

The Universal Periodic Review contribution of

THE NATIONAL COALITION OF ANTI-DEPORTATION CAMPAIGNS

(NCADC)



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1. Through its work with individuals either seeking asylum or facing deportation or removal from the United Kingdom, NCADC is aware of a number of human rights violations stemming from the UK government's treatment of such individuals. This report deals with two issues which were recommended for improvement in the UK's first UPR session, namely the treatment of lesbian, gay, bisexual or transgender (LGBT) asylum seekers by the UK government and judiciary; and the use of covert means of removing those whose asylum status has been refused. The report provides an analysis of the recent developments in these areas. The report then raises a number of other areas of concern which NCADC believes to be in need of attention by the UK authorities in order for the UK to honour its various international human rights treaty obligations.

2. During the UK's first UPR session it was noted that the UK failed to take sufficient account of an individual's sexuality when considering their claim for asylum: indeed, 98% of asylum cases involving LGBT individuals in the UK were refused. NCADC is pleased to note positive developments in this area. Since the last UPR report the UK Supreme Court has ruled that it is not sufficient for the test of risk of persecution or serious harm to be whether an LGBT individual could live discreetly in their country of origin (as was previously the case, in marked contrast to the test regarding political beliefs) .

3. This welcome judgement notwithstanding, the experiences of NCADC in asylum cases involving LGBT individuals have suggested the judgement in itself is not sufficient to protect individuals who would face persecution and

serious harm if returned. This is due to the poor quality of first instance decision-making by the UK Border Agency in all cases but particularly those of LGBT individuals, around whether or not the individual's claim of LGBT status is credible. These poor decisions have, in a worryingly high number of cases in which NCADC has been involved, also been upheld in the Immigration Courts. NCADC is highly concerned about the reasons given for refusal of asylum claims in these cases: 'late claims' for asylum based on LGBT identity are routinely interpreted as incredible claims by the UKBA, despite vast research on this being a normal and valid reaction to hiding sexual identity in country of origin, and traumatic experiences undergone because of their sexual identity. Having children, or opposite sex partners, or even in one case the use of contraceptive devices, have all been cited by the UKBA as reasons to disbelieve an individual's claim of homosexuality. NCADC believes that this reflects homophobia and a culture of disbelief in the UK government's decision making bodies, with the consequences of LGBT lives being put at risk.

4. Furthermore, there have been a number of instances where the courts have failed to take account of the dangers posed by certain states to the LGBT community. Most notably a number of clients of NCADC who had been confirmed by the UKBA to be homosexuals were refused asylum on the grounds that the court did not believe that a significant risk was posed to them by the Ugandan authorities, despite the recent reintroduction of the Anti-Homosexuality Bill into the Ugandan Parliament. NCADC has also worked with a number of clients who had suffered serious injuries at the hands of the

communities of their country of origin but who have yet had their claims for asylum refused on the basis that the court does not believe there to be a risk to the individual should they return, often without consideration of the medical evidence available.

5. Another issue raised in the UK's first UPR session was that of the use of 'secret flights' i.e. chartered flights, to remove individuals from the UK who have had their claims for asylum refused. NCADC can report that its own experiences have not shown a change in the UK's policy in this area, which allows the UK authorities to remove individuals covertly. Indeed it notes also its clients' experiences of a related policy of the UK to detain individuals (and particularly families) refused asylum via dawn raids. This practice serves to terrorise individuals and families (especially children picked up in these raids) who have experienced heavy-handed tactics such as this in their country of origin. Not only do these policies beg the question as to why the UKBA's operations need be so secretive, but they do little for the image of an asylum system which is supposed to be transparent and public. NCADC therefore would like to reiterate the call for more information to be provided by the UK government about the reasons for the continued use of these covert practices.
6. Furthermore NCADC has borne witness to a number of other human rights violations by the UK authorities which were not raised in the UK's first UPR session. Most notably the procedures applied by the UKBA have often proven to be inadequate. In particular the NCADC recalls a case in which an individual was refused the right to appeal the decision to deny their application

for asylum due to the fact that the notification of refusal had been addressed incorrectly by the UKBA. Consequently the notification of refusal could not be delivered to NCADC's client, who in turn was unable to apply for an appeal within the narrow time limit demanded by the UKBA, calling into question the UDHR's Article 10. Furthermore NCADC has had direct involvement in cases where the UKBA has failed to provide any reason for the rejection of bail applications of clients detained subsequent to their having their asylum claims refused, or where the UKBA has provided reasons for their refusal of bail which were not applicable to a client.

7. NCADC would also like to express its concerns over the increasing use of immigration detention in the UK, particularly in the cases of migrant individuals with close family or community ties in the UK; medical or mental health concerns; and individuals who have experienced detention, torture and rape in their country of origin. While UK immigration law does not allow for individuals who have survived torture to be detained (apart from in exceptional circumstances), NCADC is concerned about the fallibility of decision-making in this area and inadequate regard being given to medical reports (or access not being granted to produce these reports in the first place) attesting to an individual having undergone torture. Of further concern to NCADC is the frequent movement of individuals in detention (one NCADC client from Iraq was moved between 8 different Immigration Removal Centres; and more recently an individual has been moved four times within a matter of weeks). This movement disrupts an individual's access to legal advice (with the possible consequence of denial of access to justice), and

medical and mental health services that are so often required for this client group. NCADC calls for the end to immigration detention – an inhumane and costly practice – and in the alternative recommends vastly improved scrutiny of decisions to place individuals into the fast-track system; immigration detention generally; and of temporary admission and BAIL applications.

8. Finally the NCADC wishes to also raise the detrimental effect that the UK government's 'Legal Aid' reforms have had upon the protection of the human rights of individuals seeking asylum. Since the UK's last UPR report the UK government has introduced severe cuts to the legal aid budget and highly damaging changes to the way legal fees are paid, which has resulted in a number of the UK's largest publicly funded providers of legal representations to asylum seekers collapsing (including Refugee and Migrant Justice, and the Immigration Advisory Service). The consequence of these collapses has meant that a number of NCADC's clients have had their legal documentation lost and their cases stalled or even refused. NCADC has not seen any attempt by the UK government to rectify this state of affairs, and the quality and quantity of free legal advice has been steadily deteriorating. With limited legal options available, especially to those in immigration detention who only have access to certain legal firms selected for the IRC contract, access to justice has been compromised in the vast majority of cases with which NCADC has been involved.
9. While NCADC welcomes the recent changes which prevent a claim for asylum being refused on the basis that an applicant may conceal their sexuality

on return to their country of origin, it holds that the UK authorities have a largely similar approach to LGBT asylum cases as in place prior to the change (with refusals of asylum claims now seemingly intent on circumventing the protection afforded by the landmark Supreme Court case), and in particular fails to have an adequate test to qualify the sexuality of an individual seeking asylum, and fails to also take seriously evidence which shows an LGBT individual to be at risk should they return to their country of origin. Furthermore NCADC raises concern as to the UK's use of covert operations to detain and remove those individuals who have had their right to asylum refused, as well as the procedural inadequacy which the UKBA has consistently displayed, leading to the interruption of asylum seekers' medical and legal help. NCADC would also like to recommend the cessation of the movement of asylum seekers around the UK whilst their claim is being made. Finally NCADC would also recommend that the UK rethink its plans to cut legal aid and prevent the inevitable breach of asylum seekers' right to access to justice that would ensue.

10. The overwhelmingly majority of individuals who contact NCADC for help have compelling asylum or human rights claims in the UK. The fact that these individuals have reached the end of the asylum process and are facing removal indicates the poor quality of first-instance decision making by UKBA, and to a lesser extent, by the Immigration Courts. NCADC recommends that the UK government implements improvements in keeping with UNHCR recommendations following a review of its decision-making. Increased training for caseowners and all UKBA staff is needed, as evidence of racism

and brutality by UKBA staff (or enforcement staff contracted by UKBA) continues to come to light.

11. NCADC calls for the UK government to undertake a meaningful, independent review of its asylum decision-making system, to allow a robust asylum system to be implemented: a system that is not based on refusals for minor discrepancies, or a system that produces refusal letters riddled with errors, and a system that does not take disbelief as a starting point. As a key advocate of human rights abroad, it is essential that the UK government is more than just a signatory in name to the Refugee convention and international human rights conventions, and reflects its values of freedom and fairness in its decision making and treatment of those seeking safety in the UK.