescale which is so fast as to be contrary to any

concepts of fairness. Charles Wardle MP has spoken of the need to ensure that there is an effective avenue of appeal for all - this cannot be achieved in a two day framework.

5.1.4 In all other cases, refused asylum-seekers will only have 10 working days to lodge appeals. This is an unreasonably short time; in other immigration cases, people have at least 14 days to lodge appeals. In court proceedings, appeal periods are more often 21 or 28 days. The procedure rules make provision to extend this period, but no mechanism for how this can be done.

5.1.5 The timetable attached to the draft immigration rules on asylum suggests that the hearing would be completed within 42 days. This is clearly an inadequate time for such serious issues to be decided.

5.2 Claims 'without foundation'

5.2.1 The Secretary of State is given an opportunity to state that any case is without foundation at any stage if it is believed that it does not raise an issue as to the UK's obligations under the Convention or is 'frivolous or vexatious'. This means that people whose claim for asylum is based on a ground not listed in the Convention, for example people fleeing civil war and danger in Bosnia or Angola, could be considered 'without foundation'. People who are at present granted exceptional leave to remain, because the Home Office recognises their danger, could be treated as making claims 'without foundation'. In effect the Secretary of State can deem any person's case to fall within this category. The timetable attached to the draft asylum rules suggests that the decision making process is to take no more than 28 days from start to finish. It also suggests that some cases will be decided within hours.

5.2.2 To allow an accelerated procedure to apply to people who have just arrived within the UK, who may well fear the interviewing officer conducting the examination or who may be so traumatised by the events leading up to their flight, is likely to lead to unjust refusals of particularly vulnerable applicants. This is contrary to the spirit of para 198 of the UNHCR *Handbook on procedure and criteria for determining refugee status* which states that people may well be afraid to give full and accurate accounts of their cases because of their past experiences. Para 203 states that the benefit of any doubt should be in their favour.

5.3 People who have come through another country

5.3.1 If people apply for asylum on arrival in the UK, their asylum claims will not even be looked into if they have come via a third country (draft immigration rules, para. 11); they can be removed if the Secretary of State is satisfied that that country is 'safe', without reference to the country itself.

5.3.2 Most asylum-seekers come from countries whose nationals are required to obtain visas before coming to the UK - indeed, once a country begins to produce refugees, a visa requirement is swiftly imposed (eg Turkey in 1989, Uganda in 1991, most of Yugoslavia in 1992). The draft immigration rules (para. 2) make it clear that asylum applications will not be granted unless the person reaches the UK. Asylum-seekers who are overseas therefore cannot get visas as refugees and airlines carrying them direct to the UK will face fines under the Immigration (Carriers' Liability) Act. They are usually forced to flee via a third country; the decision on whether that country is 'safe' for them as individuals or at a particular time is not one that can or should be taken summarily or arbitrarily. The UK's responsibilities under the UN Convention to provide safety to people fleeing persecution cannot simply be passed on to other countries which may not even have signed the

Convention and even to some of those which have (for example, Turkey and Iran are unsafe for certain individuals and groups).

5.3.3 Once a speedy decision has been made not to consider the asylum claim, the applicant may have only 48 hours in which to appeal. Given that the Home Secretary has announced that 300 extra detention places are being made available, it is likely that such people will be held in detention centres, outside major population centres and at some distance from advisers and legal representatives.

5.3.4 If the applicant fails to contact a representative or lodge an appeal in time, he or she faces immediate removal.

5.4 People who apply when they are already legally in the UK; curtailment of leave

5.4.1 At present, people who make asylum applications while they have permission to be in the UK (eg as visitors, students, workers or spouses within a year of arrival) have a full right of appeal if refused asylum. Even if the application and the appeal fails, they will be able to remain to continue their stay or their studies.

5.4.2 The proposals in the Bill take away these rights. Anyone who claims asylum will need to appeal within 10 days of refusal, on the same basis as above. In addition, the Bill gives the Home Secretary the power to curtail the immigration leave the person already had at the same time as refusing their asylum application. There is no appeal under this Bill against such a decision. So, for example, a Yugoslavian student one year into a university course who applies for asylum because it is unsafe to return to Croatia at present is likely to have the application refused (because civil war is not one of the asylum grounds in the UN Convention) and to find herself liable to deportation in the middle of her studies.

5.4.3 Moreover, if a person has applied to remain on some other ground as well, for example because s/he has married a British citizen, and has lodged an appeal against refusal of asylum s/he will also forfeit the right of appeal against refusal of the other application. Schedule 2(2) of the Bill ensures that all outstanding appeals against refusal, on whatever grounds, will be dealt with under the procedures of this Bill once an asylum appeal has been lodged. All other appeals, for example against refusal to remain on the basis of marriage, or against a decision to deport, will be dealt with together and will need to be made to the special adjudicator within the 10-day time limit. Advisers may therefore have to advise asylum-seekers not to contest a refusal of asylum, in order to protect existing full appeal rights.

5.4.4 These provisions make it very hazardous indeed for people who are already in the UK to make, and pursue, an application for asylum. They risk losing substantive appeal rights they may already have and render themselves liable to deportation in the middle of their stay here.

6. Decision-making criteria

6.1 For all applicants, the draft immigration rules on asylum set out the criteria which will govern both the Home Office decision and the grounds on which appeals can succeed. Paras 6 and 7 list factors which may be taken into account in assessing applicants' 'credibility'. The United Nations High Commission for Refugees has stated: 'It is not advisable to list, as paragraph 7 does, the factors which should be given special consideration in assessing an asylum-seeker's credibility. Evaluation of credibility is a process which involves the consideration of many complex factors, both objective and

subjective, which are impossible to enumerate. Since all these may be equally important, singling out any of these factors will, by necessity, be incomplete and arbitrary.' The factors include:

6.2 that the applicant *'has failed to apply forthwith upon arrival in the UK'*, or there has been a *'failure, without reasonable explanation, to make a prompt and full disclosure of material factors'*.

Many applicants will be unable or unwilling to apply immediately on arrival in the UK. People who have been tortured or brutally treated by officials will not be able to tell their story to the first British official they meet; organisations dealing with torture victims know that it can take a long time to build sufficient trust to talk freely about such experiences. In other cases, people may legitimately hesitate before putting in an asylum application once they have escaped from immediate danger. Applying for asylum is a drastic step: it means cutting off all possibility of return to one's home country and may put relatives and friends in danger. People are often reluctant to do this and need time to think through the consequences with advisers or with others from the same community. Asylum-seekers without access to legal advice will not know what is a 'material factor' relevant to their case.

6.3 that the applicant has *'made false representations or...destroyed, damaged or disposed of any passport...'*

This contravenes Article 31 of the UN Convention, which accepts that asylum-seekers may need to disguise their intentions or their identity in order to flee to safety. It is wholly irrelevant to the strength and genuineness of their asylum claim.

6.4 that *'if there is a part of the country from which the applicant claims to be a refugee in which he would not have a well-founded fear of persecution and to which it would be reasonable for him to go'* (para 9) the application may be refused.

This is a derogation from responsibilities under the UN Convention. The *Handbook* states in para 91 that 'the fear of being persecuted need not always extend to the whole territory of the refugee's country of nationality' and Article 1A refers to a country, not to parts thereof.

6.5 the actions of anyone acting as an agent of the asylum-seeker with or without his or her express approval can also be taken into account.

An asylum case can therefore be prejudiced by corrupt 'agents' in the country of origin, incompetent advisers in the UK or any friends or relatives who mistakenly try to help.

6.6 If an applicant *'is part of a group whose claims are clearly not related to the criteria for refugee status in the Convention and Protocol he may be refused without examination of his individual case.'*

This is a further provision which allows for accelerated and unsafe decision-making. It is in contravention of the UN Convention, which insists that each case be dealt with individually. It begs the question of what is a group, what or who is 'clearly' outside the Convention. It allows for the kind of stereotyped, cursory decision-making which has allowed Tamils and Kurds later granted full refugee status to be initially labelled 'manifestly bogus' by Ministers and officials (see para 2 of this briefing, which argues that this may be *ultra vires* the Bill).

6.7 Many of these points were also discussed in the meeting of the Ad Hoc Group Immigration, of EC Interior Ministers, which met in London on 30 November 1992. The Resolution on 'manifestly unfounded' asylum cases mentions similar things, but also provides for more safeguards for asylum-seekers. For example, people must have *'deliberately* made false representations' about their asylum claim, or *'in bad faith* destroyed, damaged or disposed of any passport, other document or ticket *relevant to their claim'*. The Resolution also confirms that any of these factors 'cannot in themselves outweigh a well-founded fear of persecution under Article 1 of the Geneva Convention and none of them carries any greater weight than any other'.

7. clause 9

...makes provision for appeals on a point of law to pass from the Immigration Appeal Tribunal directly to the Court of Appeal or in Scotland the Court of Session.

7.1 This appears to be an attempt to cut out judicial review, in spite of Ministers' assurances that they would not seek to do so. At present, judicial review of Tribunal decisions can be sought in the Divisional Court. The existence of a right of appeal direct to the Court of Appeal looks superficially attractive but in fact it will have a restrictive effect as appeals are only possible on points of law and once the Court of Appeal has declined to grant leave (and it grants such leave very rarely in appeals from other Tribunals) it will be virtually impossible to persuade a lower court to grant leave for judicial review.

8. clauses 10 and 11

...clause 10 amends section 13 of the Immigration Act 1971 so as to remove the present right of appeal which exists against refusal of an entry clearance and refusal of leave to enter from visitors, students intending to study for less than six months, prospective students and their dependants.

....clause 11 provides for the removal of a right to appeal in other cases where refusals...are mandatory under immigration rules.

8.1 These clauses remove rights of appeal from whole categories of people; the provisions are disturbing and cannot be justified. Despite assurances given by the Prime Minister in debate on Maastricht that immigration would not be subject to control from Europe, this proposal, among others in the Bill, appears to be prompted by pressure from the Trevi Group of EC ministers.

8.2 The Home Secretary has stated that these appeals constitute a disproportionate amount of all pending appeals and contribute to delays in the appeals system. On 11 January he called visit visa appeals 'a creaking, improbable, out-of-date appeal mechanism' (*Hansard*, col. 719). The appeal system does need improvement but this must be done by increasing resources to the appellate authorities, rather than by removing important rights. The Parliamentary Home Affairs Committee in its 1990 report on delays in the immigration system stated (recommendation 12): 'We recommend that the backlog of appeals should not be used as an excuse for reducing rights of appeal.'

Visitors' appeal rights

8.3 The removal of appeal rights is already being met with hostility from those representing Black and Asian British citizens and others who have experienced visitor refusals at first hand. It is an attack on the family life of many black and ethnic minority

British citizens and others living here. Many families have members living in other countries with whom they keep in touch through visits. There are already difficulties about this and people from black and Third World countries are refused more often as visitors; for example, 1 in 67 Jamaicans and 1 in 2014 United States citizens were refused entry in 1991 and 1 in 5 Bangladeshis and Ghanaians were refused visit visas. This is because the immigration rules say that it is up to visitors to satisfy an immigration official that they intend to leave the UK at the end of their visit - and officials operate different standards for people from different countries. The Commission for Racial Equality's report, *Immigration control procedures*, of February 1985, referred to racist assumptions made of passengers by immigration officers; regrettably, the report is as relevant today as when it was written.

8.4 The Bill states that people will no longer be able to appeal against refusal. Whenever officials are given a power with no procedures for review, they are more likely to make arbitrary decisions and refuse applications, knowing there will be no comeback on them. Visa officers hundreds of miles away will have the unchecked, unbridled power to divide a grandmother permanently from her grandchildren, an uncle from his nephews, who will have no source of redress.

8.5 In 1991, out of 8010 immigration appeals decided against entry clearance refusal for temporary purposes, 1495 were successful, a rate of 1 in 5.4. Thus many wrong decisions would go unchecked. Losing the right of appeal does not only mean losing a particular visit. Immigration officials mark the person's passport to show the refusal. If people apply again, they are likely to be refused again. Other countries' immigration officials know what these marks mean - so they are likely to refuse a visit visa too. With the closer cooperation between EC governments, being refused one visit visa once may mean that the person will never be able to travel to Europe.

Students' appeal rights

8.6 The Bill removes rights of appeal against refusal for students applying to come for courses of less than six months, and for all prospective students.

8.7 Many young people want, for good reasons, to finish their education in the UK, or to take courses which are not available in their home country. The qualifications they will gain will not only benefit them as individuals but will increase the pool of skills available in their country. Time spent enjoyably in the UK in their youth will enhance contacts between the countries in the future. This provision will mean in practice that fewer overseas students will be able to come to the UK. Others come in as prospective students in order to attend interviews or to finalise their choice of course; colleges will often not give definite places to students before they have been interviewed and some countries will not allow students to make financial arrangements for their support during a course until they have been definitely accepted.

8.8 Immigration officials refuse visas for many unjust or spurious reasons. When there is no scrutiny of their decisions, they are likely to do so more often.

8.9 The Home Office recognised the strength of feeling against this clause by issuing a press release on 8 December 1992 listing procedures to be followed when a visit entry clearance is refused, for example, giving the person more detailed reasons for refusal, having a quick review of the decision by another official at the same British post and stating that a past refusal would not prejudice a fresh application. Many of these procedures already exist and others are unworkable. The proposals are in no way a substitute for the right of appeal, or even for an independent review of an administrative

decision. They also do not mention the situation of people refused entry at a British port, or the situation of students and prospective students at all, and are wholly unsatisfactory.

8.10 Appeals against mandatory refusals (clause 11), for example a visitor who needs to remain for more than six months, may not be able to succeed, but they can be a vital way of requesting the Home Office to reconsider a decision. The Home Office may have made a correct decision under the letter of the immigration rules but have disregarded important compassionate aspects; for example, a visit by a grandmother to help care for her grandchildren at the time another baby is expected and is born may need to be more than six months. Adjudicators have the power to make recommendations to the Home Office to use its discretion to reconsider a case. If there is no right of appeal, there is no opportunity for such recommendations and no check on Home Office officials.

9. clause 12

...provides for carriers' liability to be extended to transit passengers and for the Home Office to decide, by order, which transit passengers shall be required to have visas in order to pass through the UK.

Amnesty International has set out the dangers of the Immigration (Carriers' Liability) Act in preventing asylum-seekers from gaining access to the determination process, in its briefing, *A duty dodged*. These provisions are now to be extended to transit passengers from selected countries; in the past, these have been solely countries from which people are seeking to flee, such as Somalia and Sri Lanka.

10. Detention

10.1 The Bill contains no additional powers to detain. However, the Immigration Act 1971 already gives a power to detain indefinitely, and without bringing before a court, anyone whose application for entry is being considered or has been refused by the Home Office. This includes all those seeking, or who have been refused, asylum. The Home Secretary has announced that 300 extra detention places will be made available for asylum-seekers 'considered likely to abscond...and to enable those refused asylum to be detained while awaiting removal'. Detainees are among those to whom the 2-day time limit for appealing against refusal will apply; it is therefore of concern that the Home Office may choose to detain people whom it wishes to remove quickly after refusal. It is also likely that people whose cases the Home Office considers to be 'groundless' will be detained, and may not have the chance to exercise their right of appeal.

10.2 Asylum-seekers are particularly vulnerable if detained. In some cases, they will have fled from places of imprisonment, where torture and ill-treatment were routine. In all cases, they will be extremely anxious about their future and in need of support from refugee communities and legal advisers. There have been many suicide attempts by detained asylum-seekers. Since 1987, four asylum-seekers have died in detention, three from self-inflicted injuries and one while under prison officers' control and restraint procedures. Immigration staff have spoken publicly about the need for 'humane detention'. There is no such thing; it cannot be humane to imprison people simply because they have come to seek asylum in the UK. There is an urgent need for Immigration Act detention, particularly as it applies to asylum-seekers, to be regulated through the courts.

JCWI/ILPA
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