

**STUDY ON ASYLUM SEEKERS IN EXPEDITED REMOVAL**  
*As Authorized by Section 605 of the International Religious Freedom Act of 1998*

**CONDITIONS OF CONFINEMENT FOR DETAINED  
ASYLUM SEEKERS SUBJECT TO EXPEDITED REMOVAL**

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## CONDITIONS OF CONFINEMENT FOR DETAINED ASYLUM SEEKERS SUBJECT TO EXPEDITED REMOVAL

Detention is a critical issue for asylum seekers subject to Expedited Removal in the United States. In FY2003, asylum seekers constituted only 6 percent of the 230,000 aliens in the custody of the Department of Homeland Security (DHS).<sup>1</sup> However, all asylum seekers subject to Expedited Removal are, by law, detained until a credible fear determination has been made in their case.<sup>2</sup> Even after the Credible Fear determination, which normally occurs between two and fourteen days after an alien's arrival, it is at the discretion of the DHS Bureau of Immigration and Customs Enforcement (ICE) Office of Detention and Removal Operations (DRO) to determine whether to release an asylum seeker prior to his or her hearing before an immigration judge. According to ICE, the average length of detention for released asylum seekers in Expedited Removal was 64 days, and 32 percent were detained for 90 days or longer.<sup>3</sup>

Detention is clearly a significant factor in an asylum seeker's experience in the Expedited Removal process. Consequently, Congress authorized the United States Commission on International Religious Freedom to appoint experts to examine the conditions under which these asylum seekers are confined.<sup>4</sup> This report attempts to describe those conditions.

### I. THE DETENTION OF ASYLUM SEEKERS SUBJECT TO EXPEDITED REMOVAL

The rationale for detaining asylum seekers who are subject to Expedited Removal has several components. For one, section 235 (b) (1) (B) (iii) (IV) of the Immigration and Nationality Act provides that any alien subject to Expedited Removal procedures "shall be detained pending a final determination of credible fear of persecution and, if found to have such a fear, until removed." If credible fear is found (a process that can take between 48 hours to two weeks), ICE District Directors may parole at their discretion those aliens who meet the credible fear standard, can establish identity and community ties, and who are not subject to possible bars to asylum involving violence or other misconduct.

Since, by definition, aliens who are placed in Expedited Removal proceedings either have no documents, faulty documents, or ones that an immigration inspector has determined were fraudulently obtained, detention serves the purpose of detaining aliens until their identity can be determined. Moreover, since ICE is charged with the responsibility of insuring that asylum seekers subject to Expedited Removal actually appear for their asylum hearings, and that they appear for their removals (if asylum is not granted), detention helps to insure that both goals are met.

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<sup>1</sup> Fact Sheet – ICE Office of Detention and Removal (May 4, 2004) (available at [www.ice.gov](http://www.ice.gov)); and Report to Congress, Detained Asylum Seekers, Fiscal Year 2003, Prepared by U.S. Immigration and Customs Enforcement Office of Detention and Removal and the Department of Homeland Security, Management Directorate, Office of Immigration Statistics.

<sup>2</sup> Section 235(b)(1)(B) of the Immigration and Nationality Act ("The INA"), 8 USC 1225(b)(1)(B) (2004).

<sup>3</sup> Report to Congress, Detained Asylum Seekers, FY2003.

<sup>4</sup> Section 605 of the International Religious Freedom Act of 1998, 22 USC 6474 (2004).

However, it also is possible that asylum seekers who are subject to Expedited Removal are held in detention unnecessarily (i.e., when less onerous measures could accomplish the same goals equally well), for too long a period of time (i.e., when they otherwise could be paroled pending the adjudication of their asylum hearings), or that the conditions under which they typically are detained are inappropriate (i.e., the nature of their confinement may be psychologically harmful or otherwise interfere with their successful integration into U.S. society or the home country to which they are removed). This report addresses the latter concern—the nature and appropriateness of the actual conditions under which asylum seekers subject to Expedited Removal are detained.

It is important to acknowledge at the outset that this report analyzes the conditions of confinement for post-credible fear asylum seekers largely in reference to their similarity with traditional correctional environments. There are several reasons for this. For one, the issue of whether the detention of asylum seekers subject to Expedited Removal “criminalizes” them—by treating them in much the same way as criminals are treated in our society—has been the subject of much controversy in the United States and abroad.<sup>5</sup> Examining whether and to what extent the conditions under which post-credible fear asylum seekers are kept approximates conditions in the nation’s penal system helps to clarify that debate.

In addition, both the letter and spirit of the DRO detention standards appear to embody a traditional correctional system approach to the housing and treatment of post-credible fear asylum seekers. These standards clearly model those in use in traditional prisons and jails and, in fact, explicitly refer to the Bureau of Prisons and American Correctional Association (ACA) Standards for Adult Local Detention Facilities.<sup>6</sup> The use of traditional correctional standards for the detention of asylum seekers in the Expedited Removal process contributes to the sense that they are being criminalized by the nature of the conditions in which they are confined.

On the other hand, despite their heavy reliance on a traditional correctional approach, the DRO standards and guidelines also were designed to be flexible in their application. That is: “Since the standards as written could not be imposed on IGSA (Intergovernmental Service Agreement) facilities, which house diverse groups of individuals, the format of the standards was altered so that they could be more flexible. The new standards will be required for all facilities holding INS detainees, but they include flexibility to allow IGSA’s to use alternate means of

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<sup>5</sup> The Executive Committee of United Nations High Commissioner for Refugees (UNHCR), of which the United States is a member, in its Conclusion 44 (1986), expressed that, “in view of the hardship which it involves, detention (of asylum seekers) should normally be avoided.” *See* Appendix E. It also stressed “the importance for national legislation and/or administrative practice, to make the necessary distinction between the situation of refugees and asylum seekers, and that of other aliens,” and that “refugees and asylum seekers shall, whenever possible, not be accommodated with persons detained as common criminals...” The UNHCR Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers (1999) reiterated that the detention of asylum seekers is “inherently undesirable...(and) should only be resorted to in cases of necessity;” emphasizing the importance of “the use of separate detention facilities to accommodate asylum-seekers. The use of prisons should be avoided. If separate detention facilities are not used, asylum-seekers should be accommodated separately from convicted criminals or prisoners on remand. There should be no co-mingling of the two groups.” *See* Appendix F.

<sup>6</sup> “The standards are based on current INS detention policies, Bureau of Prisons’ Program Statements, and the widely accepted ACA Standards for Adult Local Detention Facilities, but are tailored to serve the needs of INS detainees.” INS News Release, INS to Adopt New Detention Standards, November 13, 2000.

meeting the standards if necessary.”<sup>7</sup> Thus, at the same time the DRO standards incorporate a traditional corrections approach to detention, and some of the facilities in which aliens are detained are actual jails, they seem to contemplate the possibility of using different, alternative approaches to the handling of asylum seekers subject to Expedited Removal.

Moreover, it is clear that the specific conditions of confinement in DRO detention facilities are not dictated by the nature of the alien population housed in them. For example, there is a dramatic contrast between the approach to the detention of post-credible fear asylum in the Queens Contract Detention Facility, which is structured and operated much like a traditional jail or correctional facility, and the Broward Transitional Center, which appears to be a much more humane and far less intrusive form of confinement that bears only minimal resemblance to a traditional prison or jail. Coincidentally, despite their dramatic differences in conditions and approach, both facilities are operated by the same parent company, GEO (Global Expertise in Outsourcing, formerly part the Wackenhut Corporation).

In fact, the dramatic differences between these two facilities appear to be largely a function of the terms of the ICE contracts under which they each operate, rather than differences in the nature of the populations served. Thus, the nature of the conditions under which the group of asylum seekers subject to Expedited Removal are kept appears to be a policy choice, rather than a detention-related mandate.

## II. ASSESSING CONDITIONS OF CONFINEMENT AT THE DETENTION FACILITIES IN WHICH ASYLUM SEEKERS SUBJECT TO EXPEDITED REMOVAL ARE HOUSED

The present descriptions and assessment of the conditions under which asylum seekers are housed are based on several sources. The *primary* data source consisted of a series of structured interviews conducted by telephone with administrators who worked at 19 pre-selected detention facilities throughout the United States (described in detail below).<sup>8</sup> The results of the facility survey also were supplemented with direct observations that were conducted at 4 detention facilities (Broward Transitional Center, Elizabeth Detention Center, Krome SPC, and the Laredo Contract Detention Center), and with two group interviews that were conducted with former DHS detainees (one organized in New York City by Human Rights First, and another in Miami by Florida Immigrant Advocacy Center). In addition, the results were verified and compared with: 16 unreleased monitoring reports by the United Nations High Commissioner for Refugees (UNHCR) that ICE authorized to be shared with the Commission; 30 unreleased monitoring reports of site visits to detention facilities by the American Bar Association (ABA)

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<sup>7</sup> *ibid.*

<sup>8</sup> It is important to note at the outset that these data are limited in several ways. For one, although facilities in which the great majority of post-credible fear asylum seekers are housed were surveyed, not every facility was included. Although unlikely, it is possible that the facilities that were not included in the survey differed in some important respects from those that were, altering the accuracy of the overall descriptions. Second, and more importantly, as our primary data source, the survey depended *entirely* on information provided by the facility administrators themselves. Aside from the possible tendency for administrators to portray their own facilities in a positive light, the descriptions and accounts on which we relied in the survey were entirely those who operated the facilities rather than, for example, those of the detainees who were housed in them. In institutional settings, these two perspectives often differ from one another; conditions and procedures are not always experienced by inmates in exactly the way they are intended by administrators.

that ICE authorized be shared with Commission experts; information obtained from visits of other Commission experts in the course of the Study.<sup>9</sup> Finally, Commission researchers interviewed 39 asylum seekers who had decided to “dissolve” their asylum claims while in detention. Those interviews were evaluated to determine what effect, if any, detention conditions might have had on the aliens’ decision to dissolve their asylum claim. They, too, were used to supplement the facility survey.<sup>10</sup>

## A. The Facility Survey

As noted above, the primary data source was a survey of a sample of facilities where asylum seekers subject to Expedited Removal were detained. The sample of surveyed facilities was designed to represent the different types of institutions currently used by the Department of Homeland Security for this purpose and also to include ones that encompassed a large percentage of the population of post-credible fear asylum seekers currently in DHS custody.<sup>11</sup> Thus, the total of 19 facilities were located in 12 different states and included 6 county jails, 5 DHS run facilities, 7 private contract facilities, and one special county-run detention facility for alien families (Berks County). The institutions surveyed housed more than 70 percent of all aliens subject to Expedited Removal in FY 2003. Overall, the facilities that were surveyed were responsible for housing approximately 5585 alien men and 1015 women. (A list of the sampled facilities appears in Appendix A.) The cost of detaining an alien at these facilities varied from

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<sup>9</sup> These included visits by Commission expert to: the Queens New York Contract Facility; the Comfort Inn, Miami, Florida; San Pedro Detention Facility; Otay Mesa Detention Facility (CCA), San Diego, California; Mira Loma Detention Facility, Lancaster, California; Kenosha County Jail, Kenosha, Wisconsin; Florence SPC, Florence, Arizona; Piedmont Regional Jail, Farmville, Virginia; Aguadilla, Puerto Rico; Guaynabo-MDC, Puerto Rico; and Office of Refugee Resettlement (ORR) juvenile contract facilities in Chicago, Illinois, and San Diego, California.

<sup>10</sup> In a letter dated June 22, 2004 from Acting DRO Director Victor Cerda to USCIRF Immigration Counsel Mark Hetfield, Mr. Cerda indicated that ICE was providing the ABA and UNHCR reports to the Commission for “informational purposes only,” as they are not as comprehensive as DHS’s own monitoring reviews. As Mr. Cerda pointed out, the UNHCR and ABA reports are based on short facility tours, while the DRO monitoring reports are the result a much more comprehensive two to three day inspection of individual detention facilities. Immediately upon receipt of the letter, USCIRF made the first of many repeated requests to ICE for an opportunity to review the DRO inspection reports. ICE, however, never made those reports available to Commission experts.

<sup>11</sup> As Appendix A indicates, we had intended to survey 22 facilities. Three facilities (Ozaukee, Guaynabo, and Orleans) declined to participate. Consequently, we did not include any data or reach any conclusions pertaining to those facilities. However, note that in one case—the Ozaukee County Jail—an inspection done in September, 2003 by another outside agency that looked at many of the same issues reached many of the same overall conclusions that we did about the facilities we surveyed. Among other things, the other agency inspection reported “[d]etainee complaints about jail conditions and treatment by guards as disrespectful, rude, and unprofessional.”

Reasons for the failure to participate varied. For example, after making and breaking several appointments with Commission staff to complete the survey, Ozaukee county ultimately refused to cooperate. On the other hand, MDC Guaynabo, a facility run by the Bureau of Prisons (BOP), was unable to participate in the survey because, in spite of a number of requests made by Commission staff to BOP at the US Department of Justice, the facility was not able to get the necessary clearance from Washington in time to participate. While in Puerto Rico interviewing aliens in Expedited Removal proceedings, USCIRF Immigration Counsel Mark Hetfield was given a tour of the facility by BOP officials. Hetfield reported that, while the facility was cleaner and had more extensive programming, access to outdoor recreation and natural light, and privacy than virtually any other adult facility visited in connection with the Study (except for Broward), the facility was clearly run as a high security correctional institution. Thus, Guaynabo detainees were permitted contact attorney visits and supervised personal visits, but were strip searched after each one. Moreover, criminal detainees were co-mingled with asylum seekers with no distinction whatsoever.

A list of the facilities actually included in the sample, and from which they data on which this report relies were obtained, appears in Appendix B.

between \$30 to \$200 per detainee per day, with an average cost of approximately \$83.<sup>12</sup> This estimate is similar to the one reported in the EOIR Legal Orientation Executive Summary—that is, that overall “[t]he average cost to DHS for each detainee is \$85 per day.”

To begin the survey, administrators at each facility were asked a series of preliminary questions designed to elicit information about the cost of housing detainees there, and information about the gender and legal status of the detainees themselves.<sup>13</sup> Questions then focused at length on specific aspects of the conditions under which detainees lived, the particular procedures that governed the detainees’ day-to-day behavior, and other aspect of the institutional environment in which they were housed. By design, the survey addressed a standard set of characteristics or dimensions of institutional life, intended to determine the extent to which aliens housed in these detention facilities may be subjected to conditions of confinement that were similar to those of in-custody inmates housed in traditional jails and prisons.

### *1) Special Treatment of Alien Detainees*

One important initial issue concerned whether any special forms of treatment and protection were provided to post-credible fear asylum seekers who were in DHS detention—including whether the non-criminal and criminal aliens were kept separate from one another, whether aliens were kept separate from jail inmates (in those facilities that housed both), and whether the detention staff had any special knowledge or training that would enable them to address the special needs and unique status of asylum seekers.

More than half (13/18) of the facilities where male aliens were detained reported that they housed detainees both with and without criminal convictions. Similarly, more than half of the facilities that housed female aliens (10/13) had detainees who had been convicted of one or more criminal offense as well as those who had none. Of the facilities that housed male or female detainees who had criminal convictions with detainees who had none, 11 not only allowed some contact or interaction between both groups but also provided for shared sleeping quarters where both groups were co-mingled. Among the 8 facilities that housed non-DHS jail inmates (either sentenced or awaiting trial), 7 permitted some contact between them and the detained aliens and, in the case of 4 facilities, this included shared sleeping quarters.

Several questions addressed the issue of whether detention facility staff had special knowledge and received special training with respect to asylum seekers. In only one of the detention facilities were the line officers or guards explicitly told which specific inmates were asylum seekers. In addition, staff at very few of the facilities were given any specific training that was designed to sensitize them to the special needs or concerns of asylum seekers, and in even fewer facilities did they receive any training to enable them to recognize or address any of the special problems from which victims of torture and other forms of trauma might suffer or the

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<sup>12</sup> Note: In the case of several private contract facilities, the daily cost per detainee was reduced once the facility began to operate above a certain population level. The standard cost—not exceeding the lower population level—was used in calculating the overall average. In the case of one facility, Mira Loma, only a range was provided by the administrator and the midpoint of that range was used. Two facilities (Berks County Family Shelter and San Pedro) did not report average costs.

<sup>13</sup> A copy of the entire questionnaire appears in Appendix C.

special difficulties they might experience in the course of their detention. Specifically, only 3 of the facilities in the sample reported that staff members received “some cultural sensitivity training” and only one—Broward—reported that its staff received any training with respect to what asylum seekers “might have gone through.” In addition to the lack of specific training among line staff, only a small number of facilities (5/19) reported that *anyone* on-site—including higher level officials and administrators—had received such training.

## 2) *Use of Correctional Models of Security, Surveillance, and Control*

The first series of detailed confinement-related questions posed in the survey pertained to the basic security arrangements and procedures that were in use at the particular detention facilities. On the whole, responses indicated that these facilities were extremely secure and highly security-conscious.

All of the detention facilities but one had secure barriers (locked doors and/or gates) that separated the housing units from the initial entrance into the facility itself. The number of such security barriers ranged from 1 to 8, with a mean of 3.7 security barriers between the entrance and the detainee housing units. All but one employed special security procedures that restricted general access to the detainees’ housing units and to their individual cells or sleeping areas.

Similarly, all of the detention facilities but one employed multiple inmate “counts” during the day by which the detainees’ whereabouts were formally monitored. The number of such counts ranged from 2 to 10, and averaged 5 counts per day in the 18 facilities that used them.<sup>14</sup> All of the facilities but 5 reported that they used strip or other kinds of invasive searches on detainees as a standard procedure during the time they were processed into the facility. All but 3 reported using strip or invasive searches for security-related reasons during the detainees’ subsequent confinement. In addition, all of the facilities reported that guards conducted security-related searches of the detainees’ general living or housing areas. Some reported that these searches occurred as frequently as once a day, although in most facilities once a week or less was the norm.

The facilities also reported a heavy emphasis on the direct monitoring and surveillance of the detainees. Specifically, all but three of the facilities reported that there were fixed and secure guard stations in the detainee housing or living areas, and virtually all (18/19) had constant sight and/or sound surveillance in the housing units themselves (which typically meant the nearly constant presence of a facility staff member). In addition, most (14/19) had surveillance cameras operating inside the detainee housing units, and all but one had surveillance cameras in operation elsewhere in the facility.<sup>15</sup> All of the detention facilities used 24-hour surveillance lighting (i.e., there were key areas inside the institutions where the lights were never turned off).

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<sup>14</sup> One facility—the Yuba County Jail—reported “hourly safety checks” in addition to three “actual head counts” per day. We used only the head counts in this calculation.

<sup>15</sup> Many of the facilities reported the use of numerous surveillance cameras throughout. For example, the Yuba County Jail reported that it had approximately 70 surveillance cameras were in regular operation.

### 3) *Restricted Movement and Segregated Confinement*

Prisons and jails are characterized by the limitations they place on the liberty of inmates. Indeed, it is one of their defining qualities. The freedom of movement of post-credible fear detainees in the facilities that were surveyed was restricted in a number of important respects. For one, virtually all of the detention facilities (18/19) reported using physical restraints with the detainees. In some instances the use of restraints was reported as rare and minimal, in others it appeared to be frequent and more extensive. For example, the Tri-County Jail in Ullin, Illinois reported that the staff used “handcuffs, belly chains, and leg shackles... when detainees leave the facility.” On a day-to-day basis, detainees in virtually all (17/19) of the facilities were restricted in their movement outside of their direct housing units, and only a few (4) allowed detainees to have access to other housing or living areas within the facility. In addition, all of the facilities but 2 reported that they required the detainees to have staff escorts whenever they moved throughout the facility. The only areas within the institutions to which detainees were given relatively unrestricted, unescorted access were the dayrooms that were attached to their living areas.

The use of segregation, isolation, or solitary confinement for disciplinary reasons was widespread among the detention facilities that were sampled. All but 3 of them reported that they used some form of this kind of specialized, punitive confinement in response to certain kinds of disciplinary infractions by the detainees.

### 4) *Limitations on Privacy and Personal Freedom*

Significant limitations were reported in the amount of privacy, personal freedom, and individuality that detainees were afforded in virtually all of these facilities. Thus, detainees in only a few of the detention facilities (4/19) had access to private, individual toilets that they could use when no one else was present. In only slightly more of the facilities (5/19) were detainees able to shower privately (i.e., outside the presence of others). Very few detainees had the opportunity to be alone in their cells or rooms (something that was possible in only 4 facilities). In addition, detainees at very few facilities (4/19) were given any opportunity to personalize their living quarters by decorating them, and the overwhelming majority of the facilities (16/19) required detainees to wear uniforms rather than street clothes. Similarly, only 2 of the facilities permitted detainees to have personal hygiene items that were not sold at the facility commissary or provided by the government. In fact, there were 6 detention facilities—about a third of the sample—that did not extend commissary privileges of any kind to the detainees.

### 5) *Pursuit of Legal Claims*

The detention facilities that were surveyed did acknowledge the importance of allowing the detainees to pursue their legal claims in several ways. For example, all of the facilities reported providing the detainees with at least some kind of law library access, and in 5 of them such access was described as essentially unlimited. (However, in *none* of the facilities visited by the experts were all the legal materials listed in the DHS detention standards—listed in Appendix E—present and up-to-date, a problem consistently reported by the UNHCR and ABA monitoring reports as well.) Virtually all (18/19) of the facilities reported that “know your rights”

presentations were conducted, either by their own staff (5), NGO representatives (8), or both (5).<sup>16</sup> The great majority also indicated that the “know your rights” handouts were issued or made available to detainees. Most facilities reported handbooks were available in English and Spanish, with Chinese (6), French (4), and Creole (4) also covered in several of the facilities.<sup>17</sup>

#### 6) *Access to Programming and Meaningful Activity*

There were a significant number of restrictions placed on the detainees’ opportunities to engage in meaningful activities or programs of any kind while they were confined. The degree of the restrictions varied according to the nature of the activity. Thus, virtually all of the facilities reported that they provided detainees with some opportunity for what they characterized as outdoor recreation or exercise. (The one exception—Oakland County Jail—provided 3 hours per week in an indoor gym at the facility.) However, the number of hours of outdoor exercise per week varied widely from as many as 40 (in a few facilities where detainees were reported to have virtually unlimited daytime outdoor access) to as few as one hour to an hour and a half per day (the rule in 8 facilities). In virtually every case in which outdoor exercise was provided (15/18), the facilities reported that the detainees were still in a circumscribed, confined environment (described in one case as a “small concrete slab that is well fenced in with razor wire”).<sup>18</sup>

In terms of other activities routinely available to detainees, no detention facility provided detainees with access to the internet. Moreover, a majority (11/19) of the facilities reported that they had no educational or vocational training activities whatsoever available in which detainees could participate. Among the 8 facilities that offered some kind of programming activity, most offered ESL classes, and several gave the detainees an opportunity to participate in several kinds of classes (e.g., in “life skills” or art).

On the other hand, all of the facilities but 2 allowed detainees to work. In most of the detention facilities where work was allowed (12/17), detainees were paid. However, in each case the rate of pay for their labor was very minimal—\$1 per day.

#### 7) *Access to Religious, Mental Health, and Medical Services*

In addition to meaningful activity and programming, incarcerated persons often have special needs that arise from time to time and that must be addressed by specialized personnel. The special services available to detainees at the facilities that were surveyed varied. For

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<sup>16</sup> In some instances, these presentations were infrequent. For example, the Yuba County Jail reported that the UC Davis law school provided “know your rights” presentations “when they chose,” but this averaged only about three times per year. Given the fact that the average stay in detention is 64 days, “know your rights” presentations that occurred approximately three times per year would fail to reach a large segment of the detained asylum seeker population.

<sup>17</sup> We note that here, as with all of the data presented concerning access to services and the like, we were unable to directly assess the quality of the “know your rights” presentations, the materials that were distributed, or the accuracy of the translations.

<sup>18</sup> It should be noted that the nature of these outdoor facilities appeared to vary widely. In the inspection of the Elizabeth facility, for example, Commission researchers noted that the cramped, enclosed exercise area hardly was “outdoor” at all, even though it was characterized as such in the survey results.

example, most (13/19) of the detention facilities had at least one full-time chaplain (another had a part-time chaplain), virtually all had weekly religious services that detainees were permitted to attend, most conducted special religious services in conjunction with certain religious holidays, and all but one facility accommodated at least some religious or special diets.

On the other hand, even though all facilities employed some kind of mental health screening at the time detainees were being processed into the institution, and most made mental health services available to detainees who requested it later on, only 5 of the facilities had any full-time mental health staff members. Among the 14 that reported having no full-time mental health staff was the large Mira Loma facility where as many as 1200 DHS detainees can be held at a time. The survey did not address the issue of whether detainees had access to ongoing therapy or mental health counseling, if so, on what basis, or the quality of the care that actually was provided.<sup>19</sup> Nonetheless, the lack of full-time mental health staff in many of these facilities raised concerns about these issues.

Moreover, in only 2 of 19 facilities did mental health staff members conduct regular rounds or make any kind of effort to directly monitor the mental health status of the detainees. Most of the facilities did report that they had special suicide prevention procedures in the case of detainees who were suspected of being suicidal, although in most instances this consisted of placing the detainee in a segregation or isolation unit.<sup>20</sup>

Medical care tended to be handled more consistently. Thus, the overwhelming majority of the facilities reported that at least one full-time nurse was present, and nearly half (8/19) had full-time physician coverage.

#### 8) *Contact with the Outside World*

Finally, significant limitations were placed on the detainees' contact with the outside world in most of the detention facilities that were surveyed. For one, in virtually all of the facilities (except one), there were limitations placed on the frequency and length of the social visits that were permitted. In fact, the majority of the facilities (11/19) limited visiting days to only 1-2 days per week; only 4 permitted visiting every day. In addition, 10 facilities reported that visiting was restricted to 1 hour or less per visit, and only 2 placed no time limits on the lengths of social visits. The majority of the detention facilities (11/19) prohibited any kind of contact visiting with social or family visitors, which meant that visits often occurred behind plexi-glass windows. However, attorney visiting was handled more generously: attorney visitation was unlimited in all of the facilities and, in all but 2 facilities, they were allowed to be contact visits.

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<sup>19</sup> For example, note that a Bellevue/NYU study of detained asylum seekers reported that "most of the asylum seekers interviewed (69 percent) reported that they wanted counseling for their mental health problems although few received such services... Among those who wanted counseling, only 6 (13 percent) reported receiving counseling from someone provided by the detention facility." Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture, *From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers* (2003), at p. 63.

<sup>20</sup> It should be noted that confinement in isolation is likely to exacerbate depression and, for this reason, generally is not regarded as an appropriate response to suicidality.

Detainees at all facilities were permitted phone calls, although these were outgoing phone calls only, and even in-coming calls from attorneys were prohibited. Only a few facilities placed limits on number and length of calls (except on the basis of phone availability), and some provided pro bono calling privileges on a limited basis. Virtually every facility placed limitations on the kind of mail detainees could receive (only one reported it did not). Incoming letters were opened in every facility, and 6 detention facilities even placed restrictions on the number of letters detainees could send out in a week.<sup>21</sup>

### *Summary*

Appendix D contrasts the characteristics of the alien detention facilities in which detained asylum seekers are housed (as measured in the survey described above) with those of traditional jails and prisons that are intended for accused and/or convicted criminals. Indeed, as one chief administrator of a detainee-only facility put it, “the people here are all our prisoners.”<sup>22</sup> Thus, Appendix D shows that, in most critical respects, the DHS detention facilities are structured and operated much like standardized correctional facilities. Indeed, in some instances, actual criminal justice institutions—in this case, county jails—are operated as dual use facilities that simultaneously house asylum seekers and criminal offenders, side-by-side. Even in those DHS or contract detention facilities that explicitly are designed to house only alien detainees, the physical structure, day-to-day operations, and treatment of residents appear to be corrections-based in virtually all important respects. Moreover, there were few systematic differences between the several types of facilities. That is, whether they were county jails, DHS run facilities, or private contract facilities, they were operated in more or less the same way. With the exception of the Broward Transitional Center (a private contract facility) and the Berks Family Shelter (a county run detention facility), the facilities employed similar rules, with similar conditions of confinement, that greatly resembled traditional correctional settings.

## **B. Interviews with Former Detainees**

The results of the facility surveys were supplemented by face-to-face interviews conducted in Miami and, especially, New York, with asylum seekers who had been in detention but subsequently were released. The interviewees (who, in the case of those in New York, had been confined either in the Elizabeth Detention Center or the Queens Contract Detention Facility and, in the case of those in Miami, had been confined either in Krome SPC or the Broward Transitional Center) recalled many painful and even traumatic aspects of their detention. Several complained of physical as well as mental abuse suffered in the course of their detention. One of them summarized the hardships of institutional life this way:

You had to put on a uniform, were taken to a dormitory to live, had no privacy—and even had to shower in the presence of a guard (who could be a male or female—it didn’t matter). You must conform to all the arbitrary regulations—eat what you are given, when you are given it, and get used to being searched each time you leave your dormitory. They can touch you anywhere.

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<sup>21</sup> In some instances, the limitations were placed on mailing by indigent detainees. For example, the Yuba County Jail allows indigents to send a maximum of two letters per week free of charge.

<sup>22</sup> Interview at Laredo Processing Center, September 22, 2004.

Another former detainee said, “you have to endure many cultural violations in the detention center. In my country, we are not supposed to see our elders naked. But we had to there. And you are afraid, you don’t know the law here.” In addition to fear, many talked about depression at the prospect of what they worried would be indefinite detention. Indeed, some encountered asylum seekers in the facilities who already had been detained for several years without release. They reported that deep concerns about their own uncertain fate in the asylum process affected them psychologically during their confinement. Yet there was no active monitoring of their mental or emotional condition.

The adverse treatment took a toll on a number of the persons interviewed. One of them said:

I felt really isolated and humiliated. I felt like a person who had no value. At any time, the security guards made us do whatever they wanted. I felt traumatized by my treatment. My blood pressure went higher and my medical problems worsened there.

Other former detainees described the conditions in the facilities as “psychologically degrading... stressful and depressing.” They also reported that they could be placed in isolation—in essence, solitary confinement—for trivial offenses such as verbal disagreements with other detainees.

A number of those interviewed told compelling stories of the torture and persecution in their home countries that had led them to seek asylum in the United States. Yet they felt that their treatment in detention, while they awaited the resolution of their asylum case, added to their pre-existing emotional distress. As one of them put it: “The whole detention system is there to break you down further. The time you spend there prolongs your trauma. And you are not even allowed to cry. If you do, they take you to isolation.” Another said, “I fled my country because of this. I broke down and cried when it happened here.”

Other former detainees spoke of being “treated like children” at the detention facilities, of having very little to do, and being “treated like a criminal.” Even at Broward—which otherwise was an exception to the very severe conditions in the other detention facilities—at least one former detainee noted that many of the women were depressed and that there were several suicide attempts during the period she was kept there.

Language barriers were described as a consistent problem. A number of the former detainees reported that even when there were translations provided for important legal documents, there were few if any key facility staff members (for example, in mental health) who spoke the language of many of the detainees. This made effective communication extremely difficult.

### **C. Facility Tours**

The tours of the facilities confirmed the fact that, except for the Broward Transitional Center, these detention units are structured and run much like traditional correctional institutions. There is a high premium placed on security and surveillance, and this is evident from the moment anyone enters the facilities themselves. Indeed, at Krome, for example, the security exceeded the level that exists at most correctional facilities. There were armed guards stationed at the entrance to the facility and it was impossible to even drive into the parking lot without first showing them proper identification. Once inside, in each of these facilities, the characteristic sounds of slamming gates and locked doors closing behind serve to remind visitors and residents that they are in a high security correctional environment.

The atmosphere inside the facilities that were examined by Commission researchers were unmistakably somber. The stark conditions appeared to have a direct effect on the residents. As one official at the Elizabeth Detention Center acknowledged, “mental health is a big problem. Sometimes people get very depressed, and just getting them a change of scenery, getting them out of this place for a while, improves their mental health.” He went on to note that:

Detention itself is really depressing. But when you don't know when you are getting out, that's really bad. I worked in a federal correctional facility and, although the inmates were not happy, they at least knew when they were getting out and had something definite to look forward to. Here, they don't.

Again, with the exception of Broward, the detention facilities that were inspected looked very much like county jail facilities that exist throughout the United States—physically drab, lacking personalized decorations and the like, and without much open space or common programming areas for meaningful activities in which detainees could participate. Most of the so-called “recreation” areas were cramped and restricted (with the exception of the outdoor recreation areas at Broward, Mira Loma, Florence, Laredo and Krome), and they had little if any exercise equipment. The libraries were small and sparse, and appeared to have comparatively few volumes (most of which were in written in English). The dayrooms were drab and uninviting.

Interestingly, all of the facilities that were inspected, except Broward, used standard correctional nomenclature for their isolation unit—“SHU” (the correctional acronym for “special housing unit”)—that is employed in most prisons and jails in the United States. Moreover, the SHU units in these detention facilities appear to be structured and to operate in very much the same way as in traditional correctional settings. That is, they were run as punishment units that subjected detainees to virtually around-the-clock enforced isolation, in extremely sparse cells, and under heightened levels of deprivation.

### **III. THE PSYCHOLOGICAL IMPACT OF CONFINEMENT**

The fact that the detention facilities that were surveyed and inspected so closely resembled traditional correctional institutions poses a number of concerns. Adaptation to prison-like environments is difficult for virtually everyone confined in them. Most people experience

incarceration as painful and even traumatic. The experience also can have long-term consequences. Beyond the psychological effects of trauma, life in a prison-like environment requires people to change and adjust in ways that may prove difficult for them to relinquish upon release. That is, in the course of coping with the deprivations of life in a prison or jail, and adapting to the extremely atypical patterns and norms of living and interacting with others that incarceration imposes, many people are permanently changed.

Psychological reactions to the experience of living in a prison-like environment vary from individual to individual, making generalizations difficult. It is certainly *not* the case that everyone who is incarcerated is disabled or psychologically harmed by it. But few people end the experience unchanged by it. Among the commonsense generalizations that have been corroborated by research is the fact that persons who have psychological vulnerabilities *before* their incarceration are likely to suffer more problems later on, and that the greater the level of deprivation and harsh treatment and the longer they persist, the more negative the psychological consequences.

Perhaps the most comprehensive summary of research on the effects of living in a prison-like environment included these findings: that “physiological and psychological stress responses... were very likely [to occur] under crowded prison conditions”; inmates are “clearly at risk” of suicide and self mutilation; that “a variety of health problems, injuries, and selected symptoms of psychological distress were higher for certain classes of inmates than probationers, parolees, and, where data existed, for the general population”; that imprisonment produced “increases in dependency upon staff for direction and social introversion,” “deteriorating community relationships over time,” and “unique difficulties” with “family separation issues and vocational skill training needs.”<sup>23</sup> The same literature review found that a number of problematic psychological reactions occurred after relatively brief exposure to a prison-like environment. For example, higher levels of anxiety have been found in inmates after eight weeks in jail than after one, and measurable increases in psychopathological symptoms have been found to occur after only 72 hours of confinement. Research in which college student participants were placed in a simulated prison-like environment also found that extreme reactions occurred after only a short period—less than a week—of incarceration.<sup>24</sup>

The term “institutionalization” is used to describe the process by which inmates are shaped and transformed by the institutional environments in which they live. Sometimes called “prisonization” when it occurs in prison-like settings, it is the shorthand expression for the broad negative psychological effects of incarceration. Thus, prisonization involves a unique set of psychological adaptations that typically occur—in varying degrees—in response to the extraordinary demands of prison life.<sup>25</sup> In general terms, this process involves the incorporation of the norms of prison life into one’s habits of thinking, feeling, and acting.

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<sup>23</sup> James Bonta and Paul Gendreau, P., Reexamining the Cruel and Unusual Punishment of Prison Life, 14 Law and Human Behavior 347-372 (1990), at pages 353-359.

<sup>24</sup> Haney, Craig, Banks, William, & Zimbardo, Philip, Interpersonal Dynamics in a Simulated Prison, 1 International Journal of Criminology and Penology 69 (1973).

<sup>25</sup> For example, see: Donald Clemmer, The Prison Community. New York: Hold, Rinehart & Winston (1958); Erving Goffman, Asylums: Essays on the Social Situation of Mental Patients and Other Inmates. New York: Anchor (1961); Lynne Goodstein, Inmate Adjustment to Prison and the Transition to Community Life, Journal of Research on Crime and Delinquency, 16, 246-272 (1979); Barbara Peat, Barbara and Thomas Winfree, Reducing the Intra-Institutional Effects of “Prisonization”: A Study of a Therapeutic Community for Drug-Using Inmates, Criminal

Persons who enter prison-like environments for the first time must adapt to an often harsh and rigid institutional routine. They are deprived of privacy and liberty, assigned to what they experience as a diminished, stigmatized status, and live under extremely sparse material conditions. For many of them, the experience is stressful, unpleasant, and difficult to tolerate. However, in the course of becoming institutionalized, persons gradually become more accustomed to the wide range of restrictions, deprivations, and indignities that institutional life imposes.

The various psychological mechanisms that must be employed to adjust become increasingly “natural”—that is, second nature—and, to a degree, are internalized. To be sure, the process of institutionalization can be subtle and difficult to discern as it occurs. Many people who have become institutionalized are unaware that it has happened to them. Few of them consciously decide to allow the transformation to occur, but it occurs nonetheless.

There are several components to the psychological process of adaptation that can have adverse long-term consequences for incarcerated persons after their release. They are summarized below.<sup>26</sup>

#### **A. Dependence on Institutional Structure and Contingencies**

Living in prison-like environments requires people to relinquish the freedom and autonomy to make many of their own choices and decisions. Over time, they must temper or forego the exercise of self-initiative and become increasingly dependent on institutional contingencies. In the final stages of the process, some inmates come to depend on institutional decision makers to make choices for them and they rely on the structure and schedule of the institution to organize their daily routine. In extreme cases, their decision-making capacity is more significantly impaired. Thus, some prisoners lose the ability to routinely initiate behavior on their own and cannot exercise sound judgment in making their own decisions. Profoundly institutionalized persons may even become extremely uncomfortable and disoriented when and if previously cherished freedoms, autonomy, and opportunities to “choose for themselves” are finally restored.

A slightly different aspect of this process involves developing a subtle dependency on the institution to control or limit one’s behavior. Correctional institutions force inmates to adapt to

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Justice and Behavior, 19, 206-225 (1992); C. Thomas and D. Peterson, A Comparative Organizational Analysis of Prisonization, Criminal Justice Review (6): 36-43 (1981); Charles Tittle, Institutional Living and Self Esteem, Social Problems, 20, 65-77 (1972).

<sup>26</sup> Some of these issues are discussed at greater length in: Craig Haney, The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment, in J. Travis & M. Waul (Eds.), Prisoners Once Removed: The Impact of Incarceration and Reentry on Children, Families, and Communities (pp. 33-66). Washington, DC: Urban Institute Press (2003); Craig Haney, Psychology and Prison Pain: Confronting the Coming Crisis in Eighth Amendment Law, Psychology, Public Policy, and Law, 3, 499-588 (1997); and Craig Haney and Donald Specter, Vulnerable Offenders and the Law: Treatment Rights in Uncertain Legal Times, in J. Ashford, B. Sales, & W. Reid (Eds.), Treating Adult and Juvenile Offenders with Special Needs (pp. 51-79). Washington, D.C.: American Psychological Association (2001).

an elaborate network of typically very clear boundaries and rigid behavioral constraints. The consequences for violating these bright-line rules and prohibitions can be swift and severe. The use of continuous and increasingly sophisticated surveillance devices and practices means that prison-like environments are quick to detect and punish even minor infractions.

Institutional settings surround inmates so thoroughly with *external* limits, immerse them so deeply in a network of rules and regulations, and accustom them so completely to such highly visible systems of monitoring and restraints that *internal* controls may atrophy. Thus, institutionalization or prisonization renders some people so dependent on external constraints that they gradually cease relying on their own self-imposed internal organization to guide their actions or restrain their conduct. If and when this external structure is taken away, severely institutionalized persons may find that they no longer know how to do things on their own, or how to refrain from doing those things that are ultimately harmful or self-destructive.

## **B. Hypervigilance, Interpersonal Distrust and Suspicion**

In addition, because many prison-like environments keep people under conditions of severe deprivation, some inmates accommodate by exploiting others. In such an environment, where the possibility of being taken advantage of or exploited is very real, inmates learn quickly to become hypervigilant, always alert for signs of threat or personal risk. Many inmates learn to become interpersonally cautious, even distrustful and suspicious. They attempt to keep others at a distance, for fear that they will become a victim themselves. For some inmates, these survival strategies develop quickly, become reflexive and automatic, and are difficult to relinquish upon release.

Distancing oneself from others also requires carefully measured emotional responses. Many incarcerated persons struggle to control and suppress their reactions to events around them; emotional over-control and a generalized lack of spontaneity may result. Persons who over-control their emotional responses risk alienation from themselves and others. They may develop a form of emotional flatness that is chronic and debilitating in social interactions and intimate relationships.

The alienation and social distancing from others serves as a defense against the interpersonal exploitation that can occur in prison-like settings. However, it also occurs in response to the lack of interpersonal control that inmates have over their immediate environment, making emotional investments in relationships risky and unpredictable. The disincentive against engaging in open, candid, trusting communication with others that prevails in prison-like settings leads some persons to withdrawal from authentic social interactions altogether.<sup>27</sup> Obviously, such an extreme adaptation will create special problems when inmates attempt to reintegrate and adjust to settings outside the institution.

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<sup>27</sup> For example, see: C. Jose-Kampfner, Coming to Terms with Existential Death: An Analysis of Women's Adaptation to Life in Prison, *Social Justice*, 17, 110-XXX (1990); R. Sapsford, Life Sentence Prisoners: Psychological Changes During Sentence, *British Journal of Criminology*, 18, 128-145 (1978).

### **C. Social Withdrawal and Self Isolation**

Some incarcerated persons learn to create psychological and physical safe havens through social invisibility, by becoming as inconspicuous and unobtrusively disconnected as possible from the people and events around them. The self-imposed social withdrawal often means that they retreat deeply into themselves, trust virtually no one, and adjust to prison stress by leading isolated lives of quiet desperation. One researcher found not surprisingly that prisoners who were incarcerated for longer periods of time and those who were punished more frequently by being placed in solitary confinement were more likely to believe that their world was controlled by “powerful others.”<sup>28</sup> Such beliefs are consistent with an institutional adaptation that undermines autonomy and self-initiative.

In more extreme cases, especially when combined with apathy and the loss of the capacity to initiate behavior on one’s own, the pattern closely resembles clinical depression. Inmates who are afforded little or no meaningful programming in institutional settings lack pro-social or positive activities in which to engage during their incarceration. If they also are denied access to gainful employment where they can obtain meaningful and marketable job skills and earn adequate compensation, or are allowed to work only in settings where they are assigned to menial tasks that they perform for only a few hours a day, then they are more likely to become lethargic and depressed. The longer the period of exposure to prison-like environments, the greater the likelihood that this particular psychological adaptation will occur. Indeed, one early analyst wrote that the long-term prisoners manifest “a flatness of response which resembles slow, automatic behavior of a very limited kind, and he is humorless and lethargic.”<sup>29</sup> In fact, another researcher analogized the plight of long-term women prisoners to that of persons who are terminally-ill, whose experience of this “existential death is unfeeling, being cut off from the outside... (and who) adopt this attitude because it helps them cope.”<sup>30</sup>

### **D. Diminished Sense of Self-Worth and Personal Value**

As noted above, inmates often are denied basic privacy rights and lose control over the most mundane aspects of their day-to-day existence. Prisoners generally have no choice over when they get up or have lights out, when, what, or where they eat, whether and for how long they shower or can make a phone call, and most of the other countless daily decisions that persons in free society naturally take for granted in their lives. Many inmates feel infantilized by this loss of control.

Prison-like environments also typically confine persons in small, sometimes extremely cramped and deteriorating spaces. The 60 square foot average cell size in the United States is roughly the size of a king-size bed. Inmates who are double-celled or assigned to dormitory-style housing typically have no privacy and have little or no control over the identity of the person with whom they must share small living spaces and negotiate intimate forms of daily contact this

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<sup>28</sup> Hannah Levenson, Multidimensional Locus of Control in Prison Inmates, *Journal of Applied Social Psychology*, 5, 342-347 (1975).

<sup>29</sup> A. Taylor, Social Isolation and Imprisonment, *Psychiatry*, 24, 373-XXX (1961), at p. 373.

<sup>30</sup> C. Jose-Kampfner, Coming to Terms with Existential Death: An Analysis of Women's Adaptation to Life in Prison, *Social Justice*, 17, 110-XXX (1990), at p. 123.

requires. The degraded conditions under which they live serve as constant reminders of their compromised social status and their stigmatized social role as inmates.

A diminished sense of self-worth and personal value may result. In extreme cases of institutionalization, the symbolic meaning that can be inferred from this externally imposed substandard treatment and confinement in degraded circumstances is internalized. That is, inmates may come to think of themselves as “the kind of person who deserves” no more than the degradation and stigma to which they have been subjected during their incarceration.

## **E. Post-Traumatic Stress Reactions to the Pains of Imprisonment**

For some inmates, life in a prison-like environment is so stark and psychologically painful as to be traumatic. In extreme cases, the trauma is severe enough to produce post-traumatic stress reactions after release. Thus, former inmates may experience unexplained emotional reactions in response to stimuli that are psychologically reminiscent of painful events that occurred during incarceration. They may suffer free floating anxiety, an inability to concentrate, sleeplessness, emotional numbing, isolation, and depression that are connected to their prison traumas. Some may relive especially stressful or fear-arousing events that traumatized them during incarceration. In fact, psychiatrist Judith Herman has suggested that a new diagnostic category—what she termed “complex PTSD”—be used to describe the trauma-related syndrome that prisoners are likely to suffer in the aftermath of their incarceration, because it is a disorder that comes about as a result of “prolonged, repeated trauma or the profound deformations of personality that occur in captivity.”<sup>31</sup>

Moreover, it is now clear that certain prior experiences—ones that pre-date confinement in prison-like environments—may predispose inmates to these post-traumatic reactions. The literature on these predisposing experiences has grown vast over the last several decades. A “risk factors” model helps to explain the complex interplay of earlier traumatic events (such as abusive mistreatment and other forms of victimization) in the backgrounds and social histories of many incarcerated persons. As Masten and Garmezy noted in the seminal article outlining this model, the presence of these background risk factors and traumas in earlier in life increases the probability that someone will be plagued by a range of other problems later on.<sup>32</sup>

To those persons who already have experienced a series of earlier, severe traumas, life in a harsh, punitive, and often uncaring prison-like environment may represent a kind of “re-traumatization” experience. That is, time spent in prison-like environments may rekindle not only bad memories but also the disabling psychological reactions and consequences of those earlier damaging experiences.

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<sup>31</sup> See: Judith Herman, A New Diagnosis, in J. Herman (Ed.), *Trauma and Recovery*. New York: Basic Books (1992); and Judith Herman, Complex PTSD: A Syndrome in Survivors of Prolonged and Repeated Trauma, in G. Everly & J. Lating (Eds.), *Psychotraumatology: Key Papers and Core Concepts in Post-Traumatic Stress* (pp. 87-100). New York: Plenum (1995).

<sup>32</sup> Ann Masten and Norman Garmezy, Risk, Vulnerability and Protective Factors in Developmental Psychopathology, in F. Lahey and A Kazdin (Eds.), *Advances in Clinical Child Psychology* (pp. 1-52). New York: Plenum (1985).

The various psychological consequences of institutionalization that have been described above are not always immediately obvious once the structural and procedural pressures that created them have been removed. Indeed, persons who leave a prison-like environment and are fortunate enough to return to moderately structured and especially supportive settings—stable family, work, helpful forms of agency supervision, supportive communities—may experience relatively unproblematic transitions. However, those who return to difficult and stressful circumstances that lack supportive structure and services are at a greater risk of post-incarceration adjustment problems. In these cases, the negative aftereffects of institutionalization often appear first in the form of *internal* chaos, disorganization, stress, and fear. Because the process of institutionalization has taught most people to cover or mask these internal states, and to suppress feelings or reactions that may indicate vulnerability or dysfunction, the outward appearance of normality and adjustment may hide a range of common but serious problems that are likely to be encountered in free society.

#### IV. SPECIAL PSYCHOLOGICAL ISSUES FOR ASYLUM SEEKERS SUBJECT TO EXPEDITED REMOVAL

Because many asylum seekers have suffered severe and sometimes very recent trauma and abusive treatment preceding their detention in the United States, their incarceration would be expected to have more severe psychological consequences. These prior trauma histories—ones that often include torture, imprisonment under inhumane conditions in their native countries, and exposure to other extreme kinds of abuse—mean that a number of asylum seekers who are subject to Expedited Removal will enter the United States in fragile psychological states. As a result, they will be more vulnerable to emotional crises than the average person who is exposed to the rigors of institutional life. Indeed, there is reason to expect that, for many of these post-credible fear asylum seekers, the painful and traumatic aspects of detention (as outlined above) will represent a form of “re-traumatization” whose long-term consequences may be deeper and more long-lasting. In fact, one study of a sample of detained asylum seekers indicated that more than four of five manifested symptoms of clinical depression, three quarters had anxiety-related symptoms, and that fully half showed signs of post-traumatic stress disorder.<sup>33</sup>

In addition to the increased painfulness of incarceration for an already vulnerable population of detainees, several longer-term consequences for this group of asylum seekers may be of special concern. For one, some of those subjected to the Expedited Removal process may decide to terminate their asylum application, despite credibly fearing return to their home country, because they are traumatized and disheartened by their experiences in detention. Indeed, to study this potential problem, as part of the evaluation of consequences of current detention

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<sup>33</sup> Keller, A., Rosenfeld, B., Trinh-Sherwin, C., Meserve, C., Sachs, E., Leviss, J., Singer, E., Smith, H., Wilkinson, J., Kim, G., Allden, K., & Ford, D., Mental Health of Detained Asylum Seekers, *The Lancet*, 362, 1721-1723 (2003). A number of detailed and comprehensive reports have raised a broad set of concerns about the detention of asylum seekers in the United States. For example, see: Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture, *From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers* (2003); Amnesty International, *Lost in the Labyrinth: Detention of Asylum Seekers*. New York: Amnesty International (1999). Human Rights Watch, *Locked Away: Immigration Detainees in Jails in the United States*. New York: Human Rights Watch (1998).

practices, the results of interviews conducted by Commission researcher with 39 asylum seekers who decided to “dissolve” their asylum claims while in detention were reviewed.

Many of the interviewees indicated that the nature of their post-credible fear detention and treatment was one of the factors that led to their decision to terminate their application. They expressed these concerns in a variety of ways, ranging from one detainee who said that he terminated his asylum application because “it is not worth it to sit in jail while applying for asylum,” to another who said that “I need to help my children and I cannot do so from jail,” to one who preferred to go home “because detention is affecting my head and my spirit,” and a fourth who acknowledged that detention “instills fear in people” and that locking down “human beings who are not harming anybody” is “not right.”

Others complained that “when I found out the conditions of my compatriots, and how they are waiting months after months in detention, I decided I would prefer to go back.” Another asylum seeker who attributed his decision to terminate his asylum claim directly to his detention experience put it succinctly: “I’m not used to living in prison. This situation is not good for me... I can’t live in jail any longer.”

Of course, it was impossible to tell whether these detention-related explanations were genuine as opposed to, say, detainees finally concluding or conceding that their asylum claims had no merit. Yet there was no obvious advantage or benefit for a detainee to cite detention conditions as the reason for dissolving his or her asylum claim. Nonetheless, explanations based on the harshness of detention were commonplace among the 39 persons interviewed in this portion of the study. Asylum seekers who terminated said that they were “sick and tired of prison,” that they’d never been incarcerated before and didn’t think they deserved such treatment, and that they “didn’t know I’d be imprisoned,” sometimes for months or years. These comments suggest that some number of asylum seekers who might otherwise qualify for asylum could be deterred from continuing to pursue their claims because they are forced to remain in detention in the course of the asylum process.

Finally, detained post-credible fear asylum seekers—whether they ultimately are granted asylum or are returned to their home countries—may suffer from long-term psychological consequences of detention. In recent years, a large literature has developed that examines the aftereffects of incarceration.<sup>34</sup> The literature on the aftereffects of incarceration in general suggests that—especially for persons who lack access to significant social and economic resources when they are released, who may have begun their period in detention with special psychological vulnerabilities, and who are likely to re-enter free society without any adequate transitional services to assist them in the difficult post-institutional adjustment process—successful reintegration often proves a difficult if not impossible task. Many people released from traditional prisons and jails cannot find productive work or sustain meaningful social and personal relationships; an unusually high number eventually engage in criminal activity and return to custody. Most experts believe that their continued social and economic marginality is at least in part the result of the lasting psychological effects of incarceration. Asylum seekers held

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<sup>34</sup> For example, see the various studies and references described and cited in in J. Travis & M. Waul (Eds.), Prisoners Once Removed: The Impact of Incarceration and Reentry on Children, Families, and Communities. Washington, DC: Urban Institute Press (2003).

in jail-like conditions may suffer from exactly the same kinds of post-incarceration adjustment problems, exacerbated by the additional problems they will encounter attempting to integrate into a strange and unfamiliar culture (in those cases where asylum is granted and they assume residency in the United States).

## V. DISCUSSION, ALTERNATIVES, AND NEED FOR FURTHER STUDY

The data from this Study, however, raises a number of questions about the conditions of confinement under which asylum seekers who are subject to Expedited Removal are detained. Even under the best of conditions and most humane practices, incarceration is psychologically stressful and potentially harmful. As long as procedures are used to insure that post-credible fear asylum seekers appear at asylum hearings and removal proceedings, policies that minimize the number of asylum seekers in Expedited Removal who are kept in detention, shorten the length of time during which they are detained, and keep those who are detained under the most humane possible conditions will reduce the psychological risks of incarceration and lessen the potential damage that may be done to this already vulnerable group of people.

These questions warrant further study. As DHS endeavors to improve the detention environment for those asylum seekers whom it must detain, there should be a careful, systematic assessment of the impact of detention on asylum seekers that not only documents the administrators' descriptions of conditions at each facility (as our Report did), but supplements that assessment with detailed inspections of a representative sample of facilities by knowledgeable researchers (with experience in evaluating correctional environments), and extended interviews (including mental health assessments) of a representative sample of asylum seeking detainees

Forcing asylum seekers to become dependent on institutional structures and contingencies (which, in extreme cases, means they may relinquish self-initiative and self-generated internal behavioral controls), and increasing the likelihood that some will become distrustful, fearful, and hypervigilant in jail-like settings where they are kept seems ill-advised. Subjecting them to conditions where some of them will feel the need to withdraw and isolate themselves from others, in addition to experiencing the enforced social isolation from their families that often occurs, is likely to impair their social relationships and future adjustment. So, too, will exposing them to conditions of confinement that diminish their sense of self worth and personal value by placing them in deprived circumstances where they have little or no control over mundane aspects of their day-to-day lives. The possibility that detained asylum seekers will experience post-traumatic stress disorder, or have pre-existing medical or psychological conditions exacerbated is a serious concern. Especially because of the vulnerabilities with which many of them initially enter detention facilities, high incidences of clinical syndromes—pre-existing or acquired during confinement—are likely.

Some asylum seekers subjected to Expedited Removal will have their petitions denied and will be returned to countries where they must re-establish themselves. Others will be granted asylum and face the challenge of integrating into a free but complex society. In neither case will the process of transition be facilitated by long periods of potentially damaging incarceration.

Of course, the exact nature of the conditions of confinement under which persons are housed matter. This study identified a number of severe jail-like conditions that went beyond anything necessary to insure the safe and secure housing of persons pending hearings and removal proceedings. Given the severity of the conditions of confinement identified in the present study, the Physicians for Human Rights study conclusion that “the psychological health of detained asylum seekers is extremely poor and worsens the longer asylum seekers remain in detention” is not surprising.<sup>35</sup>

In addition, staff members in the overwhelming majority of detention facilities surveyed received little or no client-appropriate training. As noted above, only one of 19 facilities surveyed provided its staff with any specialized training designed to sensitize them to the unique background and potential trauma histories of asylum seekers. Instead, the overwhelming majority of staff members have received jail-appropriate training in security and custody-related matters. Many have become accustomed to working with a domestic criminal population who have little in common with asylum seekers. This is especially true in the case of women and children asylum seekers, whose trauma histories and emotional needs may be more severe and require more specialized training.<sup>36</sup>

Many of the facilities surveyed appeared to fall short of existing ICE detention guidelines. Moreover, while DHS and contract facilities make an effort to carry out the guidelines, other facilities run by other government agencies are not required to follow them. For example, the guidelines make an effort to separate asylum seekers from criminals and criminal aliens. According to the guidelines: “The classification system shall assign detainees to the least restrictive housing unit consistent with facility safety and security. By grouping detainees with comparable records together, and isolating those at one classification level from all others, the system reduces noncriminal and nonviolent detainees’ exposure to physical and psychological danger.”<sup>37</sup> However, the guidelines are not binding on detention facilities operated by local, state, or federal government agencies through intergovernmental service agreements (IGSAs). Consequently, our survey found that, in IGSA facilities, asylum seekers are frequently co-mingled or even sleep next to criminal aliens, detainees awaiting criminal trial, and convicts.

On the other hand, we were very impressed with the Broward Transitional Center “non-jail-like” model of detention, which appeared to have achieved a much more appropriate balance between security concerns and the mental health and emotional needs of asylum seekers subject to Expedited Removal. Broward detainees were regarded less as criminals and more as human beings whose past trauma and future transition into free society warranted caring, respectful treatment. The detainees were given a significant amount of freedom (despite being confined in a secure detention facility), their ability to maintain and strengthen family ties was supported (through a liberal contact visiting policy), and the likelihood that they would suffer various forms of social, psychological, and cognitive deterioration associated with incarceration was minimized

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<sup>35</sup> Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture, *From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers* (2003), at p. 5.

<sup>36</sup> As stated in the UNHCR Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers (1999), “The detention of asylum-seekers is, in the view of UNHCR, inherently undesirable. This is even more so in the case of vulnerable groups such as single women, children, unaccompanied minors and those with special medical or psychological needs.” See Appendix F.

<sup>37</sup> INS Detention Standard: Detainee Classification System (p. 5) (2003).

(through a full range of activities and programs in which detainees can participate on a daily basis).

The Broward model is still a form of detention, to be sure, and it is experienced as such by the detainees who are kept there. However, it appears to be designed to reduce the harmful effects of incarceration as much as possible.

Staff members who were interviewed at Broward believed that their model was transferable to other facilities in which post-credible fear asylum seekers are held and we concur. We would anticipate that the transfer of the Broward model would meet pockets of resistance among more traditionally trained correctional staff and administrators. Yet, just as at Broward itself (whose administration and staff includes former correctional personnel), committed leadership and active guidance has resulted in the creation of a model facility, run and staffed by persons who appeared to take great pride in the alternative model of detention they had created and were devoted to its continuing success. Moreover, along with the Broward administrators with whom we discussed this issue, we saw no reason why the model could not be extended to detention facilities in which male as well as female detainees were housed.

In terms of cost, it is worth noting that, according to our survey, use of Broward costs DRO \$83 per night per alien. This is slightly less expensive than the national average per ICE detention bed. (And the much more prison-like facility operated in Queens by GEO, the same contractor which manages Broward, costs ICE an average of \$200 per night. The cost of bed space in the New York metropolitan area, however, is considerably more expensive than in South Florida.).

Finally, the present report was written without an opportunity to systematically study the implementation and effects of the newly implemented Intensive Supervision Appearance Program (ISAP).<sup>38</sup> The increased use of electronic monitoring and related alternatives offers the obvious advantage of providing security and surveillance data without the corresponding economic as well as psychological costs of incarceration. At the same time, however, it is important to note that several of the asylum seekers in the Expedited Removal process that we interviewed who currently were participating in ISAP complained about the conditions that were imposed on them. That is, in discussions with a small number of persons enrolled in the program in the Miami area, complaints were expressed to the effect that unrealistic limits were set on times and distances that they could travel that, in turn, restricted or prevented participants from working and otherwise engaging in normal daily routines.

The use of monitoring devices such as ankle bracelets also constitutes a form of criminalizing post-credible fear asylum seekers—albeit on a more mild basis than detention in jail-like settings. The issue of whether ISAP (with or without electronic monitoring) is being

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<sup>38</sup> In September, 2002, an Electronic Monitoring Device Program (EMD) contract was awarded to ADT, and initially piloted in Anchorage, Detroit, Miami, Seattle, Portland, Orlando, and Chicago. On March 22, 2004, an ISAP contract was awarded to Behavioral Interventions, Inc., of Boulder, Colorado, providing for the community supervision of up to 1600 aliens. A total of 8 ICE field offices—in Baltimore, Philadelphia, Miami, St. Paul, Denver, Kansas City, San Francisco, and Portland—have implemented this program.

used with asylum seekers who would otherwise qualify for and likely have been granted parole without any such conditions merits further study.<sup>39</sup> That is, it is important to determine whether alternatives to detention (such as electronic monitoring) are being used as genuine alternatives to detention—in which case they would lessen the criminalization of this population of asylum seekers, and reduce the psychological risks of incarceration for them. If, on the other hand, these programs actually are being implemented as alternatives to parole, then they are extending potential criminalizing and other adverse effects to persons who would not otherwise be subjected to them.

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<sup>39</sup> “Parole is a viable option and should be considered for aliens who meet the credible fear standard, can establish identity and community ties, and are not subject to any possible bars to asylum involving violence or misconduct...” Office of Field Operations Memorandum, December 30, 1997.

APPENDICES

**Appendix A: Facilities in Sample**

<u>FACILITY</u> NAME	LOCATION	Managed By
<b>Etowah County Jail</b>	Gadsen, Alabama	Local Gov't
<b>Florence SPC</b>	Florence, Arizona	DHS
<b>Otay Mesa</b>	Otay Mesa, California	Corrections Corporation of America
<b>Mira Loma</b>	Lancaster, California	Los Angeles County Sheriffs
<b>Oakland City Jail</b>	Oakland, California	Local Gov't
<b>San Pedro SPC</b>	San Pedro, California	DHS
<b>Yuba County Jail</b>	St. Marysville, California	Local Gov't
<b>Krome SPC</b>	Miami, Florida	DHS
<b>Broward Transitional Center</b>	Pompano Beach, Florida	Global Expertise in Outsourcing (formerly Wackenhut)
<b>Tri-County Jail</b>	Ullin, Illinois	Local Gov't
<b>Orleans Parish Jail</b>	New Orleans, Louisiana	Local Gov't
<b>Tensas Parish Detention Center</b>	Waterproof, Louisiana	Emerald Correctional Management
<b>Elizabeth Contract</b>	Elizabeth, New Jersey	Corrections Corporation of America
<b>Queens Contract</b>	Queens, New York	Global Expertise in Outsourcing (formerly Wackenhut)
<b>Berks Family Shelter</b>	Leesport, Pennsylvania	Local Gov't (County)
<b>Aguadilla SPC</b>	Aguadilla, Puerto Rico	DHS
<b>Guaynabo</b>	Guaynabo, Puerto Rico	Fed. Gov't (Bureau of Prisons)
<b>Laredo Contract Detention Facility</b>	Laredo, Texas	Corrections Corporation of America
<b>Port Isabel SPC</b>	Los Fresnos, Texas	DHS
<b>Arlington County Jail</b>	Arlington, Virginia	Local Gov't
<b>Piedmont Regional Jail</b>	Farmville, Virginia	Local Gov't
<b>Ozaukee County Jail</b>	Ozaukee, Wisconsin	Local Gov't

\*\*Ozaukee, Guaynabo, and Orleans did not complete interviews (Ozaukee refused.)

## **Appendix B: Facilities Actually Surveyed and Those Visited by Commission Experts**

In alphabetical order, the 19 facilities that were surveyed were:

Aguadilla SPC (Puerto Rico)  
Arlington County Jail (Virginia)  
Berks County Family Shelter (Pennsylvania)  
Broward Transitional Center (Florida)  
Elizabeth Detention Center (New Jersey)  
Etowah County Jail (Alabama)  
Florence Staging Facility (Arizona)  
Krome SPC (Florida)  
Laredo Contract Detention Facility (Texas)  
Mira Loma (California)  
Oakland City Jail (California)  
Otay Mesa Detention Facility (California)  
Piedmont Regional Jail (Virginia)  
Port Isabel (Texas)  
Queens Contract Detention Facility (New York)  
San Pedro SPC (California)  
Tensas Parish Detention Center (Louisiana)  
Tri-County Jail (Illinois)  
Yuba County Detention Facility (California)

In alphabetical order, the 18 facilities visited by Commission experts:

Aguadilla, Puerto Rico

Broward Detention Center, Miami, Florida

Comfort Inn, Miami, Florida

Elizabeth Contract Detention Center, Elizabeth, New Jersey

Florence SPC, Florence, Arizona

Guaynabo-MDC, Puerto Rico

Kenosha County Jail, Kenosha, Wisconsin

Krome, SPC, Miami, Florida

Laredo Contract Detention Center, Laredo, Texas

Mira Loma Detention Facility, Lancaster, California

Oakland County Jail, Oakland, California

Otay Mesa Detention Facility (CCA), San Diego, California

Piedmont Regional Jail, Farmville, Virginia

Queens New York Contract Facility

San Pedro Detention Facility, San Pedro, California

Yuba City Jail, Yuba City, California

In addition, Office of Refugee Resettlement (ORR) juvenile contract facilities in Chicago, Illinois, and San Diego, California.

**Appendix C:**

DETENTION CENTER QUESTIONNAIRE

**Researcher Name:** \_\_\_\_\_

**NAME OF FACILITY:**

**ADDRESS OF FACILITY:**

**POINT OF CONTACT:**

(E-mail, telephone number)

**TYPE OF FACILITY:**

(Circle One)

- Local Jail
- State Prison
- Federal Prison
- Private Contract Facility (Contractor name:  
\_\_\_\_\_)
- Run by DHS (“Service Processing Center”)

**Number of Beds at Facility:**

(A) Number of beds for alien men in DHS custody:

(B) Number of beds for alien women in DHS custody:

(C) Number of beds for men who are NOT in DHS custody (specify whose custody they are in if not DHS (US Marshall’s Service, Local, State of Federal Prison system, etc.):

(D) Number of beds for women not in DHS custody (specify):

**Cost charged to DHS per detainee per night:** \_\_\_\_\_

**Nature of Population at Facility (check all that apply):**

- Alien men **without** known criminal convictions
- Alien women **without** known criminal convictions
- Criminal alien men (detained post conviction for administrative purposes, not serving time)
- Criminal alien women
- Criminal men serving sentences or awaiting trial
- Criminal women serving sentences or awaiting trial

**(IF THERE ARE ANY MEN HOUSED AT FACILITY) If facility has criminals serving time or individuals awaiting trial, to what extent do male convicts and male non-criminal aliens intermingle?**

- Share sleeping quarters

- Housed separately, no interaction.
- Housed separately, but some interaction (specify: at rec time, meal time, or other)

**(IF THERE ARE ANY MEN HOUSED AT FACILITY) If facility has criminal aliens detained post conviction, to what extent do male criminal aliens and non-criminal male aliens intermingle?**

- Share sleeping quarters
- Housed separately, no interaction.
- Housed separately, but some interaction (specify: at rec time, meal time, or other)

**(IF THERE ARE ANY WOMEN HOUSED AT FACILITY) If facility has criminals serving time or individuals awaiting trial, to what extent do female convicts and female non-criminal aliens intermingle?**

- Share sleeping quarters
- Housed separately, no interaction.
- Housed separately, but some interaction (specify: at rec time, meal time, or other)

**(IF THERE ARE ANY WOMEN HOUSED AT FACILITY) If facility has criminal aliens detained post conviction, to what extent do female criminal aliens and non-criminal female aliens intermingle?**

- Share sleeping quarters
- Housed separately, no interaction.
- Housed separately, but some interaction (specify: at rec time, meal time, or other)

**ASYLUM-SPECIFIC QUESTIONS:**

**Are the guards at the facility aware of who is an asylum seeker or who is not?**

- Guards are told who is an asylum seeker (credible fear) and who is not.

**Explain:**

- Guards are not specifically told who is seeking asylum and who is not, but they generally know.

**Explain:**

- Guards do not generally know who is seeking asylum and who is not.

**Do guards receive any special training on dealing with:**

- (A) Asylum seekers
- (B) Victims of torture and trauma?

**Explain:**

**Do other personnel at the facility receive such training? Explain:**

**Are aliens with convictions for immigration related offenses such as Entry Without Inspection or Use of False Documents treated as “criminal aliens” at the facility?**

- Yes, they are housed with criminal aliens
- Yes, they are not permitted to reside at the facility because this facility does not house criminal aliens
- No, aliens with immigration-related offenses such as those are not regarded as “criminal aliens” by this facility

**I. SECURITY, SURVEILLANCE, AND “PUNISHMENT”**

<b>ATTRIBUTE OF CONFINEMENT</b>	<b>TREATMENT OF ASYLUM SEEKERS</b>	<u>JAIL</u>
<b>How many security barriers (locked gates and/or doors) have to be opened from the outside by staff in order to reach the detainee’s housing units?</b>		
<b>Are restrictions placed on who can enter a detainee’s cell or individual housing area? Is access to the housing units themselves restricted?</b>		YES
<b>Are in-cell or housing unit counts preformed? How often?</b>		YES
<b>Does the staff conduct strip searches or other kinds of invasive</b>		YES

searches during in processing of the detainees?		
Are detainees ever strip-searched for security purposes? Under what circumstances?		YES
Are searches of the detainees' general living areas performed? Under what circumstances and how often?		YES
Are there fixed and secure guard stations in the detainees' housing units?		YES
Is there constant sight and sound surveillance in the detainees' housing units?		YES
Are there surveillance cameras in use within the detainees' housing units? Where?		YES
Are there surveillance cameras anywhere else within the facility? Where?		YES
Is there 24-hour surveillance lighting anywhere in the facility?		YES
Are physical restraints used with detainees? Under what circumstances?		YES

<b>Are detainees ever placed in isolation/ segregation for disciplinary reasons? What kind of problems?</b>		YES

II. ALIEN'S ABILITY TO MOVE ABOUT WITHIN DETENTION

<b>ATTRIBUTE OF CONFINEMENT</b>	<b>TREATMENT OF ASYLUM SEEKERS</b>	<u>JAIL</u>
<b>Are restrictions placed on detainees' movements outside of their housing units? Please explain any such limitations.</b>		YES
<b>Is detainee access to non-assigned housing units or living areas limited? If so, how?</b>		YES
<b>Are escorts required when detainees move through the facility? When?</b>		YES
<b>Is detainee access to the dayroom restricted? How? Are escorts required for access to day rooms?</b>		YES

III. HOUSING AND LIVING SPACE CONDITIONS

<b>ATTRIBUTE OF CONFINEMENT</b>	<b>TREATMENT OF ASYLUM SEEKERS</b>	<u>JAIL</u>
<b>Do detainees have access to private, individual toilets with no one else present?</b>		NO

<b>Do detainees have the use of private individual showers where no one else is present?</b>		NO
<b>Do detainees have opportunities to be alone in their cells or rooms?</b>		NO
<b>Are restrictions placed on the detainees' ability to personalize/decorate their living quarters? If so, what?</b>		YES
<b>May detainees wear their own street clothes? (Please describe uniforms or other standard-issue clothing.)</b>		NO
<b>Are different uniforms or colors issued to different classes of detainees? (Please explain color coding)</b>		YES
<b>Can detainees have personal hygiene items that are not provided by the government or sold at the commissary (canteen)? (If yes, are there any limitations on such items?)</b>		NO
<b>Are there any limitations placed on detainees' ability to purchase items at the commissary? (Please explain any limitations.)</b>		YES

IV. OCCUPATIONAL, RECREATIONAL, EDUCATIONAL, RELIGIOUS, AND LEGAL OPPORTUNITIES

ATTRIBUTE OF CONFINEMENT	TREATMENT OF ASYLUM SEEKERS	<u>JAIL</u>
Is detainee access to the law library restricted? (Eg: time restrictions, printing restrictions, etc.)		YES
Do detainees have access to the internet? If so, are there any restrictions?		NO
Are “Know Your Rights” presentations conducted at the Detention Center? If so, by whom (detention center or NGO) and how often?		
Are copies of Know Your Rights handouts issued to or made available to detainees? In what languages?  *REQUEST A COPY of handbook and list of pro bono representatives and attorneys that aliens receive		
What type of outdoor recreation do detainees receive? (Where, how often, and confined or escort??)		

<b>What programming opportunities (eg: education classes, vocational training) are provided to the detainees?</b>		
<b>Are detainees allowed to work? If so, are they paid for their work? How much?</b>		YES
<b>Religious Services:</b>  <b>Please describe religious opportunities for detainees:</b>	<b>Check all that apply:</b> <input type="checkbox"/> Full-time chaplain or other clergy at facility <input type="checkbox"/> Part-time chaplain or other clergy at facility <input type="checkbox"/> Weekly services at facility (specify denomination(s): <input type="checkbox"/> Holiday services at facility (specify denominations): <input type="checkbox"/> Detainees permitted to travel escorted to off-site religious services on holidays (explain): <input type="checkbox"/> Detainees permitted to travel unescorted to off-site religious services on holidays (explain): <input type="checkbox"/> Detainees permitted to travel unescorted to off-site religious services weekly (explain): <input type="checkbox"/> Detainees permitted to travel escorted to off-site religious services weekly (explain): <input type="checkbox"/> Other on site-regularly scheduled religious services – explain: <input type="checkbox"/> Other on-site ad hoc scheduled religious services – explain <input type="checkbox"/> Special Religious Diets Accommodated (kosher/halal/vegetarian) Y/N EXPLAIN:	

**V. HEALTH ISSUES (Mental Health, Doctor, Dentist)**

<b>ATTRIBUTE OF CONFINEMENT</b>	<b>TREATMENT OF ASYLUM SEEKERS</b>	<b><u>JAIL</u></b>
<b>Is segregation or isolation used when a detainee may be suicidal? If not, what is done in this situation?</b>		YES
<b>How many fulltime</b>		

<b>mental health staff do detainees have access to at the facility where they are confined?</b>		
<b>Is there a mandatory mental health assessment at intake?</b>		
<b>Are services available upon request of the detainee?</b>		
<b>Do mental health personnel make regular rounds or must a detainee ask for assessment?</b>		
<b>What kind of fulltime medical staff is available to detainees?</b>		
<b>Is there a mandatory medical health assessment at intake?</b>		
<b>Do detainees have access to dental staff at the facility?</b>		

**VI. VISITS, PHONECALLS, AND CORRESPONDENCE**

<b>ATTRIBUTE OF CONFINEMENT</b>	<b>TREATMENT OF ASYLUM SEEKERS</b>	<b><u>JAIL</u></b>
<b>Are limitations placed on the frequency and length of visits detainees are allowed to have? What are they?</b>		<b>YES</b>
<b>Are limitations placed on the length and frequency of ATTORNEY visits?</b>		

<b>What are they?</b>		
<b>Are detainees allowed to have contact visits? Under what circumstances? Limitations?</b>		NO
<b>Are detainees permitted to place telephone calls? Are calls limited in frequency and duration?</b>		YES YES
<b>Are calls to lawyers treated differently than other calls?</b>		
<b>How are telephone calls paid for and at what rate?</b>		
<b>What limitations are placed on detainees' rights to send and receive correspondence? Is correspondence to lawyers treated any differently?</b>		
<b>At what rate are indigents allowed to send correspondence?</b>		

**Appendix D**

**I. SECURITY, SURVEILLANCE, AND “PUNISHMENT”**

<b>ATTRIBUTE OF CONFINEMENT</b>	<b>TREATMENT OF ASYLUM SEEKERS</b>	<b><u>JAIL</u></b>
<b>Multiple security barriers (locked gates and/or doors) must be traversed to reach the detainee’s housing unit</b>	95%	YES
<b>Restrictions are placed on access to cells or individual housing areas</b>	95%	YES
<b>Multiple in-cell or housing unit counts are performed</b>	95%	YES
<b>Staff conducts strip searches or other kinds of invasive searches during in-processing</b>	74%	YES
<b>Detainees are subjected to strip-searches for security purposes</b>	84%	YES
<b>Regular searches of the detainees’ general living areas are performed</b>	100%	YES
<b>There are fixed and secure guard stations in the detainees’ housing units</b>	84%	TYPICALLY
<b>There is constant sight and/or sound surveillance in the detainees’ housing units</b>	95%	YES

<b>There are surveillance cameras in use within the detainees' housing units</b>	74%	TYPICALLY
<b>There are surveillance cameras in use in other areas of the facility</b>	95%	TYPICALLY
<b>There is 24-hour surveillance lighting elsewhere in the facility</b>	100%	TYPICALLY
<b>Physical restraints used with detainees</b>	95%	YES
<b>Detainees may be placed in isolation/ segregation for disciplinary reasons</b>	84%	TYPICALLY

II. ALIEN'S ABILITY TO MOVE ABOUT WITHIN DETENTION

<b>ATTRIBUTE OF CONFINEMENT</b>	<b>TREATMENT OF ASYLUM SEEKERS</b>	<u>JAIL</u>
<b>Restrictions are placed on detainees' movement outside of their housing units.</b>	90%	YES
<b>Detainee have restricted access to non-assigned housing units or living areas</b>	79%	YES
<b>Escorts are required when detainees move through the facility</b>	90%	YES

III. HOUSING AND LIVING SPACE CONDITIONS

<b>ATTRIBUTE OF CONFINEMENT</b>	<b>TREATMENT OF ASYLUM SEEKERS</b>	<b><u>JAIL</u></b>
<b>Detainees lack access to private, individual toilets where no one else is present</b>	79%	VARIES
<b>Detainees lack private individual showers where no one else is present</b>	74%	YES
<b>Detainees lack opportunities to be alone in their cells or rooms</b>	79%	VARIES
<b>Restrictions are placed on the detainees' ability to personalize/decorate their living quarters</b>	79%	VARIES
<b>Detainees wear uniforms rather than their own street clothes</b>	84%	YES
<b>Detainees are prohibited from having personal hygiene items that are not provided by the government or sold at the commissary or canteen</b>	90%	YES

IV. OCCUPATIONAL, RECREATIONAL, EDUCATIONAL, RELIGIOUS, AND LEGAL OPPORTUNITIES

<b>ATTRIBUTE OF CONFINEMENT</b>	<b>TREATMENT OF ASYLUM SEEKERS</b>	<b><u>JAIL</u></b>
<b>Detainee access to the law library is restricted</b>		YES

	74%	
<b>Detainees are denied any access to the internet</b>	100%	YES
<b>Detainees have only restricted access to outdoor recreation</b>	84%	YES
<b>Detainees are restricted to outside exercise in areas that are circumscribed and confined, with security restrictions</b>	83%	YES
<b>Detainees are prohibited from meaningful programming opportunities (e.g., education classes, vocational training)</b>	58%	VARIES
<b>Detainees are permitted to work but are paid nothing or a trivial amount (e.g., \$1/day) for their labor</b>	90%	VARIES

V. MENTAL AND MEDICAL HEALTH ISSUES

<b>ATTRIBUTE OF CONFINEMENT</b>	<b>TREATMENT OF ASYLUM SEEKERS</b>	<b><u>JAIL</u></b>
<b>Facility fails to provide for routine mental health monitoring so that even those detainees who do not request services are</b>	90%	TYPICALLY

<b>seen periodically by mental health staff</b>		
<b>Mental health contact is limited by the absence of a full-time psychologist or psychiatrist</b>	74%	VARIES
<b>Custody staff lacks specialized training to recognize and address unique mental health needs of detainee population</b>	95%	YES
<b>Medical care is limited by the absence of a full-time physician</b>	58%	VARIES

VI. VISITS, PHONECALLS, AND CORRESPONDENCE

<b>ATTRIBUTE OF CONFINEMENT</b>	<b>TREATMENT OF ASYLUM SEEKERS</b>	<b><u>JAIL</u></b>
<b>Limitations are placed on the frequency and length of visits that detainees may have</b>	95%	YES
<b>Detainees are prohibited from having contact visits with family and friends</b>	58%	TYPICALLY
<b>Limitations are placed on detainees' rights to send and receive correspondence</b>	100%	YES

## Appendix E

### Detention of Refugees and Asylum-Seekers

Date: 13 Oct 1986 | Executive Committee Conclusions

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The Executive Committee,

Recalling Article 31 of the 1951 Convention relating to the Status of Refugees.

Recalling further its Conclusion No. 22 (XXXII) on the treatment of asylum-seekers in situations of large-scale influx, as well as Conclusion No. 7 (XXVIII), paragraph (e), on the question of custody or detention in relation to the expulsion of refugees lawfully in a country, and Conclusion No. 8 (XXVIII), paragraph (e), on the determination of refugee status.

Noting that the term "refugee" in the present Conclusions has the same meaning as that in the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, and is without prejudice to wider definitions applicable in different regions.

- (a) Noted with deep concern that large numbers of refugees and asylum-seekers in different areas of the world are currently the subject of detention or similar restrictive measures by reason of their illegal entry or presence in search of asylum, pending resolution of their situation;
  - (b) Expressed the opinion that in view of the hardship which it involves, detention should normally be avoided. If necessary, detention may be resorted to only on grounds prescribed by law to verify identity; to determine the elements on which the claim to refugee status or asylum is based; to deal with cases where refugees or asylum-seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim asylum; or to protect national security or public order;
  - (c) Recognized the importance of fair and expeditious procedures for determining refugee status or granting asylum in protecting refugees and asylum-seekers from unjustified or unduly prolonged detention;
  - (d) Stressed the importance for national legislation and/or administrative practice to make the necessary distinction between the situation of refugees and asylum-seekers, and that of other aliens;
  - (e) Recommended that detention measures taken in respect of refugees and asylum-seekers should be subject to judicial or administrative review;
  - (f) Stressed that conditions of detention of refugees and asylum seekers must be humane. In particular, refugees and asylum-seekers shall, whenever possible, not be accommodated with persons detained as common criminals, and shall not be located in areas where their physical safety is endangered;
  - (g) Recommended that refugees and asylum-seekers who are detained be provided with the opportunity to contact the Office of the United Nations High Commissioner for Refugees or, in the absence of such office, available national refugee assistance agencies;
  - (h) Reaffirmed that refugees and asylum-seekers have duties to the country in which they find themselves, which require in particular that they conform to its laws and regulations as well as to measures taken for the maintenance of public order;
  - (i) Reaffirmed the fundamental importance of the observance of the principle of non-refoulement and in this context recalled the relevance of Conclusion No. 6 (XXVIII).
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## Appendix F



OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES GENEVA

# **UNHCR REVISED GUIDELINES ON APPLICABLE CRITERIA AND STANDARDS RELATING TO THE DETENTION OF ASYLUM SEEKERS<sup>1</sup>**

**(February 1999)**

### **Introduction**

1. The detention of asylum-seekers is, in the view of UNHCR inherently undesirable. This is even more so in the case of vulnerable groups such as single women, children, unaccompanied minors and those with special medical or psychological needs. Freedom from arbitrary detention is a fundamental human right and the use of detention is, in many instances, contrary to the norms and principles of international law.
2. Of key significance to the issue of detention is Article 31 of the 1951 Convention<sup>2</sup>. Article 31 exempts refugees coming directly from a country of persecution from being punished on account of their illegal entry or presence, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. The Article also provides that Contracting States shall not apply to the movements of such refugees restrictions other than those which are **necessary**, and that any restrictions shall only be applied until such time as their status is regularised, or they obtain admission into another country.
3. Consistent with this Article, detention should only be resorted to in cases of **necessity**. The detention of asylum-seekers who come "directly" in an irregular manner should, therefore, not be automatic, or unduly prolonged. This provision applies not only to recognised refugees but also to asylum-seekers pending determination of their status, as recognition of refugee status does not make an individual a refugee but declares him to be one. Conclusion No. 44(XXXVII) of the Executive Committee on the Detention of Refugees and Asylum-Seekers examines more concretely what is meant by the term "**necessary**". This Conclusion also provides guidelines to States on the use of detention and recommendations as to certain procedural guarantees to which detainees should be entitled.

4. The expression "**coming directly**" in Article 31(1), covers the situation of a person who enters the country in which asylum is sought directly from the country of origin, or from another country where his protection, safety and security could not be assured. It is understood that this term also covers a person who transits an intermediate country for a short period of time without having applied for, or received, asylum there. No strict time limit can be applied to the concept "**coming directly**" and each case must be judged on its merits. Similarly, given the special situation of asylum-seekers, in particular the effects of trauma, language problems, lack of information, previous experiences which often result in a suspicion of those in authority, feelings of insecurity, and the fact that these and other circumstances may vary enormously from one asylum seeker to another, there is no time limit which can be mechanically applied or associated with the expression "**without delay**". The expression "**good cause**", requires a consideration of the circumstances under which the asylum-seeker fled. The term "asylum-seeker" in these guidelines applies to those whose claims are being considered under an admissibility or pre-screening procedure as well as those who are being considered under refugee status determination procedures. It also includes those exercising their right to seek judicial and/or administrative review of their asylum request.

5. Asylum-seekers are entitled to benefit from the protection afforded by various International and Regional Human Rights instruments which set out the basic standards and norms of treatment. Whereas each State has a right to control those entering into their territory, these rights must be exercised in accordance with a prescribed law which is accessible and formulated with sufficient precision for the regulation of individual conduct. For detention of asylum-seekers to be lawful and not arbitrary, it must comply not only with the applicable national law, but with Article 31 of the Convention and international law. It must be exercised in a non-discriminatory manner and must be subject to judicial or administrative review to ensure that it continues to be necessary in the circumstances, with the possibility of release where no grounds for its continuation exist.<sup>3</sup>

6. Although these guidelines deal specifically with the detention of asylum-seekers the issue of the detention of stateless persons needs to be highlighted.<sup>4</sup> While the majority of stateless persons are not asylum-seekers, a paragraph on the detention of stateless persons is included in these guidelines in recognition of UNHCR's formal responsibilities for this group and also because the basic standards and norms of treatment contained in international human rights instruments applicable to detainees generally should be applied to both asylum-seekers and stateless persons. The inability of stateless persons who have left their countries of habitual residence to return to them, has been a reason for unduly prolonged or arbitrary detention of these persons in third countries. Similarly, individuals whom the State of nationality refuses to accept back on the basis that nationality was withdrawn or lost while they were out of the country, or who are not acknowledged as nationals without proof of nationality, which in the circumstances is difficult to acquire, have also been held in prolonged or indefinite detention only because the question of where to send them remains unresolved.

### **Guideline 1: Scope of the Guidelines.**

These guidelines apply to all asylum-seekers who are being considered for, or who are in, detention or detention-like situations. For the purpose of these guidelines, UNHCR considers detention as: **confinement within a narrowly bounded or restricted location, including prisons, closed camps, detention facilities or airport transit zones, where freedom of movement is substantially curtailed, and where the only opportunity to leave this limited area is to leave the territory.** There is a qualitative difference between detention and other restrictions on freedom of movement.

Persons who are subject to limitations on domicile and residency are not generally considered to be in detention.

When considering whether an asylum-seeker is in detention, the cumulative impact of the restrictions as well as the degree and intensity of each of them should also be assessed.

## **Guideline 2: General Principle**

**As a general principle asylum-seekers should not be detained.**

According to Article 14 of the Universal Declaration of Human Rights, the right to seek and enjoy asylum is recognised as a basic human right. In exercising this right asylum-seekers are often forced to arrive at, or enter, a territory illegally. However the position of asylum-seekers differs fundamentally from that of ordinary immigrants in that they may not be in a position to comply with the legal formalities for entry. This element, as well as the fact that asylum-seekers have often had traumatic experiences, should be taken into account in determining any restrictions on freedom of movement based on illegal entry or presence.

## **Guideline 3: Exceptional Grounds for Detention.**

Detention of asylum-seekers may exceptionally be resorted to for the reasons set out below as long as this is clearly prescribed by a national law which is in conformity with general norms and principles of international human rights law. These are contained in the main human rights instruments.<sup>5</sup>

There should be a presumption against detention. Where there are monitoring mechanisms which can be employed as viable alternatives to detention, (such as reporting obligations or guarantor requirements [see Guideline 4]), these should be applied **first** unless there is evidence to suggest that such an alternative will not be effective in the individual case. Detention should therefore only take place after a full consideration of all possible alternatives, or when monitoring mechanisms have been demonstrated not to have achieved the lawful and legitimate purpose.

In assessing whether detention of asylum-seekers is necessary, account should be taken of whether it is reasonable to do so and whether it is proportional to the objectives to be achieved. If judged necessary it should only be imposed in a non discriminatory manner for a minimal period.<sup>6</sup>

The permissible exceptions to the general rule that detention should normally be avoided must be prescribed by law. In conformity with EXCOM Conclusion No. 44 (XXXVII) the detention of asylum-seekers may only be resorted to, if **necessary**:

**(I) to verify identity.**

This relates to those cases where identity may be undetermined or in dispute.

**(ii) to determine the elements on which the claim for refugee status or asylum is based.**

This statement means that the asylum-seeker may be detained exclusively for the purposes of a preliminary interview to identify the basis of the asylum claim.<sup>7</sup> This would involve obtaining essential facts from the asylum-seeker as to why asylum is being sought and would not extend to a determination of the merits or otherwise of the claim. This exception to the general principle cannot be used to justify detention for the entire status determination procedure, or for an unlimited period of time.

**(iii) in cases where asylum-seekers have destroyed their travel and /or identity documents or have used fraudulent documents in order to mislead the authorities of the State, in which they intend to claim asylum.**

What must be established is the absence of good faith on the part of the applicant to comply with the verification of identity process. As regards asylum-seekers using fraudulent documents or travelling with no documents at all, detention is only permissible when there **is an intention** to mislead, or a refusal to co-operate with the authorities. Asylum-seekers who arrive without documentation because they are unable to obtain any in their country of origin should not be detained solely for that reason.

**(iv) to protect national security and public order.**

This relates to cases where there is evidence to show that the asylum-seeker has criminal antecedents and/or affiliations which are likely to pose a risk to public order or national security should he/she be allowed entry.

Detention of asylum-seekers which is applied for purposes other than those listed above, for example, as part of a policy to deter future asylum-seekers, or to dissuade those who have commenced their claims from pursuing them, is contrary to the norms of refugee law. It should not be used as a punitive or disciplinary measure for illegal entry or presence in the country. Detention should also be avoided for failure to comply with the administrative requirements or other institutional restrictions related residency at reception centres, or refugee camps. Escape from detention should not lead to the automatic discontinuation of the asylum procedure, or to return to the country of origin, having regard to the principle of non- refoulement.<sup>8</sup>

**Guideline 4: Alternatives to Detention.**

Alternatives to the detention of an asylum-seeker until status is determined should be considered. The choice of an alternative would be influenced by an individual assessment of the personal circumstances of the asylum-seeker concerned and prevailing local conditions.

Alternatives to detention which may be considered are as follows:

**(i) Monitoring Requirements.**

Reporting Requirements: Whether an asylum-seeker stays out of detention may be conditional on compliance with periodic reporting requirements during the status determination procedures. Release could be on the asylum-seeker's own recognisance, and/or that of a family member, NGO or community group who would be expected to ensure the asylum-seeker reports to the authorities periodically, complies with status determination procedures, and appears at hearings and official appointments.

Residency Requirements: Asylum-seekers would not be detained on condition they reside at a specific address or within a particular administrative region until their status has been determined. Asylum-seekers would have to obtain prior approval to change their address or move out of the administrative region. However this would not be unreasonably withheld where the main purpose of the relocation was to facilitate family reunification or closeness to relatives.

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**(ii) Provision of a Guarantor/ Surety.** Asylum seekers would be required to provide a guarantor who would be responsible for ensuring their attendance at official appointments and hearings, failure of which a penalty most likely the forfeiture of a sum of money, levied against the guarantor.

**(iii) Release on Bail.** This alternative allows for asylum-seekers already in detention to apply for release on bail, subject to the provision of recognisance and surety. For this to be genuinely available to asylum-seekers they must be informed of its availability and the amount set must not be so high as to be prohibitive.

**(iv) Open Centres.** Asylum-seekers may be released on condition that they reside at specific collective accommodation centres where they would be allowed permission to leave and return during stipulated times.

These alternatives are not exhaustive. They identify options which provide State authorities with a degree of control over the whereabouts of asylum-seekers while allowing asylum-seekers basic freedom of movement.

**Guideline 5: Procedural Safeguards.<sup>10</sup>**

If detained, asylum-seekers should be entitled to the following minimum procedural guarantees:

(i) to receive prompt and full communication of any order of detention, together with the reasons for the order, and their rights in connection with the order, in a language and in terms which they understand;

(ii) to be informed of the right to legal counsel. Where possible, they should receive free legal assistance;

(iii) to have the decision subjected to an automatic review before a judicial or administrative body independent of the detaining authorities. This should be followed by regular periodic reviews of the necessity for the continuation of detention, which the asylum-seeker or his representative would have the right to attend;

(iv) either personally or through a representative, to challenge the necessity of the deprivation of liberty at the review hearing, and to rebut any findings made. Such a right should extend to all aspects of the case and not simply the executive discretion to detain;

(v) to contact and be contacted by the local UNHCR Office, available national refugee bodies or other agencies and an advocate. The right to communicate with these representatives in private, and the means to make such contact should be made available.

Detention should not constitute an obstacle to an asylum-seekers' possibilities to pursue their asylum application.

#### **Guideline 6: Detention of Persons under the Age of 18 years.<sup>11</sup>**

In accordance with the general principle stated at Guideline 2 and the UNHCR Guidelines on Refugee Children, **minors who are asylum-seekers should not be detained.**

In this respect particular reference is made to the Convention on the Rights of the Child in particular:

- Article 2 which requires that States take all measures appropriate to ensure that children are protected from all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians or family members;
- Article 3 which provides that in any action taken by States Parties concerning children, the best interests of the child shall be a primary consideration;
- Article 9 which grants children the right not to be separated from their parents against their will;
- Article 22 which requires that States Parties take appropriate measures to ensure that minors who are seeking refugee status or who are recognised refugees, whether accompanied or not, receive appropriate protection and assistance;
- Article 37 by which States Parties are required to ensure that the detention of minors be

used only as a measure of last resort and for the shortest appropriate period of time.

Unaccompanied minors should not, as a general rule, be detained. Where possible they should be released into the care of family members who already have residency within the asylum country. Where this is not possible, alternative care arrangements should be made by the competent child care authorities for unaccompanied minors to receive adequate accommodation and appropriate supervision. Residential homes or foster care placements may provide the necessary facilities to ensure their proper development, (both physical and mental), is catered for while longer term solutions are being considered.

All appropriate alternatives to detention should be considered in the case of children accompanying their parents. Children and their primary caregivers should not be detained unless this is the only means of maintaining family unity.

If none of the alternatives can be applied and States do detain children, this should, in accordance with Article 37 of the Convention on the Rights of the Child, be as a measure of last resort, and for the shortest period of time.

If children who are asylum-seekers are detained at airports, immigration-holding centres or prisons, they must not be held under prison- like conditions. All efforts must be made to have them released from detention and placed in other accommodation. If this proves impossible, special arrangements must be made for living quarters which are suitable for children and their families.

During detention, children have a right to education which should optimally take place outside the detention premises in order to facilitate the continuation of their education upon release. Provision should be made for their recreation and play which is essential to a child's mental development and will alleviate stress and trauma.

Children who are detained, benefit from the same minimum procedural guarantees (listed at Guideline 5) as adults. A legal guardian or adviser should be appointed for unaccompanied minors.<sup>12</sup>

### **Guideline 7: Detention of Vulnerable Persons.**

Given the very negative effects of detention on the psychological well being of those detained, active consideration of possible alternatives should precede any order to detain asylum-seekers falling within the following vulnerable categories:<sup>13</sup>

Unaccompanied elderly persons.

Torture or trauma victims.

Persons with a mental or physical disability.

In the event that individuals falling within these categories are detained, it is advisable that this should only be on the certification of a qualified medical practitioner that detention will not adversely affect their health and well being. In addition there must be regular follow up and support by a relevant skilled professional. They must also have access to services, hospitalisation, medication counselling etc. should it become necessary.

### **Guideline 8: Detention of Women.**

Women asylum-seekers and adolescent girls, especially those who arrive unaccompanied, are particularly at risk when compelled to remain in detention centres. As a general rule the detention of pregnant women in their final months and nursing mothers, both of whom may have special needs, should be avoided.

Where women asylum-seekers are detained they should be accommodated separately from male asylum-seekers, unless these are close family relatives. In order to respect cultural values and improve the physical protection of women in detention centres, the use of female staff is recommended.

Women asylum-seekers should be granted access to legal and other services without discrimination as to their gender,<sup>14</sup> and specific services in response to their special needs<sup>15</sup>. In particular they should have access to gynaecological and obstetrical services.

### **Guideline 9: Detention of Stateless Persons.**

Everyone has the right to a nationality and the right not to be arbitrarily deprived of their nationality.<sup>16</sup>

Stateless persons, those who are not considered to be nationals by any State under the operation of its law, are entitled to benefit from the same standards of treatment as those in detention generally.<sup>17</sup> Being stateless and therefore not having a country to which automatic claim might be made for the issue of a travel document should not lead to indefinite detention. Statelessness cannot be a bar to release. The detaining authorities should make every effort to resolve such cases in a timely manner, including through practical steps to identify and confirm the individual's nationality status in order to determine which State they may be returned to, or through negotiations with the country of habitual residence to arrange for their re-admission.

In the event of serious difficulties in this regard, UNHCR's technical and advisory service pursuant to its mandated responsibilities for stateless persons may, as appropriate, be sought.

### **Guideline 10: Conditions of Detention<sup>18</sup>**

Conditions of detention for asylum-seekers should be humane with respect shown for the inherent dignity of the person. They should be prescribed by law.

Reference is made to the applicable norms and principles of international law and standards on the treatment of such persons. Of particular relevance are the 1988 UN Body of Principles for the

Protection of all Persons under any form of Detention or Imprisonment, 1955 UN Standard Minimum Rules for the Treatment of Prisoners, and the 1990 UN Rules for the Protection of Juveniles Deprived of their Liberty.

The following points in particular should be emphasised:

- (i) the initial screening of all asylum seekers at the outset of detention to identify trauma or torture victims, for treatment in accordance with Guideline 7.
- (ii) the segregation within facilities of men and women; children from adults(unless these are relatives);
- (iii). the use of separate detention facilities to accommodate asylum-seekers. The use of prisons should be avoided. If separate detention facilities are not used, asylum-seekers should be accommodated separately from convicted criminals or prisoners on remand. There should be no co-mingling of the two groups;
- (iv) the opportunity to make regular contact and receive visits from friends, relatives, religious, social and legal counsel. Facilities should be made available to enable such visits. Where possible such visits should take place in private unless there are compelling reasons to warrant the contrary;
- (v) the opportunity to receive appropriate medical treatment, and psychological counselling where appropriate;
- (vi) the opportunity to conduct some form of physical exercise through daily indoor and outdoor recreational activities;
- (vii) the opportunity to continue further education or vocational training;
- (viii) the opportunity to exercise their religion and to receive a diet in keeping with their religion;
- (ix) the opportunity to have access to basic necessities i.e. beds, shower facilities, basic toiletries etc.;
- (x) access to a complaints mechanism, (grievance procedures) where complaints may be submitted either directly or confidentially to the detaining authority. Procedures for lodging complaints, including time limits and appeal procedures, should be displayed and made available to detainees in different languages.

### **Conclusion.**

The increasing use of detention as a restriction on the freedom of movement of asylum seekers on the grounds of their illegal entry is a matter of major concern to UNHCR, NGOs, other agencies as well as Governments. The issue is not a straight-forward one and these guidelines

have addressed the legal standards and norms applicable to the use of detention. Detention as a mechanism which seeks to address the particular concerns of States related to illegal entry requires the exercise of great caution in its use to ensure that it does not serve to undermine the fundamental principles upon which the regime of international protection is based.

1. These Guidelines address exclusively the detention of asylum seekers. The detention of refugees is generally covered by national law and subject to the principles, norms and standards contained in the 1951 Convention, and the applicable human rights instruments. 2. The Geneva Convention of 28 July 1951 Relating to the Status of Refugees. 3. Views of the Human Rights Committee on Communication No. 560/1993, 59th Session, CCPR/C/D/560/1993. 4. UNHCR has been requested to provide technical and advisory services to states on nationality legislation or practice resulting in statelessness. EXCOM Conclusion No. 78(XLVI) (1995), General Assembly Resolution 50/152, 1996. See also Guidelines: Field Office Activities Concerning Statelessness. (IOM/66/98-FOM70/98). 5. Article 9(1) International Covenant on Civil and Political Rights. (ICCPR) Article 37(b) UN Convention on the Rights of the Child. (CRC) Article 5(1) European Convention for the Protection of Human Rights and Fundamental Freedoms. (ECHR) Article 7(2) American Convention on Human Rights 1969. (American Convention) Article 5 African Charter on Human and People's Rights. (African Charter) 6. Article 9(1), Article 12 ICCPR, Article 37(b) CRC Article 5(1)(f) ECHR Article 7(3) American Convention Article 6 African Charter. EXCOM Conclusion No. 44(XXXVII) 7. EXCOM Conclusion No. 44 (XXXVII) 8. Sub Committee of the Whole of International Protection Note EC/SCP/44 Paragraph 51(c). 9. Art 16, Art 12 UDHR 10. Article 9(2) and (4) ICCPR Article 37(d) CRC Article 5(2) and (4) ECHR Article 7(1) African Charter. Article 7(4) and (5) American Convention EXCOM Conclusion no. 44 (XXXVII) UN Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment. 1988 UN Standard Minimum Rules for the Treatment of Prisoners 1955 11. See also UN Rules for the Protection of Juveniles Deprived of their Liberty 1990 12. An adult who is familiar with the child's language and culture may also alleviate the stress and trauma of being alone in unfamiliar surroundings. 13. Although it must be recognised that most individuals will be able to articulate their claims, this may not be the case in those who are victims of trauma. Care must be taken when dealing with these individuals as their particular problems may not be apparent, and it will require care and skill to assess the situation of a person with mental disability or a disoriented older refugee who is alone. 14. See UNHCR Guidelines on The Protection of Refugee Women. 15. Women particularly those who have travelled alone may have been exposed to violence and exploitation prior to and during their flight and will require counselling. 16. Art 15 UDHR. See EXCOM No. 78(XLVI) 17. Article 10(1) ICCPR 1988 UN Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment. UN Standard Minimum Rules for the Treatment of Prisoners 1955 1990 UN Rules for the Protection of Juveniles Deprived of their Liberty 18. Article 10(1) ICCPR 1988 UN Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment. 1955 UN Standard Minimum Rules for the Treatment of Prisoners. 1990 UN Rules for the Protection of Juveniles Deprived of their Liberty.