

BID's Perspective on Immigration Detention

Immigration Detention

Every year around 30,000 people are held in immigration detention. These are mainly individuals, including families and children, who are awaiting a decision on their asylum claims or those who are being forcibly removed from the country following an unsuccessful asylum application. Some asylum seekers are detained pending determination of their asylum claims under an accelerated legal process, known as, the "Fast Track". They are held in immigration removal centres, of which there are ten across the UK. These centres are like prisons.

These individuals are detained under powers conferred on the Secretary of State under a number of Immigration Acts ¹, with the Immigration Act of 1971 providing the main powers of detention. Article 5 of the European Convention on Human Rights, incorporated into domestic law under the Human Rights Act of 1998, while enshrining the right to liberty for all - except in certain circumstances - allows for: *"the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country of a person against whom action is being taken with a view to deportation or extradition"*. This detention must, however, be proportionate to the objective (of removal) and alternatives to detention must be considered.

The power to detain an individual is delegated to immigration officers, who must complete a form and hand it to the person being detained, citing the reasons for detention. No form of judicial scrutiny or oversight is applied to this decision at this stage. A person's detention is not time-limited and immigration detainees are not granted automatic bail hearings. This means that in many cases people can be left in detention for weeks, months and, in some cases, years. Many detainees have no legal representation and therefore feel unable or ill-equipped to access elective bail procedures.

The Home Office does not keep figures on length of detention, but a survey done by the London Detainee Support Group in December 2008 of 470 detainees showed that 263 had been detained between nought and six months, while 21 had been in detention for longer than two years. The most recent Annual Report from Her Majesty's Chief Inspector of Prisons (HMIP) was critical of the fact that there are no official statistics on total numbers of people detained over a period, nor on length of detention. The inspectors also found that the length of detention in Dover Immigration Removal Centre (IRC) had doubled and that 25% of detainees they had interviewed at Colnbrook IRC (near Heathrow) had been there for longer than twelve months. The government provides 'snapshot' figures of detention. The most recent on children showed 55 children detained, with 15 of those having been detained between one and two months. HMIP's Annual Report also noted that in 2007 three times as many children were detained for periods longer than 28 days than in 2005.

¹ The Immigration Act 1971; The Immigration and Asylum Act 1999; The Nationality, Immigration and Asylum Act 2002; UK Borders Act 2007

The Work of BID

Bail for Immigration Detainees (BID), a charity established in 1999, provides free legal advice and information to immigration detainees on bail (<http://www.biduk.org/>). As we are unable to represent everyone who approaches us, we provide detainees with the knowledge, skills and support to prepare their own cases for bail and to represent themselves, at the same time as recognising that this is no substitute for proper legal representation. However, legal representation in detention is subject to a strict merits test, and only a few are lucky enough to be taken on under legal aid. We take on a few cases ourselves, prioritising the most vulnerable such as pregnant women, survivors of torture, families with children and those with mental or physical ill-health. Children in families can be detained on the same basis as adults. They are only supposed to be detained immediately prior to removal back to their country of origin, but of the 25 families that BID has worked with between October 2008 and January 2009, only two have been removed. One of the families we worked with recently was held for twelve weeks in spite of the hospitalisation of one of the children, who suffered from diabetes, and despite the worsening mental health of the father, who became unable to speak and was refusing food. All the families we supported were picked up in dawn raids and had no time to collect their belongings or say goodbye to their friends.

BID is becoming increasingly perturbed at the increase in long-term detention. Recently we secured the release of an individual at the fifth attempt after he had spent over three and a half years in detention (equivalent to a seven-year prison sentence). He was subsequently granted indefinite leave to remain in the UK.

Bail does not examine the lawfulness of the detention itself, and BID has become more involved in referral of cases for judicial review of the government's exercise of its power to detain. The judgment in a group of cases of long-term detention referred by BID last year ruled that their detention was unlawful and ordered their immediate release.²

With the UK Borders Act of 2007 providing for automatic deportation for any foreign national serving a sentence of 12 months or longer, and the government announcing its intention to increase the capacity of the detention estate by 60%, many more people are likely to be held in immigration detention for longer periods of time. In the aftermath of a robust parliamentary debate on the length of time terrorist suspects should be detained, BID considers it regrettable that so little attention is paid to the length of time people can be deprived of their liberty under immigration powers.

² *A et ors (R on the application of) v Secretary of State for the Home Department [2008] EWHC 142 (Admin)*