



**Asylum Aid's Response to
HM Government's Consultation Paper:
Together We Can End Violence Against
Women And Girls**

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About Asylum Aid

Asylum Aid is an independent, national charity working to secure protection for people seeking refuge in the UK from persecution and human rights abuses abroad. We provide free legal advice and representation to the most vulnerable and excluded asylum seekers, and lobby and campaign for an asylum system based on inviolable human rights principles. The Refugee Women's Resource Project (RWRP) at Asylum Aid strives to obtain protection, respect and security for women seeking asylum in the UK by providing specialist advice, research and resources on asylum issues for women. Asylum Aid was runner up in the Liberty and Justice Human Rights Awards 2007.

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Asylum Aid's Policy Position

Women seeking asylum have the right to have their protection claims determined by an asylum system in the UK that is informed, in all aspects of its policy and operations, by a thorough understanding of the particular forms of persecution and human rights abuses that women experience because of their gender and of their particular needs as women. To ensure a truly integrated strategy on violence against women, Asylum Aid believes that women seeking asylum have the right to be treated in a gender-sensitive manner. The lessons learned by the criminal justice system must be transferred to the asylum system.

Asylum Aid's work in relation to this topic

Refugee Women's Resource Project

The Refugee Women's Resource Project (RWRP) was set up at Asylum Aid in 2000 in recognition of the fact that women who have fled their homes in search of safety have particular problems and their needs and circumstances are not adequately addressed by the UK asylum system.

The traditional image of a refugee is of a male political activist, persecuted for his involvement in protests against the state. Women's political activities often take a different form, perhaps giving shelter or food to those in hiding or refusing to abide by restrictions such as dress codes. Women also face forms of persecution that are particular to them. These include domestic violence, rape, sexual violence, forced marriage and female genital mutilation, from which they are unable to get state protection.

RWRP aims to enable women seeking asylum in the UK to obtain protection and security, to maintain their dignity and to be treated with respect during the asylum process. The Project is unique in providing legal advice to individual women alongside research, legal analysis, policy work and campaigning on issues affecting women seeking asylum.

In 2006 RWRP won the Emma Humphreys Memorial Prize, awarded each year to a group that has done exceptional work to combat violence against women and children and raised awareness of this issue, whether through writing, campaigning or activism.

Charter of rights of women seeking asylum

In June 2008 Asylum Aid launched a *Charter of rights of women seeking asylum*. This new initiative aims to influence the UK Border Agency to create a gender-sensitive culture throughout its policies and practice. The Charter provides a framework of principles to address the treatment of women asylum seekers in a more strategic way alongside suggestions as to how the UK Border Agency could improve its operational practice and remove the discriminatory barriers women face. It covers all aspects of the end-to-end asylum process: the asylum determination system, accommodation, welfare, detention and removal.

The *Charter* was launched in the House of Commons on 22nd October 2008. Over 140 organisations have endorsed this *Charter* so far, including Amnesty International UK, Liberty, Oxfam and Rights of Women.

The *Charter* states "If a woman suffers rape, domestic violence or honour crimes in the UK there are gender-sensitive practices that have been developed within the criminal justice system to respond appropriately. If a woman suffers similar violence in her home country and comes to the UK to seek protection, the immigration system should respond to a similar standard, learning the lessons from the criminal justice system."

Gender-sensitive practices are also essential for the UK Border Agency and the Asylum and Immigration Tribunal to fully comply with the Gender Equality Duty.

Introduction

We welcome the concept of an integrated strategy on violence against women. In particular we believe that women who are seeking asylum must be included in this strategy.

This response is in answer to the consultation's final two questions:

Should the strategy include any specific measures on equality and diversity? What further equalities issues should the violence against women strategy take into account (for example on race, age, gender, ethnicity, sexuality, disability, socioeconomic background or geographical location)?

Are there any other matters we should be considering? (page 28)

We accept the consultation paper's definition of violence against women taken from the UN Convention on the Elimination of All Forms of Discrimination against Women as "Violence that is directed against a woman because she is a woman, or that affects women disproportionately"¹ and that this includes domestic violence, sexual violence, abuse and exploitation, trafficking, female genital mutilation, forced marriage and crimes committed in the name of honour.

The consultation paper details the major progress made in relation to the way the criminal justice system works with women victims of violence against women. However, there is a marked disparity between the experiences of female victims of violence against women going through the criminal justice process in the UK and that of women asylum seekers going through the asylum process. For a truly integrated strategy, the policies and practices developed for women victims of violence against women in the criminal justice system need to be transferred to the asylum system.

It is impossible to fit women asylum seekers' experience into the consultation paper's themes of prevention, provision and protection. This is because the violence against women experienced by women asylum seekers once they arrive in the UK can include direct violence by state officials and failure to protect

¹ <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>

women from such violence because of government policies or practice.

We have divided the experiences of women asylum seekers into three themes.

a) Direct abuse by the state – during detention and removal

Some women seeking asylum experience violence against them at the hands of officials working for the state (including officials contracted to undertake particular functions by the state). This occurs particularly during forced removals and also in immigration removal centres.

b) Failure to protect - the asylum determination system

The state fails to protect women asylum seekers from violence that they have experienced abroad and which has caused them to flee.

c) Failure to protect – vulnerability due to destitution

Asylum seeking women who become destitute because of government policies are particularly vulnerable to sexual violence on the streets in the UK. They are too scared to access protection from this through the police.

These are the issues we believe need to be addressed in order to create a truly integrated strategy to end violence against women and girls.

1. Context

In 2007, 6,930 women applied for asylum as principal applicants (30% of the total) and 2,715 applied as dependents of family members, for example as a dependent of a husband or father (dependents includes women and girls).

The great majority of asylum seekers, including women, are not recognised as refugees in the UK under the Refugee Convention. In 2007, 22% of female principal applicants were granted asylum. Appeals against initial refusal are sometimes successful, suggesting errors in assessing claims. 23% of appeals were allowed in 2007; this statistic is for men and women combined as figures are not disaggregated.²

Women's asylum claims may be because they were persecuted by their state. For instance a woman may be involved in political activities and be detained because of this. In many countries such detention routinely includes being raped by state officials such as prison guards. In other cases, women are persecuted by their family or community and are unable to get protection from the state. These forms of persecution tend to be particular, although not exclusive, to women and include domestic violence, rape, sexual violence, forced marriage, honour crimes and female genital mutilation.

Women seeking asylum in the UK can have been affected by violence against women in their home country but they are also vulnerable to this in the UK. For example, 76% of the women supported by the Refugee Council's

² Home Office, *Asylum statistics United Kingdom 2007*, Home Office Statistical Bulletin, 21st August 2008

Vulnerable Women's Project had been raped, either in their country of origin or the UK.³

2. Policies in relation to violence against women

UNHCR (the UN Refugee Agency) has "consistently advocated that the refugee definition, if properly interpreted, can encompass women who have been persecuted for gender-related reasons."⁴ Gender guidelines provide a mechanism by which the Refugee Convention can be interpreted in such a gender-sensitive way.

The UK is one of the few countries in Europe to have such gender guidelines.⁵ Entitled *Gender Issues in the Asylum Claim*, this Asylum Instruction was incorporated by the Home Office in March 2004 and revised in October 2006.⁶ It acknowledges that the Refugee Convention has traditionally been interpreted through a framework of male experiences. It includes the range of harm that women might experience, the need to consider relevant country information and the importance of gender-sensitive procedures such as providing female interviewers and interpreters.

The UK Border Agency has two policies relevant to violence against women. The first is the Asylum Instruction referred to above and the other policy is Policy Bulletin 70 on meeting the needs of those affected by domestic violence in UKBA supported accommodation.⁷

In contrast the police and Crown Prosecution Service (CPS) have many policies for women who have experienced violence against women. In the consultation paper's list of key government achievements since 1997⁸, 16 strategies, policies, action plans and good practice guidance are included in relation to violence against women in the criminal justice system. Appendix A of this paper provides a non-exhaustive list of such policies and Appendix B provides two detailed examples. Appendix C of this paper provides a summary of the UK Border Agency's two policies relevant to violence against women. Appendix D is a comparison of the experiences of two women, one a British woman in the UK and the second a woman fleeing domestic violence abroad and seeking asylum in the UK.

³ Refugee Council, *The Vulnerable Women's Project: refugee and asylum seeking women affected by rape or sexual violence – Literature Review*, February 2009

⁴ Bemma Donkoh, *Sierra Leone anger at FGM asylum in UK*, BBC News Africa 19.10.06

⁵ H Crawley and T Lester, *Comparative analysis of gender-related persecution in national asylum legislation and practice in Europe*, UNHCR, May 2004

⁶ <http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/>

⁷ <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumsupportbulletins/accesstosupport/>

⁸ Annex 3

Case study

Since 2002 the police have had detailed guidance⁹ on interviewing survivors of sexual and domestic violence¹⁰ to ensure that they are interviewed in a way that enables them to provide the best possible evidence that they can. This includes giving the victim the choice about the gender of their interviewer. Paragraph 3.99 of the guidance states:

“The witness’s gender, race, culture and ethnicity must always be given due consideration and advice sought where necessary, but stereotypic conclusions about who is to conduct the interview should be avoided. Where the witness expresses a particular preference for an interviewer of either gender or sexual orientation or from a particular race, cultural or ethnic background this should be accommodated as far as is practical in the circumstances”.

During 2006-7 UNHCR recommended that UKBA ask asylum applicants whether they had a preference over the gender of their UKBA interviewer on four occasions and each time this was not accepted by the Immigration Minister. It took a campaign by Asylum Aid and other NGOs to persuade UKBA to ask this question at screening.¹¹

Meanwhile there are pockets of good practice:

“here in our Region we attempt to match female applicants with female case owners. Where this is not possible the applicant is asked if she does not mind being interviewed by a male case owner, if there is an objection we will meet the request but this may cause a delay to the applicant.”

Steve Chapman, Regional Asylum Lead, Wales and the South West of England Region, UKBA¹²

When it comes to the criminal courts, the Judicial Studies Board's Equal Treatment Bench Book contains guidance on domestic violence and sexual offences for judges. For example it covers the prevalence of domestic violence and sexual offences, the reasons why victims often do not report such crimes, the judge's role in protecting the victim and special measures available to victims when giving evidence in court. It also refers to specialist training manuals on the courts' role in relation to domestic violence.¹³ There are specialist domestic violence courts and judges are also trained specifically for rape cases.

The equivalent of the Asylum and Immigration Tribunal (AIT) had gender guidelines in place in relation to appeals from 2000¹⁴ but in September 2006 the

⁹ Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and Using Special Measures

http://www.cps.gov.uk/Publications/docs/Achieving_Best_Evidence_FINAL.pdf

¹⁰ Under section 17 of the Youth Justice and Criminal Evidence Act 1999 survivors of sexual violence are always considered to be intimidated witnesses while survivors of other forms of violence, such as domestic violence, will be if they are feel fear or distress when considering giving evidence.

¹¹ *Women's Asylum News*, issue 71, January 2008

¹² Email from Steve Chapman to Debora Singer, 21 September 2007

¹³ Equal Treatment Bench Book, Judicial Studies Board, updated December 2008

¹⁴ Berkowitz, N and Jarvis, C, *Asylum gender guidelines*, 2000, Immigration Appellate Authority

President of the current AIT stated that these had never been the AIT's policy and they were removed from their website.¹⁵ Asylum Aid has been spearheading a campaign to get equivalent information about issues affecting women asylum seekers into the Equal Treatment Bench Book for immigration judges at the AIT.

Case study

In R v Doody, a man was accused of violently raping his partner. She had called the police to their house because of his violent behaviour but only told them about the rape two days later. The judge, in his summing up, spoke to the jury of reasons why a woman might not report rape straight away. "They feel ashamed of what's happened. They are often too traumatised or embarrassed to tell anyone what's going on..." When this summing up was challenged, the Solicitor General intervened in the Court of Appeal (Criminal Division) "The Solicitor General ... submits that ... the judge should remind the jury of the particular trauma associated with the offence of rape, and the fact that a woman may find it very difficult to pluck up the courage to report the offence."¹⁶ The Court of Appeal subsequently made a decision on appropriate judicial directions in cases where a woman delayed reporting sexual violence to the police.

In contrast, an Immigration Judge, when confronted with a client who has alleged rape at a late stage in the asylum process routinely claims that if it was true, the client would have said it at the beginning. He regularly states in his determination: "We regard rape as a most horrendous crime which is capable of having a traumatic and long lasting effect on the victim. However we deprecate the attempt to utilise the crime of rape when it has not taken place and we find that the appellant has materially undermined her credibility by falsifying this aspect of her story".¹⁷

The criminal justice system has numerous policies and procedures related to women as victims of violence against women. In contrast, the UK Border Agency has one policy and the Asylum and Immigration Tribunal now has none.¹⁸

Recommendation: The Judicial Studies Board Equal Treatment Bench Book should include information about issues affecting women asylum seekers.

Recommendation: for a truly integrated strategy, the UK Border Agency and the Asylum and Immigration Tribunal must respond to a similar standard as the criminal justice system to women asylum seekers who have experienced violence against women.

¹⁵ *Women's Asylum News*, 66, January/February 2007

¹⁶ [2008] EWCA Crim 2394

¹⁷ Black Women's Rape Action Project & Women Against Rape, *Misjudging Rape: Breaching Gender Guidelines & International Law in Asylum Appeals*, 2007

¹⁸ See Appendices

3. Violence against women – issues that need to be considered to create an integrated strategy

a. Direct abuse by the state – during detention and removal

Some women are detained on arrival in the UK, others after their asylum claim has been refused. After their case is refused, if they do not return voluntarily, some asylum seekers are forcibly removed to their country of origin.

The cases of people injured during forced removals or whilst in detention over a period from 2004 to 2007 have been collected into a dossier. 78 of these cases are of women, some in the presence of their children. 13 events were at Yarl's Wood Immigration Removal Centre, the remainder during forced removals. The alleged assaults and beatings of asylum seekers were by security guards employed by private companies contracted by the Home Office to run immigration removal centres or to escort detainees being moved between centres or when being removed from the UK. The authorities appear reluctant to investigate such assaults and there is no evidence of any security guards or their employers being prosecuted for such an assault.¹⁹

Case study

"Jane' and her 2 year old daughter from central Africa

*A pregnant mother alleges she was hit, verbally abused and sustained bruising to her wrists because her handcuffs were put on so tightly. She also says she was not allowed to comfort her 2 year old daughter during the removal attempt. She says the cabin crew complained to the captain about her treatment and she was taken off the plane. She says she was told by the immigration escorts that next time she would be handcuffed, her legs chained and her mouth covered."*²⁰

Detention is traumatic for all asylum seekers. It is additionally traumatic for those who have experienced rape or torture, particularly if this was while detained in their country of origin. However, women who disclose experiences of rape or torture are not routinely taken out of detention. There is no systematic process in place to identify and release those who are not fit to be detained.²¹

Recommendation: no one should be detained but in particular women who have suffered violence against women should not be detained and should be taken out of detention immediately if it is discovered that they have experienced such violence.

Yarl's Wood is the only Immigration Removal Centre for just women and families but it has no target for the ratio of female staff. The ratio hovers just below the

¹⁹ Birnberg Pierce and Partners, Medical Justice and the National Coalition of Anti-Deportation Campaigns, *Outsourcing abuse: the use and misuse of state-sanctioned force during the detention and removal of asylum seekers*, July 2008

²⁰ Birnberg Pierce and Partners, Medical Justice and the National Coalition of Anti-Deportation Campaigns, *Outsourcing abuse: the use and misuse of state-sanctioned force during the detention and removal of asylum seekers*, July 2008, p 50

²¹ Bail for Immigration Detainees, *Refusal Factory*, September 2007

50% mark. In contrast, HM Prison Service has a Prison Service Order on *Establishing an appropriate staff gender mix in establishments* which states that the appropriate ratio is generally considered to be 60:40 female to male staff. It states this is due to women who have been abused by men feeling safer in a more female environment and issues of decency and security.²² In addition social work and medical staff at Yarl's Wood are often male. We believe that standards considered appropriate for residential institutions catering for women offenders should also be appropriate for residential institutions catering for women asylum seekers. Again the good practice of the criminal justice system has not been transferred to the immigration services.

Recommendation: UKBA should provide a staffing ratio in women's immigration removal centres at the same level as in women's prisons, and employ female medical and social work staff.

At Tinsley House the vast majority of residents are male. Anne Owers, the Chief Inspector of Prisons commented "We were particularly troubled by the plight of single women. They appeared marginalised and almost forgotten. They were left to share facilities within a mainly male establishment and this could be both embarrassing and intimidating."²³

Recommendation: The detention of women in Tinsley House should be stopped.

b. Failure to protect - the asylum determination system

If a British woman is forced into marriage or to undergo female genital mutilation in the UK or abroad there are UK laws against this.²⁴ If a British woman is taken overseas for a forced marriage the Foreign Office's Forced Marriage Unit will actively attempt to rescue her and facilitate her return to the UK if she wishes.²⁵

Yet the asylum determination system fails to protect women from abroad who are fleeing similar violence. For example, the case of a young woman at risk of female genital mutilation in Sierra Leone had to go all the way to the House of Lords.²⁶

In assessing asylum claims, violence in the family is still routinely perceived to be a private violation and not the responsibility of the state; consequently women's experiences of such abuse are not considered to amount to persecution despite the lack of state protection. As each case has to be argued on its merits and the facts of the case, state policy on asylum for women fleeing violence and

²² *Establishing an Appropriate Staff Gender Mix in Establishments*, Prison Service Order number 8005, 30/05/2001; also referred to in *Women Prisoners*, Prison Service Order Number 4800, 28/04/08

²³ HM Inspectorate of Prisons, *Report on a full announced inspection of Tinsley House Immigration Removal Centre 10-14 March 2008 by HM Chief Inspector of Prisons*, 2008, Recommendation HE.36

²⁴ Female Mutilation Act 2004 and Forced Marriage (Civil Protection) Act 2007

²⁵ <http://www.fco.gov.uk/en/fco-in-action/nationals/forced-marriage-unit/>

²⁶ *SSHD v K and Fornah* [2006] UKHL 46

abuse is unpredictable and inconsistent.²⁷

Case study

BD is a woman from Mali who experienced female genital mutilation (FGM), forced marriage and domestic violence. Once in the UK, BD discovered that she was pregnant by a man other than her husband.

With Asylum Aid's help, BD submitted evidence and a witness statement prior to her asylum interview. BD made an application for asylum on the following grounds:

- Her child was the result of adultery and this would mean violence towards BD and stigmatisation of the child*
- Her child would have to undergo FGM*
- There was no state protection against domestic violence*
- There was nowhere in Mali that would be safe as BD's father was a high status man and had the means to find her*

After consideration of her claim by a female Case Owner, BD was granted refugee status at the initial decision stage.

This case demonstrates what can be achieved by a good case worker who is able to obtain clear instructions from a client by gaining their trust; to draft a clear and comprehensive statement of that person's experiences and state how the law applies to those facts. Additionally it demonstrates how a female Case Owner with a strong understanding of gender persecution issues (in this case within the Cardiff office) can reach a positive decision quickly and thus avoid utilising further public funds by recourse to the appeals procedure.²⁸

Our experience is that this example of good practice is all too rare. Poor quality official decision-making is generally a major obstacle for women seeking protection in the UK. The gaps in understanding of gender-based violence in the UK asylum system includes how this falls within the remit of the Convention, understanding women's specific forms of political activism and discriminatory religious or cultural norms that target women specifically and in some cases constitute forms of violence.²⁹ This is particularly apparent for women seeking protection from violence at the hands of family or their community where state protection is not available in their country of origin.³⁰

Case study

KN was a young Sikh woman from a mainly Muslim area in north India. She experienced persecution because of her religion, including an attempted rape and an arson attack on her home, whilst she was still a child.

²⁷ P Sen and L Kelly, *Violence against women in the UK*, Shadow thematic report for the Committee on the elimination of all forms of discrimination against women, 2007

²⁸ *Annual Report 2008*, Asylum Aid

²⁹ P Sen and L Kelly, *Violence against women in the UK*, Shadow thematic report for the Committee on the elimination of all forms of discrimination against women, 2007

³⁰ See for example POPPY Project and RWRP at Asylum Aid, *Good intentions: a review of the New Asylum Model and its impact on trafficked women claiming asylum*, June 2008

*KN was granted asylum at the appeal stage but the Home Office then challenged this decision. The Home Office claimed that the Immigration Judge in the initial appeal had not properly considered a Country Guidance case relating to Sikhs. In reconsidering this, the Senior Immigration Judge noted that the case related to a much older man and that the Immigration Judge had been right in regarding it as therefore not relevant to considering the fate of a young woman. He noted that it would be unduly harsh for KN to relocate to another part of India, as she was so young.*³¹

In terms of procedures, women face many obstacles in the current asylum procedures. Women who apply for asylum in the UK find it traumatic to have to keep repeating the story of the violence they have experienced. The system is too fast to allow them to develop trust in those interviewing them.³² Confidentiality at screening stage is severely limited when applicants have to speak through a screen in a public office.³³ At their substantive interview they may have to relate their experiences in front of their children.³⁴ In addition, there is a failure to interview women separately from male relatives, lack of understanding of why women may delay disclosing details of their experiences,³⁵ a culture of disbelief and lack of childcare during asylum interviews.³⁶

At the decision-making stage obstacles include downgrading of medical evidence, granting only humanitarian (subsidiary) protection instead of full refugee status³⁷ and not recognising cultural norms that mean women cannot return to other parts of their country as single women, single mothers, widows etc.³⁸

The adoption of gender guidelines should, if consistently implemented and if staff are given adequate training, make a contribution to addressing these issues. However, there is very little evidence of the guidelines being implemented by UKBA³⁹ or the AIT (when their guidelines were in place).^{40,41}

³¹ *Annual Report 2008*, Asylum Aid

³² Under the New Asylum Model, interviews are expected to be held within two weeks of application and within two to three days in the detained fast track

³³ South London Citizens, *A humane service for global citizens: enquiry into service provision by the Immigration and Nationality Directorate at Lunar House*, 2005

³⁴ *Refugee Council, Asylum seekers' experiences of the New Asylum Model: Findings from a survey with clients at Refugee Council One Stop Services, January 2008*

³⁵ P Sen and L Kelly, *Violence against women in the UK*, Shadow thematic report for the Committee on the elimination of all forms of discrimination against women, 2007

³⁶ a UK-wide campaign to persuade UKBA to provide childcare during asylum interviews started in April 2007 resulted in two regions (Cardiff and Glasgow) doing this and the issue has been included in UKBA's *Code of Practice on keeping children safe from harm*, Dec 2008

³⁷ P Sen and L Kelly, *Violence against women in the UK*, Shadow thematic report for the Committee on the elimination of all forms of discrimination against women, 2007

³⁸ C. Bennett, *Relocation, Relocation, the impact of internal relocation on women asylum seekers*, November 2008

³⁹ S. Ceneda and C. Palmer, *Lip service or implementation? Home Office Gender Guidance and Women Asylum Seekers*, Asylum Aid, 2006

⁴⁰ Black Women's Rape Action Project & Women Against Rape, *Misjudging Rape: Breaching Gender Guidelines & International Law in Asylum Appeals*, 2007

⁴¹ R Wallace and A Hathaway, *The application of the gender guidelines within the UK asylum determination process*, 2004

Case study

B's asylum interview lasted for over five hours without a break, during which time she was asked 300 questions, none of which pursued her earlier disclosure of having been raped in detention in Sudan. B was given a male interpreter for her asylum interview, although a medical report subsequently described her intense fear of men following her experiences in detention. B's claim was refused because the Case Owner disbelieved all aspects of her claim.

At the appeal hearing Asylum Aid raised the Case Owner's failure to follow the asylum policy instruction on gender issues. The Case Owner stated that she did not consider that the gender guidelines were relevant and appeared to be unaware that they have been compulsory since 2004.

The Immigration Judge at the appeal hearing was disturbed by the conduct of the asylum interview and the lack of questions about the allegation of rape. He found B's statements to be credible and supported by the objective evidence. He overturned the refusal decision stating that "the appellant's evidence clearly displays the characteristics of someone who is in need of international protection because they face a real threat of persecution..."⁴²

Recommendation: UKBA should ensure the full and consistent implementation of the gender guidelines and that these are monitored and regularly reviewed.

Women who have experienced violence against women are also not in a position to have their asylum claim heard appropriately if they are dealt with through the fast track process. The fast track asylum determination procedure was set up to process asylum claims deemed to be straightforward and where a decision could be made quickly.⁴³ Because the Refugee Convention is written from the perspective of male experiences, women's cases that involve violence against women are by definition more complex. In addition, women who have experienced violence against women are not allowed adequate time to develop trust and confidence to speak about their experiences.

The Home Office's own research recognises that women who have experienced violence against women should not be in the detained fast track but are not being taken out of it.⁴⁴ Evidence from UNHCR similarly raises concerns over inappropriate cases involving complex claims being routed to and remaining within the detained fast track. They also refer to decision makers at Yarl's Wood IRC not appearing to possess "the necessary skills and expertise to ensure that the full range of gender related claims are recognised in asylum decisions".⁴⁵

Recommendation: the detained fast track is incompatible with a gender-sensitive asylum process but whilst it continues, UKBA should ensure the

⁴² *Annual Report 2007, Asylum Aid*

⁴³ Border and Immigration Agency, *Asylum Process Instruction, Annex 1, Suitability for Detained Fast Track (DFT) and Oakington processes*, 28 July 2007

⁴⁴ Home Office, *Yarl's Wood Detained Fast-Track Compliance with the Gender API*, A report by the NAM Quality Team, August 2006

⁴⁵ UNHCR Quality Initiative Project, *Key Observations and Recommendations February 2007 – March 2008*, June 2008

screening process is sufficiently robust to exclude from the detained fast track those who claim to have experienced gender-based harm and, in line with existing policy, exclude those who are 24 weeks or more pregnant or have serious health issues

c. Failure to protect – vulnerability due to destitution

The Government's own policy of not allowing refused asylum seekers to work results in many becoming destitute. This makes women vulnerable to violence against women.

Poor financial and social support networks contribute to some women asylum seekers becoming destitute even whilst their claims are ongoing when they should have access to accommodation and financial support.⁴⁶ Women are particularly vulnerable to destitution following family separation, which may be linked to domestic violence and / or sexual exploitation.⁴⁷ This is despite UKBA's policy on domestic violence and asylum seekers which provides alternative accommodation (including paying for refuge accommodation) to asylum seekers who are living in UKBA supported accommodation and experience domestic violence.⁴⁸

Only refused asylum seekers with children or health problems or who are unable to return to their countries have access to accommodation and limited financial support once their asylum claim has been refused (known as Section 4 support). With no permission to work, many refused asylum seekers become destitute with no support whatsoever. Factors such as domestic violence or vulnerability to exploitation are not taken into account when deciding who qualifies for Section 4 support.

Refugee Action reported that women who are forced into sleeping rough 'are obviously more vulnerable, often attracting unwanted attention, harassment and sexual abuse' and fear reporting this to the police.⁴⁹ A more recent report by PAFRAS found that more than one third of women sleeping outside had experienced sexual assaults including rape. None reported this to the police partly because of the trauma they had experienced at the hands of the police in their home countries and partly because they feared that coming to the attention of the police would expedite their forced removal from the UK.⁵⁰ The protection that should be available to those experiencing violence against women is thus inaccessible in practice to women asylum seekers at the end of the asylum process.

⁴⁶ P Sen and L Kelly, *Violence against women in the UK*, Shadow thematic report for the Committee on the elimination of all forms of discrimination against women, 2007

⁴⁷ Refugee Survival Trust, *What's going on? A study into destitution and poverty faced by asylum seekers and refugees in Scotland*, April 2005

⁴⁸ Home Office, *Policy Bulletin 70 on Domestic Violence*, January 2004

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumsupportbulletins/accesstosupport/>

⁴⁹ Refugee Action, *The destitution trap*, 2006

⁵⁰ Diane Taylor, *Underground lives: an investigation into the living conditions and survival strategies of destitute asylum seekers in the UK*, PAFRAS (Positive Action for Refugees and Asylum Seekers), March 2009

Case study

"I was sleeping on a park bench because I had nowhere to stay. A man came up to me and said I could stay at his house. In desperation I agreed to go with him but he forced me to have sex with him. After two nights he threw me out because he said his wife was coming back, then I found out I was pregnant. The worst thing is being abandoned. Before I arrived here I thought a country like England would help in my situation, now I think differently. I have suffered a lot here.

Patricia, 32, DRC [Democratic Republic of Congo]⁵¹

The Asylum Support Appeals Project (ASAP) provides free representation to individuals who are appealing against the decision from UKBA to refuse them support. Their clients are predominantly refused asylum seekers who are destitute and applying for Section 4 support. Just over a quarter of their clients are women, many of whom have been victims of violence, either in their country of origin or in the UK. As a result of destitution a number of these women have reported entering or remaining in abusive relationships because they were unable to access any other forms of support. One woman, who had been street homeless, informed ASAP that she went to live with the first man who expressed an interest in her as she was so frightened of being on the streets. She was eventually forced to leave this man as a result of domestic violence. Others reported exchanging sex for food and shelter or becoming involved in formal prostitution.

Case Study

A is a young woman who was raped whilst detained in her country. She entered the UK as an unaccompanied child and was initially supported by Social Services. Whilst in the care of Social Services she gave birth to a daughter.

Once A turned eighteen she and her baby were evicted from Social Services accommodation as her claim for asylum had been refused. She applied for Section 4 support but was refused as she did not meet the very narrow criteria.

A then turned to prostitution as she had no other means of supporting herself and her daughter. She also began to abuse alcohol. As a result of the prostitution she became pregnant for the second time. A is now receiving treatment for depression and has been assessed as suffering from post traumatic stress disorder.⁵²

During their research on destitution, Amnesty International UK was told by people working with refused asylum seekers that they suspected that some of the women had turned to prostitution to survive, and that young girls were possibly given floor space in exchange for sexual favours.⁵³ In the PRAFAS

⁵¹ Diane Taylor, *Underground lives: an investigation into the living conditions and survival strategies of destitute asylum seekers in the UK*, PAFRAS (Positive Action for Refugees and Asylum Seekers), March 2009, page 27

⁵² Case study provided by ASAP

⁵³ Amnesty International, *Down and out in London: the road to destitution for rejected asylum seekers*, November 2006

research, some destitute women said they worked in street prostitution to earn money.⁵⁴

Recommendation: to alleviate the vulnerability of destitute women to violence or exploitation, UKBA should grant permission to work, provide financial support, accommodation, access to education and healthcare to refused asylum seekers. At the least they should provide Section 4 support to women experiencing domestic violence.

Conclusion

If a strategy to end violence against women and girls is to be a truly integrated one, the rights of women seeking asylum must be included. For a strategy to end violence against women to be cross-governmental, the UKBA and the Asylum and Immigration Tribunal must undergo a cultural shift and adopt gender sensitive policies and practices in a way that ensures they are implemented. In particular, UKBA must deal with the issue of their staff (albeit employed via contractors) being allegedly involved in abusing women asylum seekers. UKBA and the Asylum and Immigration Tribunal must adopt or amend policies and procedures in relation to the asylum determination system which fail to protect women fleeing violence against women. UKBA additionally must amend policies that make women asylum seekers vulnerable through destitution.

The above evidence demonstrates that the criminal justice system has a far more gender-sensitive approach than the asylum system. There is an urgent need for the asylum system to learn the lessons from the criminal justice system and undergo a similar cultural shift.

In conclusion, Asylum Aid believes that women asylum seekers have a right to the equivalent standard of treatment in relation to violence against women as other women in the UK in similar situations. In particular we believe:

1. Women asylum seekers are entitled to the equivalent standard of treatment at all stages of the asylum determination system as women victims in the criminal justice system.
2. Women asylum seekers in Immigration Removal Centres are entitled to the equivalent standard of treatment as women in prisons in the UK.
3. Women asylum seekers are entitled to the equivalent standard of treatment in terms of maternity benefits as British women.

⁵⁴ Diane Taylor, *Underground lives: an investigation into the living conditions and survival strategies of destitute asylum seekers in the UK*, PAFRAS (Positive Action for Refugees and Asylum Seekers), March 2009

Appendix A: Non-exhaustive list of criminal justice policies relevant to violence against women

<i>Agency:</i>	<i>Violence against women</i>	<i>Rape</i>	<i>Sexual violence</i>	<i>Domestic violence</i>
<i>National</i>	2008 Tackling Violence Action Plan	2006 Victims Code of Practice 2005 Home Office Rape Action Plan	Youth Justice and Criminal Evidence Act 1999 Sexual Offences Act 2003 2007 sexual violence and abuse action plan	Domestic Violence Crime And Victims Act 2004
<i>CPS</i>	2008 Violence against women strategy 2008 violence against women action plans 2008 Violence against women crimes report 2008 impact assessment violence against women strategy	2004 Rape policy and guidance 2007 Achieving Best Evidence in Criminal Proceeding -Guidance for vulnerable or intimidated witnesses 2009 policy for prosecuting cases of rape		2001 DV policy 2008 DV protocols 2008 DV special courts review '07/'08 2009 DV Guidance revised
<i>Police</i>		2009 CPS & police sign protocol on handling rape cases		
<i>ACPO</i>			2009 Guidance on investigating serious sexual offences (forthcoming)	2008 Guidance on investigating domestic abuse (revised and reissued)

<i>Agency:</i>	<i>Forced marriage</i>	<i>FGM</i>	<i>Honour crime</i>
<i>National</i>	Forced Marriage (Civil protection) Act 2008	FGM Act 2003	
<i>CPS</i>			
<i>Police</i>			
<i>ACPO</i>			2008 Honour based violence strategy

Appendix B: Examples of criminal justice policies relevant to violence against women

a) Crown Prosecution Service Policy for Prosecuting cases of rape March 2009⁵⁵

The revised CPS policy on rape provides comprehensive information about the role and responsibilities of the CPS, how rape cases should be prosecuted and what victims can expect from the CPS.

The policy includes information about the following:

- Specialist Rape prosecutors (and now Violence Against Women Co-ordinators) in all areas – these Prosecutors are trained in prosecuting rape and other sexual offences.
- Specialist Rape prosecutors should understand the psychological effects of sexual violence and should be trained on the myths and stereotypes that surround sexual violence
- Ten point pledge of service victims can expect to receive from the CPS
- Can refer breaches of Code of Practice to CPS under complaints procedure

The policy also provides a summary of the legislative and other support options that are available to survivors of sexual violence to ensure that the CPS works effectively with other agencies including:

- Survivors of sexual violence are automatically entitled to receive special measures under section 16 of the Youth Justice and Criminal Evidence Act 1999. Prosecutors should work with the police and survivor to arrange what special measures are appropriate in each case. Special measures that can assist victims/witnesses give evidence at trial include: video recorded interviews which can subsequently be used as evidence-in-chief; the use of screens; giving evidence through live TV link; and clearing the public gallery.
- A network of Independent Sexual Violence Advisors (ISVA's) across England and Wales as part of Government initiative to provide targeted professional support to victims of sexual and violence crime.
- Rape victims may consider undertaking pre-trial therapy to help them recover from their experiences

b) Criminal Justice System: Achieving Best Evidence in Criminal Proceedings - Guidance on interviewing victims and witnesses, and using special measures 2007⁵⁶

- Provides good practice guidance in interviewing victims/witnesses to enable them to give their best evidence. It considers preparing and planning for interviews with witnesses, decisions about whether or not to conduct an interview, and decisions about whether or not an interview should be video recorded or whether or not it would be more appropriate for a written statement to be taken after the interview.
- This edition builds on and extends guidance to include other groups of witnesses – sexual assault & d.v. are defined within 'intimidated witnesses' (though acknowledged could also be vulnerable).
- May have access to 'special measures' (discretion of the court) – include:
 - Screens – to shield witness from defendant
 - live link – witness to give evidence during the trial from outside the court

⁵⁵ CPS, available at www.cps.gov.uk

⁵⁶ Criminal Justice System, Reference 280 518 available at www.homeoffice.gov.uk

- Evidence given in private – public/press excluded
 - Video recorded interview – recorded before the trial
 - Video recorded cross examination
 - Examination of witness through an intermediary
 - Aid to communication
- Vulnerable & intimidated witnesses can also receive social support at all stages of the investigation. Includes
- Interview support - someone independent
 - Pre-trial support – provided between the interview and start of the trial
 - Court witness support – a person known to the witness but not part of the proceedings
- Whole section on planning and conducting interviews with children
- Whole section on planning and conducting interviews with vulnerable adults includes:
- Importance of planning - planning sessions should take place to identify key issues and objectives
 - Attention should be paid at all times to issues of age, disability, gender, race, culture, religion and language. Interviewing teams knowledge of this is essential as it may have a bearing on their understanding of any account given by their witnesses including the language and allusions witnesses may make (eg reward/punishment)
 - The interviewing team needs to bear in mind that some families may have experienced discrimination and/or oppression through their contact with government agencies and local authorities. **Asylum-seeking witnesses and refugees may have a fear of disclosing abuse because of what may happen to them and their family.**
 - Interviews should not work from assumptions based on stereotypes. Being sensitive contributes towards a safe and non-judgemental interview environment. It is essential the interview process itself does not reinforce any aspect of discrimination or abusive experiences for the witness.

Appendix C: Asylum policies relevant to violence against women

a) Asylum Instruction on gender issues in the asylum claim

March 2004, revised October 2006⁵⁷

The UK Border Agency's Asylum Instruction states that the Refugee Convention has historically been interpreted through a framework of male experiences. It recognises the following:

- i. Women's political activities may be low level or they may be persecuted because of their relationship with men who are politically active or because political opinions are attributed to them (imputed political opinion).
- ii. Gender-specific persecution includes harm or punishment that can specifically affect women such as sexual violence, family/domestic violence, female genital mutilation, punishment of transgression of social mores.
- iii. Abuses carried out in the private sphere can amount to serious harm which, with a failure of state protection, can amount to persecution.
- iv. There is a lack of state protection if there is
 - a state unable or unwilling to protect individuals from serious harm committed by non-state agents
 - no legal recourse to prevent, investigate or punish such violations
- v. In some countries internal flight/relocation would cause difficulties for single mothers or widows or women with family ties
- vi. Requests for an interviewer or interpreter of the same sex as the applicant
 - every effort will be made to comply with such a request made in advance
 - requests on the day of interview will be met as far as is operationally possible, but may mean a delay.
- vii. Caseworkers should be aware that sexual assault can cause trauma resulting in memory loss or distortion, difficulty in concentration and self-blame.
- viii. Applicants should be interviewed by themselves, not with their relatives or children present, and certainly in cases where there may be a claim of sexual abuse.
- ix. Applicants are advised to make arrangements for their children for the period of their interview.
- x. Caseworkers are expected to recognise that women may not have information on their family's political military or social activities because members of their family have not shared this information with them. In addition, women may be reluctant to disclose everything immediately because of feelings of guilt, shame or concerns about family dishonour.

⁵⁷ <http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/>

- xi. Country of origin information which has relevance to women's claims (such as their political, social and economic rights, protection available to them and risk on return) must be considered.

b) Policy Bulletin 70 Domestic violence January 2004⁵⁸

This bulletin gives guidance to UKBA staff when they receive a report of domestic violence in connection with an asylum seeker in accommodation provided by UKBA.

It refers to the difficulties for an asylum seeker to report domestic violence.

It states that the accommodation provider must:

- ensure that a victim and any children are transferred to alternative accommodation that is safe and secure
- offer safe alternative accommodation immediately
- if this is impractical, refer to a refuge or consult with the local authority about the action to take

It states that UKBA must:

- pay reasonable costs of alternative accommodation or a reasonable contribution towards the costs (for example for a refuge or for the victim to stay with a friend)
- provide interim support tokens if the victim wants emergency cash
- convene a case conference within one week of the date that UKBA received the first report of domestic violence which results in an action plan (examples of possible actions are provided)
- monitor this policy

⁵⁸<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumsupportbulletins/accessstosupport/http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumsupportbulletins/accessstosupport/>

Appendix D: Angela's and Malaika's experiences

Angela's experience

After experiencing years of domestic violence, Angela is raped by her husband in the UK	
Six months later, after getting support from a refuge, Angela reports the rape to the police	A Specially Trained Officer (STO) is assigned to Angela's case to support her throughout the investigative process. A female officer is assigned to take Angela's statement.
	The police discuss the support options available to Angela and refer her to Victim Support and a local women's organisation who offer her the support of an Independent Sexual Violence Advocate (ISVA).
	Angela's statement is videoed and, in accordance with the guidance on Achieving Best Evidence in Criminal Proceedings Angela is accompanied by her ISVA.
The Crown Prosecution Service charges Angela's husband with rape under the Sexual Offences Act	The decision to charge is taken by prosecutor who has received training on domestic and sexual violence. In each CPS area there is a Violence Against Women or Area Rape Coordinator monitoring the prosecution of rape and other serious sexual violence cases.
	Angela's case is heard in a specialist Crown Court
	The judge has had training on sexual violence issues
	As a survivor of sexual violence under the Youth Justice and Criminal Evidence Act Angela's video statement is accepted as her evidence- in-chief so that she does not have to repeat her story, and she is cross-examined via a video link rather than appearing in court
	Following the Court of Appeal judgement in Doody the judge directs the jury that there are many reasons why women may delay reporting sexual violence to the police and it is for them to decide why Angela delayed in reporting sexual violence.
Angela's husband is convicted of rape and sentenced to prison	
	Angela has received protection from the UK's legislation, policies and procedures regarding violence against women

Malaika's experience

After experiencing years of domestic violence, Malaika is raped by her husband in their home country	
A week later, Malaika reports the rape to the police	The police tell Malaika her place is with her husband and she should go home
	There are no laws against domestic violence or marital rape in Malaika's country
Malaika's husband continues to threaten and abuse her	
Malaika tells her brother and they decide the only way she will be safe is to leave the country	
Malaika's brother pays an agent to get her a false passport and buys her a plane ticket to London	
Malaika arrives at Heathrow and claims asylum	An immigration officer takes Malaika to an interview room and asks her a few questions
Malaika is taken to the Asylum Screening Unit in Croydon	Malaika is asked about her asylum claim by another immigration officer in a public room where she has to speak through a screen
	Malaika is asked whether she would prefer a male or female immigration officer to consider her asylum claim and opts for a female
The next day, Malaika is dispersed elsewhere in the UK and allocated to an UK Border Agency (UKBA) asylum team	
A day later Malaika attends a first reporting event	UKBA assigns her a female interpreter and a female immigration officer who informs her about the asylum system
less than a week later, Malaika has her substantive interview	UKBA assigns her a different female immigration officer and the same female interpreter. Malaika has to tell her story again. She talks of her husband's violence but cannot bring herself to talk about the rape. She has no legal representative.
	UKBA has a single relevant policy, the <i>Asylum Instruction on gender issues in the asylum claim</i>
Malaika is refused asylum	
Malaika finds a female solicitor and tells her about the rape	
The solicitor takes her appeal to the Asylum and Immigration Tribunal	Malaika's solicitor asks for an all female court which is allowed
	There is no specialist court on women's issues and no guidance on violence against women for Immigration Judges
	The Immigration Judge says that because Malaika didn't mention the rape during

	her initial asylum claim, this goes against her credibility, ie she doesn't believe her. (Even if the Immigration Judge had accepted Malaika's claim, she would have stated that this was a domestic issue so Malaika could go and live somewhere else in her country.)
Malaika's appeal is refused	UKBA stops providing accommodation and financial support and tells Malaika to continue reporting to their office on a weekly basis
Malaika becomes destitute. She accepts the offer of accommodation from a man she meets in the street who then sexually abuses her.	Malaika does not go to the police because they were no help in her home country and because of her immigration status
Six months later, when she goes to report to UKBA, Malaika is detained. She spends three weeks in an Immigration Removal Centre for women and families	Malaika is frightened as there are male staff in the residential areas of the Immigration Removal Centre. About 50% of the staff are female. (In a prison for women, the staffing ratio would have to be 60% female)
Malaika is deported to her country of origin	
	Malaika has not received protection from the UK's legislation, policies and procedures regarding violence against women