



COMMISSIONER FOR HUMAN RIGHTS

COUNCIL OF EUROPE



CommDH(2008)23  
Strasbourg, 18 September 2008

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## MEMORANDUM

**by Thomas Hammarberg**  
**Commissioner for Human Rights of the Council of Europe**

Following his visits to the United Kingdom  
on 5-8 February and 31 March-2 April 2008

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Issues reviewed:  
Asylum and immigration

## Executive Summary

Commissioner Thomas Hammarberg and his delegations visited the United Kingdom from 5 to 8 February and from 31 March to 2 April 2008. In the course of these visits the Commissioner held discussions with State authorities and non-governmental organizations on a number of human rights issues, including asylum and immigration, and visited some institutions including the Colnbrook and Yarl's Wood Immigration Removal Centres. Among the State authorities contacted was the Home Office Minister of State Liam Byrne.

The Commissioner focused during both his visits on the following major issues relating to asylum and immigration, commented on in detail in the present Memorandum:

- I. **Administrative detention of asylum seekers upon entry, in the context of the "Detained Fast Track" (DFT):** While the Commissioner commends the authorities' efforts to enhance the efficiency of the asylum system, he is concerned about the publicized targets of the UK Border Agency (UKBA) aimed at accelerating further asylum procedures, given that celerity and quality of decision-making in the complex field of refugee law and protection are rarely a matching pair. The Commissioner notably recommends that the UK authorities consider regulating DFT by introducing special legislation that would be fully in conformity with the legislative standards laid down by the European Convention on Human Rights, expressly proscribe DFT in relation to particularly vulnerable persons, such as unaccompanied minors, and expressly provide alternatives to detention measures.
- II. **Detention of rejected asylum seekers and of immigrants subject to deportation:** The Commissioner is concerned at the UKBA's public commitment to expanding the immigration detention facilities. He urges the authorities to consider the possibility of drastically limiting migrants' administrative detention and recommends, in the meantime, that a maximum time limit for administrative detention be introduced into domestic law. Moreover, the Commissioner recommends that initial and on-going education in human rights protection be promoted for all immigration staff, possibly in cooperation with national human rights structures or other competent organizations.
- III. **Special needs of children in the context of asylum and immigration:** Having noted in particular the high annual numbers of unaccompanied asylum seeking children (UASC), the majority of them reportedly smuggled or trafficked, the Commissioner urges the authorities to proceed promptly to the ratification of the 2005 Council of Europe anti-trafficking Convention, to further improve the age-assessment procedures and to review constantly and systematically the welfare services provided to UASC by local authorities. The Commissioner also encourages the UKBA to pursue further its effort aimed at providing alternative-to-detention regimes for families and children and calls on the authorities to withdraw, as soon as possible, the "immigration reservation" to the UN Convention on the Rights of the Child.
- IV. **The cases of ethnic Tamils subject to deportation to Sri Lanka:** The Commissioner has been seriously concerned about the cases of approximately 235 Sri Lankan Tamils subject to deportation and the fact that these cases were not resolved at national level and were brought to Strasbourg, encumbering the over-burdened docket of the European Court of Human Rights. The Commissioner notes with concern that the Home Office has not accepted certain security-related assessments and guidelines on asylum seekers drawn up by UNHCR and urges the UK authorities to provide refuge to ethnic Tamils from Sri Lanka, as long as there are substantial grounds showing the existence of a real risk for their life and limb in case of forced return.
- V. **Aliens' forced return in the context of diplomatic assurances:** The Commissioner strongly opposes the UK practice of aliens' forced returns on the basis of diplomatic

assurances which are inherently flawed since they are usually sought from countries with long-standing, proven records of torture and ill-treatment. The Commissioner calls upon the authorities to follow the Council of Europe Committee of Ministers' *Twenty Guidelines on Forced Return* and recalls the deporting State's duty to monitor returnees' reception and to ensure full protection of their safety and dignity.

The UK authorities' response is appended to the present Memorandum.

## I. Introductory note

1. This Memorandum is based on two visits to the United Kingdom by the Commissioner for Human Rights (the Commissioner) from 5 to 8 February and from 31 March to 2 April 2008, during which he held discussions with State authorities and non-governmental organizations on a number of human rights issues. During his second visit the Commissioner visited some institutions including the Colnbrook Immigration Removal Centre (IRC) – a centre detaining only males adjacent to Heathrow airport and the Yarl's Wood IRC in Clapham, Bedfordshire – a centre detaining only females and families.<sup>1</sup> This Memorandum deals with the aspects of the visits relating to asylum and immigration.
2. The Commissioner sincerely wishes to thank the United Kingdom authorities for the assistance which they provided in facilitating the independent and effective performance of both visits.
3. The visits and discussions held at the two aforementioned IRCs with the staff of the United Kingdom Border Agency (UKBA)<sup>2</sup> and of the IRCs' private managing company, as well as with foreign national detainees, were particularly interesting and useful.
4. Human rights issues relating to asylum seekers and immigrants in the United Kingdom continue to constitute some of the major challenges for this country<sup>3</sup>, as is the case in most, if not all, Council of Europe Member States.
5. The Commissioner wishes to reiterate that the treatment afforded by Member States to foreigners, asylum seekers or immigrants wishing to enter Europe constitutes a litmus test for States' effective observance of and respect for fundamental human rights principles.
6. The Commissioner has noted the on-going efforts made by the United Kingdom with a view to developing a more efficient system of asylum and immigration. However, in an era characterized by an increased (forced or other) trans-border movement of persons, the enhanced efficiency of a State's mechanisms in this field should not prevail over fundamental human rights and freedoms or lose sight of the relevant Council of Europe standards.
7. The Commissioner has focused during both his visits on the following major issues relating to asylum and immigration, commented on in detail below:

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<sup>1</sup> During his first visit the Commissioner was accompanied by his Advisor Mr Dennis Van Der Veur and his Personal Assistant Ms Sandra Ferreira; during his second contact visit the Commissioner was accompanied by his Advisors Mr Nikolaos Sitaropoulos and Mr Dennis Van Der Veur.

<sup>2</sup> On 1 April 2008, the UKBA replaced the former United Kingdom Border and Immigration Agency (UKBIA), bringing together border, immigration, customs and visa checks, [www.ukba.homeoffice.gov.uk](http://www.ukba.homeoffice.gov.uk).

<sup>3</sup> See also Council of Europe Commissioner for Human Rights, *Report on his visit to the United Kingdom* (4-12/11/2004), 08/06/2005, CommDH(2005)6, section on immigration and asylum, paragraphs 36-77.

- a) Administrative detention of asylum seekers upon entry, in the context of the “Fast Track Processes”;
- b) Detention of rejected asylum seekers and of immigrants subject to deportation;
- c) Special needs of children in the context of asylum and immigration;
- d) The cases of ethnic Tamils subject to deportation to Sri Lanka;
- e) Aliens’ forced return in the context of diplomatic assurances.

## II. Administrative detention of asylum seekers upon entry, in the context of the “Fast Track Processes”

8. As at 29 December 2007, 1,455 persons who had sought asylum at some stage were being detained in the United Kingdom solely under Immigration Act powers<sup>4</sup>.
9. Administrative detention of asylum seekers upon entry into the United Kingdom is mainly applied under the “Fast Track Processes”, that is, administrative and judicial (appeal) proceedings aimed at an accelerated determination of refugee status applications which are proved to be unfounded. These processes were first applied at the Oakington IRC (Longstanton, Cambridgeshire) in 2000, in a period when the country was faced with an increased number of asylum seekers, and are currently in use in two more IRCs in England: those of Harmondsworth (adjacent to Heathrow airport) and Yarl’s Wood. This type of detention of asylum seekers is commonly called “Detained Fast Track” (DFT). The processes in Harmondsworth and Yarl’s Wood are particularly fast in practice: the refugee applicant is usually interviewed on day two and served with a decision on day three following his or her asylum request.
10. The refugee status recognition rates in these three DFT centres ranged from 0 to 2% in the third and fourth quarters of 2007<sup>5</sup>. The refugee status first instance recognition rate in 2007 in the United Kingdom was approximately 16%<sup>6</sup>.
11. It is noted that there is no special statutory basis for the administrative detention of asylum seekers in the “Fast Track Processes”. The power to detain is construed by the UKBA as emanating from the Immigration Act 1971 (as subsequently amended), under which immigration officers are entitled to order the detention of persons arriving in the United Kingdom to determine whether they should be given leave to enter.
12. The criteria that form the basis for the detention of asylum seekers in the “Fast Track Processes” are found in Chapter 55 of the UKBA Enforcement Instructions and Guidance (replacing Chapter 38 of the UKBA Operational Enforcement Manual), an internal, administrative manual containing guidance and information to immigration officers. Under Chapter 55.4 on “Fast Track Processes”, “[a]ny [asylum] claim may be referred to the Detained Fast Track, whatever the nationality or country of origin of the applicant, where it appears after screening to be one that may be decided quickly. To assist staff in making referrals, the ‘Detained Fast Track Processes Suitability List’ includes a list of countries which may well give rise to claims which may be decided quickly, within the indicative timescales for the Detained Fast Track”<sup>7</sup>.

<sup>4</sup> See Home Office, *Asylum Statistics : 4<sup>th</sup> Quarter 2007*, p. 10, available at: [www.homeoffice.gov.uk/rds/immigration1.html](http://www.homeoffice.gov.uk/rds/immigration1.html).

<sup>5</sup> Ibid. Tables 17, 19, 21 and Home Office, *Asylum Statistics: 3<sup>rd</sup> Quarter 2007*, Tables 17, 19, 21.

<sup>6</sup> Rate based on “initial decisions” and refugee status recognitions, Home Office, *Asylum Statistics : 4<sup>th</sup> Quarter 2007*, Table 4b.

<sup>7</sup> The same manual (Chapter 55.4) contains a list with particularly vulnerable persons, such as unaccompanied minors, disabled applicants, pregnant females of 24 weeks and above, who “will usually be unsuitable for the detained fast track”.

13. It is recalled that under Article 5, paragraph 1, of the European Convention on Human Rights, a person may be deprived of their liberty only “in accordance with a procedure prescribed by law”.
14. Under the established case law of the European Court of Human Rights, the domestic law that provides for the deprivation of a person’s liberty should fully conform to the qualitative requirements prescribed by the rule of law principle, inherent in the Convention.
15. According to the European Court of Human Rights, quality of law under the Convention “implies that where a national law authorises deprivation of liberty - especially in respect of a foreign asylum-seeker - it must be sufficiently accessible and precise, in order to avoid all risk of arbitrariness.”<sup>8</sup> That is to say, the law should be in public form in order to be easily accessed by every person concerned. In addition, it should be marked by exactness and sufficient clarity so that its consequences are foreseeable by the persons to whom it is applied.<sup>9</sup>
16. Importantly, the European Court of Human Rights has noted that “[t]hese characteristics are of fundamental importance with regard to asylum-seekers at airports, particularly in view of the need to reconcile the protection of fundamental rights with the requirements of States’ immigration policies.”<sup>10</sup>
17. Finally, it is noted that refugee applicants held at the IRCs of Oakington and Yarl’s Wood are subject to the “non suspensive appeals” (NSA) system, provided for by Section 94 of the Nationality, Immigration and Asylum Act 2002<sup>11</sup>. Under this legislation, “where the Secretary of State certifies an asylum or human rights claim as clearly unfounded, the appellant may not appeal while in the United Kingdom”. The Secretary of State is bound to certify the above claims as clearly unfounded if the applicants come from a list of NSA countries (added therein by way of a statutory instrument approved by both Houses of Parliament) which are presumed to be safe<sup>12</sup>, unless the Secretary of State is “satisfied” to the contrary.
18. Under the same legislation, the Secretary of State may add a State, or part of a State, to the NSA list “if satisfied that - (a) there is in general in that State or part no serious risk of persecution of persons entitled to reside in that State or part, and (b) removal to that State or part of persons entitled to reside there will not in general contravene the United Kingdom’s obligations under the Human Rights Convention”.

#### Conclusions and Recommendations

19. The Commissioner commends the efforts of the UKBA aimed at enhancing the efficiency of the asylum system. In principle, he considers positive the employment as from March 2007 of the New Asylum Model to all new asylum claims, under which a single case owner has responsibility for a refugee applicant throughout the asylum procedure.

<sup>8</sup> *Amuur v France*, judgment of 25/06/1996, paragraph 50.

<sup>9</sup> *Al-Nashif v Bulgaria*, judgment of 20/06/2002, paragraphs 119, 121.

<sup>10</sup> *Amuur v France*, *ibid.*

<sup>11</sup> See UKBA, *Guidance Documents, Non-suspensive Appeals*, 02/04/2008, [www.ukba.homeoffice.gov.uk](http://www.ukba.homeoffice.gov.uk).

<sup>12</sup> As at 02/04/2008, the NSA country list read: “Albania, Bolivia, Brazil, Ecuador, Ghana (Males only), India, Jamaica, Macedonia, Moldova, Mongolia, Nigeria (Males only), Serbia (Including Kosovo **but not** Montenegro), South Africa, Ukraine”.

20. However, the Commissioner is concerned at the publicized “tough targets” set by the UKBA which, inter alia, aim to increase by 50 per cent the number of asylum cases concluded in less than six months<sup>13</sup>. Celerity and quality of decision-making, especially in the complex field of refugee law and protection, are rarely a matching pair. Accelerated procedures that may lead to a reduction in quality of examination of asylum claims and of decision-making may not be regarded as efficient. The Commissioner suggests that the authorities review this risk before any additional steps to further accelerate the procedures. This also in view of the reduced number of asylum applications (23,430 in 2007, while in 2000 the relevant number was 80,315).
21. Moreover, the Commissioner notes with concern the absence of a special and precise legal framework regarding detention of asylum seekers in “Fast Track Processes”.
22. The Commissioner wishes to reiterate that a clear differentiation should be in place in domestic law and practice between refugee and immigrant applicants. Refugee applicants seek to enter a refuge country because of a well-founded fear of persecution. They are under threat because of their ethnicity, religion, nationality, political opinion or membership of a particular social group. Some of them also need international protection because of their subjection to serious harm in their own countries, such as the death penalty, execution or indiscriminate violence due to armed conflicts.
23. It is of concern that the criteria and details of asylum seekers’ DFT are not contained in law (primary or secondary legislation) but in an internal, administrative manual of immigration officers. The manual is available at the site of the UKBA but part of it (“a small amount”) is not public on the ground that it “may damage the effectiveness of the immigration control”<sup>14</sup>. In addition, the criteria (see above paragraph 12) under which the aforementioned manual allows administrative detention are not characterized by precision, a fact that may lead to an excessive use by immigration officers of their discretion to detain asylum seekers.
24. Therefore, the Commissioner recommends that the United Kingdom authorities consider regulating this issue by introducing special legislation fully in compliance with the standards laid down by the European Convention on Human Rights (see above paragraphs 14-16)<sup>15</sup>. In this context, the Commissioner strongly encourages the authorities to conclude promptly the “Simplification Project”, which was initiated in June 2007 and is aimed at the consolidation and simplification of immigration law.
25. The international refugee law principle of *non-detention of refugee applicants* should be firmly established in British immigration law. Their detention may occur only exceptionally, for the shortest possible time and only for the following purposes: (a) to verify the identity of the refugees; (b) to determine the elements on which the claim to refugee status is based (c) to deal with cases where refugees have destroyed their travel and/or identity documents or have used fraudulent documents to mislead the authorities of the country of refuge; (d) to protect national security or public order<sup>16</sup>.

<sup>13</sup> UKBA press release of 03/04/2008, [www.ukba.homeoffice.gov.uk](http://www.ukba.homeoffice.gov.uk).

<sup>14</sup> [www.bia.homeoffice.gov.uk/policyandlaw/guidance/enforcement](http://www.bia.homeoffice.gov.uk/policyandlaw/guidance/enforcement).

<sup>15</sup> In this respect, it is noted that in the case of *Saadi v the United Kingdom*, judgment of the European Court of Human Rights of 29/01/2008, there was not raised the issue of quality of the law that allowed the applicant’s fast track detention (of 7 days) in 2001 in Oakington IRC. Also, in the particularly fast DFT processes, introduced later, in Harmondsworth and Yarl’s Wood IRCs detention usually is longer than 7 days.

<sup>16</sup> See also Commissioner’s Viewpoint, *States should not impose penalties on arriving asylum-seekers*, 17/03/2008, [www.coe.int/t/commissioner/Viewpoints/080317\\_en.asp](http://www.coe.int/t/commissioner/Viewpoints/080317_en.asp).

26. The law should expressly proscribe the application of “Fast Track Processes” to particularly vulnerable persons, such as asylum-seeking unaccompanied minors and persons with regard to whom there are reasonable grounds to believe that they are victims of torture, sexual violence or human trafficking, cases whose examination and analysis require *de facto* more time.
27. Alternatives to detention measures should be expressly provided for in the law. Reports by the Office of the United Nations High Commissioner for Refugees and specialist NGOs may be helpful in this respect<sup>17</sup>.
28. Asylum seekers in detention should be informed promptly, in a language they understand, of the reasons for their arrest and detention, in conformity with Article 5, paragraph 2, of the European Convention on Human Rights<sup>18</sup>.
29. The Commissioner is particularly worried about the serious reduction of legal aid provided to asylum seekers. Information on existing alternatives to detention measures, such as release on bail, and expert legal aid to all detained asylum seekers should be provided *ex officio*, as soon as the detention starts. Without this, alternative measures to detention can hardly be used and applied in practice.
30. The Commissioner recommends that the UKBA adopt a more cautious and flexible approach towards the “Fast Track Processes” and its announced policy of making and enforcing the majority of asylum decisions within six months<sup>19</sup>. Administrative celerity aimed at efficiency should not act to the detriment of the effective observance of the European human rights standards and the principles of international refugee law.
31. The Commissioner wishes also to stress that asylum seekers should be kept in reception centres, not in detention or removal centres. Having noted that the United Kingdom does not apply to detention centres the Council Directive 2003/9/EC of 27/01/2003 on minimum standards for the reception of asylum seekers, the Commissioner recommends that the United Kingdom authorities consider applying this Directive in all IRCs where asylum seekers are detained.
32. As regards the NSA procedures, the Commissioner acknowledges that the aforementioned practice of drawing up lists of safe third countries and establishing (in principle) a rebuttable presumption of safety therein, has the potential of enhancing efficiency by accelerating the process of refugee status determination.
33. However, the Commissioner urges the UKBA to be particularly attentive when applying the NSA procedures, especially in the context of the DFT processes, and always allow applicants to remain in the country if they have arguable claims that they would be subjected, if forcibly returned to their country of origin, to treatment contrary to Articles 2 or 3 of the European Convention on Human Rights<sup>20</sup>.

<sup>17</sup> See UNHCR, *Alternatives to Detention of Asylum Seekers and Refugees*, April 2006, www.unhcr.org, N. Chmelickova (ed), *Survey on Alternatives to Detention of Asylum Seekers in EU Member States*, 2007, <http://alternatives-to-detention.org>.

<sup>18</sup> See also judgment of the European Court of Human Rights in the case of *Saadi v the United Kingdom*, 29/01/2008, where a violation of Article 5, paragraph 2, was found due to a delay of 76 hours in providing reasons for detention to the applicant asylum seeker who was held at Oakington IRC.

<sup>19</sup> See Home Office Border and Immigration Agency, *Ten point plan for border protection and immigration reform*, press release of 14/01/2008, www.bia.homeoffice.gov.uk.

<sup>20</sup> See also Council of Europe Commissioner for Human Rights, *Recommendation concerning the rights of aliens wishing to enter a Council of Europe member State and the enforcement of expulsion orders*, 19/09/2001, CommDH/Rec(2001)19, paragraph 11, www.coe.int/t/commissioner.

34. Finally, the attention of all, administrative and judicial, decision-making organs should be drawn, especially through their initial and on-going training, to the relevant recommendations contained in Guidelines 5, paragraph, 3, and 2, paragraph, 1, of the Council of Europe Committee of Ministers *Twenty Guidelines on Forced Return* (2005)<sup>21</sup>, as well as to paragraph 11 of Recommendation CommDH/Rec(2001)19 of the Council of Europe Commissioner for Human Rights<sup>22</sup>.

### III. Detention of rejected asylum seekers and of immigrants subject to deportation

35. As at 29 December 2007 there were 2,095 persons detained in the United Kingdom solely under Immigration Act powers; 1,820 were male, 275 female, and 35 children (under the age of 18)<sup>23</sup>.
36. The recorded length of detention of the 35 children detained under Immigration Act powers in 2007 ranged from “7 days or less” to “2 months to less than 3 months”<sup>24</sup>. During his visit, the Commissioner was informed that on 31 March 2008 there were recorded 10 (of whom 7 were 4 years old or younger) accompanied children detained for more than 60 days at Yarl’s Wood IRC.
37. The Commissioner was informed that the Government is committed to expanding the detention capacity by 20 per cent over the next two years, in order to increase the number of aliens who can be removed from the country. In particular, an eleventh IRC is currently under preparation, planned to have a capacity of approximately 420 detainees.
38. It is of particular concern that current United Kingdom legislation provides for no maximum time of administrative detention under Immigration Act powers and no automatic judicial oversight of the detention prolongation.
39. In this context, it is noted that the Commissioner’s visit to Harmondsworth IRC scheduled to take place on 1 April was cancelled due to a demonstration of detainees who were protesting at, *inter alia*, their length of detention. Later it was reported that the demonstration escalated and resulted in the arrest by police of a number of detainees on 5 April<sup>25</sup>.
40. The Commissioner was redirected by the UKBA and visited instead the Colnbrook IRC, located very near to the Harmondsworth IRC. In Colnbrook IRC, the Commissioner noted in particular a case of an immigration detainee from Sri Lanka, who claimed that he was an ethnic Tamil and that, having served his sentence of 4 months’ imprisonment for bankcard fraud, had been detained there for 22 months.
41. Under the UKBA Enforcement Instructions and Guidance (Chapter 55.8), “[c]ontinued detention in all cases of persons in sole detention under Immigration Act powers must be subject to administrative review at regular intervals”. Detainees (with access to legal representation) may challenge the lawfulness of their detention through an application for judicial review. By judgment of 21 January 2008, the High Court found unlawful the

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<sup>21</sup> Available at [www.coe.int/t/cm](http://www.coe.int/t/cm).

<sup>22</sup> See above.

<sup>23</sup> See Home Office, *Asylum Statistics : 4<sup>th</sup> Quarter 2007*, Tables 11-12.

<sup>24</sup> *Ibid.* Table 13.

<sup>25</sup> Other detainees’ protests relating to their detention conditions were reported at the end of March and early April 2008 at the IRCs of Oakington and Yarl’s Wood.



detention at Colnbrook IRC of three Algerian nationals for more than a year, given that there was no clear prospect of their removal to the country of origin<sup>26</sup>.

42. The Commissioner also noted that certain immigration detainees in the two IRCs visited were not well informed about the progress of their removal procedures under way or about the identity of the person who had earlier provided them with legal advice. In particular, one detainee from Ethiopia alleged that she had never been informed in writing of the reasons for her arrest and detention at Yarl's Wood IRC. Another detainee of Somali nationality, allegedly a repetitive, petty-crime offender, who had arrived in the country at the age of two and had all his family members in the United Kingdom, apparently was deprived of expert immigration law advice at Colnbrook IRC. Recent reports by United Kingdom institutions on the matter of legal advice and representation available to asylum and immigration detainees confirm the need for adopting urgent measures by the United Kingdom authorities for providing better information and more expert legal advice to these persons<sup>27</sup>.
43. The UKBA officials at Colnbrook IRC informed the Commissioner of the "Facilitated Return Scheme" currently run by the UKBA and the International Organization for Migration. Under this scheme, voluntary returns of aliens subject to deportation are facilitated; the individuals concerned being provided with financial assistance in order to return and reintegrate in their countries of origin. The UKBA officials noted that this scheme had been successful, with more than a thousand alien beneficiaries in the last year alone.
44. Finally, the Commissioner noted that seven of the ten existing IRCs are run by private "service companies", contracted and overseen by the UKBA. The two IRCs visited by the Commissioner are run by SERCO, which provides, except for the surveillance and detention, services relating to the detainees' education, healthcare, religion and recreation. The Commissioner held useful discussions with staff employed by this private company.
45. In this context, it is worth noting the significant work and latest Report of the (former) UKBIA Complaints Audit Committee (2006/2007) in which it was reported, *inter alia*, that "[a]llegations [by persons detained under Immigration Act powers] of racism were roughly equivalent [in the periods 2005/6 and 2006/7], as were allegations of unprofessional conduct and unfair discrimination. The one notable difference relates to allegations of rudeness and criminal behaviour. In 2005/6 rudeness accounted for 38% and criminal behaviour for 12%; in 2006/7 rudeness dropped to 28% and criminal behaviour rose to 19%".<sup>28</sup>
46. During his visit, the Commissioner was provided with a copy of the initial training programmes available to SERCO staff (under UKBA supervision) at the IRCs of Colnbrook (six weeks' training) and Yarl's Wood (seven weeks' training). The training programmes contain a series of sessions regarding, *inter alia*, the 2001 Detention Centre Rules, the rights of a detainee and the immigration and asylum legislation and child protection. "Human rights" or the "Human Rights Act 1998" are accorded approximately one and a half hours in these training programmes.

<sup>26</sup> *The Queen on the application of A, MA, B and ME v Secretary of State for the Home Department*, judgment of 21/01/2008, [2008] EWHC 142 (Admin).

<sup>27</sup> See, *inter alia*, House of Lords – House of Commons, Joint Committee on Human Rights, *ibid.* paragraphs 286-291, Her Majesty's Chief Inspector of Prisons, *Report of an unannounced inspection of the residential short-term holding facility at Manchester Airport*, 3-4 September 2007, pp 13-15, <http://inspectorates.homeoffice.gov.uk/hmiprisons/>.

<sup>28</sup> UKBIA Complaints Audit Committee, *Annual Report 2006/2007*, November 2007, p. 19, [www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/cacreports](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/cacreports).

### *Conclusions and Recommendations*

47. The Commissioner is fully cognizant of the migration flow pressure exerted on the United Kingdom, similar to other Council of Europe Member States. This complex, international and social phenomenon must be dealt with in a manner which is not only efficient but also effectively respects human rights principles.
48. The Commissioner commends the Home Office practice of keeping and publishing detailed statistics on persons detained under Immigration Act powers and on the length of children's detention. It is recommended that length of detention statistics be kept and published with regard to all adult detainees.
49. The Commissioner is particularly concerned by the reports on the detention conditions in Harmondsworth IRC which he was not able to visit on 1 April, as scheduled. This particular IRC has a sad record of disturbances that in the past have resulted in serious damage to its premises. The Commissioner urges the UKBA immediately to take all necessary measures for the amelioration of the detention conditions in Harmondsworth IRC.
50. The Commissioner is concerned by the UKBA's public commitment to expanding the immigration detention facilities. This is likely to increase further the practice of administrative detention of refugee applicants and of immigrants subject to deportation. Depriving aliens of their liberty and keeping them in detention strains, often excessively, the personal and family lives of detainees. It is also a burden on State resources.
51. The Commissioner urges the United Kingdom authorities to consider the possibility of drastically limiting the practice of administrative detention of migrants, one problematic aspect of which is the high degree of discretion and broad powers of the immigration officers<sup>29</sup>.
52. In the meantime, the Commissioner strongly recommends that a maximum time limit for administrative detention be introduced into the United Kingdom legislation, as is the case in France and certain other Council of Europe Member States, and that administrative detention is subject to automatic judicial oversight.
53. The Commissioner urges the United Kingdom authorities to adopt measures in order to ensure that asylum and immigration detainees are kept systematically informed and are provided with on-site, expert legal advice, so that existing alternatives to detention, such as release on bail, may easily be applied for by detainees. In this context, the authorities' attention is drawn to the Council of Europe Committee of Ministers' *Twenty Guidelines on Forced Return* (2005)<sup>30</sup>, in particular Guideline 4 on notification of the removal order, Guideline 5 on remedy against the removal order and Guideline 9 on judicial remedy against detention.
54. The Commissioner commends the aliens' voluntary return scheme currently run by UKBA and IOM and urges the United Kingdom authorities to continue this scheme, regularly evaluating and improving it, if necessary, in accordance with the Council of Europe Committee of Ministers' Guideline 1 on promotion of voluntary return<sup>31</sup>.

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<sup>29</sup> See also Report of the United Nations Special Rapporteur on the Human Rights of Migrants Jorge Bustamante to the Human Rights Council, UN Doc. A/HRC/7/12, 25/02/2008, paragraphs 41-50; United Nations, Office of the High Commissioner for Human Rights, *Administrative Detention of Migrants*, undated, esp. conclusions, [www2.ohchr.org/english/issues/migration/taskforce/disc-papers.htm](http://www2.ohchr.org/english/issues/migration/taskforce/disc-papers.htm).

<sup>30</sup> Available at [www.coe.int/t/cm](http://www.coe.int/t/cm).

<sup>31</sup> *Idem*.

55. Finally, the Commissioner commends the work of the UKBA Complaints Audit Committee whose work and reports on immigration detainees' complaints contribute to the amelioration of detention conditions. The Commissioner recommends that the UKBA and the contracted private companies that manage the IRCs pay particular attention to the initial as well as the on-going training and education of their staff. More time should be accorded to educational courses concerning human rights protection during the initial training programmes. In addition, special, initial and on-going education in human rights protection should be promoted, possibly in cooperation with national human rights structures, such as the Equality and Human Rights Commission, or other competent professional, national or international, organizations with experience in the protection of immigrants and asylum seekers' human rights.

#### IV. Special needs of children in the context of asylum and immigration

56. In 2007 there were 3,135 applications for asylum in the United Kingdom lodged by unaccompanied asylum-seeking children (UASC), that is, persons *"under 18, or who, in the absence of documentary evidence establishing age, appea[red] to be under that age, [were] applying for asylum in [their] own right and; [were] separated from both parents and [were] not cared for by an adult who by law or custom has responsibility to do so"*<sup>32</sup>.
57. A similarly high number of UASC were recorded in 2006, while the numbers of asylum seekers claiming to be unaccompanied children, but not accepted as such by the authorities, seem to be significantly higher<sup>33</sup>.
58. The Commissioner has noted the high number of age disputes with which the UKBA is faced every year and the Government's acknowledgment that x-rays, like other assessment techniques, are incapable of assessing age with absolute precision, and that age assessment processes need to be improved<sup>34</sup>.
59. The Children's Commissioner for England has reported that the majority of the UASC "are either smuggled or trafficked into the country"<sup>35</sup>. Accordingly, the level of protection and the responsibilities of the United Kingdom authorities under international and European human rights law must be correspondingly high.
60. The Commissioner notes with satisfaction the creation and operation as from April 2007 of a special administrative entity ("segment") in charge of asylum applications lodged by children. Caseworkers undergo special, relevant training.
61. UASC are provided with support by local authorities' social services departments which have the statutory duty, under the Children Act 1989, to safeguard and promote the welfare of all children in need, irrespective of their immigration status.
62. However, the Commissioner has been informed during his visits that the welfare services provided by local authorities do not always meet the standards prescribed by

<sup>32</sup> See Home Office, *Asylum Statistics* concerning 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Quarters 2007, loc. cit.

<sup>33</sup> In 2006, 5,515 applications from asylum seekers claiming to be unaccompanied minors were recorded. 3,245 were initially accepted while 2,270 had their age disputed. Children's Commissioner for England, *Claiming Asylum at a Screening Unit as an Unaccompanied Child*, March 2008, [www.11million.org.uk](http://www.11million.org.uk).

<sup>34</sup> House of Lords-House of Commons, Joint Committee on Human Rights, *Government Response to the Committee's Tenth report of this Session: The Treatment of Asylum Seekers*, 25/06/2007, paragraphs 33-34, [www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/jtrights.htm](http://www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/jtrights.htm)

<sup>35</sup> Idem.

law. It is also of concern to note that many UASC are not provided with a legal guardian or advocate and that certain UASC are “de-accommodated”, that is, they are taken out of the “looked after” system before reaching the age of 18<sup>36</sup>.

63. As regards detention, in Chapter 55.10 of the UKBA Enforcement Instructions and Guidance there is a list containing people “*who are normally considered suitable for [immigration] detention in only very exceptional circumstances*”. Therein are included persons such as unaccompanied minors, people with serious disabilities, pregnant women and persons where there is “independent evidence” that they have been tortured. A similar list exists also in the above manual with regard to the DFT asylum processes.
64. Recent reports, however, have pointed to discrepancies between official instructions and practice. Such evidence was presented to the House of Lords - House of Commons Joint Committee on Human Rights in 2006-2007 which led the Committee to note that they were “*deeply concerned by the evidence [they] have heard about the current gap between policy and practice in relation to the detention of vulnerable adults*”, while “*children and their needs are invisible throughout the [asylum] process*”<sup>37</sup>. A specialist NGO in the United Kingdom also reported that from 1 October 2005 to 31 May 2006 21 torture survivors and 7 children were detained at Harmondsworth IRC for an average of 6.8 days and a further 2 torture survivors and 2 children were held for an average of 39.6 days before being released<sup>38</sup>.
65. On 2 April 2008 the Commissioner visited the Yarl’s Wood IRC which hosts single women and families with children. On that date there were 343 detainees therein, including 73 families and 31 children (all accompanied). While the detention conditions and the provision of support and education by committed staff appeared satisfactory, the detention of children for periods that may reach, as mentioned above, almost 3 months raises particular concern.
66. At the same time, the Commissioner was informed of the existence of a pilot project by the UKBA aimed at providing alternative-to-detention open regimes for families with children in the area of Kent. This project reportedly has not met with much success due to the absconding of persons kept there. The UKBA is currently exploring further the issue and obtaining information on good practices of other countries with experience in this field.
67. Finally, the Commissioner has noted with concern that the United Kingdom still adheres, inter alia, to its “immigration reservation” to the United Nations Convention on the Rights of the Child by which children who are refugees or immigrants, despite their special vulnerability, are subject to exclusion from the protective ambit of this Convention<sup>39</sup>. The Commissioner raised this issue during his visit and was informed by the United Kingdom authorities that this reservation is now under review.

<sup>36</sup> House of Lords-House of Commons, Joint Committee on Human Rights, *The Treatment of Asylum Seekers*, Tenth Report of Session 2006-07, Volume I, 30/03/2007, paragraphs 184-193.

<sup>37</sup> House of Lords-House of Commons, Joint Committee on Human Rights, *The Treatment of Asylum Seekers*, Tenth Report of Session 2006-07, Volume I, 30/03/2007, paragraphs 236 and 258-261, [www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/jtrights.htm](http://www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/jtrights.htm). See also Independent Asylum Commission, *Fit for purpose yet? – The Independent Asylum Commission’s Interim Findings*, March 2008, 61-62, [www.independentasylumcommission.org.uk](http://www.independentasylumcommission.org.uk).

<sup>38</sup> Bail for Immigration Detainees, *Briefing Paper on Detained Fast Track – March 2008*, [www.biduk.org](http://www.biduk.org).

<sup>39</sup> The reservation reads: “The United Kingdom reserves the right to apply such legislation, in so far as it relates to the entry into, stay in and departure from the United Kingdom of those who do not have the right under the law of the United Kingdom to enter and remain in the United Kingdom, and to the acquisition and possession of citizenship, as it may deem necessary from time to time”. See also Children’s Rights Alliance for England, *UK Implementation of the Convention on the Rights of the Child*, London, March 2008.

### *Conclusions and Recommendations*

68. The Commissioner urges the United Kingdom authorities to proceed, as soon as possible, to the ratification of the 2005 Council of Europe Convention on Action against Trafficking in Human Beings (in force as from 1 February 2008), which was signed by the United Kingdom on 23 March 2007. This treaty contains significant provisions for the promotion and protection of the rights of victims of trafficking, including children, such as those regarding age disputes, protection of private life, trafficked children's access to education and their special protection in court proceedings.
69. The Commissioner notes, in particular, Article 10, paragraph 4, of the above Convention which prescribes that, as soon as an unaccompanied child is identified as a victim of trafficking, States parties should: a) provide for representation of the child by a legal guardian, organization or authority which shall act in the best interests of that child; b) take the necessary steps to establish the child's identity and nationality; c) make every effort to locate the child's family when this is in the best interests of the child.
70. The Commissioner encourages the UKBA to further improve the age-assessment procedures. As regards in particular children victims of trafficking, the authorities' attention is drawn also to Article 10, paragraph 3, of the above-mentioned Council of Europe Convention on Action against Trafficking in Human Beings, which requires States Parties to presume that a victim is a child if there are reasons for believing that to be so and if there is uncertainty about their age. Until their age is verified, they must be given special protection, in accordance with their rights as defined, in particular, in the United Nations Convention on the Rights of the Child.
71. The Commissioner urges the United Kingdom authorities to review constantly and systematically the welfare services provided by local authorities to UASC and be particularly attentive to the provision to every child of legal advice and of a legal guardian if the child is unaccompanied. In this context, it is noted that minimum standards on UASC are contained in Article 19 of Council Directive 2003/9/EC of 27 January 2003 on the reception of asylum seekers.
72. The Commissioner recalls also the Council of Europe Committee of Ministers' Recommendation CMRec(2007)9 *on life projects for unaccompanied migrant minors*. According to this Recommendation, Council of Europe Member States have been encouraged to develop "life projects" aimed at developing the capacities of minors, allowing them to acquire and strengthen the skills necessary to become independent, responsible and active in society. In order to achieve this, national life projects, fully in accordance with the best interests of the child should pursue objectives relating to the social integration of minors, personal development, cultural development, housing, health, education and vocational training, and employment.
73. Initial and on-going training in human rights law and standards, especially those concerning the rights of the child, should be systematically included in the UKBA curricula of all immigration officers dealing with children, as well as in the training curricula of all the staff of the private companies contracted by UKBA, that manage IRCs with families and children.
74. The Commissioner is particularly concerned by the practice of detaining accompanied children for periods that may reach almost three months. The Commissioner recommends that the UKBA pay particular attention to these cases. Detention of accompanied children in the context of asylum and immigration should be expressly proscribed by law and take place only in exceptional circumstances which should be precisely detailed in the law, in accordance with the standards of the European

Convention on Human Rights and the United Nations Convention on the Rights of the Child.

75. The Commissioner commends the UKBA's pilot project aimed at providing alternative-to-detention regimes for families with children. He encourages the UKBA to pursue further this effort and make this a viable alternative to detention.
76. Finally, the Commissioner calls upon the authorities to reconsider, with a view to withdrawing, the United Kingdom reservations to the United Nations Convention on the Rights of the Child. The Commissioner encourages the authorities to proceed to the withdrawal, as soon as possible, of the "immigration reservation" to the United Nations Convention on the Rights of the Child.

## **V. The cases of ethnic Tamils subject to deportation to Sri Lanka**

77. The Commissioner has been following closely the cases of approximately 235 Sri Lankan Tamils, most of them failed asylum seekers subject to deportation from the United Kingdom. They have lodged applications with the European Court of Human Rights, applying also for interim measures under Court Rule 39, so that their deportations do not occur while the applications are pending before the Court.
78. As from late October 2007, the Court allows Rule 39 applications in all cases involving forced return of ethnic Tamils, given the acutely deteriorating security situation in Sri Lanka. The United Kingdom Government has complied with all Rule 39 interim measures issued so far by the Court.
79. Information from international and non-governmental organizations<sup>40</sup> confirms that since 2006 the political situation in Sri Lanka has been particularly turbulent, characterized, inter alia, by widespread abductions and disappearances, targeting in particular ethnic Tamils. This warrants the special attention of Member States and calls for caution in cases of ethnic Tamils subject to deportation to Sri Lanka.
80. The Commissioner commends the halting of deportations by the United Kingdom Government, in conformity with the Court's Rule 39 requests.
81. However, it remains a matter of serious concern that these cases have not been resolved at national level and have been brought to Strasbourg, encumbering the Court's over-burdened docket with a significant number of complex, individual applications.
82. In this context, it is noted that in the Operational Guidance Note on Sri Lanka, dated 5 November 2007 and valid still in early April 2008, the Home Office expressly does not accept certain assessments and positions of the Office of the United Nations High Commissioner for Refugees (UNHCR) relating to the security situation in Sri Lanka, such as the one concerning the non-existence of realistic internal flight alternatives for persons fleeing targeted violence and human rights abuses by the LTTE (Liberation Tigers of Tamil Eelam)<sup>41</sup>.

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<sup>40</sup> See, inter alia, United Nations, Human Rights Council, Working Group on the Universal Periodic Review, Compilation of UN documents regarding human rights situation in Sri Lanka, A/HRC/WG.6/2/LKA/2, 25/03/2008, United Nations High Commissioner for Refugees, *UNHCR Position on the International Protection Needs of Asylum-Seekers from Sri Lanka*, December 2006, Human Rights Watch, *Recurring Nightmare – State responsibility for "disappearances" and abductions in Sri Lanka*, March 2008.

<sup>41</sup> Page 10, document available at [www.ukba.homeoffice.gov.uk](http://www.ukba.homeoffice.gov.uk).

83. It is noted that two Council of Europe Member States, the Netherlands and Switzerland, as well as one German *Land* (Schleswig-Holstein), have suspended the enforcement of removal orders against rejected Tamil asylum seekers to Sri Lanka<sup>42</sup>.

#### *Conclusions and Recommendations*

84. The Commissioner urges the United Kingdom authorities to provide refuge to ethnic Tamils from Sri Lanka, as long as there are substantial grounds showing the existence of a real risk for these people's life and limb in case of forced return.
85. The Commissioner is concerned that the Home Office does not accept certain security-related assessments and guidelines on asylum seekers from Sri Lanka which have been drawn up by the UNHCR. All the more so when these assessments have been corroborated by other specialist United Nations organs and by the practice of other Council of Europe Member States
86. The Commissioner is seriously worried at the fact that this policy has led to a further increase of the caseload of the European Court of Human Rights by the significant number in individual applications by ethnic Tamils. The processing of so many Rule 39 applications, often raising complex issues of fact and law, is particularly time-consuming for the Court. The Commissioner recommends that the UK authorities declare a moratorium on such deportations until the Court has had an opportunity to rule on the merits of one of these cases.

#### **VI. Aliens' forced return in the context of diplomatic assurances**

87. The Commissioner has been following closely the growing use of diplomatic assurances in the context of immigration removals, According to the United Kingdom Government, extradition or immigration-related removals with diplomatic assurances would occur only in exceptional circumstances, since "*it believes that seeking such assurances is a sensible measure in some cases where the presence of the person in the UK is not conducive to the public good, or where it considers that the person represents a security risk*"<sup>43</sup>.
88. In 2004 the United Kingdom removed two individuals to Libya upon receipt of oral assurances provided by the Libyan Government that, *inter alia*, those persons would not be subjected to ill-treatment by the authorities or ill-treated while in detention.
89. In 2005 the United Kingdom signed Memoranda of Understanding (MoU) with Jordan, Lebanon and Libya which formalized the procedures of diplomatic assurances. These MoU provide, *inter alia*, for the alien deportees to receive private visits from a representative of an "independent body" appointed jointly by the two States concerned.
90. The Commissioner is informed about the decision to deport to Jordan on national security (terrorism-related) grounds, a Jordanian national who there had been charged and convicted on the basis, *inter alia*, of evidence extracted by torture. Another terrorism-related case of attempted deportation concerned two Libyans. In that case,

<sup>42</sup> In the Netherlands there is a general suspension of deportations of rejected Tamil asylum seekers to Sri Lanka until the delivery of a "pilot" judgment of the European Court of Human Rights, while in Switzerland there is a suspension of deportations of rejected Tamil asylum seekers to the North East of Sri Lanka. The German *Land* Schleswig-Holstein has decreed a stop of deportations to Sri Lanka.

<sup>43</sup> See United Nations Committee against Torture, *Consideration of Reports submitted by States parties under Article 19 of the Convention, Comments by the United Kingdom Government to the conclusions and recommendations of the Committee against Torture*, CAT/C/GBR/CO/4/Add.1, 08/06/2006, paragraph 50.

the “independent body” jointly appointed for monitoring the implementation of the assurances was the “Qadafi Development Foundation” headed by one of President Qadafi’s sons. On 9 April 2008 the Court of Appeal ruled that the United Kingdom could not lawfully proceed with any of these deportations<sup>44</sup>.

### *Conclusions and Recommendations*

91. The Commissioner is well aware of the grave difficulties faced by Council of Europe Member States in their efforts to protect their societies from terrorist violence. However, European human rights standards prohibit *in absolute terms* torture or inhuman or degrading treatment or punishment of every person, irrespective of their undesirable or dangerous conduct. As the European Court of Human Rights has stressed, freedom from torture and ill-treatment is one of the fundamental values of European democratic societies.
92. The Commissioner strongly opposes the forced return of aliens on the basis of diplomatic assurances which are usually sought from countries with long-standing, proven records of torture.
93. The Commissioner wishes to reiterate and stress that the weakness inherent in the practice of diplomatic assurances lies in the fact that where there is a need for such assurances, there is clearly an acknowledged, real risk of torture and ill-treatment. Such assurances should never be relied on, where torture or ill-treatment is condoned by the Governments and is widely practised.<sup>45</sup>
94. The inherent weakness of diplomatic assurances has been demonstrated in two major judgments of the Grand Chamber of the European Court of Human Rights, in the cases of *Chahal v the United Kingdom* (15/11/1996) and *Saadi v Italy* (28/02/2008). In both cases the Court found that the enforcement of deportation, to India and to Tunisia accordingly, of the aliens concerned would constitute violations of Article 3 of the Convention, despite the diplomatic assurances that had been requested (obtained in the former case) by the respondent States.
95. The Commissioner draws the authorities’ attention to the Council of Europe Committee of Ministers’ *Twenty Guidelines on Forced Return*, especially to Guideline 20 that regards monitoring and remedies in the case of forced returns. According to paragraph 3 of these Guidelines, forced return operations should be fully documented, particularly with respect to any significant incidents that occur or any means of restraint used in the course of the removal operation.
96. The Commissioner urges the authorities to reconsider, with a view to withdrawing, the United Kingdom’s reservations to the Council of Europe Committee of Ministers’ *Twenty Guidelines on Forced Return*.
97. Finally, in cases of enforced return the deporting State has a duty to monitor the reception of the returnee and ensure full protection of his or her safety and dignity.

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<sup>44</sup> See *Othman (Jordan) and Secretary of State for the Home Department*, [2008] EWCA Civ 290; *AS & DD (Libya) and Secretary of State for the Home Department and Liberty (intervenor)*, [2008] EWCA Civ 289.

<sup>45</sup> See also Council of Europe Commissioner for Human Rights, *Report on his visit to Sweden (21-23 April 2003)*, 08/07/2004, CommDH(2004)13, paragraph 19, and *Report on his visit to the United Kingdom (4-12 November 2004)*, 08/06/2005, CommDH(2005)6, paragraphs 28-30, [www.coe.int/t/commissioner](http://www.coe.int/t/commissioner).



## Appendix

### Response to Commissioner for Human Rights of the Council of Europe Thomas Hammarberg

Following his visit to the United Kingdom on February 5 – 8 and 31 March to 2 April 2008.

#### Issues reviewed: Asylum and Immigration

The Government would like to thank the Commissioner for the time and effort he has expended in both his visits to the United Kingdom and the very thoughtful report of his findings. We very much welcome the opportunity to discuss what we are doing to further promote human rights as an integral part of the way we work. This is as true of the United Kingdom Border Agency (UKBA) as it is of any other arm of government. We take careful note of all recommendations made, and have the following comments on certain recommendations, using the same paragraph numbers as the Memorandum.

### **Part II Administrative detention of asylum seekers upon entry, in the context of the “Fast Track Processes”**

#### Conclusions and Recommendations

19. The Government welcomes the Commissioner’s conclusions.
20. The targets referred to by the Commissioner relate to the non-detained route. The UK will always ensure that speedy decision making does not mean rushed decision-making. Issues concerning the speed of conclusion within the Detained Fast Track (DFT) processes are dealt with below.

21, 23, 24, 25 & 26

As well as the UKBA policy document referred to, the DFT processes work within the framework provided by the departmental policy (as set out in the Operational Enforcement Manual), the Immigration and Asylum Appeals (Fast Track) Procedure Rules 2003, and (in the case of Non Suspensive Appeals (NSA) applications) Section 94 of the Nationality, Immigration and Asylum Act 2002. Legislation regarding detention specifically within the DFT and NSA processes is contained within the Immigration Act 1971, subsequent case law and departmental policy, which can be found on the UKBA website. <http://www.bia.homeoffice.gov.uk/>.

The detention of persons being dealt with in the DFT process is subject to safeguards and carefully reviewed at regular intervals. It is also open to claimants to apply to an Immigration Judge for bail whilst in the DFT process. We do not believe that detention is

used excessively. Specific provision in United Kingdom legislation for detention within the DFT process is considered to be unnecessary given that, in practical terms, it is difficult to envisage providing additional safeguards over and above those that already exist. The Government believes the measures currently in existence - the system of detention review, as provided for in departmental policy and the right to apply bail as provided for in law - provides adequate and proper safeguards for detainees. The existence of such safeguards is set out publicly on the UKBA website (see above). The Government does not accept that further setting out of the framework in legislation would provide any greater protection than that which currently exists.

Detention within the DFT process is used in order to carry out the functions recognised as exceptions from the international law principle of *non-detention of refugee applicants*; namely: *to verify the status of the refugees; to determine the elements on which the claim to refugee status is based; to deal with cases where refugees have destroyed travel/identity documents or have used fraudulent documents to mislead the authorities of the country of refuge.*

Particularly vulnerable applicants including minors, victims of trafficking or sexual violence or those where there are reasonable grounds to believe that they are victims of torture are not dealt with within the DFT process as a matter of policy. It is not considered that legislative provision is necessary to prevent them being dealt with within the DFT process.

The operation of the DFT process has been reviewed in considerable detail in the United Kingdom by the Court of Appeal and found to operate fairly provided it does so flexibly. *Refugee Legal Centre V Secretary of State for the Home Department {2004} EWCA Civ 1481* is one such case.

That required flexibility can be demonstrated by the fact that between 10-15% of all cases entering into the DFT process are taken out at various stages and placed into the non-detained route as it is recognised that they are unsuitable for the process.

Decisions taken within the DFT process have a strong record of being upheld by the judiciary, with 96-98% of appeal cases remaining in the process being dismissed by Immigration Judges.

27. The Government wishes to highlight that a small minority (currently around 10%) of the total number of asylum applicants are dealt with whilst detained.
28. The UK ensures this requirement is strictly adhered to. In the *Saadi V. UK* judgment, the ECHR found a violation of Article 5(2) of the Convention because the applicant had not been told promptly of the real reason for his detention i.e. that he was being detained because he fulfilled the criteria for his asylum application to be considered under the Oakington fast-track process. The IS91R ("Reasons for Detention and Bail Rights") notice used at the time of the violation did not contain a specific reference to detention as part of the fast-track asylum process as a reason for detention. This was corrected initially by the use as from February 2001 of an addendum to the IS91R, and then the issue of a revised version of the form in April 2002. The addendum and revised version of the form gave detention as part of the fast-track asylum process as a specific reason for detention. A further instruction was issued in July 2004 asking Immigration Officers (IOs) to indicate all the reasons why detention was considered appropriate and not just

because the IO was satisfied that the application may be decided quickly using the fast-track procedures on the basis that on initial consideration the application may be one which can be decided quickly

29. Please see answer to paragraph 53 below.
30. For the reasons given above, it is considered that the operation of the DFT process within existing time frames is reasonable and fair.

The vast majority of asylum seekers in the UK live in the community whilst their applications are under consideration. Detention of an individual with an extant application for asylum would only normally be authorised in one or more of the following circumstances: as part of a fast-track asylum process; where there is a risk of absconding; or where there is a risk of harm to the public. The UK's detention policies and practices have been designed to be and are fully in line with Article 5 of the European Convention on Human Rights (ECHR).

The Government can assure the Commissioner that the EC Directive on the minimum standards for the reception of asylum seekers is considered to apply to immigration detention facilities in the UK.

31. The Government welcomes the Commissioner's comments.
32. The Government is particularly attentive when applying NSA procedures. This is done with numerous safeguards. Where a claimant has an "arguable" case – their application, depending on the circumstances, can be removed from the NSA process and dealt with in the DFT or non-detained route, or the claim can be granted. The mere existence of an "arguable" claim does not in itself provide reasons for a subject to remain in the United Kingdom, and nor do we believe it should.
34. UKBA currently meets this recommendation with respect to the Council of Europe's Committee of Ministers' Twenty Guidelines on Forced Return. The training for NSAs emphasises the availability of judicial review to applicants whose claims are certified as 'clearly unfounded', and this remedy has a suspensive effect. Applicants with "arguable claims" from the NSA list of States are provided with an 'in-country' appeal and the applicant is not removed unless their appeal is unsuccessful or they do not lodge an appeal.

### **Part III Detention of rejected asylum seekers and of immigrants subject to deportation**

37. The position has changed since the Commissioner visited the UK. As well as a new removal centre at Gatwick we are seeking to gain planning permission for another removal centre. We are looking at two possible sites.
38. See the response to the recommendation at paragraph 52.
39. The protest at Harmondsworth was peaceful, but following receipt of intelligence (which indicated a small number of detainees were bullying other detainees to take part and planning to start a disturbance) it was decided to take action. 27 detainees were identified as

ringleaders and were removed from Harmondsworth to other Immigration Removal Centres and prisons.

40. We note that detention can be prolonged in those circumstances where a detainee does not cooperate with the removal process. The Courts have upheld that such detention remains lawful.
42. We are not in a position to comment on the specific allegations made by detainees as outlined in the Commissioner's report. However, all immigration detainees are required to be notified in writing about the reasons for their detention, and our authorities always seek to ensure that this requirement is met. The notice (known as the IS91R) indicates the statutory power under which detention has been authorised, the reasons for their detention and the factors taken into account in reaching the decision to detain. The notice must be explained to the individual, using an interpreter if necessary. A fresh notice is required to be served in the event that the reasons for the person's detention change. In addition, detention is reviewed monthly and the results of these reviews are notified in writing to detainees. If a detainee has any doubt about the reason for their detention they need only ask for advice from a UKBA officer at the detention facility.

Information on contacting the Immigration Advisory Service and the Refugee Legal Centre is contained in the notice of reasons for detention served on all detainees. This information is repeated in all removal centres, together with contact details for local legal representatives who are able to provide immigration advice. Detainees are advised of their right to legal representation, and how they can obtain such representation, within 24 hours of their arrival at a removal centre. In those removal centres where asylum applications are considered under the detained fast-track procedures independent legal advice and representation is available on site.

The Legal Services Commission has set up two schemes to further improve detainee access to legal advice: one is a telephone-based advice service for detainees who are held initially at a police station before transfer to an immigration removal centre; and the other is the provision of twice-weekly legal advice surgeries for detainees at removal centres.

44. To clarify our system: those tasked with managing our centres are responsible for providing the full range of services, albeit that some services may be subcontracted.
45. The reference to the Complaints Audit Committee's report of 2006 is accurate. However, as the authors of the report made clear, the rise in the number of allegations of "criminal behaviour" (which are likely to relate to allegations of assault during the removal process) may be as a consequence of better recording as opposed to an increase in such complaints per se. The UKBA is enforcing more removals and is often dealing with individuals who are more likely to resist removal and who, as a consequence, may require to be controlled and restrained using lawful techniques. This can lead to higher numbers of allegations/complaints of assault. All allegations of assault are investigated thoroughly and are referred to the police for their own parallel investigation.
46. The Government requires that all those contracted are provided with human rights training. Those contracted to manage Immigration Removal Centres are required to employ staff for planning and the management of training and produce plans. Staff training must take account of the diverse nature of the removal centre population, which will require the provision of background information about the many different cultures staff are likely to

come into contact with. All training must incorporate the need to understand and better communicate with detainees. Training includes coverage of the Human Rights Act and how this impacts on life in removal centres. The training is designed to enable staff to develop a human rights approach to their work and so provide them with the confidence to apply that knowledge in their day to day encounters with detainees.

Centres must implement training and refresher training programmes and are required to have systems in place for recognising when individuals are required to take refresher training.

### Conclusions and recommendations

48. The Government welcomes the Commissioner's comments and notes that the department covering Immigration Research and Statistics hope to start publishing statistics relating to length of detention again as soon as the data quality problems associated with a change in the way information is collected have been resolved. As the Commissioner notes such data is provided in respect of children.
49. The Government takes seriously its duty of care for those held in our removal centres. The most recent report by Her Majesty's Chief Inspector of Prisons on Harmondsworth (published in June 2008) commends Harmondsworth staff and management on the progress made since the previous report in 2006. The facility is applauded for its considerable improvement in staff attitude and promoting respect. The UK Border Agency recognises that its detention facilities must be well run, safe and secure.
50. Creating more detention space is a crucial part of the UK Border Agency's plans to increase the removal of illegal immigrants. But those who have no legal basis to stay in the UK and who are required to leave the UK will not be detained simply on the basis that a detention space is available.
51. The Government wishes to point out that officers with authority to reach decisions to detain are required to comply with published guidance relating to the UKBA's detention policy and practice.
52. The detention of individuals is subject to administrative review at regular intervals at successively higher levels within the UKBA. Further, access to the processes of judicial review and habeas corpus provide satisfactory means by which the lawfulness of detention may be challenged before the courts, as required by Article 5(4) of the ECHR. Detainees are also able to apply to Chief Immigration Officers and Immigration Judges for bail (and as often as they wish) and so have the opportunity to secure their release from detention. Article 5 of the ECHR does not require there to be judicial oversight of Immigration detention decisions and to introduce such oversight would inevitably create a significant burden for the courts and would add another layer to the immigration and asylum process that the UK Government is consistently seeking to simplify.
53. All immigration detainees are served with a notice giving reasons for their detention at the initial point of detention. The notice indicates the statutory power under which detention has been authorized, the reasons for their detention and the factors taken into account in reaching the decision to detain. The notice must be explained to the individual, using an interpreter if necessary. A fresh notice is served in the event that the reasons for the person's detention change. In addition, detention is reviewed monthly and the results of these reviews are notified in writing to detainees.

### Legal advice

Information on contacting the Immigration Advisory Service and the Refugee Legal Centre is contained in the notice of reasons for detention served on all detainees. This information is repeated in all removal centres, together with contact details for local legal representatives who are able to provide immigration advice. Detainees are advised of their right to legal representation, and how they can obtain such representation, within 24 hours of their arrival at a removal centre. In those removal centres where asylum applications are considered under the detained fast-track procedures independent legal advice and representation is available on site. The Legal Services Commission has set up two schemes to further improve detainee access to legal advice: one is a telephone-based advice service for detainees who are held initially at a police station before transfer to an immigration removal centre; and the other is the provision of twice-weekly legal advice surgeries for detainees at removal centres.

All immigration removal centres have access to telephone-based interpreting services and must retain details of official interpreters who can be called upon if needed to ensure that clear communication can take place.

### Bail

The notice served on detainees giving reasons for their detention also contains information on their bail rights, which must be explained to the individual, using an interpreter if necessary. Further information on how to apply for bail is held at immigration removal centres and is readily available to detainees: this includes the bail handbook produced by the voluntary group Bail for Immigration Detainees, which also runs bail workshops for detainees in some removal centres. In addition, legal advisors at the twice-weekly advice surgeries in removal centres are required as part of their contract to provide advice on bail to detainees.

55. We welcome the Commissioner's commendation of the work of the UKBA Complaints Audit Committee and note his further recommendations.

## **Part IV Special needs of children in the context of asylum and immigration**

64. The Government has responded to the Committee's Report and that response is publicly available
65. The Government has no wish to detain people any longer than is required and this is particularly true in the cases of families with children. However, there are occasions where detention is prolonged as a consequence of attempts to frustrate the removal process. The courts have upheld that continued detention in such circumstances remains lawful.

### Conclusions and recommendations

68. Ratification of the 2005 Council of Europe Convention on Action against Trafficking in Human Beings.

As the Commissioner notes, on 23 March 2007 the United Kingdom became a signatory to the *Council of Europe Convention on Action against Trafficking in Human Beings*

(“the Convention”). Signature of the Convention is more than a symbolic gesture, it marks a real commitment to implement the obligations it imposes and will provide a framework for the minimum rights and protection of all identified victims of trafficking.

Before ratifying the Convention, the Government is committed to implementing it fully and in accordance with its ongoing strategy on trafficking. As a dualist State, before ratification we must ensure UK law and administrative practice will enable us to implement the Convention. The need for wide consultation and limited secondary legislation means ratification is taking time. On 14 January 2008 the Home Secretary announced that we would ratify the convention by the end of 2008. We are currently on track to achieve this.

Action that has been delivered already to prepare for ratification includes:

- a comprehensive review to identify gaps in compliance;
- the securing of primary legislation to ensure compliance with the Convention through the Criminal Justice and Immigration Act 2008;
- testing of a formal victim identification processes and procedures for a National Referral Mechanism under operation Pentameter 2;
- drawing on the expertise of government and non-governmental partners through consultation workshops on issues such as a National Referral Mechanism (for both adults and children);
- consulting on the timeframes for a Reflection and Recovery Period for victims, which informed the Government’s decision to set the minimum at 45 days. This goes beyond the requirements of the Convention and can be extended to meet individual health and recovery needs where necessary;
- consulting on the application and timeframes for Temporary Residence Permits and deciding that once again we will go beyond the minimum requirements. Eligible victims of trafficking will have access to one-year temporary residence permits, renewable in certain circumstances;
- the development of proposals for a system of Convention compliant victim support based on the existing Poppy project model; [http://www.eaves4women.co.uk/POPPY\\_Project/POPPY\\_Project.php](http://www.eaves4women.co.uk/POPPY_Project/POPPY_Project.php)
- scoping of awareness raising and training needs for frontline staff;
- working with stakeholders to deliver a trafficking for forced labour pilot; which also includes exploring the identification and support needs of these victims<sup>1</sup>; and
- hosting a Council of Europe conference on Implementing the Convention .

Currently the UK Border Agency will always seek to ascertain the age of a child who may have been trafficked, via documentary or other evidence. However, where the

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<sup>1</sup> It is accepted that our knowledge and ability across various Government agencies to identify victims of labour trafficking requires improvement. So as part of the plans to implement the Council of Europe Convention on Human Trafficking it was agreed to test aspects of identification and support processes in a labour trafficking pilot. The UK Border Agency has taken a lead in developing the pilot along with stakeholders from a number of other areas across government departments and agencies. Non Governmental Organisations (NGOs) are also involved. The pilot started in May, is small, and has focused aims but it should increase our understanding of the levels of trafficking for forced labour, and will add to the intelligence picture of this type of criminality. It is cross cutting using a variety of agencies on the front line. Through multi agency working we hope to draw on a mix of expertise to develop our understanding and practices. Using the minimum standards of the Convention we hope to create a pathway which allows victims of labour trafficking to escape the influence and control of the trafficker.

young person's appearance and demeanour suggests him/her to be over the age of 18, the claimed age will be disputed, and the young person referred to the nearest local authority for age assessment.

It is the policy of the UKBA to rely on a Merton-compliant age assessment as evidence of age, as reflected in the Asylum Instruction on Age Dispute. Applicants dealt with under the Age Dispute process are effectively treated as children, to provide a safeguard until and unless a Merton-compliant age assessment concludes them to be an adult.

Young persons whose appearance and demeanour suggests them to be significantly over the age of 18 are treated as adults, unless they produce convincing evidence of their claimed age. Where a young person claiming to be a child is subsequently considered to be an adult, this will not impact on the consideration of their asylum claim, or their claim to have been trafficked.

All young persons claiming to be a child, regardless of the UK Border Agency's view of their age, are referred to the Refugee Council Services Children's Panel.

Policy and practice is already in place in relation to protection of private life. We ensure at all times that the privacy and identity of all child victims of trafficking is maintained, from protection of all personal data, through their protection whilst in the care of local authority children's services, to their appearance as victims and witnesses in criminal justice proceedings.

In respect of trafficked children's access to education, Section 113 of the Education Act 1996 places a legal duty on Local Authorities to ensure that education is available for all children of compulsory school age in their area appropriate to their age, abilities and aptitudes and any special education needs they may have. This duty applies irrespective of a child's immigration status or rights of residence in a particular location.

Arrangements already exist for any child who needs the protection afforded by family courts to receive it. This may be necessary in exceptional and complex cases where there is continuing risk of imminent harm to the child. This service includes the appointment of a legal guardian until the court determines that it is no longer necessary.

69. Article 10, paragraph 4 of the Convention.

We are taking action to ensure that our National Referral Mechanism (NRM) (required by Article 10 of the Convention) operates efficiently in relation to children. We are working with partners to develop an assessment and referral tool to support the process for determining "reasonable grounds to believe" an individual child may be a victim of trafficking. This will ensure consistency of approach across all relevant agencies.

All trafficked children, once identified and if in continuing need of support and care, become the responsibility of a Local Authority as a looked after child. The local authority and the child's designated social worker fulfil the requirements of the Council of Europe Convention. The child in any case would also have access to legal advice, education, medical and psychological support. The Government's White Paper "Care Matters" and Children and Young Persons Bill currently in Parliament contain additional measures to strengthen the service provision and improve outcomes for all looked after children even further. <http://www.dcsf.gov.uk/publications/childrenandyoungpersonsbill/>



Paragraph 352 of the Immigration Rules states that an accompanied or unaccompanied child who has applied for asylum in their own right may be interviewed about the substance of their application or to determine their age and identity. The interview is conducted in the presence of a responsible adult.

The screening officer will also check the documents of a child and any accompanying adult(s); recording biometric information (fingerprints and photographs) which is then cross-checked against the UK database.

UKBA is strongly committed to sharing appropriate key data about a child and their presence in the UK with welfare, education and health agencies

Section 6 of the Asylum Seekers (Reception Conditions) Regulations 2005 <http://www.opsi.gov.uk/si/si2005/20050007.htm> requires the Secretary of State to endeavour to trace the child's family as soon as possible after the child makes an asylum application. This requirement is reflected in our published policy. <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance>.

The UK Border Agency has long-established links with the British Red Cross and the International Social Services. During the asylum process children are encouraged to contact either agency to trace their families if they wish to do so. The UK Border Agency also bolsters this process by endeavouring to trace a child's family where this is appropriate and there is sufficient information to conduct a trace. Family details are collected at the earliest opportunity in the asylum process, with follow up as appropriate at interview.

In some cases the information provided by the child is insufficient to conduct a trace. Additionally, there are times when our duty of confidentiality will override the tracing requirement, for example in cases where the family may have been complicit in the trafficking or where the tracing enquiries may put the child or family at risk from either the traffickers or the authorities in the country of origin. Again, this is reflected in our published policy.

70. Improvements to age assessment procedures.

In January 2008 UKBA issued its proposals for reform of the treatment of unaccompanied asylum seeking children "Better Outcomes: The Way Forward" <http://www.bia.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/closedconsultations/uasc/betteroutcomes.pdf>. Key reform 4 commits UKBA to "putting in place better procedures to assess age in order to ensure children and adults are not accommodated together".

The first step in this reform was the setting up of an Age Assessment Working Group which includes representatives of UKBA, local authorities, the medical colleges and NGOs with an interest in child asylum seekers. The working group has now met on four occasions and is preparing to meet for a final session which will produce recommendations for the improvement of the process of age assessment.

In all cases where a claimed age is disputed it is UKBA policy to treat the applicant as if they were a child until such time as they are assessed to be an adult. This applies to all disputed age cases whether or not they have been trafficked.

In December 2007 the Government published guidance entitled “Safeguarding Children Who May Have Been Trafficked” (<http://police.homeoffice.gov.uk/publications/operational-policing/safeguard-children-trafficking>). This provides detailed guidance for practitioners including asylum staff who come in to contact with child victims of trafficking, and is particularly valuable in assisting practitioners in the steps to take to ensure that child victims are identified as such and that they are properly safeguarded and cared for.

71. Welfare services to Unaccompanied Asylum Seeking Children (UASC) from Local Authorities (LAs).

UASC are supported by LAs in the same way as UK children. Their needs are assessed and they are provided support accordingly.

All UASC are referred to LAs to provide care and support under the provisions of the Children Acts 1998 and 2004.

The UKBA is satisfied that LAs provide the support that UASC need. However, the introduction of specialist local authorities, heralded by the paper “Better Outcomes: The Way Forward – Improving the Care of Unaccompanied Asylum Seeking Children”, published by the then Border and Immigration Agency in January 2008, will enable the particular needs of UASC to be more fully taken into account.

In addition to the support provided by Local Authorities, UASC are referred to the Children’s Panel of the Refugee Council by the UKBA. The Panel provides independent guidance and support to the young person helping them to navigate the asylum system.

72. Life projects.

It is vital that all children and young people who are granted refugee status are supported in their integration into society. Equally it is right that those asylum seeking children who are not granted any form of leave, and therefore have no legal basis to remain, are returned to their own country. It is therefore important that this group of young people should have clarity about the outcome of their application to stay in the United Kingdom as early as possible so that social workers and others involved in the care system can work with them to manage their expectations and reduce uncertainty in care planning.

It is clear that the process of managing the young person’s expectations and making preparations for their return, will present new challenges for all professionals and agencies working with this group of young people. We will improve working arrangements between immigration and local authority children’s services staff. We will also work with other agencies and the devolved administrations to produce updated guidance that will capture the “twin track” approach to care planning, so that guidance takes into account the position of both successful and unsuccessful applicants for asylum.

Education and vocational training will form an important part of this work, with the aim of equipping those young people who return to their country with the necessary range of skills to adjust to life back home.

73. Training for UKBA staff and contractors.

UKBA have rolled out a three tiered training approach to Keeping Children Safe from Harm. Incorporated into this is training on Human Rights law, issues surrounding human rights and how these relate to the job roles within UKBA.

The training begins with an awareness raising e-learning package, where the main issues are highlighted. Following this is a two-day classroom based course where these issues are reiterated and studied in much more detail. The details of the Human Rights Act 1998 and the UN Convention on the Rights of the Child (UNCRC) 1989 are taught and discussed with specific reference to the relevant Articles. A further job specific aspect to the training then pin points the human rights issues which are most relevant when Immigration Officers are going about their daily work.

Human rights training is not currently provided for UKBA contractors since they are not involved in making immigration decisions, but in providing facilities and services for which they are trained. UKBA will be making some initial training available for their contractors and assessing the need for constructing further training similar to the training discussed previously.

74. Detention of children for up to three months.

The UKBA has no wish to detain families with children (or for that matter individuals) any longer than necessary. In practice families with children are only detained at the point of removal from the UK and the intention behind this is to ensure that time spent in detention is limited. Unfortunately, there are occasions where the parent(s) seek to frustrate the removal process and the effect of this is that detention can be prolonged. The courts have upheld that detention in such circumstances is lawful

The UKBA pays particular attention to cases of detention involving families with children; that is why they are subject to rigorous review and subject to ministerial review in those cases where detention reaches the 28 day period.

75. Alternatives to detention.

The Government welcomes the Commissioner's commendation of the Alternative to Detention 'A2D' project, which was commissioned to run for 12 months (November 2007 – October 2008). The pilot is being run by Migrant Helpline (MHL) on behalf of UKBA and is aimed at Failed Asylum Seekers with children who have exhausted all appeal rights and have no legal right to remain in the UK.

The Government aspires to reduce the number of children going through detention and to increase the take up of associated voluntary return packages to allow families to return home with dignity.

Before the next stage in the asylum process i.e.: consideration of detention and removal, A2D offers families an opportunity to discuss at length the implications of their status

with the Provider (MHL), as well as an informed presentation or one-to-one interview with the International Organisation for Migration to consider the experience and financial benefits of returning home voluntarily.

76. Withdrawal of UK reservation to the United Nations Convention on the Rights of the Child (UNCRC)

The UK signed the UNCRC in 1991 in full support of its ethos of upholding the rights of children. This has been actively demonstrated through an ongoing relationship with the international monitoring body and by bringing about continuous improvements in child safeguarding policy and practice over the years since 1991.

The Home Secretary announced on 14 January 2008 a review of the UK's immigration based reservation to the UNCRC. The review has 2 parts – an internal assessment of the current risks and a public consultation conducted as part of the wider consultation that ended in April on UKBA's Code of Practice on keeping children safe from harm. The responses to the consultation are in the process of being analysed and the review is expected to conclude in the summer.

## **Part V The cases of ethnic Tamils subject to deportation to Sri Lanka**

### Conclusions and recommendations

84. As with all other asylum claims, asylum claims from Sri Lankan Tamils are assessed on their individual merits against the background of the latest available country information including that which has been drawn up by the office of the UNHCR in accordance with our international obligations. Those individuals able to demonstrate a need for international protection will be granted asylum or a different form of leave if appropriate. Sri Lankan nationals who have been found not to need international protection, and who have no right to remain in the UK but who refuse to leave voluntarily, are liable to be removed. In this way we ensure that we provide protection to those who need it.
85. With regard to the Commissioner's specific recommendation, as outlined above, the Home Office does take into account advice from the office of the UNHCR which is considered in the round against other publicly recognised sources of country information including information from other government departments, for example the Foreign Office, Non Government Organisation bodies including Amnesty and Human Rights Watch as well as media sources. Utilising a wide range of information sources allows the Home Office to formulate a balanced policy position and to monitor the country situation on an ongoing basis.
86. With regard to the Commissioner's specific recommendation, as outlined above, the Government does take into account advice from the office of the UNHCR which is considered in the round against other publicly recognised sources of country information including information from other government departments, for example the Foreign and Commonwealth Office, NGO bodies including Amnesty and Human Rights Watch as well as media sources. Utilising a wide range of information sources allows the Government to formulate a balanced policy position and to monitor the country situation on an ongoing basis.

## Part VI Aliens' forced return in the context of diplomatic assurances

88. The Government considers it important that it is recognised that the two individuals were removed from the UK in 2004 (on receipt of assurances provided at very senior level regarding their safety on return to Libya) on grounds that this was conducive to the public good, the men having served lengthy custodial sentences for serious criminal offences.
90. The judgment in the Jordanian case is now the subject of an appeal to the House of Lords by the Government, which contends that all the circumstances of the person's retrial should be taken into account when making such an assessment.

As for the Libyan cases, while it is true, as a matter of fact, that the Qadafi Development Foundation was part of the monitoring body, this was not a determinative factor in the Court of Appeal's ruling.

### Conclusions and recommendations

92. There is a statutory right of appeal against a decision to deport someone from the UK. Where an individual contends that their removal would be a breach of their rights under the European Convention of Human Rights (ECHR) the UK can only deport if our domestic courts, and potentially the European Court of Human Rights, are satisfied their removal is compatible with the UK's international commitments.

Where the UK has pursued framework agreements on diplomatic assurances they have been drafted to satisfy ourselves and the courts that a particular removal *is* in conformity with our national and international obligations and the assurances fall to be tested by the courts.

Even where we have assurances in place, we will not deport someone in the unlikely scenario that there were substantial reasons for believing that there was still a real risk of torture or other inhuman or degrading treatment or punishment or that the death penalty would apply.

93, 94, 95

The Government believes that the judgment in the *Saadi* case made clear (at paragraph 148) the proper approach to be adopted when considering such assurances. As it stated:

'Furthermore, it should be pointed out that even if, as they did not do in the present case [i.e. *Saadi v Italy*], the Tunisian authorities had given the diplomatic assurances requested by Italy, that would not have absolved the Court from obligation to examine whether such assurances provided, in their practical application, a sufficient guarantee that the applicant would be protected against the risk of treatment prohibited by the Convention. The weight to be given to assurances from the receiving State depends, in each case, on the circumstances obtaining at the material time.'

The Government believes that seeking assurances in order to be able to deport people who represent a threat to our national security is a legitimate means of both safeguarding the human rights of the individuals concerned and protecting the human rights of the general public – including their right to life. The Government notes that the European

Court of Human Rights has not ruled unlawful the principle or practice of deportation with assurances, but simply reaffirmed that where such assurances are obtained the Court will need to determine their adequacy in relation to a specific case at a particular point in time.

#### Guidelines on Forced Return

96. The Government observes that its reservations concerning the Twenty Guidelines on Forced Return are not related to its use of assurances.