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Victims of trafficking in custody *Can you please tell me what is happening?*

Liz Hales¹

During the last 18 months we have been carrying out research to fill the knowledge gap in relation to the increasing numbers of migrant women in custody in South East England.² The focus has been on identifying those who entered the country controlled by traffickers or smugglers³ or who had been worked under slavery or servitude within the UK after independent entry. Our aim was to gain a better understanding of their experiences as they were processed through the criminal justice and immigration systems and, for those who had been trafficked, the National Referral Mechanism (NRM).⁴

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² This work has been carried out by Dr Liz Hales and Professor Loraine Gelsthorpe at the Institute of Criminology, University of Cambridge, funded by the ESRC (RES-062-23-2348).

³ We use the term smuggler for those who have been paid to facilitate movement from their home country to the UK and whose involvement terminates at the point of arrival.

⁴ For more information about the National Referral Mechanism, see Women's Asylum News, Issue 96, October 2010, pp. 104, http://www.asylumaid.org.uk/data/files/publications/143/WAN_October.pdf.

The target group for this research was identified through one to one screening interviews with 103 foreign nationals in custody, from which we identified 43 women who were victims of trafficking,⁵ 5 who had entered the UK independently but had then been worked in servitude or slavery like conditions and 10 who were charged with entry to the UK without legal documentation resultant on theft of their passports by smugglers. This target group were then monitored through a further 74 interviews in custody in five prisons,⁶ Yarl's Wood Immigration Removal Centre and, for those not deported, in the community after release. We also observed 34 court hearings, looked at communications from their legal representatives and UK Border Agency Criminal Casework Directorate and discussed their cases with relevant others.⁷

Through this, information was gathered in relation to their experiences of recruitment, transport, enforced labour and disposal in the hands of others and, for those who escaped prior to arrest, their perceived survival options. From the point of arrest we looked at their case management within the criminal justice system in terms of experiences of arrest, charges, court appearances, bail applications, sentencing outcomes, legal representation, facilitation and response to disclosures of abuse by others. We gathered parallel information on their case management by the UKBA in terms of asylum applications and as the Competent Authority (CA) where they were referred to the NRM. In recognition of the fact that just under half had dependent children and four gave birth in custody we also looked at the impact of their management on the well-being of their children.

There were common experiences disclosed by all the women in the target group, but this article focuses on the 43 who were victims of trafficking. Within this group 2 were formally assessed as children⁸ whilst in custody in the adult estate and an additional 3 had been trafficked as children. The two dominant nationality groups were Vietnamese (16) and Nigerian (12) and the main offences for which the women had been arrested were related to the use of false documentation and production of cannabis. Other victims were arrested for crimes such as street robbery or drugs importation.

Disclosures made to the researchers revealed that the experience of many had been ongoing brutal sexual, physical and emotional abuse. Almost half had been used in sex work and the others were used for cannabis production, domestic servitude and organised crime. Their experiences left them traumatised, socially isolated, not knowing whom to trust and feeling increasingly disempowered as they were processed through the criminal courts. All were refused bail when first charged and there were only four cases in which bail was granted after a lengthy period in custody. In two of these cases this was as a result of a positive Reasonable Grounds decision by the CA.

Within this group, only 11 (26%) were processed through the NRM. An additional 4 women were made aware of this option, but declined due to their desire to return home as soon as possible to their country of origin and/or fear of repercussions by the traffickers. Of the 11 referred, 9 were facing criminal charges and within this group in only 5 cases were the referrals made in time to potentially stop the criminal proceedings. With the other 4 women, 3 were not formally identified as victims of trafficking until serving their sentence and one after the completion of her sentence. The CA within the NRM for all the women in the study was the UKBA and they concluded that 4 of these women referred by the First Responder were not victims of trafficking, a decision that was made alongside the refusal to grant asylum. These negative decisions were not supported by detailed reports presented by the Poppy Project⁹ (3) and AFRUCA¹⁰ (1). It is not insignificant that the average period of time

⁵ Conclusions as to victimisation of trafficking were drawn from accounts of recruitment, transportation, exploitation and evidence of physical and emotional abuse as outlined in the section on Identifying Victims in SOCA (2012) *National Referral Mechanism* (NRM) <http://www.soca.gov.uk/about-soca/about-the-ukhtc/national-referral-mechanism>.

⁶ HMPs Holloway, Bronzefield, Drake Hall, Morton Hall and Downview.

⁷ Formal consent was first sought for engagement with all these women, with the guarantee of anonymity. Consent was also sought for sharing information on case management at a later stage. The format of one to one interviews recognised the fact that these women were likely to be the victims of multiple trauma and great care was taken in allowing them to take the lead in the interviews with the researchers and in the choice of interpreters.

⁸ When using the word women we include these two children.

⁹ www.eaves4women.co.uk/POPPY_Project/POPPY_Project.php.

¹⁰ African Unite Against Child Abuse. www.afruca.org/.

spent in custody and or immigration detention for the 7 women who were formally assessed by the CA to be victims of trafficking was over four months (128 days).

For the other 36 (84%) there was no formal recognition of their victim status and no access to appropriate support or temporary protection from deportation other than going down the route of applying for asylum. Within the target group, 31 had applied for asylum within the period of the research. Of equal significance is the fact that, to date, in only one of the cases did victim disclosures of abuse result in a full police investigation of the actions of the traffickers.

One of the key elements of this work was to look at the reasons for this low rate of referral to the NRM and/or recognition that the offences were committed under duress or resultant on the actions of others. Common themes were failures to facilitate disclosures or to respond adequately to these. Also apparent was the lack of understanding, by those who managed their cases, of the long term impact of their abuse, resulting in challenges made as to why they had not sought the help of the police. The fact that all the women were in custody from point of arrest also impacted on their options, in that entering a guilty plea was presented as the safest option in terms of early release. Their experiences of support under legal aid exacerbated this in that they had different representatives at each stage of the criminal proceedings, legal visits were rare and time restraints inhibited the development of trust. This was further exacerbated by being processed through a foreign system with inadequate interpreting facilities. There was a common experience of total confusion expressed in interviews and, for some, being held in custody was a continuation of their experiences of being trafficked; being locked in, disempowered and not knowing what lay ahead. It is not insignificant that one of the key questions put to the researchers was:

Can you please tell me what is happening?

In 8 cases the fact that the woman was a victim of trafficking was raised by defence lawyers in mitigation, after the women had entered a guilty plea. In only 2 of these did this result in the Crown Prosecution Service adjourning proceedings to gather more information on their victim status and then decide whether it was in the public interest to go ahead with a prosecution.¹¹ In 6 other cases where this was observed, 5 of which were in relation to cannabis production, this fact was acknowledged within the court setting but not acted on. Of equal concern is the fact that none of those interviewed were advised by their criminal justice solicitor of the potential impact of a guilty plea on any asylum application and for 25 of the cases monitored a sentence of twelve months or over was given, making them subject to automatic deportation.¹²

For the victims of trafficking not taken out of their home country by force, the move was 'sold' to them as a viable option for seeking work (23), asylum (4) and a mixture of work and refuge from ongoing threats (9). However, once within the UK, none of those whose primary move was for asylum, had the chance to make a formal application due to their traffickers' hold. For 22 (51%) of those who had been trafficked the additional need for asylum was in response to the threat of being sent back into the hands of those who trafficked them in the first place and to whom they were 'in debt'. They saw their position on return to be even more vulnerable than on departure and one had already been re-trafficked.

The majority of the women in the sample had their screening and full asylum interview in custody where they experienced huge barriers in accessing legal representation and it is noteworthy that both Refugee and Migrant Justice and the Immigration Advisory Service went into administration during the period of the research. Most women in the sample who had accessed an immigration solicitor had done so with the assistance of two key voluntary sector organisations, Hibiscus and the Detention

¹¹ For clarification of the Legal Guidance on how the CPS should manage these cases see section on Prosecution of defendants charged with offences who might be trafficked Victims, Crown Prosecution Service Legal Guidance (2011) *Human trafficking and Smuggling*. http://www.cps.gov.uk/legal/h_to_k/human_trafficking_and_smuggling/ (Latest Update April 2011).

¹² Under the UK Borders Act 2007, Section 32 on Automatic Deportation.

Advice Service.¹³ They did not receive advance warning of the dates of their interviews or advice on how best to prepare. All written communication from the UKBA was in English, even when an interpreter had been necessary to conduct the interview and there were a number of failures identified in relation to compliance with the Asylum Procedure Directive (APD).¹⁴ Of particular relevance is the recommendation by UNHCR under Article 23 of the APD on personal interviews which states that an application in detention:¹⁵

should be offered all the safeguards necessary to ensure that s/he can pursue and support his/her claim, including thorough gathering of evidence. The disadvantages faced by detained applicants in pursuing their claims should be taken into account.

For all the victims of trafficking the decisions made by the UKBA had the greatest potential impact on their future lives. At the end of the research we were aware of 14 asylum application outcomes. Only two victims (the children) were granted refugee status for the next five years, at which point they would have to apply for an extension of leave to remain. Initial asylum decisions on the other 12 cases were negative and 6 of these had also been refused at the appeal stage. Those who were going through the appeal process found it increasingly stressful.

Five of the asylum applicants whose asylum applications were being processed after release from detention and who were re-interviewed by the UKBA in the community were supported under asylum support. This necessitated accepting the temporary accommodation provided and for 3 of these women (one of whom had a dependent child) this entailed moving to locations in Wales and the south coast where they knew no one and 2 expressed concerns about living in accommodation where the resident group was dominantly male.¹⁶ This relocation meant that the child of one of the victims had to be taken out of her current nursery provision. They all talked of their ongoing feeling of isolation and vulnerability and with limited financial means, they found it difficult to maintain effective communication with their London based immigration solicitors.

This research indicates that we have a long way to go to ensure effective compliance with the Council of Europe Convention on Trafficking¹⁷ and the new EU Trafficking Directive¹⁸ in terms of identifying victims of trafficking and the provision of appropriate support.

For those who are interested, the full report, including case details and statements and our key policy and practice recommendations will be accessible in the forthcoming report.¹⁹

Women Asylum News would like to thank Dr Liz Hales for writing this article.

¹³ These two organisations also suffered from reduced contracts, resultant on prison budget cutbacks, during the research period.

¹⁴ EU member states remain bound by the APD under Article 68 of the Treaty on the Functioning of the EU.

¹⁵ UNHCR, Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice, March 2010, www.unhcr.org/4ba9d99d9.html.

¹⁶ From interviews with the women and observation of the accommodation.

¹⁷ Council of Europe Convention on Action against trafficking in Human Beings (May 2005) <http://www.coe.int/trafficking>.

¹⁸ Directive 2011/36/EU of the European Parliament and the Council on preventing and combating trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA (5th April 2011), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>.

¹⁹ Hales and Gelsthorpe (2012 forthcoming) *The Criminalisation of Migrant Women* University of Cambridge, Institute of Criminology.

Legal Issues

No general risk of persecution for lesbians and gays in Zimbabwe

LZ (homosexuals) Zimbabwe CG [2011] UKUT 487 (IAC) (26 January 2012)²⁰

LZ is a lesbian from Zimbabwe who claimed asylum in 2009 on the basis that she was at risk of persecution because of her sexual orientation. The UK Border Agency refused her claim on the basis that even if she was at risk of suffering ostracism from her family and social discrimination this did not amount to persecution. The UKBA also argued that there is a homosexual scene in Zimbabwe, especially in urban areas, from which she could get support and if necessary she could relocate within Harare or elsewhere in Zimbabwe.

LZ's appeal to the Asylum and Immigration Tribunal was dismissed on the basis that although attitudes towards lesbians in some quarters might be significantly disapproving, LZ would not suffer ill-treatment or persecution as a result of her sexuality. Her application for permission to appeal to the Upper Tribunal was granted. The Upper Tribunal concluded that there had been an error of law in the initial appeal because the immigration judge had failed to apply the approach developed by the Supreme Court in the case of *HJ and HT* (the case was heard in the Supreme Court after LZ's appeal).²¹ LZ's case was then identified as a potential Country Guidance case on risk to homosexuals in Zimbabwe.

The dispute between LZ and the Secretary of State for the Home Department (SSHD) was over the seriousness and extent of actual ill-treatment of homosexuals in Zimbabwe. The parties agreed that the law in Zimbabwe criminalises homosexual behaviour amongst men and that some homosexuals suffer discrimination, harassment and blackmail from some of the general public and from the police.

The Upper Tribunal started from the assumption that the existence of a law penalising consensual homosexual acts does not itself constitute persecution but is only persecutory if it is routinely enforced and penalties imposed. On the basis of the evidence considered at the hearing, the Upper Tribunal concluded that homosexual conduct is not prosecuted to any meaningful extent in Zimbabwe. The Upper Tribunal also found that attempted extortion and police detention of homosexuals does occur but without resulting in prosecutions. The Tribunal noted that the evidence of such treatment only concerned male homosexuals and that there were no reports of such treatment suffered by lesbians. However, on the whole, the Upper Tribunal concluded that the evidence does not demonstrate instances of attempted extortion, false complaints to the police, and unjustified detentions which are so prevalent as to constitute a general risk. The Tribunal also concluded that there is no real risk of murder for homosexuals of either gender in Zimbabwe. On the issue of "corrective rape", the Tribunal found that it is rare and although it accepts that it does happen and that of its nature must often be a hidden crime, it does not represent a real risk to homosexuals of either gender. On the availability of support for LGBT persons, the Tribunal found that there is a limited "gay scene".

The Upper Tribunal looked at the treatment of single women, noting that historically women living alone were at risk of being perceived as prostitutes, mistresses or lesbians but that this is changing as a result of HIV/AIDS. The Tribunal found that lesbians who are either naturally discreet, or who are willing to present a heterosexual narrative for family or societal reasons, are unlikely to be identified as such. The Tribunal also noted that:

79. An economically active lesbian is at less risk of perception as a lesbian because she is more likely to be able to afford to live in a low density housing area, and so to enjoy a

²⁰ http://www.bailii.org/uk/cases/UKUT/IAC/2011/00487_ukut_iac_2011_lz_zimbabwe_cg.html.

²¹ For a summary of the case, see Women's Asylum News, Issue 93, July 2010, pp. 5-7, http://www.asylumaid.org.uk/data/files/publications/138/WAN_July_2010.pdf.

measure of protection from public scrutiny of her lifestyle and circumstances, which a woman living in a high density housing area would not be able to enjoy.

80. *The perception that a woman is a lesbian may lead to discrimination or harassment from some individuals, but not generally to violence. There is a higher level of tolerance of homosexuality within Zimbabwean society than government rhetoric would suggest.*

81. *Where a real risk of persecution or serious harm is established, the police do not offer lesbians any sufficient protection.*

So despite the fact that there is a small risk that a woman perceived to be a lesbian might face an attempt at blackmail, there is a means of redress. Zimbabwe's Prime Minister, Morgan Tsvangirai's statement on gay rights in October 2011 strengthened the Tribunal's perception that the general public is not as hostile to homosexuals as Mugabe's comments may suggest.

LZ argued that LGBT persons with HIV/AIDS are at higher risk of ill-treatment in Zimbabwe due to discrimination in access to medication and food. In response, the Tribunal found that LGBT organisations could provide the necessary support in identifying sympathetic medical professionals and the evidence before the Tribunal did not show any changes to the level of discrimination faced by persons with HIV/AIDS since the case of RS.²² The Tribunal set out that HIV/AIDS as a factor would not be discounted in individual cases but that there was insufficient evidence to conclude that homosexuality coupled with a positive diagnosis, without more, would result in the grant of refugee status.

Relying on the fact that LZ has spent a considerable amount of time in the UK, she argued that this placed her at an increased risk of ill-treatment. The Tribunal concluded that there was no evidence to support the assertion that time spent abroad would worsen the situation of any homosexual in Zimbabwe.

LZ also argued that the situation in Zimbabwe is akin to that in Jamaica and that the Tribunal should determine her case similarly to the determination in SW (lesbians – HJ and HT applied) Jamaica CG where the Tribunal found that Jamaica is a deeply homophobic society where lesbians and perceived lesbians are at risk of violence, "corrective rape" and even murder.²³ The Tribunal concluded that the situation in Zimbabwe is very different from Jamaica and that the public expression of homophobia in Zimbabwe is relatively recent and politically motivated. The Tribunal accepted that some gay men are harassed and blackmailed, and that some gay women are pressurised to engage in sexual relations and to marry, without many such cases emerging in reported cases or published statistics. The Tribunal agreed that there is a lack of protection from the authorities in this respect.

Overall the Tribunal concluded that homosexuals are not persecuted as a generality in Zimbabwe and that being openly gay does not translate into a real risk although this might be a significant factor. If however, homosexuals, male and female, can show an individual risk of persecution because of their sexuality, state agencies and the police will not provide them with protection and resort to such agencies may actually make matters worse.

The Tribunal found that LZ would be personally discreet in Zimbabwe, by choice, but that her sexual identity in the context of her family connections among the Zimbabwean elite gives rise to a risk. In general, connections with the elite does not raise a threat against homosexuals, on the contrary the reverse is more likely. The Tribunal was careful to note that LZ's case was an exception rather than the rule.

²² For a summary of the case, see Women's Asylum News, Issue 96, October 2010, pp. 7-8, http://www.asylumaid.org.uk/data/files/publications/143/WAN_October.pdf.

²³ For a summary of the case, see Women's Asylum News, Issue 103, July 2011, pp. 6-8, http://www.asylumaid.org.uk/data/files/publications/167/WAN_July_2011.pdf.

The Tribunal noted that internal relocation for homosexuals at risk of ill-treatment was an option within the same city or to other areas of the country. Internal relocation would only be excluded if the personal circumstances of the applicant created a risk throughout the country (as is the case for LZ).

LZ's appeal was allowed under the Refugee Convention.

National News

Legal Aid Bill discussions in the House of Lords²⁴

The Legal Aid, Sentencing and Punishment of Offenders Bill has continued, throughout January and February to be scrutinised by the House of Lords at committee stage. All amendments concerning the withdrawal of immigration from the scope of legal aid have been debated. For the first time, the Government's intention to exclude all immigration categories from exceptional funding, was explicitly stated, by front-bench peer Lord Wallace. In response to a question from Baroness Gale (Labour Whip) about children's immigration applications and their eligibility for exceptional funding he replied in the negative. He then went on to say that "exceptional funding should be granted only where it is required by law, [where] denying legal aid would risk a breach of an individual's rights under EU law or the ECHR" but that case law had consistently shown that this did not apply to immigration cases.²⁵ During the debate, Labour peers came out in support of permitting legal aid funding for immigration cases. Lord Bach laid out the official Labour position:

"We believe that immigration law should remain within the scope of legal aid. It is an important, if qualified, check on poor decision-making by the UK Border Agency and other agencies, and it ensures that immigrants, many of whom are vulnerable, disorientated and scared, are able to assert their rights by accessing what may be a confusing new judicial system. Moreover, it keeps the machinery of justice working efficiently as well."²⁶

The Immigration Law Practitioners Association have formally written to Baroness Gould, who proposed all immigration-related amendments, to ask her to propose them again for debate when the Bill comes to Report stage. They have launched a campaign to encourage the public to write to their MPs asking them to push for immigration cases to be considered eligible for exceptional funding.

This information was correct at time of writing but may have been altered by recent events.

International News

Cambodia/Malaysia: Domestic workers left vulnerable to abuse

The lack of regulation of recruiters and employers in Malaysia has led to increased risk of suffering for the thousands of Cambodian women and girls who have moved there as domestic workers. Human Rights Watch has heavily criticised both the Cambodian and Malaysian governments for 'abdicating responsibility' while 'unscrupulous recruitment agencies' forge identity documents for child migrants, enforce debt burdens on workers, give workers false job descriptions and charge outrageous recruitment fees. Other domestic workers have reported being in effect detained in 'training centres'

²⁴ Update provided in Rights of Women's 'Women' Migration and Asylum Network' January e-bulletin.

²⁵ 18 Jan 2012: Hansard Column 668

²⁶ 18 Jan 2012 : Hansard Column 616

without adequate food, water or medical care, for three months or longer. Those who escape face reprisals for themselves or family members, who can be threatened with financial ruin. Human Rights Watch say that some government officials are working with these recruitment agencies, with police officers threatening women who try to escape from centres with arrest. The Cambodian government have made some small progress in trying to tackle the problem, managing to successfully prosecute the manager of a recruitment agency in September for illegally detaining child workers. Other recruitment agencies go unpunished however and the government has failed to revoke licences of agencies exploiting workers.

Malaysian labour laws specifically exclude migrant domestic workers from rights granted to Malaysians. These include, a day of rest per week, annual leave and working hour restrictions. Under immigration laws a domestic worker's address is tied to that of her employer, which enable employers to not only arbitrarily terminate contracts but also refuse permission for the worker to transfer jobs. Workers are left with no avenue to seek redress, their only contact often being their exploitative recruitment agent. The Cambodian embassy in Kuala Lumpur has returned workers, some of whom were victims of physical or sexual abuse, to their recruitment agencies or employers. Human Rights Watch have called for the Cambodian government to impose comprehensive migration laws, impose regulations and monitoring upon recruitment agencies and penalties against those found to be committing violations of workers' rights. They have called for the Malaysian government to alter their labour and sponsorship laws in order to ensure migrant workers are protected from harm and not discriminated against.

To read the full article, see: <http://www.hrw.org/news/2011/10/31/cambodia-malaysia-domestic-workers-face-abuse?tr=y&aid=9805043>.

Canada: Critics call on government to do more to protect LGBT refugees

The Canadian government has been criticised for only partly delivering on their pledge to accept more refugees persecuted due to their sexual orientation or gender. Citizenship and Immigration minister Jasson Kenney stated in December 2011 that Canada would increase their refugee intake, particularly creating spaces for those fleeing religious persecution and those who have suffered because of their sexuality or gender issues. However, this refers only to refugees resettled by the United Nations High Commission for Refugees (UNHCR) and not to those arriving in Canada independently of this programme and claiming asylum. This has led some non-governmental organisations to accuse the government of demonising those refugees who travel to Canada outside of the Government-Assisted Refugee Program. Janet Dence, executive director of Canadian Council for Refugees states that Canada uses the UNHCR 'as a gatekeeper' because "they want someone else to do the screening for them and decide which people are worthy enough to have their cases considered by Canada." The government have put a cap on private sponsorship, due, they say, to a backlog, but many expect the cap to remain once the backlog has been cleared, potentially denying legitimate refugees unable to access UNHCR's resettlement programme a legal way to set up a new life in Canada. Criticism also stems from the fact the government chose to highlight the plight of Iranian LGBT refugees fleeing persecution in Iran and then Turkey. It is felt that African refugees, particularly LGBT refugees are a more vulnerable group and require an urgent focus of extra support.

To read the full article, see:

http://www.xtra.ca/public/National/Critics_question_governments_response_to_refugee_claims-11258.aspx.

Haiti: UN peacekeepers accused of sexually abusing minors

For the third time in five years, United Nations police officers based in Haiti have been accused of "sexual exploitation and abuse involving minors". The United Nations have expressed grave concern

at these allegations and has sent a team of officials to Port-au-Prince in Haiti to investigate them 'with the utmost determination'. The UN Mission in Haiti (MINUSTAH) has publicly accepted its responsibility to prevent and take prompt action when such accusations arise. A spokesperson promised that they would do all they can to ensure that "the perpetrators of such acts are punished with the utmost severity". These latest allegations will be a severe blow to the UN, whose peacekeeping missions have been dogged by similar accusations since they were first conceived 50 years ago. The issue came to a head in 2005, when the UN discovered its peacekeepers in the Congo were having sex with Congolese women and girls in exchange for food, or small amounts of money. As a consequence, a "zero tolerance" policy was introduced towards sexual abuse, as was a new code of conduct for peacekeepers and a new training regime, with a major focus on sexual conduct. Despite these measures, the sexual abuse of women and minors in peacekeeping missions appears to continue: these allegations in Haiti alone following similar cases in 2007 and in 2011 108 military personnel from Sri Lanka were deported in the first instance, accused of sexual exploitation and abuse, while last year's allegations were against Uruguayan peacekeepers. The sexual assault they committed was filmed and resulted in public anti-UN demonstrations on the streets of Haiti's capital.

The perpetrators were however recently released without charge by a Uruguayan court as the young Haitian victim appeared to have disappeared. As the UN have no political or legal authority to directly punish military personnel guilty of these crimes, they often go unpunished, due to national governments unwilling to prosecute or provide timely justice. It is perhaps for this reason, that UN peacekeepers can commit these crimes with likely impunity, that measures taken so far seem to have had little effect.

To read the full article, see: <http://ipsnews.net/print.asp?idenews=106521>.

Nepal: Worrying escalation of violence against women

Despite the end of a civil war in 2006 human rights groups based in Nepal have become alarmed by the increase in violence against women they are witnessing in the country. There were more than 1,500 incidents of violence against women in the period June 2010-2011 according to the Anbeshi-2011, a yearbook launched by Women's Rehabilitation Centre, based in Kathmandu valley, to record such cases. The majority (64%) of cases are domestic violence, followed by social violence (17%), rape (8%), and murder (4%). The perpetrator was in most cases the husband at 74%, followed by family members at 26%. Among the murder cases 85% of the killers were the husbands of the victims. 54 women, having been accused of witchcraft, were beaten, stripped and forced to endure other savageries.

These cases indicate that the Nepalese government's 2010 campaign to end violence against women has not been successful. NGO workers have pointed to continual political turmoil as a reason for the increase in attacks. "With a succession of weak governments, there is a growing sense of frustration and a culture of impunity. Women become targets of both," according to Saranda Pokhrel, founding member of Women Security Pressure Group. Another worrying trend is that the age of rape victims is decreasing: of the rape victims known to Nepal's largest human rights organisation, Informal Sector Service Centre (Insec), 190 were under the age of 18 and 6 were below the age of 10. Twenty of these young women were killed. As is seen across the globe, rape remains a hidden crime among Nepal's villages, suggesting the official figures represent only the tip of the iceberg. In one case, two young girls of 8 and 10 were raped by a teenage male in Syangja district. The family of the girls were compelled to hush up the crime by threats of ostracism from their fellow villagers.

Migration, whereby Nepalese workers are moving abroad to work, is also contributing to this rise in violence against women, as wives of migrant workers, left behind in Nepal, are being falsely accused of adultery by neighbours and in-laws and driven away from their homes. The lowly position of women

in Nepal's feudal society means that they lack the resources to bring their attackers, who often have greater social, economic and political power than them, to justice.

To read the full article, see: <http://ipsnews.net/print.asp?idnews=106346>.

Pakistan: Female genital mutilation remains hidden

It is a commonly held belief that Pakistan is "free" from female genital mutilation (FGM) but there is increasing evidence that this is incorrect. More victims are coming forward to say that they suffered from this practice as young girls, backed by testimonials from midwives and religious leaders. The practice is indeed not widespread across the whole country but can be found in particular communities, such as the Bohra (who number about 100,000) and the ethnic Sheedi community (numbering several thousand). Both communities can mainly be found in the southern province of Sindh. According to victims from the Bohra community, an estimated 50-60% of Bohra women undergo FGM. This does represent a decrease, with some suggestions that at one time 80-90% women were forced to undergo the procedure. The decrease is put down to awareness-raising among the community of the dangers and harm involved. Shershah Syed, a former president of Pakistan's Society of Obstetricians and Gynaecologists has also spoken out against FGM he witnessed in urban Pakistan. He warned that the procedure has no medical benefits and in fact can lead to health complications. According to the WHO, these can include repeated infections, cysts, infertility, higher childbirth complications and the need for repeated surgeries. This does not cover the psychological consequences, which remain largely uninvestigated in the country, due to the hidden nature of the practice.

To read the full article, see: <http://www.irinnews.org/printreport.aspx?reportid=94534>.

Somalia: Rise in rape cases in Mogadishu's IDP camps

Camps for internally displaced people in Somalia's capital Mogadishu have seen a sharp, unprecedented increase in rape cases. One women's rights activist, Mama Hawo Haji, reported that in two days in December she had seen 32 rape victims taken to the hospital; the previous four months having seen 80 cases in total. She said a "climate of fear" had developed in the camps, primarily because the perpetrators were most often government security officers. Rights workers claim that Somalia's government cannot control their security forces and that the increase in rape cases is one source of evidence for this. Badbaado, one of the largest camps in the city, saw the death of a baby after men fell over a fence while attempting to rape a woman, landing on the child. Workers for the UN Population Fund say that they hear allegations of rape daily which is of grave concern to them. They have stepped up their recording facilities accordingly, in order to be able to have a clearer picture of the exact needs of people in the camp. A proposal for the creation of a special unit to protect the IDP camps has been made to the Somali cabinet by Somalia's National Disaster Management Committee. They also called for the rapid arrest and charging of those members of security forces or other individuals who rape, followed by strict sentences. A spokesperson for the NDMA said they were still waiting for a response from the government. Haji is a strong critic of the government and the lack of attention it is paying to the problem of rape in the country, accusing them of being too 'busy fighting each other instead of protecting the public'. She said that women's rights groups will not stop fighting "until someone listens to us. We will continue shouting from the rooftops until rape stops."

To read the full article, see: <http://www.irinnews.org/printreport.aspx?reportid=94520>.

USA: Obama administration vows to offer protection to LGBT refugees

President Obama has spoken out against the discrimination and persecution suffered by lesbian, gay, bisexual and transgender people across the globe. He ordered those federal agencies working overseas who come into contact with LGBT individuals to challenge any anti-gay violence they witness and to work hard to ensure that they have equal access to asylum procedures and assistance. He also indicated that federal agency staff working within the US would be receiving the training they need to ensure they are able to address the needs of LGBT refugees and asylum seekers most effectively, "including by providing to them adequate assistance and ensuring the federal government has the ability to identify and expedite resettlement of highly vulnerable persons with urgent protection needs". The memo, issued in December has been praised by rights groups who also acknowledged the work done by another member of the administration, Secretary of State, Hillary Clinton, in advancing the concept of LGBT rights as human rights.

To read the full article, see: <http://www.usnews.com/news/blogs/washington-whispers/2011/12/06/obama-offers-asylum-to-overseas-gays>.

Yemen: Child marriage keeps girls as second class citizens

Human Rights Watch has called on the government of Yemen to set 18 as a minimum age for marriage as child marriage is leading to widespread discrimination and sexual violence. At its most basic level it denies young women the right to determine their own futures as they must submit so early to the wishes of their husbands. There is currently no legal minimum age for marriage in the country, after the previous minimum age of 15 was abandoned by the government in 1999. Consequently, Yemeni government and UN data has shown that 14% of girls in Yemen marry before the age of 15, and 52% marry before the age of 18. HRW have compiled a report after interviews with more than 30 girls and women who were married as children as well as non-governmental organisation workers and staff members of the Health and Education Ministries. Some of the girls were removed from school when they reached puberty; almost all of the girls and women they spoke to said that once they were married they were unable to continue with their education. Furthermore, girls spoke of being victims of domestic abuse, verbal and physical, and sexual violence. This was either at the hand of their husbands or other members of their husband's household.

A recent recipient of the Nobel Peace Prize, Tawokkal Karman, has been championing women's rights in Yemen. She has criticised the Yemeni government for not banning child marriage, arguing that there is ample Islamic scholarship to justify setting the minimum age for marriage as 18. The Yemeni government cited religious grounds for their reason to abolish a minimum age, and a group of lawmakers used Sharia (Islamic law) to block a parliamentary vote which would have seen a minimum age of 17 reinstated in 2009. Many other countries in the Middle East and North Africa which recognise Sharia law still have a minimum age for marriage and in many cases this is age 18 or even higher. In this way they conform, unlike Yemen, to international standards and treaties which define a child as anybody under the age of 18. Yemen is actually party to several treaties and conventions which prohibit child marriage. There is therefore international pressure for them to bring in the regulations which would halt this practice.

To read the full article, see: <http://www.hrw.org/node/103414?tr=y&auid=9984598>.

New Publications

Inquiry into Human Trafficking in Scotland

Equality and Human Rights Commission, November 2011

This is a report from the inquiry launched to look at the reasons for the low level of enforcement of anti-trafficking legislation in Scotland. There has only been one prosecution in Scotland, in September 2011, compared to 150 in England and Wales, since the legislation was introduced. The inquiry spoke with trafficking victims and police officers, who reported their frustration at being unable to persuade victims and witnesses to testify. They are often too scared either because of threats made by the trafficking gang enforcers, but sometimes also because of precarious immigration statuses, leaving them fearing deportation. A Scottish law requirement for corroboration also makes prosecutions more difficult than elsewhere in the UK. The inquiry was unable to put a figure to the extent of trafficking in Scotland. It did find that sex trafficking was the most common type suffered by victims in Scotland, while trafficking into forced labour, and to a lesser extent, into domestic servitude, also being significant purposes. The strongest links were between Nigeria and sex trafficking, the Baltic states and Czech and Slovak republics and forced labour trafficking, and between the Indian sub-continent and trafficking into domestic servitude. The report emphasises that these were not the only links found, simply the most common.

The underlying issues for trafficking, the inquiry found, included the desire for sex with exotic 'others'; the exploitation of poverty-stricken parts of the world; and discrimination against those with the lowest status in society. Almost all the victims the inquiry spoke to reported being deceived into becoming victims of trafficking, then controlled by manipulation and threats of violence or debt bondage made against families. The report stresses that trafficking should not be seen as a 'foreign' problem- 'Scotland's role is central as a 'destination' state, and as such it is involved and implicated at various levels in the crime of human trafficking.' The inquiry, among its other recommendations, calls on the Scottish Government to rectify the gaps in provision caused by the piecemeal anti-trafficking legislation introduced so far: 'The two main criminal offences related to human trafficking in Scotland have different definitions for fundamentally the same act.' Scotland should bring in comprehensive legislation that coordinates more closely with that of the UK and the EU as a whole.

For the full report, see: <http://www.equalityhumanrights.com/scotland/human-rights-in-scotland/inquiry-into-human-trafficking-in-scotland/>.

Asylum support for women who are victims of domestic violence

Asylum Support Appeals Project, December 2011

This latest factsheet from ASAP provides useful guidance for asylum-seeking (and refused asylum-seeking) women on seeking UKBA accommodation after suffering domestic abuse. The advice is for both those already living in UKBA accommodation and those living in other accommodation, such as private renting, but who need to leave as a consequence of the abuse. It outlines the government's official definition of domestic violence and the UKBA's policy on domestic violence. It highlights the important fact that UKBA accommodation providers must supply alternative accommodation to women who have experienced violence while living in UKBA accommodation, as well as other routes available to them. For example, that the UKBA can meet the costs of accommodation if a woman has already fled and found her own alternative place to stay. For those women who have suffered domestic violence but do not currently live in UKBA accommodation, the factsheet outlines the criteria they must meet to be eligible for support, either under Section 95 if they are still waiting for a decision on their asylum claim, or Section 4 if a woman is a refused asylum seeker. The factsheet also focuses on how women can prove they are 'destitute', another prerequisite for receiving support. Finally, it

covers how women can appeal if they are refused this support, by applying to the Asylum Support Tribunal.

For copies of the factsheet please contact Gerry Hickey at gerry@asaproject.org.uk.

The Interpretation of the Convention Ground of 'Membership of a Particular Social Group' in the Context of Gender-related Claims for Asylum: A critical analysis of the Tribunal's approach in the UK

Christel Querton, Refugee Law Initiative Working Paper No. 3, January 2012

Despite often making 'conventional claims' for asylum based on their political opinion, race, nationality or religion, many women also claim asylum in the United Kingdom (UK) on the basis that they fear persecution because of their gender. To be recognised as refugees, women asylum seekers must therefore often demonstrate that they fear persecution on account of their membership of a Particular Social Group (PSG). In the UK, the Refugee Convention ground of PSG is the most litigated, and women asylum seekers may face many obstacles to benefitting from the protection they require. This paper explores the development of the interpretation of the PSG ground in the context of gender-related claims for asylum and assesses its implication for the protection of women who fear gender-related persecution. In particular, it sets out a critical analysis of the Asylum and Immigration Tribunal's determination in *SB (Moldova)* in light of the House of Lords' decision in *Fornah*.

The paper demonstrates the Tribunal's failure to follow the decision of the majority in *Fornah* that the two limbs of article 10(1)(d) Qualification Directive, setting out the definition of a PSG, are alternatives and not cumulative and why this determination is flawed. The paper also concludes that the Tribunal has developed a more rigorous test for the definition of PSG where the group is gender-based despite the absence of domestic and international jurisprudence and rules of interpretation that would support this approach. The analysis highlights the discriminatory approach by the Tribunal and demonstrates that this approach cannot stand.

For the full paper, see:

[http://www.sas.ac.uk/sites/default/files/files/RLI/RLI Working Paper No 3.pdf](http://www.sas.ac.uk/sites/default/files/files/RLI/RLI%20Working%20Paper%20No%203.pdf).

"We'll show you you're a woman" Violence and Discrimination against Black Lesbians and Transgender Men in South Africa

Human Rights Watch, December 2011

South Africa was the first country in the world to include non-discrimination clauses based on sexual orientation in their constitution in 1996. This report however examines the huge gulf between the ideals of the constitution and the reality of attitudes today in South Africa. Specifically, the discrimination, harassment and violence suffered by black lesbians, transgender men and individuals born female but not conforming to feminine gender norms. Individuals interviewed for the report spoke of living a life of fear and constant self-policing. This has badly affected their educational and economic achievements. They reported suffering public and private ridicule, as well as rejection from their family members, peers and neighbours. Those that were victims of crime said they almost never reported it, for fear of hostility and discrimination by police. Recent media coverage has focused on one kind of crime, that of 'corrective rape', designed by the perpetrator to 'convert' individuals to heterosexuality. This report suggests that this focus is too narrow and should instead be widened to

look at range of violence, discrimination and lack of official protection suffered by lesbians and transgender men. The report sets this against the context of high crime rates, including sexual violence, as well the general restriction of women's rights seen in South Africa. It profiles the perpetrators of violence against lesbians and transgender men, the lack of action and willingness from police to tackle these crimes and the inconsistency in which non-discrimination laws are implemented. It concludes by making recommendations to various stakeholders, primarily that the South African government should take the necessary immediate steps to ensure that the legislation designed to prevent this suffering is actually enforced.

For the full report, see: <http://www.hrw.org/reports/2011/12/05/we-ll-show-you-you-re-woman>.

Women's Security in South Sudan: Threats in the Home

Sudan Human Security Baseline Assessment (HSBA), Small Arms Survey, January 2012

This short paper examines the key threats to security faced by women in South Sudan. These are not, in the main, from external sources, such as militia groups, official security forces or the armed conflict with Sudan, but rather from within their own home. These threats encompass the areas of health, food and economy but also marriage, with the occurrence of domestic violence. Maternal mortality rates in South Sudan are the highest in the world, while the food situation has worsened since May 2011, when Sudan imposed an unofficial blockade on the South Sudan. As a consequence it has become even more important to gain employment in order to pay for food, something which remains elusive for many women due to high illiteracy levels and paucity of jobs. Yet South Sudanese women who are able to get jobs are often still not able to be economically autonomous, forced to give their salary to their husbands or, if their dowry has not yet been paid, to their fathers.

Domestic violence represents a huge threat to South Sudanese women, due to its endemic nature. The reports states that anecdotal evidence suggests that it is 'widely accepted as being a normal part of married life.' As is common elsewhere in the world, women do not complain to the police about their violent husbands, expecting ridicule and hostility. In severe cases, women may turn to their extended families for help. Yet it is likely that families push for the women to stay with their husband for economic reasons, as divorce would entail the return of dowry cattle to the husband's family. It might also lead to women losing custody of their children, as unless they are breastfeeding, customary law states that children should remain with their father. Sexual violence within marriage also undoubtedly takes place but is commonly not perceived as abuse, even when women and girls are presenting at clinics complaining of pain during sex. Widows also remain highly vulnerable- if they wish to marry again they must 'divorce' their deceased husband and return the dowry and 'his' children. Consequently, this rarely happens. While traditionally widows remain in the care of their husbands' families after their death, the civil war made this very difficult for many women as it split and scattered communities, leaving widows without any safety net of support. The report concludes by emphasising the need to situate examinations of human security issues in the home first, before looking outwards, in the South Sudan.

For the full report, see: <http://www.smallarmssurveysudan.org/facts-figures>.

UK Training and Events

ASAP's Destitution Awareness Day and AGM Asylum Support Appeal Project

Date and Time: Monday 27th February, 1pm-5pm. (AGM 6pm-8pm)
Location: Oxford House, Derbyshire Street, Bethnal Green, E2 6HG

This year ASAP's Destitution Awareness Day will focus on destitute refused asylum seekers with support needs. The event will include:

- Speaker from Freedom From Torture highlighting the difficulties faced by those with physical and mental health problems who are without support
- Speaker from Women for Refugee Women highlighting the problems faced by destitute women with children.
- Workshops looking at the barriers in the support system for those with support needs and solutions for tackling these barriers.

This is a free event and lunch will be provided.

ASAP's AGM will take place from 6pm in the evening and this will be followed by food, wine and music. All are warmly invited.

To book a place for this event, please email Sinead Parsons at: Sinead@asaproject.org.uk.

Supporting Female Victims of Adult Trafficking Poppy Project Training

The [Poppy Project](#) is running a series training events for statutory and non-statutory agencies to enhance awareness of adult human trafficking with a focus on supporting female victims. The training will increase knowledge of trafficking awareness, identification, best practice in victim care, supporting victims through immigration and criminal justice proceedings and the right to compensation.

Dates and Locations

Leeds: 29th February
London: 23rd and 24th February and 22nd and 23rd March
Cardiff: 8th March
Newcastle: 13th March
Birmingham: 22nd February and 20th March

Who should attend?

Anyone in the statutory, voluntary or community sectors that may be coming into contact with female victims of trafficking, including women's organisations, housing and support services, asylum seeker support services, social services and community safety groups. It is also of interest to those focusing on trafficking as part of their studies.

For more information and to request a booking form please contact Sally Montier on 020 7840 7149 or sally.montier@eaveshousing.co.uk.

Human Rights Watch Film Festival

Dates: 21 - 30 March

Location: Various London locations

The Human Rights Watch Film Festival returns to London from 21 - 30 March – with a lineup of inspiring documentaries and dramas that will generate debate. This season includes some powerful films looking at the rights of women and the rights of refugees and migrants. Three films likely to be of particular interest to readers:

LOVE CRIMES OF KABUL + Q&A

Presented in association with Afghanaid and No Women No Peace

Jailed for running away from home to escape abuse, for allegations of adultery, and other “moral crimes,” the women of Afghanistan’s Badum Bagh prison band together to fight for their freedom.

Showing at ICA London: Friday 23 March, 18.30 & Ritzy Cinema: Saturday 24 March, 16.30

SAVING FACE + Q&A

In Pakistan, a woman's face is deemed to be her greatest asset. Someone seeking to punish a woman need only destroy her face to do her permanent harm—both physically and socially.

Showing at: Curzon Soho: Wednesday 28 March, 18.40 + Q&A Ritzy: Thursday 29 March, 21.15 + Q&A

THE PRICE OF SEX + Q&A

Presented in association with Birds Eye View Film Festival and The Poppy Project

Intimate and revealing, The Price of Sex is a feature-length documentary about young Eastern European women who have been drawn into a world of sex trafficking and abuse. It is a story told by the young women who refused to be silenced by shame, fear, and violence.

Showing at Curzon Soho: Friday 23 March, 18.40 + Q&A , ICA London: Saturday 24 March, 18.30 + Panel discussion, Ritzy: Sunday 25 March, 19.00 + Q&A

For the full line-up by theme, see: <http://ff.hrw.org/eventlist/4/theme>.

Women and Asylum: recognising, representing, and working together to resolve issues facing women in the asylum system

British Red Cross, Wednesday 28 March 2012, 10am – 4pm

Martin Harris Centre
University of Manchester, Oxford Road, Manchester M13 9PL

An event to mark International Women's Day for professionals working with women in the asylum system, and anyone with an interest in learning more about the issues involved.

Raising awareness of the barriers to protection faced by women seeking asylum and by women refugees

Recognising the specific challenges faced by women within the asylum system

Working together with practitioners to develop effective strategies to resolve these issues

Speakers and interactive seminars on the issues facing women in the asylum system

- Including the challenges surrounding health, legal help, integration and other aspects of women's lives

Full programme and flyer to follow.

Booking in advance is essential. For any enquiries please contact Rachel Kean on 0161 888 8932 or by email at rkean@redcross.org.uk.

Rights of Women are recruiting a Treasurer for the Management Committee

Rights of Women is currently recruiting a Treasurer for co-option to the Management Committee. They are looking for a woman with a strong background in financial management to support the Committee and Director in the strategic management of Rights of Women.

Closing date: **9 March 2012**. Interviews: week beginning **26 March 2012**. For more information please see their website <http://www.rightsofwomen.org.uk/jobs.php#committee> or phone 020 7251 6575.

Films by the European Network of Migrant Women

To highlight the shortcomings of family reunification policies in Europe, the European Network of Migrant Women (ENoMW) has produced three short films. Illustrating the experiences of three migrant women affected by existing policies, the films highlight restrictions for female migrant workers to unite with their children, the barriers facing those on a spouse dependent visa who seek to leave a violent relationship, and finally, the difficulties for non-EU nationals to join a partner in the EU. As the European Commission has recently launched a consultation to review the Directive on Family Reunification, the network has also developed a "Lobbying Kit" with tools to facilitate engagement in the consultation process in order to bring about a more gender-sensitive policy framework on family reunification in Europe.

Download the [Lobbying kit](http://migrantwomennetwork.org/?article268) (<http://migrantwomennetwork.org/?article268>) and the [short films](http://www.youtube.com/user/EuropeanWomenLobby) (<http://www.youtube.com/user/EuropeanWomenLobby>).

Charter of rights of women seeking asylum



Endorsements: 287

Google group membership: 154

Impacts of *Unsustainable*

Following Asylum Aid's publication of the research, *Unsustainable: the quality of initial decision making in women's asylum claims* in January 2011, an advocacy strategy was implemented. A year later, it is timely to review the impacts that can be attributed to that work. Below is a summary of these impacts on the UKBA and on the wider debate.

UK Border Agency

1. The UKBA disaggregated its statistics on appeals by sex for the first time
2. The UKBA acknowledged that a disproportionate number of refusals of applications from women are overturned at appeal
3. The UKBA published a thematic gender audit of asylum decision making by the UKBA in June 2011 which reinforced the *Unsustainable* findings
4. The Asylum Screening Unit agreed to allocate female interviewing officers and interpreters to women applicants where possible
5. The UKBA created a new compulsory one day training module on gender issues for all asylum decision makers, highlighting issues and case studies raised in *Unsustainable*

Wider debate

6. The Minister for Immigration identified greater gender sensitivity in the asylum process as a key goal for the UKBA at the National Asylum Stakeholders Forum on 26th May 2011
7. Deputy Prime Minister Nick Clegg questioned whether there is an inherent unfairness built into the system in a speech celebrating 60th anniversary of the Refugee Convention on 10th May 2011
8. Bridget Phillipson MP and Baroness Oona King referred to themes from *Unsustainable* at a Women for Refugee Women event in Portcullis House on 9th May 2011
9. *Unsustainable* research was referred to in House of Lords questions on 11th October 2011
10. Two members of Home Office Women felt impelled by *Unsustainable* to focus on the issue of women asylum seekers in autumn 2011

Unsustainable is available at <http://www.asylumaid.org.uk/pages/unsustainable.html>.

For more information on the Charter and the Every Single Woman campaign, please go to www.asylumaid.org.uk/charter.

If your organisation would like to endorse the charter, please send an email simply stating the name of your organisation to charter@asylumaid.org.uk.

Donations to Asylum Aid

Asylum Aid provides free legal advice and representation to asylum-seekers and refugees, and campaigns for their rights. We rely on the generosity of individuals to help us continue our work. Your support would be greatly appreciated. A gift of just £5 each month could support our free legal advice line.

Name

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Email

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Standing order form

The Manager, (Bank Branch): Address of Bank:

Please pay Asylum Aid the sum of £ each month/quarter/year (delete as appropriate) until further notice

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Address:

Postcode:

Signature:

Date:

[FOR OFFICIAL USE ONLY]

To: The Cooperative Bank, 80 Cornhill, London EC3V 3NJ. Sort code: 08 02 28 Account no: 65281262

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Signature

Date

To support Asylum Aid's work, please complete and return this form to: Asylum Aid, Club Union House, 253-254 Upper Street, London, N1 1RY

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