

**Home Office/ Department of  
Constitutional Affairs**

**Consultation on Proposed  
Asylum Measures**



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## **Mission Statement of Jesuit Refugee Service UK**

The Jesuit Refugee Service (JRS) is an international Catholic non-governmental organisation, at work in over 50 countries, with a mission to accompany, serve and defend the rights of refugees and forcibly displaced people.

The purpose of JRS UK is to accompany, to serve and to advocate on behalf of all asylum seekers from their first arrival until they are satisfactorily settled. This work is carried out in collaboration with other JRS offices round the world, other Church and secular organisations, voluntary and governmental, which are active in the same field.

## **Values**

JRS is grounded in Catholic social teaching and draws on the principles of Ignatian spirituality in discerning with whom we work. All Members share a common set of values and principles concerned with justice, the dignity of the person and a responsibility to carry out the social mission of the Church.

With a priority to working wherever the needs of displaced people are urgent and unattended by others, JRS offers a human and pastoral service to refugees and the communities who host them through a wide range of rehabilitation and relief activities. Services — pastoral care, education for children and adults, social services, counselling, and health care—are tailored to meet local needs according to available resources.

The main focus of JRS UK's work is with asylum seekers in detention through visits, phone calls and letters. We produce news sheets to keep them in touch with events in their country. When they are released we keep in touch with them and offer practical support.

## **Consultation on Proposed Asylum Measures**

### **Introductory remarks.**

That the consultation period on the proposed asylum measures was so brief is both unfortunate and represents an undermining of the democratic process, suggesting as it does that the government is disinterested in receiving comments on the proposals and discourages the comments from being made. It is difficult for small organisations such as JRS to give a full and considered response in a consultation with such a short time in which to do it. We trust that our comments will be taken fully into consideration.

JRS is dismayed at the possibility of yet more deterrent legislation regulating the asylum process in the UK. Instead of looking at the asylum process as being one based on protection needs the government continues in its short-sighted attempts to deter people from coming to the UK to claim asylum and to make things as difficult as possible for those seeking asylum in the UK. It must be remembered that asylum is a human right and should therefore be administered in a rights-based/protection needs basis.

The Home Secretary has declared the strategy to be “not anti-immigration”, stating that he has “greatly expanded the opportunities for hard-working immigrants to come to the UK through legal routes”.<sup>1</sup>

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<sup>1</sup> Joint Home Office/Dept for Constitutional Affairs Press Release – Asylum Measures, 27 October 2003, 296/203

However in the opinion of JRS, the adoption of these measures, deterrent in character, seriously undermine the Convention relating to the Status of Refugees 1951, by which the UK is bound.

The new legislative proposals deal with the asylum and immigration appeals system; undocumented passengers; safe third country; the regulation of legal advice; and the restriction of family support.

- **Asylum and immigration appeals system.** JRS is seriously concerned by the proposal to introduce a new single tier of appeal for refused asylum applications. The emphasis in this announcement of proposed new legislation on the cumbersome nature of the current appeals process is misleading.

At the initial application level in asylum cases decision making is often poor. This is borne out in our opinion by the high rates of positive decisions given at appeal level<sup>2</sup>. One can only wonder what the true number of wrongly decided cases is, given the difficulty there is to find good legal advice and representation at the higher appeal levels. The high levels of appeals of course lead to a backlog of cases waiting appeal.

In addition there is a high rate of refusal on non-compliance grounds<sup>3</sup>: 12,130 refusals for non-compliance were made last year out of 82,715 cases<sup>4</sup>.

In practice this means that the first appeal level is often the first opportunity that an individual has to have his/her asylum application considered properly. To reduce appeals to a single tier will in effect deny these applicants of an effective appeal if they are refused.

This will be all the more the case if the government introduces other measures to restrict access to the higher courts, a move being considered.<sup>5</sup>

Too much emphasis is being put on abuse of the current appeals system rather than on getting initial decision making by the home Office right. This would also cut costs, remove delays from the process, and reduce the risk of absconding.

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<sup>2</sup> An average of 21% at adjudicator level, but as high as 31% for those from the Democratic republic of Congo, 40% for Eritreans, 37% for Zimbabweans at adjudicator level, according to the Home Office's own statistics for 2002. Asylum Statistics: 4<sup>th</sup> Quarter 2002, Table 7.

<sup>3</sup> Reasons why a refusal on non-compliance grounds might be given include not attending an interview or not returning a Statement of Evidence Form within the 14 day deadline in English. In our experience asylum seekers often have good reason for both of these examples of non-compliance: in the former due to transport difficulties (e.g. cancelled trains) or not receiving a travel warrant in time to make the journey to the interview; in the latter because English is not their first language and they were unable to see a solicitor or other adviser with access to a translator within the deadline.

<sup>4</sup> Asylum Statistics: 4<sup>th</sup> Quarter 2002, Table 4b

<sup>5</sup> Annex A to Joint Home Office/Dept for Constitutional Affairs Press Release – Asylum Measures, 27 October 2003, 296/203

- **Undocumented passengers.** The UK proposes to introduce sanctions for those who destroy or discard their documents before claiming asylum. In addition the UK proposes that being undocumented should lead to a tougher assessment of the credibility of their statements in support of their asylum claim.

In the opinion of JRS this would be wrong. At the moment the Immigration Rules allow for questions as to credibility to be raised as regards undocumented asylum applicants who make a delay in claiming asylum after entry, which is a cause of great concern to us already, as there are many reasons why an individual may be undocumented<sup>6</sup> and many reasons which can delay an application for asylum<sup>7</sup>. The extension to cover all undocumented asylum seekers is unnecessary and would seriously undermine Article 31(1)<sup>8</sup>.

To our mind this is another blatant example of deterrent measures to deny access to the asylum process in the UK. The UK already invests heavily in border control measures, including freight screening equipment at Belgian and French ports, the use of airline liaison officers in Prague, and the moving of UK border controls to France.

The emphasis in the Home Office announcement is one of tackling illegal immigration. This misses the point entirely to our mind. The point should rather be one of assessing protection needs, not of deterring individuals from getting to the UK.

In addition it is unreasonable in the extreme to not only disadvantage an undocumented individual as regards to the credibility of his/her claim for asylum but to criminalise that individual by creating two new criminal offences: the offence of being undocumented without reasonable explanation and the offence of failure to comply with the re-documentation process. There are already many immigration offences which can be – and have been – used to prosecute individuals (asylum seekers among them) for illegal entry into the UK due to the use of false or no documentation. The new offences are unnecessary and to our mind contravene the duty not to impose sanctions in Article 31(1).

JRS is also very concerned about the possibility of requiring carriers to take copies of passengers' identity documents before they travel on certain routes. This is instituting another secondary form of immigration control to deter those with protection needs from getting to the UK. We also have grave concerns over issues of privacy and confidentiality which this measure would entail. How would the carriers be regulated over their holding of what would be very private and potentially sensitive information.

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<sup>6</sup> e.g. inability to present oneself to the necessary authorities to get a travel document due to fear of persecution, unsafe conditions in a country, etc.

<sup>7</sup> not least of which are trauma, language difficulties and not knowing how to make a claim for asylum and wanting to find this out first.

<sup>8</sup> Article 31(1) of the 1951 Convention relating to the status of refugees provides that: "The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory without authorisation provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence".

- **Safe third country.** Under the requirement of non-refoulement<sup>9</sup>, the UK government must be absolutely certain before returning an asylum seeker to a safe third country that that individual will not be sent back to his/her own country of residence when he/she had faced persecution. Criteria must be established regarding how a country is designated safe and what makes a country safe. Annex A to the announcement goes some way to alleviating our concerns as to criteria establishing what makes a country safe: “designated countries will be those where we are satisfied that an individual will be neither persecuted nor subjected to torture or inhuman and degrading treatment or punishment, nor one which would remove a person in breach of the principles of the Refugee Convention or the ECHR”. We remain however concerned that the UK government may designate countries as safe which do not recognise an individual as a refugee if he/she has not suffered persecution at the hands of a government or state agency. The UK has a history of recognising persecution by non-state actors. To return someone to a “safe” third country which does not recognise persecution by non state actors is tantamount to refouling that individual, as he/she will returned to his/her country of origin or residence from that “safe” country, whether that country is a signatory of the ECHR or the 1951 Convention relating to the status of refugees or not. This would be unacceptable to our mind. Further safeguards must be put in place to any such proposal allowing the removal of asylum seekers to safe third countries.
  
- **Regulation of legal advice.** JRS does not provide legal advice to asylum seekers, but rather “signposts” the services and advice available elsewhere. In our opinion, effective regulation of legal advice is essential especially given the vulnerability of the clients (asylum seekers), the complexity of the asylum process and the results which could occur if incompetent or inadequate advice is given (possibly removal to persecution). The establishment of the Office of the Immigration Services Commissioner (OISC) has in our opinion improved the quality of legal advice in the voluntary sector. The accreditation by the OISC allows us a measure of confidence in recommending an agency and the system of accreditation provides an easy reference of what level of work the advisers in the organisation concerned are entitled to carry out. There is also an easy procedure to follow should a complaint be necessary. We would welcome increased powers for the OISC to ensure that legal advisers are qualified, have the necessary supervisory structures in place. We would also welcome an accreditation scheme that offered a similar measure of confidence when it comes to looking for a solicitor to provide immigration advice to one of our clients.

However our views are those of non-practitioners and we would hope that the government also takes into account views of those who do carry out immigration case work regarding the practical effects which these proposals will have on them and their cases.

- **Restriction of family support.** The government’s proposal to withdraw support from families who are at the end of their cases having exhausted their appeals and have not had a positive decision in their cases, unless they are willing to take a paid voluntary route home is morally indefensible. It is questionable whether their decision will indeed be voluntary if faced with the alternative of being left with no means of

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<sup>9</sup> not returning an asylum seeker to a country to face persecution (Article 33(2) of the 1951 Convention relating to the status of refugees)

support (no financial assistance from the government, no permission to work) in the UK or returning to a country in which they fear they will be persecuted or be otherwise unsafe, e.g. Afghanistan, Iraq or Zimbabwe.

Louise Zanré, 18 November 2003