



The Centre for Applied Childhood Studies

**SUBMISSION TO THE COMMITTEE ON THE RIGHTS OF THE CHILD
Day of General Discussion 2012**

'The Rights of All Children in the Context of International Migration'

Title of Submission: The rights of the child in respect of immigration detention in the United Kingdom

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INTRODUCTION

The Centre for Applied Childhood Studies undertakes research and policy and practice development which contribute to the well-being of children, young people and families nationally and globally. We use evidence based knowledge and perspectives to strengthen the capacity of families and promote the fullest development of all children. We have extensive experience of promoting rights and freedoms that enable social progress and better standards of life for all children and families, including those affected by immigration controls.

The Centre asserts a belief in fundamental inalienable human rights and in the inherent dignity and worth of children. We have a particular interest in the needs of children, women and families who claim asylum and human rights protection, and who we consider a 'vulnerable' group. The Centre recognises that children seeking asylum or who are dependents in asylum claims are forced to migrate and claim asylum in another country. Many of these children do not intend to remain in the UK and a significant number did not choose to leave their homeland.

In preparing this submission, we have given consideration to good practice in terms of alternatives to detention based on our research and policy advice role which included engaging with the UK Coalition government consultation exercise on ending detention for children subject to immigration controls.

DETENTION in the UK

The detention of people seeking asylum in the UK takes place without any criminal charge to the detainee; without statutory time limit; and without the right to an automatic bail hearing before the courts (Immigration Act 1971 c.77). In practice, this has meant that people seeking asylum in the UK have been held for indefinite periods of time, sometimes successive years at a time.

International and national human rights organisations and research bodies have provided evidence that detention is harmful both physically and psychologically. The Centre asserts a belief in the right of all people to be free from physical and psychological harm and free from the threat of harmful practices. We argue that detention constitutes a harmful practice. We reject accommodating children and families seeking asylum in ways and locations that result in their isolation from the wider community. We feel there are both short and long-term benefits to the integration of children and families within the UK population from the very start of their asylum process.

POLICY SHIFTS on DETENTION

We bring attention to the policy shift in the UK regarding the use of immigration detention. Further to extensive lobbying and evidence of the harms caused by detention, the Conservative Liberal Democrat Coalition government produced a policy statement to end the detention of children for immigration purposes (2010). This policy decision was made as a result of the growing body of research that detention is psychologically and physically detrimental and harmful to children.

We hope that other countries might learn from the reversal in detention policy for children and families who are subject to UK immigration laws. One key element of the new process includes strengthening decision-making by working more closely with the United Nations High Commissioner for Refugees (UNHCR) to test and improve decisions. A second element involves the creation of a specialist group of family case-owners, providing early access to legal advice and offering practical support and guidance to families, right through the asylum application process. Furthermore, the government has committed to ensuring that families have a dedicated family conference to discuss future options including the specific option of assisted return, engaging with families throughout the process. Also, commitments have been made to families who do not choose to take up the offer of assisted return to receive at least two weeks' notice of the need to leave the country and the opportunity to leave under their own steam. This extended notification period – up from 72 hours - will ensure that the family can prepare properly for their return and give them time to follow up outstanding issues or pursue further legal channels (UKBA 2010).

While the focus of the new approach is on managing family returns, the new model advocates ensuring that families with children are treated humanely and in a way that is consistent with UK international obligations and statutory duty in relation to children, and places a far greater emphasis on engagement with families.

CONCERNS about CHILDREN and DETENTION in the UK

Despite the policy shifts on detention in the UK, children and their families (subject to immigration controls in the UK) continue to be affected by the detention for a number of reasons:

1. Children, young people and their families continue to be held in immigration removal facilities and prison cells in the UK.
2. Children, young people and their families are detained in holding rooms (prior to removal from the UK) which are wholly unsuitable for holding children.
3. Children and young people continue to be detained in facilities for adults on the grounds that their age is in question and are referred to as 'age disputed'. Some of these young people are released with an electronic tagging device.
4. Children are separated from their parent (often their sole or primary carer) when their parent is detained.

CASE STUDIES from the UK

1. **Children, young people and their families continue to be held in immigration removal facilities and prison cells in the UK.**

Children continue to be held in immigration removal facilities and prison cells in the UK, despite government policy commitments to end the practice (Children’s Society 2011; Gower 2011, Home Affairs Section, House of Commons library; Guardian 2011; Refugee Children's Consortium 2011).

‘ Children in immigration detention ’



Medical Justice 2010

From May to August 2011, 697 children were held at all Greater London and South east airports. Almost one third were unaccompanied children. This could mean as many as 2,000 children detained each year (Children’s Society 2011).

2. Children, young people and their families are detained in holding rooms, prior to removal from the UK.

The holding rooms are wholly unsuitable for holding children. For example: none of the rooms has natural lighting, there is no access to open air and there are no modesty screens in front of the lavatory doors. Furthermore, the family space at Terminal 3 is an area of 9 square metres:

Case study: Overcrowding in Terminal 3 detention facilities

A mother, two teenage daughters and a son did not have enough room to sleep in the Terminal 3 family space. They had to rest as best they could across the tables and chairs in the main room, in the company of a large number of other detainees. (Heathrow Independent Monitoring Board 2011-12)

Case study: Overcrowding in Terminal 4 detention facilities

Twenty detainees were present at Terminal 4. Twelve of them were in a room of 27 square metres and with 16 seats. They were a mother and her nine months old baby; mother, father and child approaching two years old; mother, father and three children between three months and four years old; an unaccompanied child aged 13 and a woman travelling on her own. Several people were lying across seats, so some of the children were confined to the floor. The room was so full that a pregnant woman and her husband had to be accommodated in the male holding room. The unaccompanied

boy wanted to lie down, but was not able to do so until another detainee went to the lavatory, leaving her with no seat. One of the husbands was attempting to sleep, sitting upright in a seat with a low back. The Board considers that these people were held in conditions that can only be described as degrading. (Heathrow Independent Monitoring Board 2011-12)

These facilities are also inappropriate for overnight use; however, many detainees, including children, are held for long periods of time and through the night (some for more than 24 hours). The private contractual arrangements with G4S and Reliance require that if a female detainee or a child is present, at least one of the two detention custody officers (DCO's) on duty must be a woman, yet neither company has provided female DCOs in any of the cases when this has been required (Heathrow Independent Monitoring Board 2011-12).

3. Children and young people continue to be detained in facilities for adults on the grounds that their age is in question and are referred to as 'age disputed'. Some of these young people are released with an electronic tagging device.

A significant proportion of UK detainees are actually children (Refugee Council 2012). Of particular concern is the plight of unaccompanied children who reside without the care and protection of primary care-givers, and suffer socially and psychologically as a result of separation from their parents or guardians. Furthermore, children and young people continue to be detained as part of the asylum process because a decision has been made to treat them as adults.

Case study: Specialist age dispute Adviser (Refugee Council 2012)

In 2010 Refugee Council's specialist age dispute Adviser worked with 36 young people held in detention. Twenty six (72 per cent) of these were released from detention because they were assessed as children. Of the remainder, six were judged to be adult and four were released from detention without their age being resolved.

In 2011, the Adviser worked with 38 young people held in detention. Twenty two (58 per cent) of these were released from detention because they had been assessed as children, 13 were assessed as adult. The remainder were released as adult and awaiting the result of their age assessment when Refugee Council ceased working with them.

In the first three months of 2012, 11 young people received help to challenge their detention on the grounds of an age dispute. Six (55 per cent) were released after being found to be children.

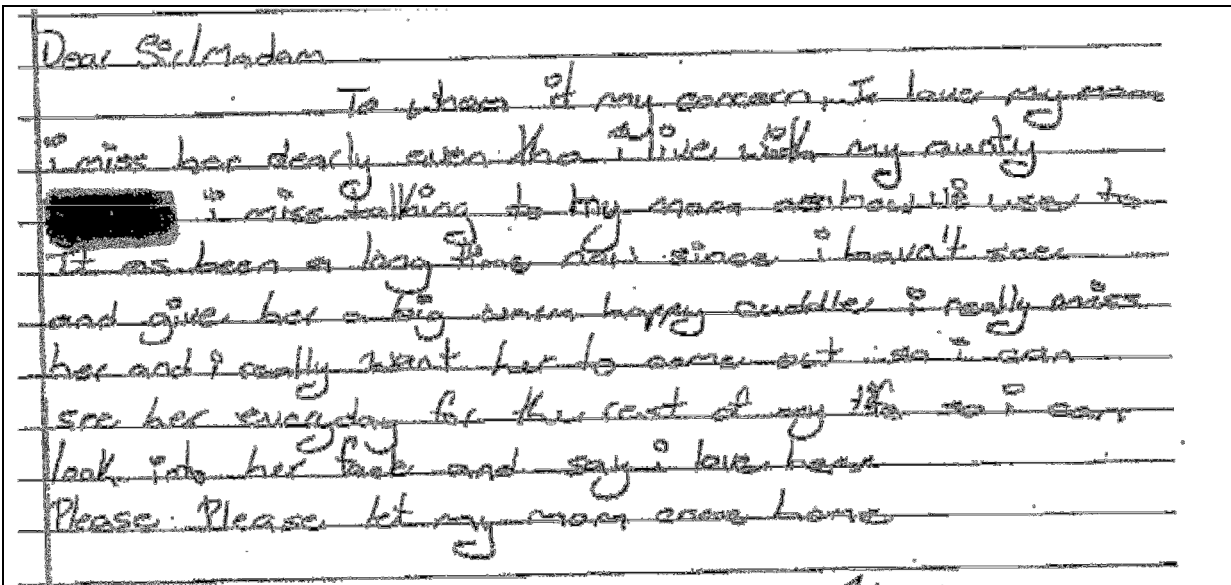
Many young people and children who come to the UK and claim asylum find it difficult or they are unable to offer official documents or evidence of their date of birth. Registering births is done very differently all around the world which will account for many of the difficulties with 'official documents'. However, people seeking asylum may also be travelling on documents which are not their own or have been given to them, and these documents are likely to have an adult date of birth

for purposes of legal travel. In the context of the precarious nature of forced migration, children are often advised to claim they are adults or they may decide they are safer if they tell others they are adults. This may act as a mechanism to protect them from people who wish to exploit them.

Some young people are released from detention and monitored using an electronic tagging device. We believe the use of electronic tagging as an alternative approach to enable authorities to track young people and families should be rejected. The stigmatisation of electronic tagging has a negative effect on all asylum seekers within their communities. We are unaware of any evidence that electronic surveillance has an impact on reducing absconding rates.

4. Children are separated from their parent (often their sole or primary carer) when their parent is detained.

The consequences of detaining parents include: short and long-term separation of children from parents; loss of contact and potentially permanent separation between children and parents, and also between siblings if the children are placed in different fostering arrangements; stigma and discrimination; and potential violations of rights to accommodation, education, physical or psychological health.



The image shows a handwritten letter on lined paper. The text is written in cursive and reads: "Dear Sir/Madam To whom it may concern, I love my mum I miss her dearly even tho I live with my aunty I miss talking to my mum about we use to it as been a long time since I havn't see and give her a big warm happy cuddle I really miss her and I really want her to come out idd I can see her everyday for the rest of my life so I can look into her face and say I love her Please: Please let my mum come home". At the bottom right of the letter, there are some faint marks that look like "11 1".

This letter was sent by Nina (14 years old) to an immigration judge who was considering her mum's bail application (Bail for Immigration Detainees 2012).

to whom it may concern
 I want my mum out because i miss her so much I want her to be miss of my life
 I want Reagh missed her mum was at here for
 my birthday and it make me sad here to give me hugs n kisses I need her to be
 my dad need help to look after me
 told me he need to look after come me
 I had sports and she is the best mum
 For me. I need her and miss her and she was at home to help take care
 them to cheer

This letter was sent by Ben (7 years old) to an immigration judge who was considering his mum's bail application (Bail for Immigration Detainees 2012)

CONCLUSION

The detention of children is unnecessary and represents a violation of many rights under the UN Convention on the Rights of the Child (UNHCR) in terms of several key articles (for example, the welfare of the child being the primary consideration). The conditions of detention impose confinement and incarceration, and the effects of detention raise serious human rights and welfare issues about the treatment of children in the UK who have fled persecution and are possibly already traumatised.

We would draw your attention to the 1999 United Nations High Commissioner for Refugees, whose guidelines relating to detention and asylum assert that child refugees should not be detained. We also wish to highlight Article 3:1 of the Convention on the Rights of the Child (1989): 'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration'. This is a fundamental principle of UK child welfare legislation and we feel that all countries (including the UK) should ensure that the approach to harmonising domestic legislation with the CRC be extended to immigration law, policy and practice.

We believe, however, that vulnerability applies not only to children but to other groups and acknowledgement that asylum seekers and refugees (including women, families and, often, men) are an especially vulnerable group because of previous harms they may have been exposed to. This focus resonates with the emerging body of empirical work that informed the policy reversal on the detention of children in the UK.

ANNEX 1-5 KEY RECOMMENDATIONS

The Centre for Applied Childhood Studies, University of Huddersfield, makes the following recommendations for consideration on this Day of General Discussion. States should implement national-level measures to implement the rights of children in international migration situations to include:

1. Cease the detention of children and families immediately; the practice is harmful; it breaches compliance with international human rights agreements and there is no evidence that non-detention leads to negative outcomes for immigration control purposes.
2. Develop community-based alternatives to detention. Individual citizens or groups (such as relatives, friends, NGOs, church groups) could act as guarantors for families seeking asylum who do not need State monitoring and act as a supportive link at hearings and all official appointments.
3. Take all necessary steps to ensure that no more children are detained because of age assessing systems, taking explicit account that no single method of assessment is adequate; appearance is a particularly unreliable indicator of age, especially when children and young people are going through puberty; and extreme caution should be exercised on classifying age assessments.
4. In cases in which young people are identified as being in need of monitoring for immigration purposes: i) closer cooperation with social services (in the UK Social services have a duty of care for unaccompanied children) or other organisations with a welfare responsibility for children, to ensure that reporting requirements take into account the welfare of the child; ii) granting temporary or indefinite leave for unaccompanied children up to the age 21 years; and iii) proper care and consideration be given to ensuring that they are not returned to situations where there is a risk of harm at the end of this period.
5. Special care and assistance be offered to other vulnerable groups, especially mothers and women who are dependents on asylum claims, who may be especially vulnerable because of previous harms they have been exposed to.

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