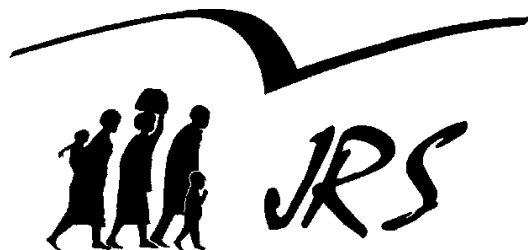


**Home Affairs Committee
Inquiry into Asylum Applications**



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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. This lessens their sense of isolation and may strengthen their claims for asylum. When they are released we keep in touch with them and offer practical support.

JRS has been given the opportunity to update its evidence to the Home Affairs Committee of 25th March 2003 with particular reference to the Government's announcement that up to 15,000 families who had lodged asylum claims more than three years ago will be considered for permission to live and work in the UK and with reference to the Government's proposed new legislative measures.

Inquiry into Asylum Applications

1. The Government's announcement on 24th October 2003 that up to 15,000 families who sought asylum in the UK more than three years ago will be considered for permission to live and work here.

JRS welcomes the government's announcement that the cases of up to 15,000 families will have their cases considered for permission to live and work in the UK on an Indefinite Leave to Remain basis if:

- The families sought asylum before 2nd October 2000;
- The families had children before that date;
- Where the final appeals process has not been exhausted or where final decisions have been made but removal has not been effected.

People who have committed a criminal offence, lodged multiple asylum applications or whose cases are the responsibility of countries elsewhere in Europe will be excluded from the exercise. In addition the Home Secretary believes that the 15,000 families are likely to comprise of 12,000 families

receiving financial support from the government and 3,000 families who are self-supporting.¹

We welcome the announcement because it is a recognition that the current asylum system has failed many individuals and families who have lodged asylum claims in the UK. We hope that the measures to be taken with regard to families who meet all the government's criteria will allow the family members concerned a degree of security and an ability to and the confidence to build a life in the UK.

We also welcome the recognition by the Home Secretary that there are delays in the system. We are not as confident as he is that the delays are "historic". They have been certainly. But delays continue to occur in many cases we come across. Many of our clients have waited over a year for their first interview. In our experience these delays continue.

JRS does, however, have some grave concerns.

It is to our mind extremely unfortunate that this exercise is being portrayed as one of "Clearing the decks for tough new asylum measures"². While there is nothing wrong with acknowledging the costliness of the asylum process as it stands for families and using this as one of the reasons for introducing the announcement on 24th October, this was a missed opportunity. The government could have phrased its arguments more humanly and positively, pointing out the humanitarian effects of its announcement: the increased security for the families involved and the addition to and the enrichment of British society which they will bring by being allowed to live and work here and by feeling able to integrate.

We are also concerned that the announcement conveys a tone that this is the last step the government will take to improve the situation for asylum seekers caught up in a situation and in a process over which they have no control. It is unfortunate that the announcement did not go farther to cover for example other particularly vulnerable groups, such as unaccompanied minors, victims of torture and individuals with special health needs. The historic delays have affected these others as much as they have affected families. While we recognise that families are deserving of special consideration due to the fact that children are involved, these other groups are equally deserving of such consideration.

We are concerned that the Home Office is not encouraging families to enquire directly, but will write to those eligible for leave to remain. Given our experience of the poor administration record in asylum cases (for example we find that the Home Office often has not updated its address records for asylum seekers properly and sometimes loses case files), we are not confident that all those who are eligible will be informed. We also feel that unless the Home Office proposes to employ a new team dedicated to consider these cases their estimate of considering and determining the 15,000 family cases within a six month period is over ambitious.

We would also like to point out that not encouraging families to get in touch with their case details raises hopes and expectations that they will be contacted. We have already had two clients ask us about this announcement in the past week. Both were very hopeful and were looking for answers and reassurance from us that they will be among the 15,000 chosen. Of course, we were unable to give this reassurance or to answer any of their questions. While the press release had some details it did not have many, including how the decisions would be taken;

¹ These details are given in the Home Office Press Release 295/2003, issued 24th October 2003.

² Title of the Home Office Press Release 295/2003, issued 24th October 2003.

what the cut off date might be as to when a family might hear if they have been successful; and crucially what appeals may be possible against a decision taken not to give a family indefinite leave to remain under this scheme. If a family is not encouraged to enquire, how might they hear if their case has even been considered under this scheme?

2. The Government's proposed new legislative measures on asylum announced on 27th October 2003.

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.

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".³

However in the opinion of JRS, the adoption of these measures, deterrent in character, would be anti- human rights and would 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.

As pointed out in our previous submission to the Home Affairs Committee⁴, at the initial application level in asylum cases decision making is often poor. There is a high rate of positive decisions given at appeal level. In addition the problem of the high refusal rates on non-compliance grounds continues. It still remains the case that for many individuals who have received a refusal at the initial application level, the appeal is often the first opportunity they have for their case to be heard 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.⁵

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

³ Joint Home Office/Dept for Constitutional Affairs Press Release – Asylum Measures, 27 October 2003, 296/203

⁴ 25 March 2003, JRS Response to the Home Affairs Committee Inquiry into Asylum Applications.

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

risk of absconding.

- **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 undocumented⁶ and many reasons which can delay an application for asylum⁷. The extension to cover all undocumented asylum seekers is unnecessary and would seriously undermine Article 31(1)⁸.

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.

⁶ 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.

⁷ 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.

⁸ 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-refoulement⁹, 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 Home Affairs Committee 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

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

indefensible. It is questionable whether their decision will indeed be voluntary if faced with the alternative of being left with no means of 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, 14 November 2003