

Amnesty International

Reforming Asylum Support Consultation

Response to the Summary of Questions

Q1

Some asylum seekers frustrate the system by not making their claim at the earliest possible stage. Should we reserve the right not to support them in some circumstances?

No

Amnesty International has worked with asylum seekers for many years and believes that there are compelling reasons why people do not make an application for asylum immediately upon arrival in the UK. They will be unfamiliar with the procedures of applying for asylum and may not speak English. It is reasonable to wish to consult with family, friends, community group members and to seek legal advice prior to making an asylum application.

The vast majority of asylum claims are made after entry and this is backed up by the latest asylum statistics published by the Home Office. In 2008 there were 23,610 applications for asylum with 20,030 applying in country and 3,580 applying at the port of entry.

Policies to withdraw support or a threat to withdraw support from those who do not apply for asylum as soon as reasonably practicable have not proved to be successful in the past.

Re-enacting section 55 of the Nationality, Immigration and Asylum Act 2002 is likely to complicate the asylum process for many who deserve protection under the 1951 UN Convention on Refugees and render them destitute. This conflicts with the Government's stated proposal of simplifying the system and for many thousands of asylum applicants it will make the process even more complex.

In the majority of asylum cases, case owners will have to decide whether the claim was made as soon as reasonably practicable. This does not seem to make the process more straightforward, efficient or cost effective.

Additionally the current level of support does not allow asylum seekers to meet their essential living needs whilst their application for asylum is being processed. Many will be subsisting on a weekly support rate of £35.13 or just £5 a day.

Q2

Do you agree with our proposals to repeal those parts of legislation which we do not intend to use (sections 9 and 10 of the 2004 Act)?

Yes

Amnesty International welcomes the proposal to repeal Section 9 of the 2004 Act which relates to the withdrawal of support of families. This policy was not in the best interest of children and has certainly not encouraged families to return.

We also welcome the proposal to repeal Section 10 of the 2004 Act which will remove the requirement for failed asylum seekers to undertake community activities as a condition of support. Compulsory community activity is associated with criminal punishment and has no place in the asylum support regime. It should not be a condition of receiving support for those who would otherwise be destitute.

Q3

Should we support any failed asylum seekers who have been found to have no protection need by the independent appeals system? If yes under what circumstances (tick boxes).

Yes to all options

Amnesty International believes that refused asylum seekers should be supported in all of the circumstances listed because they are either temporarily unable to return home through no fault of their own or some aspect of their claim is still outstanding.

There is a variety of reasons why refused asylum seekers who would otherwise be destitute should be supported. For example for the past few years, a number of refused asylum seekers from Zimbabwe have remained in the UK often destitute, unwilling to make a voluntary departure due to the situation in their home country and the Government has not been able to enforce their return. Many have subsequently been given leave to remain.

Where the UK Border Agency is not enforcing removals against nationals or groups of nationals from a particular country they should be eligible for support.

Amnesty International advocates that all refused asylum seekers who would otherwise be destitute should continue on Section 95 support until they return

home from the UK voluntarily, are forcibly returned or are granted permission to stay.

Amnesty International believes that an 'end to end' asylum support system is fairer, simpler and easier to administer. Refused asylum seekers who remain in the UK would not be forced to receive charity from others, work illegally or face the additional pitfalls associated with destitution.

We welcome the inclusion to support families with children who are born after the appeal rights exhausted stage who may otherwise fall to be supported by local authorities.

Q4

Do you agree that we should be able to set a fixed time limit for support for those supported on the basis that they are taking steps to leave, with no right of appeal?

No

Amnesty International believes that asylum seekers should be provided with accommodation and support from the time the application for asylum is made until permission to remain is granted or at the point of return whether voluntary or enforced. There is no evidence to suggest that denying support to refused asylum seekers results in facilitating voluntary departures or enforced removals.

Amnesty International recommends that where there is no reasonable prospect of a removal, refused asylum seekers should not be left destitute and in limbo but should be granted leave to remain.

There are many valid reasons why refused asylum seekers may not be able to take steps to leave therefore setting a fixed time limit for support may lead to unfairness. Designating situations where asylum seekers will have no right of appeal regardless of their individual circumstances removes all discretion from the system and will lead to extreme hardship for vulnerable individuals.

Q5

Do you agree that the way in which support is provided to asylum seekers should be different than the way support is provided to those who have been found to have no protection need?

No

Providing different forms of support to those who have been refused from those who are still awaiting an initial decision runs counter to the stated aim of the consultation which is to introduce simpler and more efficient systems. Running

separate and parallel systems of support for people at different stages in the asylum process is both inefficient and likely to be more expensive.

This policy proposal is based on the mistaken assumption that limiting or withdrawing support will encourage refused asylum seekers to return to their countries of origin.

Previous policies have proved that such policies are not effective.

Leaving asylum seekers destitute at the end of the process or having to survive on the equivalent of £5 a day (Section 4 support) has not resulted in more refused asylum seekers making a voluntary departure.

Numerous refused asylum seekers are too fearful to return voluntarily as they are from countries torn apart by conflict or where human rights violations are rife. While their countries remain volatile, they consider starving and sleeping on the streets in the UK to be the lesser of two evils. Therefore removing or limiting access to support will therefore not constitute an effective means of encouraging people to leave the UK.

Q6

Do you think that closer working with both the voluntary sector and local authorities will (a) help applicants to understand the option available to them at each stage of the process? And (b) encourage those who are found to have no protection need to accept their position and return voluntarily?

Yes to both

To ensure asylum seekers understand the options available to them there should be voluntary sector support and access to expert legal advice and representation throughout the asylum process until a sustainable solution for the asylum seeker is achieved. This should ensure that the asylum seeker engages with the process.

If the quality of initial decision making improves and early access to good quality legal advice for asylum seekers is made available across the country then it will be much easier for the voluntary sector to work more closely with UKBA to provide applicants with honest and realistic information and ensure that those who are found not to have a protection need can make an informed judgement about their next options.

As we recommended in our report “**Get It Right: How Home Office decision making fails refugees**” published by Amnesty International in 2004, initial decision making should be ‘front-loaded’ so that resources should be focused on good quality, defensible decisions early in the decision making process. This enhances efficiency by ensuring that the initial decision is based on a full understanding of the applicant’s case and is therefore reliable.

We therefore welcome the Government's decision to take forward early access to legal advice for asylum seekers in the Midlands region as piloted in Solihull with the aim of rolling this out nationwide.

Getting more initial decisions right first time would improve the efficiency of the system and save public money in wasted appeals. Currently on average 25% of asylum refusals are overturned on appeal. When this is further broken down by nationality the rate is much higher. Between July and September 2009, 51% cent of Somalis had their refusal of asylum overturned on appeal, as did 43% of Eritreans, 42% of Zimbabweans and 32% of Sri Lankans.

Q7

Do you agree that case owners should be able to tailor accommodation provisions for those who have been found to have no protection need and bring families who purposefully frustrate the system into full board accommodation (where this could assist with removal or return)?

No

If all parties had confidence in the asylum decision making process where those in need of protection are recognised then those found not to have protection needs are more likely to take the option of a voluntary departure.

Many families have put down roots in the community they live in with their children in local schools and placing them in full board accommodation will separate them from any community support they have previously received.

Looking at previous attempts at such proposals for example the Millbank pilot which was not successful, putting refused asylum seeking families into full board accommodation is also unlikely to succeed in persuading a family to return to their country of origin.

Q8

Do you agree that the offences to tackle support fraud should apply to all types of support

Yes

Amnesty International does not oppose this proposal although there appears to be little evidence of fraud. UKBA assumes the number of fraudulent cases that could be put forward for prosecution to be between 30 and 380. There appears to be no explanation of why it is disadvantageous for UKBA fraud investigators to use criminal law provisions for fraud charges.