



## Yarl's Wood Befrienders

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### **Yarl's Wood Befrienders (YWB)**

Yarl's Wood Befrienders visit those held at Yarls Wood Immigration Removal Centre, aiming to affirm human dignity and restore self-esteem by listening and offering befriending support. Yarls Wood has the capacity to hold 405 detainees. It has two units for women and a smaller unit for couples and families with adult children. YWB has been visiting at Yarls Wood since its opening in 2001.

## Universal Periodic Review: Submission by Yarl's Wood Befrienders

### Summary

1. Despite the fanfare surrounding the abolition of the indefinite detention of children in December 2010, the extensive use of administrative detention for adults remains a key part of UK immigration policy. The capacity of the "detention estate" has increased to approximately 3,400 spaces.<sup>1</sup> Yarl's Wood Befrienders is particularly concerned at the effect of detention on vulnerable women and the inappropriate use of the Detained Fast Track to decide asylum cases. Our submission is based on case studies and observations arising from YWB's direct work with detainees. It argues that the human rights of women, citing specific groups of women in particular, are infringed by aspects of the UK's immigration detention policy.

### Details of Our Concerns

#### **The Detained Fast Track ref. Articles 9, 10 and 11 (1) of the UDHR and Article 26 of the 1951 Convention relating to the Status of Refugees.**

2. 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.<sup>2</sup> 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."<sup>3</sup>
3. 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. The DFT process allows a detainee to meet their solicitor only the day before their asylum interview<sup>4</sup>, 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

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<sup>1</sup> Home Office Press Release, 6<sup>th</sup> July 2011.

<http://www.ind.homeoffice.gov.uk/sitecontent/newsarticles/2011/july/09larne-holding-centre>, accessed 11/11/11

<sup>2</sup> Asylum Aid, *Unsustainable: the quality of initial decision-making in women's asylum claims*, Jan 2011, p.5

<sup>3</sup> *ibid.* p.6

<sup>4</sup> 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](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/guidance/Detained_fast_track_process1.pdf?view=Binary)

of Justice figures for January-September 2010 stating that 63% of DFT appellants were unrepresented at appeal.<sup>5</sup>

4. The fast-tracked process in operation at Yarl's Wood had a grant rate of only 4% in 2008<sup>6</sup>, compared with 31% for female applicants in the mainstream asylum system.<sup>7</sup> 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"<sup>8</sup> and The Joint Committee on Human Rights stated that "the decision to detain an asylum-seeker may be arbitrary because it is based on assumptions about the safety or otherwise of the country from which the asylum-seeker has come."<sup>9</sup> Indeed, in 2008, 26% of cases entering the DFT at Yarl's Wood were subsequently deemed unsuitable and removed from the process.<sup>10</sup> 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.<sup>11</sup> 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.
5. 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. 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. A has since obtained fresh evidence which will be submitted as a fresh claim.

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<sup>5</sup> Detention Action, *Fast Track to Despair: The unnecessary detention of asylum seekers*, May 2011, p.28

<sup>6</sup> Human Rights Watch, *Fast-Tracked Unfairness: Detention and Denial of Women Asylum Seekers in the UK*, Feb 2010, p.29

<sup>7</sup> *ibid*, p.15

<sup>8</sup> Detention Action, *Fast Track to Despair: The unnecessary detention of asylum seekers*, May 2011, p.30

<sup>9</sup> JCHR, *The Treatment of Asylum Seekers, Tenth Report of Session 2006-07*, Volume 1, p7

<sup>10</sup> Human Rights Watch, *Fast-Tracked Unfairness: Detention and Denial of Women Asylum Seekers in the UK*, Feb 2010. p.30

<sup>11</sup> *ibid*. p.30

6. 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.

7. 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.<sup>12</sup> Detaining those who actively request protection both erodes asylum seekers' trust in the authorities and disincentivises 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.

**Detention of vulnerable women in contravention of UKBA's own policy**

8. Aside from the issue of the DFT, many women we meet are, in our view, unsuitable for detention. Chapter 55 of the UKBA's Enforcement Instructions and Guidance states that (amongst others) pregnant women (unless there is a clear prospect of early removal), victims of torture, victims of trafficking and those suffering from serious mental illness should not be detained except in "very exceptional

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<sup>12</sup> Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, Section 8.

circumstances”<sup>13</sup> In YWB’s experience, this policy appears not to be adhered to, as outlined below.

9. *Pregnant Women*: In 2011, YWB has visited seven pregnant women. They were detained for an average of 88 days. Four of them were eventually released, one only after she suffered a miscarriage during the 20<sup>th</sup> week of her pregnancy. 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.<sup>14</sup>
10. *Victims of Torture*: In 2011, YWB has visited 14 women claiming to be victims of torture. Although the majority of these had visible scarring, they were deemed fit for detention as they had no independent evidence of torture. Being detained, they faced extreme difficulty accessing independent doctors to assess their scarring.
11. *Victims of Trafficking*: In 2011, YWB has visited 18 women raising issues of trafficking. This backs up findings by the Poppy Project, who have come into contact with 180 victims of trafficking detained at Yarl’s Wood<sup>15</sup> since 1<sup>st</sup> April 2009, when the UK adopted the **Council of Europe Convention on Action against Trafficking in Human Beings**.
12. *Mentally ill detainees*: Of a total of 248 detainees visited by YWB in 2011, 36 (15%) appeared to be suffering from mental health problems of greater significance than the level of anxiety routinely experienced by detainees. Several were subsequently released, but generally only as a result of legal challenges. In YWB’s view, there are failings in both the identification and care of those with mental health problems.

### **Long Term Detention, Especially of Mothers ref. Article 8 of the ECHR**

13. Whilst we remain alarmed by the high level of long-term detainees, the statistics suggest that women do not tend to be detained for the extreme lengths of time men are. Still, 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.<sup>16</sup>

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<sup>13</sup> UKBA Enforcement Instructions and Guidance, 55.10

<sup>14</sup> Damian Green, Minister of State for Immigration, Home Office, Hansard 25 Oct 2011: Column 148W

<sup>15</sup> London Evening Standard, *Scandal of Trafficked Women held in UK*, 21<sup>st</sup> Oct 2011

<sup>16</sup> Damian Green, Minister of State for Immigration, Home Office, Hansard 25 Oct 2011: Column 148W

14. 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.
15. An inspection by the Independent Chief Inspector of the UKBA<sup>17</sup> 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.<sup>18</sup>
16. 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. The extended separation of a mother and child in particular sits uncomfortably with **Article 25 of the EDHR**, entitling motherhood and childhood to special care and assistance.

#### Case Study: D, Nigeria

D, who had a baby daughter in the UK, was sentenced to a year in prison for an immigration offence, but was detained for a further two years in Yarl's Wood. D's daughter came in to visit on several occasions, but the emotional wrench of separation was often too much for D and she could not cope with regular visits. The strain on the affective bond between mother and child was very apparent when they did meet. D's mental health deteriorated significantly and she spent much of her time alone in her room.

17. Though the Prison Service funds many schemes enabling children to travel to visit their parents where financial barriers arise, no equivalent facility exists for children of parents held in IRCs. If children are in the care of the Social Services, it is YWB's experience that the local authority is reluctant to finance such visits.

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<sup>17</sup> 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

<sup>18</sup> *ibid.* 6.6

18. Many of the women we visit who have been in prison say that the psychological burden of being in detention is even greater than that of prison because of its indefinite nature. With no fixed end-point, there is nothing concrete to focus on, leading to a feeling of despair. This is particularly difficult for mothers for whom every day spent in detention is another day apart from their child. The UK is one of the few European countries who impose no cap on the length of detention.

### **Detainee Property & Article 17 (2) of the UDHR**

19. Though we do not gather statistics on the subject, many women we visit are awaiting removal to their country of origin without money or any of their clothes or belongings. This generally occurs in the instance of women who have been encountered during enforcement operations or taken into detention straight from a reporting centre. Flights can be arranged within three days and, even if a detainee has friends or relatives in the country, they are often unable to bring their belongings to the detention centre in time.

20. Although this is an issue for both men and women, women travelling alone in many countries are particularly conspicuous. Women without appropriate clothing and travelling without luggage are even more likely to stand out upon return, increasing their vulnerability. Returnees often fly into airports far from their home if indeed they still have a home to go to. They may need to travel for several days, often without money. YWB has had to establish a fund in order to provide emergency cash grants to detainees returning with nothing.

21. Even when it is known in advance by enforcement officers that a person will be detained, provision for the collection of belongings is not made. This prioritising of operational convenience over the safety and dignity of detainees, particularly women, seems disproportionate and arbitrary.

### **Recommendations**

**Yarl's Wood Befrienders believes that the UK should take the following steps in order to fulfil its human rights obligations:**

22. 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.

23. 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.

24. 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.
25. Greater care must be taken in identifying victims of torture and trafficking. If independent evidence is lacking, it should be actively obtained.
26. 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.<sup>19</sup>
27. The UKBA should ensure that reasonable attempts are made to ensure people have their property before they are detained.

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<sup>19</sup> 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.