



Cherlande Dorvil, 3 years old, detained six months.

5. Detention and its Impact

On any given day, the U.S. government holds more than 20,000 non-citizens in immigration detention facilities and jails. We believe that several thousand of those being detained are asylum seekers.⁸⁹ For years, U.S. immigration authorities have failed to provide regular statistical information about the number of asylum seekers in detention – even though a federal statute requires the government to report these numbers to Congress.⁹⁰ The government has failed to respond to our February 2003 request, under the Freedom of Information Act, for statistics relating to the detention of asylum seekers. But based on the number of asylum seekers who have been given credible fear interviews by asylum officers, it is clear that during the last two fiscal years, at least 16,000 new asylum seekers have been detained on their arrival at U.S. airports and borders.⁹¹

Mental Health of Asylum Seekers

Detention can be particularly difficult for the many refugees seeking asylum who are survivors of rape, torture, and other traumatic experiences. Medical experts have documented the fact that refugees often suffer from Post Traumatic Stress Disorder, major depression, or other illnesses.⁹² As one expert explained: “For someone who’s been tortured and locked up in a cell as a political prisoner in their native countries...the experience of being locked up here again can trigger panic attacks, flashbacks.”⁹³

A June 2003 medical report, issued by Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture, has documented the impact of detention on asylum seekers.⁹⁴ The report, which is the first systematic and comprehensive study of the health of detained asylum seekers, confirmed:

- In case after case, the U.S. practice of imprisoning asylum seekers inflicts further harm on an already traumatized population.
- Detained asylum seekers suffer extremely high levels of anxiety, depression and Post Traumatic Stress Disorder: 86 percent of the interviewed asylum seekers suffered significant depression, 77 percent suffered anxiety and 50 percent suffered from Post Traumatic Stress Disorder.
- The already poor psychological health of asylum seekers worsens the longer that they are detained. Loss of liberty triggers disturbing memories of persecution suffered by asylum seekers in their home countries, while the length of time in jail and uncertainty of duration contributed to the deterioration of mental health.
- Psychological counseling services are either not available or very limited despite high levels of symptoms of psychological distress in many detained asylum seekers.

Conditions of Detention

Asylum seekers are held in jails and detention facilities around the country. Among the largest of the facilities are the 200-bed contract detention facility in Queens, New York (run by Wackenhut Corrections Corporation/ the GEO Group), the 300-bed facility in Elizabeth, New Jersey (run by Corrections Corporation of America), the 226-bed Krome Service Processing Center and detention facility in Miami, Florida (run by DHS), the El Centro Service Processing Center in El Centro, California, and the Port Isabel Service Processing Center in Harlingen, Texas.

Detention Standards

In 2001 the INS finally produced a Detention Operations Manual that sets out minimal standards for treatment of detained asylum seekers and other immigrants.⁹⁵ The manual includes provisions for visitation from family and friends, access to health care, group legal rights presentations, telephonic access to legal representatives, visitation from legal representatives, accurate lists of free legal service providers for dissemination to detainees, and availability of relevant legal materials. Although these standards are welcome, at first they were applied to only those not housed in jails, prisons, and other facilities, amounting to only half the population of detained immigrants.⁹⁶ Detention facilities may not comply with these standards fully; because these standards have not been codified as regulations but are only operational guidelines, there is no legal remedy to enforce them.

The Department of Homeland Security (ICE) also rents space in state prisons and local jails around the country in order to detain asylum seekers. Among the jails where asylum seekers are detained are the York County Prison in Pennsylvania; Turner Guilford Knight Correctional Center (TGK) and Broward County jails in Miami, Florida; Tri-County Detention Center in Ullin, Illinois; Ozaukee County Jail in Port Washington, Wisconsin; Yuba County Jail in Yuba County, California; Riverside Regional Jail in Prince George County, Virginia; and Hasting Correctional Center in Hastings, Nebraska.

While some of these facilities are euphemistically referred to as “detention facilities,” for those being held there, they are essentially prisons. Asylum seekers are stripped of their clothing, required to wear prison uniforms, transported in handcuffs or shackles, not allowed to have contact visits with family, and treated like prisoners. In some detention centers, such as the Wackenhut Detention Center in New York and the Elizabeth Detention Center in New Jersey, detainees live in warehouse buildings and their “outdoor” time consists of a visit to a room within the building that has a chain mesh ceiling which allows some fresh air to come in the room. For activity, detainees in some facilities are allowed to work in facility upkeep and are paid one dollar per day for their labor. Visiting hours and facilities for visitation are often extremely limited.

Jean-Pierre Kamwa

Jean-Pierre Kamwa, from Cameroon, is a torture survivor who was detained in the United States for five months before he was granted asylum with the help of the Lawyers Committee. He now works as a counselor for refugees and asylum seekers, and regularly visits other asylum seekers who are in immigration detention. Kamwa has explained that: “These detainees have, like I had when I arrived in the U.S., already been deeply affected by what happened to them before they left their homes. Now they are in a windowless detention center with no fresh air. They don’t know what will happen to them, if they will be deported, or if they will be allowed to remain. They become more and more depressed, sometimes they attempt suicide.”⁹⁷



Jean-Pierre Kamwa speaking at a Detention Watch Network event.

Over the years, human rights organizations and the press have documented deficiencies in the treatment of asylum seekers at jails and facilities around the country.⁹⁸ In their recent study, Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture reported that asylum seekers have suffered verbal abuse and other mistreatment at the hands of officers staffing detention facilities. Many asylum seekers are survivors of psychological trauma and physical torture, sometimes at the hands of prison or army guards in their home countries, yet detainees are not given adequate access to medical care and are almost never provided psychological counseling.⁹⁹ In response to reports of “widespread sexual, physical, verbal and emotional abuse of detainees, especially women” at the Krome Service Processing Center, an INS detention center on the outskirts of Miami, Florida, the Justice Department launched an investigation into the conduct of at least 15 INS officers at that facility.¹⁰⁰ The female detainees were moved to TKG, a county jail in Florida, where women reported strip-searching, deprivation of sleep, and the seizing of rosaries and other personal and religious objects.¹⁰¹

My wife and my parents, you know, in Africa, they understand this a different way. I have never been in prison before, I have never committed any kind of crime – they don't understand what I have done to deserve this.

We need natural lighting. . . . When I came in, I could read and see letters from a distance, but now I tend to lose focus, because of the constant [fluorescent] light in the dorm. . . . Even outdoors here is not outside. . . . If at least in a month, they could give people one chance to go outside, it would help to breathe fresh air. It would also bring down the stress that we are feeling. . . . Keeping people indoors all the time, with the light coming only from above, just like a chicken. . . . Even criminals in federal prisons get natural light, they get to go outdoors. . . . And these people have done crimes, great crimes – but asking for asylum is something so simple, I don't think people should be penalized for it to that extent. . . .

– A Ugandan Pastor, seeking asylum and currently detained by DHS in a U.S. immigration detention facility¹⁰²

Women in Detention

When refugee women are detained, they are often faced with particular difficulties – including lack of privacy, separation from children and vulnerability to abuse in detention. We detailed these concerns in our earlier report, entitled *Refugee Women at Risk: Unfair U.S. Laws Hurt Asylum Seekers*.¹⁰³ The vulnerability of women to abuse in detention was confirmed by an August 21, 2003 report that an asylum seeker at the detention facility in Elizabeth, New Jersey was sexually assaulted by a guard at the facility.¹⁰⁴ Women who were detained at TKG reported incidents of sexual harassment and molestation by male trustees.¹⁰⁵

Detention of Children

There has been increased attention recently to the detention of children seeking asylum in the United States.¹⁰⁶ U.S. immigration authorities reportedly detain more than 5,000 unaccompanied minors each year, some of them asylum seekers.¹⁰⁷ Many are held in juvenile jails and shelters, others are locked up in motel rooms, although some children have been detained in adult jails and detention facilities.¹⁰⁸ In 2001 more than 80 percent of the nearly 2,000 children detained in secure facilities were non-delinquent juveniles.¹⁰⁹ Some of these children are asylum seekers who have experienced persecution against themselves or their family members and seek protection. Others have been smuggled into the country by human traffickers or smugglers.¹¹⁰

Guinean Teenager Detained for Nearly Three Years

Malik Jarno, a 16-year-old orphan from Guinea, arrived in this country in January 2001 in search of refuge. He was detained in a series of county jails and was initially detained with adults. The INS continued to maintain that he was an adult, based solely on dental and bone radiographs, even though his aunt gave U.S. authorities a copy of his birth certificate which confirmed his age. An immigration judge denied his application for asylum and Jarno filed appeals with the assistance of his *pro bono* attorneys. They also provided psychological evaluations that showed he functions in the mentally retarded range. His attorneys feared he would be deported despite his disability, his fear of return to Guinea and confirmation by an expert at the Guinea Health Office of the United States Agency for International Development that “Malik Jarno would face the almost certain prospect of a bleak and life-threatening future in Guinea, would have great difficulty finding people to care or provide for him, and would almost certainly be forced to live on the streets of Conakry if forced to return here.” On December 22, 2003, the Board of Immigration Appeals agreed to reopen Jarno’s case. After three years in detention, and much public pressure, DHS finally released Jarno the next day.¹¹¹

Many unaccompanied immigrant children lack the capacity to understand the legal proceedings against them and are not provided with an adult to look after their best interest. As a result, many of them are unable to avail themselves of the relief to which they may be entitled. In addition, those who have no immigration relief often languish for years in detention in circumstances that are completely inappropriate for children.¹¹²

When a teenaged asylum seeker arrives at a U.S. airport or border and states that he or she is under 18, immigration authorities often use dental examinations and x-rays to attempt to assess the teenager's age. The INS, and now the DHS, relies on these tests even when the asylum seeker presents documentation confirming that he or she is under 18.¹¹³ As a result, U.S. immigration authorities have classified children as adults and ordered them detained in adult jails – although the dental and x-ray tests employed have been criticized as flawed and unreliable by medical and dental experts.¹¹⁴ Even the U.S. Department of State has instructed its diplomatic and consular posts not to rely on radiological testing to determine age because “growth rates vary significantly in different populations” and there may be “significant differences between an individual’s chronological age and his/her bone age.”¹¹⁵

Although legislation enacted in 2002 transfers the care and custody of children to the Office of Refugee Resettlement (ORR) in the Department of Health and Human Services,¹¹⁶ the details of this transfer have not yet been resolved. Therefore, unaccompanied children seeking asylum are still at risk. Furthermore, the Homeland Security Act did not incorporate significant safeguards that were included in the proposed Unaccompanied Alien Child Protection Act of 2001. For example, children are still subject to these questionable age determination tests, to shackling and handcuffing, and to the use of solitary confinement – a practice that can be particularly harmful to psychologically vulnerable children. The legislation also did not provide for either pro bono legal representation for children or for the appointment of guardians *ad litem* to act in the best interest of the child.

Cost of Detention

The cost of jailing refugees who seek asylum here are significant. The DHS detention and removal budget is now over \$1 billion per year. According to the Department of Homeland Security, it costs over \$600 million to detain non-citizens each year.¹¹⁷ It is also estimated that it costs on average \$85 to detain a single person in immigration detention per day.¹¹⁸ It has been estimated that detaining asylum seekers costs taxpayers at least \$130 million per year.¹¹⁹ The current policy, which results in lengthy and unnecessary detention of refugees, is wasteful.

Impact on Ability to Win Asylum

The U.S. government does not provide funding for legal representation of asylum seekers. A study conducted by the Georgetown University Institute for the Study of International Migration, which analyzed U.S. government statistics, showed that asylum seekers are up to six times more likely to be granted asylum when they are represented. The Georgetown analysis also revealed that more than one out of three asylum seekers in immigration court lack legal representation. For detained asylum seekers, the situation is worse – more than twice as many detained asylum seekers lack representation when compared to non-detained asylum seekers in immigration proceedings.¹²⁰ Detained asylum seekers, particularly those who are being held in remote areas, are often far from legal service providers.

For those who cannot afford to pay for counsel, the availability of free legal assistance is limited.¹²¹ The need for representation far exceeds the limited resources of non-profit legal organizations. In addition, some attorneys must travel great distances to meet with their clients at jails and facilities located in remote or inaccessible areas. All of these factors limit the number of lawyers who are willing and able to take these cases.

Detained asylum seekers face greater burdens in attempting to prove their cases.¹²² The ability of a detained asylum seeker to gather documentation and locate and communicate with witnesses who could corroborate the facts of her claim is severely hampered by the very fact of detention.¹²³ Although telephones are available in detention facilities, she or he may not be able to afford a phone card or may be limited to collect calls, which some lawyers and non-profit organizations do not accept. The telephones are routinely located in large “pod” or “dorm” areas that may hold scores of other detainees, so that no meaningful degree of privacy is available to make calls to legal counsel or potential witnesses.¹²⁴ In addition, detained asylum seekers often have little or no meaningful access to up-to-date legal materials or country condition reports that are essential to the preparation of their cases.¹²⁵