

If we go back my husband and my family kill me. No one to collect me on airport and you know in Pakistan women are not secure in Pakistan. If I go back there is no one who protect me from the world of animals. If there in this world a little bit humanity or U can say human rights please protect me from them. If no then allowed me to kill my self as a right of human who have nothing in this world not a

UK Border Agency
UNITED KINGDOM

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Fast-Track Unfairness

Detention and Denial of Women Asylum Seekers in the UK

HUMAN
RIGHTS
WATCH

To [REDACTED]

REMOVAL
DIRECTIONS

A. Directions have now been given for your removal from the United Kingdom by (flight) PK786 to Islamabad, Pakistan at 20.25 hrs on 05 October 2009

This is NOT an appealable decision.



Fast-Tracked Unfairness

Detention and Denial of Women Asylum Seekers in the UK

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Fast-Track Unfairness

Detention and Denial of Women Asylum Seekers in the UK

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I. Summary

Military came to our house and started to beat us. We didn't understand why ... They took my parents and siblings to different prisons. The prison I was taken to was underground and close to an airport. I was there for around six months and raped every day ... I am scared it will happen again if I return.

— Roseline X., Human Rights Watch interview July 3, 2009

Roseline is a soft spoken young woman from the Democratic Republic of Congo (DRC). She says she does not know where her family is, with the exception of one sister who lives in the UK. She says she was continuously raped while in prison in the DRC. After escaping, she had to support herself as a sex worker. With the help of one of her clients, in April 2009 she travelled to the UK. She then claimed asylum through the Home Office at the Croydon public inquiry office. The UK Border Authority (UKBA) decided at a screening interview that her case was suitable for processing in the Detained Fast Track (DFT) procedure, which for women is run out of the Yarl's Wood Immigration Removal Centre near Bedford.

DFT is an accelerated procedure for assessing asylum intended for claims by men or women that, according to the UK Border Agency, can be decided “quickly.” It is inherently unsuitable for complex cases—and the cases of both men and women can be complex. Indeed, more men than women are referred into the procedure. However, this report focuses on the use of DFT to process claims by women because claims that involve gender-related issues can be particularly complex, especially when they involve persecution by private individuals and the state's failure to provide adequate protection, and assessing them fairly can involve practical challenges.

After a woman is referred into the procedure, her claim is decided within two or three days. If refused—and in 2008 96 percent of claims were refused on first instance—she has two working days to appeal. This has to be heard within 11 days, meaning from start to finish the whole process takes around two weeks. All this time she is kept in detention, where she will remain pending deportation should her appeal fail. Since May 2005 over 2,000 women have been detained by the UK Home Office in Yarl's Wood while their claims were assessed. In 2008 91% of appeals were refused.

The system is not rigorous enough to meet basic standards of fairness. This report focuses on its particular shortcomings as regards women, especially when it comes to properly

assessing complex gender related claims. On this issue even the Home Office's own quality team agrees: in 2006 it concluded that the DFT procedure was not sufficiently "robust" or substantive to enable it to identify such claims. However, complex gender related claims are still regularly referred into the procedure.

In this report, Human Rights Watch is not assessing the merits of the claims made by the women we interviewed. But their asylum claims all had complex gender-related dimensions to them and involved consideration of the state's failure to provide them with protection—yet the cases had been placed in DFT.

Take the case of Fatima H. from Pakistan, who says her locally powerful husband, a man with close links to the police, subjected her to a sustained regime of domestic violence from which she had no way of escaping in Pakistan. Or Xiuxiu L. from China, who says she was trafficked into the UK after being held as a sex slave for five years. Or Aabida M. from Algeria, who said her affair outside of marriage led to threats from her family to kill her. Or Omar B., from Pakistan, a female to male transgender person, whose relationship with a woman led her father to assault him and his family to abandon him. Or Lisa O. from Kenya who says she was displaced in violence following elections in 2007, enslaved and raped by a man initially promising her shelter, and then forced to travel with him to the UK where she was abandoned.

Some of these individuals were eventually granted asylum (in most cases on appeal against an initial refusal or after a lengthy judicial review). But others were rejected—and all were considered by UKBA officers to have cases that could be decided quickly.

Many women who claim asylum in the UK base the claim on violence and persecution by non-state actors like family members or their husband, which raises immediately the complex issue of lack of state protection. Organizations working with asylum-seeking women report claims because of trafficking for sexual or labor exploitation, forced marriage, forced sterilization, domestic violence, female genital mutilation, threat of "honor" killings and rape. Some estimate that more than half of women applying for asylum are victims of sexual violence.

The UK is entitled to control its borders and to remove people with unfounded asylum claims, but is obliged to ensure that individuals in need of international protection have access to fair refugee status determination procedures.

A fundamental problem that permeates each stage of the DFT is failure to follow the UKBA's own gender guidelines, a comprehensive document containing important safeguards for women in the asylum process. These point out the complexity of many women's situations and the factors that UKBA officers need to take into account. Implementation of the guidelines, however, is neither consistent nor universal.

This compounds the challenges to fairness inherent in the DFT procedure as a whole. Problems start with the initial screening interview. This is the first point of contact between a UKBA officer and an asylum-seeker—the point at which an applicant applies for asylum. This interview does not involve any substantive questions about why an applicant is claiming asylum. Nevertheless, an assessment of her immigration history and credibility is made and the UKBA officer decides how the case should be routed. Many complex cases are inappropriately routed into the DFT as opposed to the general asylum procedure, despite the stated intention that DFT is there to deal speedily with straightforward (or “quick”) claims.

Once in the DFT procedure, women are on a fast-moving treadmill with structural features inhibiting or even preventing them from making their cases effectively. When women arrive at Yarl's Wood, they will often have their asylum interview the next day. Most only have an opportunity to consult their duty solicitor in a short conversation over the phone. There is little opportunity to build trust, and women, especially in cases involving rape or abuse, may only reveal relevant information late in the process, or not at all. There is limited opportunity to access expert evidence, such as medical reports. The UKBA officer who conducts the asylum interview, known as the case owner, decides whether or not asylum should be granted.

That the trauma of rape can give rise to feelings inhibiting a woman from going to the police is, for example, recognized in criminal court. However, an asylum seeker is expected to immediately tell strangers—UKBA officers and legal representatives—of any violence, including sexual violence, that she has gone through. Solicitors report and refusal letters confirm that delay in mentioning critical facts about sexual violence often leads case owners to conclude that the information is not credible. Women seeking asylum are also disadvantaged by the lack of female interviewers and interpreters which can further inhibit full disclosure of experiences.

Human Rights Watch is also concerned about the incorrect use of information and use of inappropriate information by case owners to support assessments. Our research uncovered examples of apparently medically unqualified case owners, for example, dismissing the conclusions of medical reports. Country of Origin Information (COI) reports are not available

for many of the countries from which women in DFT come. For countries that generate fewer asylum seekers COI key documents are prepared—brief country profiles with an indexed list of other sources. These are more difficult to use in the short timeframe available for decision makers. Finally, UKBA case owners have inappropriately used Operational Guidance Notes, brief subjective UKBA summaries of the political and human rights situation in a country, as background information. Decision makers often appear to be uninformed or fail to take into account women’s situations and status in their country of origin.

Women have only a few days to prepare their appeal, often giving them insufficient time to gather expert reports and other evidence that may be needed to support their asylum claim. About one third of women who are refused at first instance find themselves without legal representation at the appeal stage because free legal assistance is only granted to those whose case passes a merits test—an assessment by a solicitor that there is more than a 50 percent chance of success or that the chance of success is “borderline or unclear” but of “overwhelming importance” to the client. Solicitors face a considerable disincentive against taking on what may at first sight appear to be a marginal case—since 2005 the Legal Services Commission has required legal representatives to win 40 percent of their cases if their contract to provide legal aid is to be renewed.

If their claim is rejected, women are in theory then removed from the country. However, some cannot obtain the necessary travel documents, or are not accepted back by the destination for deportation. Such women remain in detention, sometimes for a couple of days, but sometimes for as long as ten to twelve months.

All the challenges to a fair hearing posed by the speed and characteristics of the DFT procedure are exacerbated by the fact of detention. Detention makes the already difficult task of preparing a case more difficult. Detention cuts someone off from the outside world and even though a woman can communicate by phone, there are limits to who she can access and what information she can gather. Beyond the practical difficulties, being in detention does not create the conditions encouraging women to open up about the often very intimate issues behind their claims. Therefore detention should only be used where absolutely necessary, normally to prevent someone who is about to be deported disappearing, and the state authorities should have to show the necessity for it in each individual case.

Speedier decision making needs to be balanced with the state requirements to fulfill their obligations under international human rights and refugee law. The correct test of an asylum system is that those in need of protection receive it. Asylum seekers have a fundamental

right to a full and fair consideration of their claims—an obligation not met in the DFT procedure.

The flaws within the DFT procedure—the screening process, the breakneck speed that militates against the effective preparation and presentation of a claim, the limitations on legal representation, the difficulties of accessing expert evidence in the time available, and the very fact of detention itself which makes the whole process of building a case even more difficult—leads Human Rights Watch to conclude that it should be abolished.

In the interim, more rigorous procedures should be put in place to ensure complex claims do not get routed into the DFT procedure. These should include adding complex gender-related persecution claims, such as alleged sexual violence and domestic violence, to the list of “claims unlikely to be accepted into fast track” in the suitability guidance note for routing into DFT. The criteria for routing a person through DFT should be clarified, including the factors that permit a claim to be decided “quickly”. The asylum interview should (in line with the successful Solihull pilot) allow time for the gathering of evidence before an initial decision is made, even if this means an added few days before the initial decision is taken. The right to apply for bail should be retained during this process.

Methodology

This report is based on research by Human Rights Watch in London, Bedford, Croydon, and at the Yarl’s Wood Immigration Removal Centre in the UK which took place from May to July 2009. Fifty interviews were conducted for this report, including with seventeen women with direct experience of the Detained Fast Track (DFT) system. These interviews took place with women while they were either going through DFT at Yarl’s Wood, after they had gone through the procedure, when they were taken out of the detained fast track procedure, or when they were being removed from the country. Human Rights Watch also conducted interviews with solicitors and barristers providing legal advice and assistance to women in the fast track procedure. Interviews were also conducted with nongovernmental organizations (NGOs), representatives of the United Nations High Commissioner for Refugees (UNHCR) to the UK, social workers, and volunteers. In addition, Human Rights Watch interviewed three employees of the UK Border Agency (UKBA).

All interviews were conducted in English. They were conducted in the visitor’s room at the detention center or at places convenient to the interviewees, and always in a private setting. No compensation or any form of remuneration was offered or provided to any person

interviewed for this report. In three cases, Human Rights Watch reimbursed women for the costs incurred in travelling to the place of interview.

All participants were informed of the purpose of the interview and the way in which their stories would be documented and reported. Participants were informed of their right to stop the interview at any time. All participants gave their verbal consent to be interviewed and all names have been changed to protect their identity.

This report does not aim to determine whether the asylum claims discussed were valid or not, but rather whether the detained fast track procedure fully and fairly examines these claims.

II. Recommendations

The flaws within the DFT procedure—the screening process, the breakneck speed that militates against the effective preparation and presentation of a claim, the limitations on legal representation, the difficulties of accessing expert evidence in the time available, and the very fact of detention itself which makes the whole process of building a case even more difficult—leads Human Rights Watch to conclude that it should be abolished.

In the interim, Human Rights Watch recommends:

To the Home Office and UK Border Agency

- More rigorous procedures should be put in place to ensure complex claims do not get routed into the DFT procedure, including:
 - Add to list of “claims unlikely to be accepted into fast track” in the suitability guidance note for routing into DFT, complex gender-related persecution claims, such as victims of sexual violence and domestic violence.
 - Clarify the criteria for routing a person through DFT, including a clarification of factors that permit a claim to be decided “quickly”;
- The asylum interview should (in line with the successful solihull pilot) allow time for the gathering of evidence before an initial decision is made even if that means an added few days before the initial decision takes place. The right to apply for bail should be retained during this process.
- Guarantee the full implementation of the Gender Guidelines during the fast track procedure;
- Show that detention is being used only because all other alternatives are unsuitable and detention is therefore necessary and proportionate;
- Ensure there is up to date country of origin information for all countries from where people are routed into DFT, that is objective and includes information on gender-related issues, such as domestic and sexual violence, trafficking and FGM, and state action to protect and prevent;
- Provide clear guidance to all case owners on the distinction between Country of Origin Information reports and Operational Guidance Notes;
- Make sure the correct country information is used, not just the Operational Guidance Notes and ensure their correct interpretation;

- Instruct UK Border Agency case owners to follow the UNHCR guidelines on internal relocation and they should have particular regard to country of origin information which describes the position of women in the area of proposed internal relocation;
- Ensure the availability of female case owners for all women going through DFT, as well as female interpreters and doctors in Yarl's Wood.
- Establish and deliver a specific and detailed training program for all case owners in the asylum system which deals with gender-related issues in the asylum process and ensures all case owners are aware of their obligations under the UK gender guidelines and International human rights law.
- Record the reasons why a person is taken out of fast track and placed back into the regular asylum procedure as well as the moment of that decision, and publish this information.

To the Asylum and Immigration Tribunal

- All immigration judges should follow the UNHCR guidelines on internal relocation and they should have particular regard to country of origin information which describes the position of women in the area of proposed internal relocation;
- Restore the Asylum and Immigration Tribunal gender guidelines and ensure their implementation through training.

To the Independent Chief Inspector of the UK Border Agency

- Investigate whether the detained fast track procedure (including its implementation in practice) is in line with UK government guidelines and, in particular, the gender guidelines.
- Inspect the quality and use of Operational Guidance Notes, in light of the UKBA gender guidelines.

To the Legal Services Committee

- Remove the merits test for DFT cases at the appeal stage;
- Expand the early legal advice Solihull pilot to detained fast track cases.

To the UK Parliament's Home Affairs Committee

- Launch an inquiry specifically into the legislation as well as practice of the Detained Fast Track procedure, taking into account the specific challenges faced by women seeking asylum in the UK.

To the European Commission

- Limit the use of fast track procedures and proscribe the routing of vulnerable groups through accelerated procedures by amending the Asylum Procedures Directive, in particular Article 23.
- The European Asylum Support Office, launched at the end of 2009, should provide extensive training on the complexity and validity of women's claims for asylum.

III. Background

Since March 2007 the Home Office has processed all asylum claims in the UK under the New Asylum Model (NAM), which was first laid out in the Home Office's five-year immigration strategy, "Controlling our borders: Making migration work for Britain," published in 2005.¹ The stated aim of this strategy is to introduce a faster, more tightly managed asylum process, with an emphasis on greater control of the whereabouts of asylum seekers and rapid and increased numbers of removals from the UK. An important part of the NAM is the procedure known as Detained Fast Track (DFT).

As described in the summary, DFT is inherently unsuitable for assessing complex cases—and the cases of both men and women can be complex. Indeed, more men than women are referred into the procedure. However, this report focuses on the suitability of DFT for processing claims by women because claims that involve gender-related issues can be particularly complex, especially when they involve persecution by private individuals and the state's failure to provide adequate protection, and assessing them fairly can involve significant practical challenges.

The Standard Asylum Procedure

A person may claim asylum in the UK either on arrival at the port of entry, or at the UK Border Agency (UKBA) office in Croydon.² The first interview, known as the "screening interview," aims to establish the identity of the asylum seeker, their route into the UK, liability to return to a third country (under the so-called "Dublin II Regulation"), whether or not they should be detained, and their suitability for the fast track procedure.³ The interview's purpose is not to establish the potential validity of the claim, but to elicit basic information about the asylum seeker. At this stage the UKBA does not ask detailed questions about why an applicant claimant is seeking asylum.⁴

¹ Home Office, "Controlling our Borders: Making Migration Work for Britain. Five year strategy for asylum and immigration," February 2005, <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/reports/fiveyearstrategy/asylumandimmigration?view=Binary> (accessed September 24, 2009).

² UKBA abolished the previous possibility to claim asylum in Liverpool. Since October 14, 2009, "anyone wishing to make an initial asylum application in country [is] required to do so in person at the asylum screening unit in Croydon." UKBA, "Changes to the asylum process," <http://www.ind.homeoffice.gov.uk/sitecontent/newsarticles/2009/october/18-asylum-changes> (accessed October 26, 2009).

³ Independent Chief Inspector of the UK Border Agency, "Liverpool Asylum Screening Unit: Unannounced Inspection," 10 August 2009, http://www.ociukba.homeoffice.gov.uk/files/inspection-reports/liverpool_asu.pdf (accessed October 5, 2009), p. 4.

⁴ Home Office, "Asylum Process," <http://www.ukba.homeoffice.gov.uk/asylum/process/screening/> (accessed January 20, 2010).

If the applicant is routed through the standard procedure (exceptions, including persons routed into DFT, are discussed below), the UKBA will give them an appointment at a later date to return to the Home Office. The applicant is given the details of a Home Office official responsible for processing an application for asylum from the beginning to end, known as the case owner, and is not usually placed in detention at this stage.⁵

On the appointed date, the case owner conducts a more elaborate “asylum interview” which addresses the reasons for claiming asylum. According to information given by UKBA to asylum-seekers, “The full interview is your only chance to tell us why you fear return to your country.”⁶ The case owner will give the applicant a list of legal representatives, but it is the responsibility of the asylum seeker to contact the legal representative and arrange for them to be at the interview. The legal representative has five days after the interview (which can be taped) to submit new evidence to the case owner.⁷

To be recognized as a refugee in the UK, an applicant must prove that they meet the criteria laid down in the Convention relating to the Status of Refugees (the Refugee Convention), to which the UK is a party.⁸ A refugee is defined as someone who:⁹

1. Has a well-founded fear of persecution because of his or her race, religion, nationality, membership in a particular social group, or political opinion;
2. Is outside his or her country of nationality;
3. Is unable to avail himself or herself of the protection of his or her country of nationality or habitual residence, or to return there, for fear of persecution.

There are three possible outcomes of an asylum claim: the applicant may be recognized as a refugee and given five years limited leave to remain in the UK, they may be granted an alternative form of protection, or their claim may be refused.

If no Refugee Convention reason can be identified, UKBA decision makers or Asylum and Immigration Tribunal judges must consider whether the return of the applicant would breach

⁵ Home Office, “case owner,” <http://www.ukba.homeoffice.gov.uk/asylum/process/caseowner/> (accessed January 20, 2010).

⁶ UK Border Agency, Home Office, “Your Asylum Interview,” <http://www.ukba.homeoffice.gov.uk/asylum/process/asyluminterview/> (accessed January 20, 2010).

⁷ UK Border Agency, Home Office, “Your Asylum Interview,” <http://www.ukba.homeoffice.gov.uk/asylum/process/asyluminterview/> (accessed January 20, 2010).

⁸ Convention relating to the Status of Refugees (Refugee Convention), 189 U.N.T.S. 150, entered into force April 22, 1954, acceded to by the United Kingdom 1954 and the Protocol Relating to the Status of Refugees, 606 U.N.T.S. 267, entered into force October 4, 1967 (abolishing the Refugee Convention's temporal and geographic restrictions), acceded to by the United Kingdom September 4, 1968.

⁹ Refugee Convention, article 1.

her human rights, and if so consider subsidiary protection,¹⁰ either through humanitarian protection or “discretionary leave”.¹¹ This is however, is explicitly “intended to be used sparingly.”¹² To qualify for humanitarian protection, the applicant has to show that they meet the criteria laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms incorporated into UK domestic law through the 1998 Human Rights Act.¹³

If a claim is refused, the applicant will receive a “refusal letter”, setting out the reasons for refusal. An applicant then has the right to appeal against the initial decision by the case owner within two weeks of receipt of the refusal letter and before the Asylum and Immigration Tribunal.¹⁴

After refusal at appeal, the claimant can ask for a reconsideration hearing. An immigration judge will look at the case and grant reconsideration if the Tribunal may have made an error of law and there is a real possibility that the Tribunal would decide the appeal differently on reconsideration.¹⁵ If the immigration judge considers the above criteria are met, he will order a reconsideration of the case. This means a new judge decides whether in fact a material error of law was made, and if so, a fresh appeal has to take place.¹⁶

¹⁰ Asylum Policy Instruction (API), “Assessing the Asylum Claim,” October 2006 and re-branded December 2008, <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/assessingtheclaim.pdf?view=Binary> (accessed September 25, 2009).

¹¹ The legal basis for humanitarian protection is article 339c of the consolidated Home Office Immigration Rules, available at <http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationrules/immigrationrules/> (accessed November 25, 2009). Humanitarian protection can be granted to a person who is not a refugee if there are “substantial grounds for believing that the person would face a real risk of suffering serious harm in the country of return; and the person cannot obtain effective protection from the authorities of that country (or will not because of the risk of suffering serious harm).” The Asylum Policy Instruction (API), “Humanitarian Protection,” November 2008, <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/humanitarianprotection.pdf?view=Binary> (accessed September 25, 2009). Discretionary leave is only granted in exceptional circumstances, for example when there might be a breach of the right to family life as prescribed in article 8 of the European Convention on Human Rights (ECHR), which states: “1. Everyone has the right to respect for his private and family life, his home and his correspondence.”

¹² Asylum Policy Instruction (API), “Discretionary Leave,” December 2008, <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/discretionaryleave.pdf?view=Binary> (accessed September 25, 2009).

¹³ European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, entered into force September 3, 1953, as amended by Protocols Nos 3, 5, 8, and 11 which entered into force on September 21, 1970, December 20, 1971, January 1, 1990, and November 1, 1998, respectively, art. 5(1)(f).

¹⁴ Asylum and Immigration Tribunal, “Guidance on Asylum Appeals,” <http://www.ait.gov.uk/Documents/FormsGuidance/StandardAppealForms/AsylumAppeals.pdf> (accessed January 20, 2010).

¹⁵ Article 26(6), “Asylum and Immigration Tribunal Procedure Rules,” http://www.ait.gov.uk/Documents/2005_ProcedureRules.pdf (accessed February 10, 2010).

¹⁶ Article 31, “Asylum and Immigration Tribunal Procedure Rules,” http://www.ait.gov.uk/Documents/2005_ProcedureRules.pdf (accessed February 10, 2010).

As the final possibility for scrutiny of UKBA's decisions, the High Court has the power to review immigration and asylum decisions by judicial review. An asylum seeker who was rejected throughout the process and is given an order to be removed can ask for a review of the process. Judicial reviews are a challenge to the way in which a decision was made, rather than the rights and wrongs of the conclusion reached.¹⁷ Again, there is first a judgment on whether a judicial review should be granted, and if so, a ruling on whether UKBA needs to reconsider their initial decision.¹⁸

If this is refused, UKBA will remove the applicant if they fail to leave the UK voluntarily. In 2006 the Home Office set a target for numbers of removals (male and female), "3,500 removals per month by April 2009."¹⁹ In the third quarter of 2009, 17,055 persons were removed or departed voluntarily from the UK, on average 5,685 per month including people who were turned away at the border and who left voluntarily.

Exceptions

There are certain categories of applicant whose claims are dealt with differently:

1. **Minors:** under 18 year olds—both unaccompanied children and children from families who apply in their own right—are accommodated by social services. Some children may require a social services assessment to confirm their age and until a social services age assessment has taken place, an age disputed young person is dealt with as an adult. Once age has been determined, their cases are processed by case owners who have been specially trained to deal with children.²⁰
2. **Third Country Cases:** under the European "Dublin II regulation," asylum applicants must pursue their claims in the country they first set foot in Europe.²¹ While in the UK, these applicants are held in detention before being removed to such country.²²

¹⁷ Section 2, "Her Majesty's Courts Service Guidance note on applying for judicial review," <http://www.hmcourts-service.gov.uk/cms/1220.htm> (accessed February 10, 2010).

¹⁸ *Ibid.*

¹⁹ Home Office, "Fair, effective, transparent and trusted. Rebuilding confidence in our immigration system," July 2006, p. 23.

²⁰ Home Office, "Processing an Asylum Application from a Child," 2007, <http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/processingasylumapplication1.pdf?view=Binary> (accessed December 5, 2009).

²¹ Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State is responsible for examining an asylum application lodged in one of the Member States by a third-country national, http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=Regulation&an_doc=2003&nu_doc=343 (accessed November 11, 2009). The Dublin II Regulation established a set of hierarchical criteria for determining the EU member state responsible for examining an asylum application lodged in one of the member states by a third-country national.

3. **Possible “Non-Suspensive Appeal” cases:** claims considered “clearly unfounded” by UKBA, based on a list of countries UKBA considers “safe”.²³ Once their claims have been rejected, asylum seekers defined as non-suspensive appeal cases can only appeal from outside the UK after removal. Most are kept in detention at the Oakington Immigration Removal Centre near Cambridge until they are removed.²⁴
4. **Detained Fast Track Procedure:** where it appears, after screening, that a case is one that can be decided “quickly”, any asylum claim, whatever the nationality or country of origin of the claimant, may be fast-tracked. This is the procedure examined by Human Rights Watch in this report.

Detention

According to Phil Woolas, UK Minister for Borders and Immigration, speaking in parliament in June 2008:

Detention is an essential part of the Government’s commitment to operate a “firm but fair” immigration and asylum policy by assisting us to remove those who do not qualify for leave to remain here and who refuse to leave the UK voluntarily or who would otherwise abscond.²⁵

The power to detain immigrants was first included in the Immigration Act 1971, which allowed the detention of asylum seekers in detention centers or prisons.²⁶ Immigration officers, acting on behalf of the Secretary of State, were granted the power to detain asylum seekers at any stage of the asylum procedure.²⁷ Several immigration acts subsequently affirmed and elaborated on the use of immigration detention, including the detention of fast

²² UKBA Enforcement Instructions, Chapter 27, “Third Country Cases,” <http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/oemsectione/chapter27?view=Binary> (accessed November 11, 2009).

²³ The current list of countries is available here: Certification Under Section 94 of the NIA Act 2002, Introduction, p. 2, <http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/certificationundersection94.pdf?view=Binary> (accessed December 5, 2009).

²⁴ Home Office, “DFT & DNSA Intake Selection,” AIU instruction, <http://ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/guidance/dftanddnsaintakeselection?view=Binary> (accessed October 1, 2009).

²⁵ Hansard HC, 8 June 2008, Col 624, <http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090608/debtext/90608-0021.htm#0906093000002> (accessed September 24, 2009).

²⁶ Immigration Act 1971, Part 1, paras. 15-20, http://www.uk-legislation.hmso.gov.uk/RevisedStatutes/Acts/ukpga/1971/plain/cukpga_19710077_en#pt2 (accessed October 30, 2009).

²⁷ Immigration Act 1971, Part 1, para. 16.

track cases.²⁸ Non-statutory guidance notes, such as the UK Border Agency Instruction and Guidance on Detention and Temporary Release, further developed these powers.²⁹ There is no statutory limit on the length of detention of immigrants in the UK in any of these acts.

In May 2008 UKBA announced a large-scale expansion of immigration removal centers, including a new center to process detained fast track cases, increasing capacity by up to 60 percent, adding that “[a] new centre will allow even more fast track cases to be heard.”³⁰ In March 2009 the newest center was opened, providing capacity to hold an additional 426 male detainees, leading to a total of eleven immigration removal centers providing 3,000 beds for people throughout the asylum system, including for persons routed into the detained fast track procedure.³¹

Women Seeking Asylum in the UK

In 2008, 7,390 women applied for asylum as principal applicants—approximately 30 percent of all principal applicants. That same year 2,875 women applied as dependents of other family members—about 54 percent of all dependent applicants.³²

In 2008, 31 percent of female principal applicants were granted asylum or discretionary leave at first instance by the Home Office.³³ There is no gender segregated data available for the appeal stage, but 23 percent of appeals by both men and women against refusal of refugee status were successful in 2008.³⁴ The figures appear to have remained similar in the

²⁸ Immigration and Asylum Act 1999; the Nationality, Immigration and Asylum Act 2002; UK Borders Act 2007 and most recently, the Borders, Citizenship and Immigration Act, which was given royal assent on July 22, 2009, available at http://www.opsi.gov.uk/acts/acts2009/ukpga_20090011_en_1 (accessed November 4, 2009).

²⁹ UKBA Enforcement Instructions and Guidance, Chapter 55: Detention and Temporary Leave, <http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/chapter55?view=Binary> (accessed November 4, 2009).

³⁰ UKBA, “Large Scale Expansion of Britain’s Detention Estate,” May 19, 2008, <http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2008/largescaleexpansionofbritainsdet> (accessed November 5, 2009).

³¹ Currently these are: Brook House near Gatwick, Campsfield House north of Oxford, Colnbrook close to Heathrow and “most secure” centre, Dover near the port of Dover, Dungavel House between Muirkirk and Strathaven, Harmondsworth near Heathrow where men go through the Detained Fast Track procedure, Haslar near Portsmouth Harbour, Lindholme in South Yorkshire, Oakington near Cambridge, Tinsley House near Gatwick and Yarl’s Wood near Bedford where women go through the Detained Fast Track procedure, <http://www.bia.homeoffice.gov.uk/managingborders/immigrationremovalcentres/>.

³² Home Office, “Asylum statistics United Kingdom 2008,” Home Office Statistical Bulletin, September 14, 2009, 2008, supplementary table 2k and table 2m.

³³ Home Office, “Asylum statistics United Kingdom 2008,” Home Office Statistical Bulletin, September 14, 2009, table 2l. In the same year, 30 percent of male applicants were granted status.

³⁴ This is not segregated by gender, so this is the total figure of appeals that were allowed for all asylum applicants. Home Office, “Asylum statistics United Kingdom 2008,” Home Office Statistical Bulletin, September 14, 2009, table 5a.

first half 2009 (the latest figures available at time of writing), with 29 percent of all asylum applications decided in the UK granted asylum at the initial stage.³⁵

Grounds and Gender

A woman who needs protection and recognition as a refugee must establish under the Refugee Convention that she has a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion, or membership of a particular social group in her country of nationality.³⁶ Gender is not an explicit ground for asylum under the Refugee Convention, but it is an established principle that the definition of ‘refugee’ should be interpreted to include the gender dimensions of persecution in order to accurately determine claims to refugee status. The UN High Commissioner for Refugees (UNHCR) Guidelines on International Protection make clear assessment of grounds should include the gender dimension of persecution.³⁷

The fact that gender is not specifically a ground under the Refugee Convention renders many women’s cases by definition technically complex. Women may experience persecution differently from men and be exposed to different forms of it. Assessing the implications and consequences of gender therefore requires additional information about the threats and forms of persecution experienced by a woman in her country of nationality. Furthermore, many women claim to be subject to persecution and forms of harm not directly inflicted by the state,³⁸ and for which they should—but frequently do not—receive adequate or any state protection.

There is currently no publicly available official breakdown of the reasons why women seek asylum in the UK, but organizations and solicitors working with women report issues behind claims to include trafficking for sexual or labor exploitation, forced marriage, violence within the family, forced sterilization, and sexual violence. Women have also claimed persecution based on gender-specific cultural practices such as female genital mutilation (FGM) and the threat of “honor” killings.³⁹

³⁵ Home Office, “Control of Immigration: Quarterly Statistical Summary, United Kingdom - First Quarter 2009,” p. 1 and Home Office, “Control of Immigration: Quarterly Statistical Summary, United Kingdom - First Quarter 2009,” p. 1. In these quarterly statistics there is no disaggregated information according to gender.

³⁶ Refugee Convention, article 1.

³⁷ UN High Commissioner for Refugees, Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees, 7 May 2002, HCR/GIP/02/01, <http://www.unhcr.org/refworld/docid/3d36f1c64.html> (accessed September 30, 2009), para. 4.

³⁸ As stated in Asylum Aid, “Relocation, Relocation: The impact of internal relocation on women asylum seekers,” November 2008, http://www.asylumaid.org.uk/data/files/publications/89/Executive_Summary.pdf (accessed December 8, 2009).

³⁹ See for example ICAR, “Navigation Guide. Women refugees and asylum seekers in the UK,” November 2004, available at <http://www.icar.org.uk/9568/navigation-guides/women.html> (accessed December 8, 2009).

Organizations that provide services to refugee women have estimated that more than half of all women seeking asylum in the UK are victims of sexual violence, and some have estimated that figure to be as high as 80 percent.⁴⁰ There is a particular stigma attached to rape and some survivors may experience overwhelming feelings of self-loathing and embarrassment. While victims of other crimes may anticipate and receive care and sympathy from loved ones, many rape survivors fear they will not be believed even by those closest to them. They may be met with hostile, even violent responses.⁴¹ Indeed, those closest to a rape survivor may be responsible for the abuse in the first place. For these reasons, UNHCR recommends that “in procedures for the determination of refugee status, asylum seekers who may have suffered sexual violence be treated with particular sensitivity.”⁴²

The UKBA published an Asylum Policy Instruction on Gender Issues in Asylum Claims (gender guidelines) in 2004, revised in 2006, which sought to improve the gender sensitivity of the UK asylum process at first instance.⁴³ This is a comprehensive document with several important safeguards for women in the asylum process, including a confirmation that “Although gender is not listed as a convention reason under the 1951 Convention decision-makers should be aware of gender issues in their assessment of asylum claims.”⁴⁴ The gender guidelines also include an explanation of many of the forms of persecution and violence that women might go through and base their asylum claim on.⁴⁵

However, despite these UKBA gender guidelines, Human Rights Watch and others’ evidence points to a regular failure by UKBA decision makers to take women’s experiences into account when interpreting refugee law and when deciding on return.⁴⁶ A 2006 study found a lack of implementation of the gender guidelines, stating that while a few good examples

⁴⁰Refugee Council, “Refugee and Asylum Seeking Women Affected by Rape or Sexual Violence: a literature review,” February 2009, p. 4 and Black Women’s Rape Action Project and Women Against Rape, “Misjudging Rape. Breaching Gender Guidelines & International Law in Asylum Appeals,” December 2006.

⁴¹ Email communication from Crossroads Women Centre & Women Against Rape, to Human Rights Watch, on August 14, 2009.

⁴²Conclusion 73 (XLIV), “Conclusion on Refugee Protection and Sexual Violence,” October 8, 1993, <http://www.unhcr.org/excom/EXCOM/3ae68c6810.html> (accessed September 24, 2009), para. (g).

⁴³The most recent version is the Asylum Policy Instruction (API), “Gender Issues in the Asylum Claim,” October 2006, <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/genderissueintheasylum.pdf?view=Binary> (accessed July 2009)

⁴⁴Asylum Policy Instruction (API), “Gender Issues in the Asylum Claim,” October 2006, <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/genderissueintheasylum.pdf?view=Binary> (accessed July 2009), p. 2.

⁴⁵Asylum Policy Instruction (API), “Gender Issues in the Asylum Claim,” October 2006, <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/genderissueintheasylum.pdf?view=Binary> (accessed July 2009), p. 6.

⁴⁶See also specifically on the experiences of rape survivors and claims based on the Refugee Convention, Black Women’s Rape Action Project and Women Against Rape, “Misjudging Rape. Breaching Gender Guidelines & International Law in Asylum Appeals,” December 2006.

were found, the overwhelming impression was one of a lack of awareness of gender issues and that the UKBA's own guidance was not being followed by decision-makers.⁴⁷

There is also a gap at the level of judges, who do not have gender-focused guidelines. The UK's Immigration Appellate Authority, the forerunner of today's Asylum and Immigration Tribunal (AIT), initially developed gender guidelines for immigration judges ruling on appeals and judicial reviews in asylum cases. These seemed to be taken over by the new AIT. However, in September 2006 the AIT announced that the Gender Guidelines for Immigration Judges had been removed from the AIT website stating, "The Gender Guidelines are not, and have never been, the policy of the AIT and they have no AIT approval."⁴⁸

There are no statistics that break down the grounds for claiming asylum in the UK, but in the experience of solicitors most claims for asylum by women in the UK are based on "membership of a particular social group" or "political opinion" as defined in the Refugee Convention.⁴⁹

Social group

"Membership of a particular social group," as a ground for asylum, cannot be defined by the persecution suffered by an individual; the group must exist independently of the persecution.⁵⁰ Someone whose claim is based on torture because of political belief must show proof of their political background and activity, such as membership of a political party, as well as proving that they were persecuted or tortured.

For women who are subject to domestic violence or rape, the claim requires more evidence: it is necessary to prove that the rape or violence occurred, that they remain at risk, that the state does not offer them sufficient protection, and that they are members of a particular social group in their society. In these cases, membership of a particular social group will require careful consideration of the particular circumstances of women as a group, or a subset of certain women, in the country of origin. This will usually be established in each individual case.⁵¹

⁴⁷Sophia Ceneda and Clare Palmer, "'Lip Service' or Implementation? The Home Office Gender Guidance and women's asylum claims in the UK," *Asylum Aid*, March 2006, p. 11.

⁴⁸Refugee Council, "Removal of the Gender Guidelines from Asylum Immigration Tribunal (AIT) website," *RCO Women's News*, Issue 21, January 2007, p. 2.

⁴⁹For example, email correspondence with Gabriella Bettiga, Head of Immigration at Lawrence Lupin Solicitors, July 29, 2009.

⁵⁰UNHCR, "Guidelines on International Protection: Membership of a particular social group" within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees", HCR/GIP/02/02, 7 May 2002.

⁵¹*Ibid.*

However, specific subgroups of women in particular countries are sometimes established as a social group. For example, in the case of *Shah and Islam v. SSHD* the House of Lords concluded that women in Pakistan who were victims of domestic violence constituted a particular social group. The reasoning was that these particular women formed a distinct group in society as evidenced by widespread discrimination against them, for which the state did not offer adequate protection as they were not seen as entitled to the same human rights as men.⁵² In another example, in 2006 a House of Lords ruling found that women who have not undergone female genital mutilation in Sierra Leone were a particular social group because they are perceived by society as inferior.⁵³

Political opinion

To accurately consider claims on the ground of persecution because of “political opinion”, caseworkers have to take into account that women, while certainly not always, may participate differently from men in political activities. Women’s contributions, such as cooking for the group or hiding rebels, are harder to prove than actual membership of a political group. It is particularly challenging for a woman to prove she was raped because of her political opinion, a ground under the Refugee Convention, because that requires evidence of intent. The ground of “political opinion” is often unsuccessful for women because UKBA case owners assume that women’s political participation would not be seen as important, or significant enough to be persecuted by the police in their home country.⁵⁴ This is contrary to the UKBA’s own gender guidelines which explicitly counter this assumption stating:

Decision-makers should beware of equating so-called "low-level" political activity with low risk. The response of the state to such activity may be disproportionately persecutory because of the involvement of a section of society, namely women, where because of their gender it is considered inappropriate for them to be involved at all.⁵⁵

⁵²*Islam (A.P.) v. Secretary of State for the Home Department Regina v. Immigration Appeal Tribunal and Another Ex Parte Shah (A.P.) (Conjoined Appeals)*, UKHL 20, 1999.

⁵³*Fornah v Secretary of State for the Home Department*, UKHL 46, 2006.

⁵⁴Black Women’s Rape Action Project and Women Against Rape, “Misjudging Rape. Breaching Gender Guidelines & International Law in Asylum Appeals”, December 2006, p. 10.

⁵⁵Asylum Policy Instruction (API), “Gender Issues in the Asylum Claim,” October 2006, p. 10.

IV. The Detained Fast Track Procedure

Fast Track is just a factory for sending people away... I am so scared.
— Aabida M., Yarl's Wood immigration removal center, June 17, 2009

The Development of the Detained Fast Track Procedure (DFT)

Detained Fast Track (DFT) is one of the key elements of the New Asylum Model (NAM) facilitating faster decision making on asylum cases.⁵⁶ When the Labour government came to power in the late 1990s, it stated that it intended to address the then high number of asylum applications (it has gone down significantly over the past decade) and the consequent backlog of cases in the UK.⁵⁷

In March 2000, the then Minister of State for the Home Office, Barbara Roche, announced the creation of an accelerated procedure for men including detention to be implemented at the reception center at Oakington near Cambridge.⁵⁸ This was seen as a flagship scheme to help deal with the applications backlog and to facilitate faster and a greater number of removals.

This was the first time in the UK that asylum seekers were to be placed in detention with administrative convenience as the objective.⁵⁹ Prior to this, anyone claiming asylum in the UK was required to report to a center at a given time and their claim would be handled without detention—only those asylum seekers who were rejected and about to be removed were detained.

The new accelerated procedure was intended to facilitate an asylum decision as fast as possible. For that to be achieved, it was considered necessary to ensure that applicants would be readily available for every part of the process, without the risk of them absconding,

⁵⁶The New Asylum Model was introduced by the Home Office, "Controlling our Borders: Making Migration Work for Britain. Five year strategy for asylum and immigration," February 2005, <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/reports/fiveyearstrategy/asylumandimmigration?view=Binary> (accessed September 24, 2009).

⁵⁷See for example Will Somerville, "Immigration under New Labour", Bristol 2007, Don Flynn, "British Immigration Policy, New Labour, and the rights of migrants: A critical assessment," <http://www.signsofthetimes.org.uk/flynn%5Btextonly%5D.html> (accessed November 6, 2009) and Jonathan Ensor and Amanda Shah, The United Kingdom, in Jan Niessen et.al. (Eds.), "Current Immigration Debates in Europe: A Publication of the European Migration Dialogue," September 2005.

⁵⁸Hansard HC, 16 March 2000, Vol. 364, Col 385 WS.

⁵⁹Immigration Law Practitioners' Association (ILPA), "The Detained Fast Track Process, a best practice guide," January 2008, p. 2.

“otherwise claimants would likely be unwilling to comply with asylum procedures.”⁶⁰ Initially limited to Oakington, the original rationale was to have a relaxed regime of minimum physical security, only applicable to single males, with on site legal representation, and a maximum of seven days in detention.⁶¹ If a claim was refused, the appeal would take place outside the fast track timetable and would not involve detention.⁶² While the UK Home Office has not been completely clear about why the procedure was initially only for single males, it would appear that their flight risk was considered greater or that their cases were more often considered unsubstantiated.⁶³

Since March 2000 the rules have changed on several occasions. Most changes have chipped away at the ability of asylum seekers to present a claim supported by evidence, thereby further eroding the right to a full and fair asylum determination process.

The first version of the fast track procedure was challenged in the *Saadi v. UK* case in 2001 and 2002, which went all the way to the Grand Chamber of the European Court of Human Rights.⁶⁴ Mr. Saadi, along with several fellow Iraqi asylum seekers, claimed that his seven day detention for fast track processing violated Article 5 of the European Convention on Human Rights.⁶⁵ In 2001 the UK Court of Appeal ruled that detention was not unlawful and this decision was upheld in 2002 by the Law Lords.⁶⁶ The European Court ruled that as long as the detention took place in reasonable conditions and its length was not excessive, it was proportionate—and that the detention of seven days was not a violation of Article 5.⁶⁷

In March 2003, the then Minister for immigration and Counter Terrorism, Beverley Hughes, used this approval of the use of detention by the courts to introduce a variant of the accelerated procedure that brought the appeals process into the fast track procedure for the first time. In other words, in some cases appeals against the rejection of an asylum claim

⁶⁰As explained by Ian Martin, inspector in the Immigration and Nationality Directorate in a witness statement for the case of R (Saadi et ors) v SSHD [2001] EWHC Admin 670.

⁶¹As explained by Justice Collins in the case R (RLC) v SSHD [2004] EWHC 684 (Admin).

⁶²Ibid.

⁶³Human Rights Watch Interview with UKBA official, September 15, 2009. A specific asylum procedure for men, as was the case, is discriminatory in nature and would not be in line with the UK's human rights obligations, for example under article 14 of the ECHR.

⁶⁴Case of Saadi v. the United Kingdom, Application no. 13229/03, Judgment of 29 January 2008, <http://cmiskp.echr.coe.int/tkp197/view.asp?item=3&portal=hbkm&action=html&highlight=saadi&sessionId=30375592&skin=hudoc-en> (accessed September 24, 2009).

⁶⁵Article 5 (1) (f) of the ECHR reads: “Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: (...) f) the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.”

⁶⁶House of Lords, R (Saadi) v Secretary of State for the Home Department, 1 WLR 3131, October, 2002.

⁶⁷Case of Saadi v. the United Kingdom, Application no. 13229/03.

were now to take place within an accelerated timeframe and while the asylum seeker was in detention.⁶⁸ The Home Office claimed this was justified because it was limited to “single male applicants from countries which are believed by the [Home Office] to be those where in general there is no serious risk of persecution.”⁶⁹

In April 2003 the Harmondsworth Immigration Removal Centre near London Heathrow Airport became the location for the implementation of this new fast track procedure.

Up until 2004 there was no procedure in place for re-routing a claim back into the standard asylum procedure should it become obvious that an error had been made in the original routing. However, in 2004 the Court of Appeal ordered the Home Office to adopt a flexibility policy that allows case owners to remove cases from the detained fast track, following a legal challenge by the Refugee Legal Centre (now Refugee and Migrant Justice).⁷⁰

The Home Office’s five-year (2005-2010) strategy for immigration stipulated that the detained fast track would be increasingly used and that women would also be brought into it:

We will expand the detention capacity we have for those whose claims are considered under our current fast track processes, for those suitable for a quick decision. We will open a new detention facility for single females linked to the fast track process.⁷¹

Then in May 2005 the government announced that the Yarl’s Wood Immigration Removal Centre near Bedford was to be used to detain and process women in the fast track procedure. Yarl’s Wood has a capacity for 284 single women and 121 bedspace for families (not going through DFT.) Since that time, women in the DFT procedure remain in detention throughout the asylum application and appeal process until they are removed, granted status, or transferred back into the standard asylum procedure.

⁶⁸Hansard HC Vol 401 Col 42WS, 18 March 2003.

⁶⁹ As later explained by Justice Collins in the case R (RLC) v SSHD [2004] EWHC 684 (Admin).

⁷⁰Detained Fast Track Processes Operational Instruction on Flexibility in the Detained Fast Track, April 2005, http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/guidance/Detained_fast_track_process1.pdf?view=Binary (accessed November 12, 2009). And the legal challenge to the fast track system: R (RLC) v SSHD [2004] EWHC 684 (Admin).

⁷¹Home Office, “Controlling our Borders: Making Migration Work for Britain. Five year strategy for asylum and immigration,” February 2005, <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/reports/fiveyearstrategy/asylumandimmigration?view=Binary> (accessed September 24, 2009), para. 68.

The 2005 Five Year Strategy included a projection to increase the numbers of asylum seekers going through the accelerated procedure, including women: “we project that up to 30 percent of new asylum applicants will be put through a fast track detained process.”⁷²

The UK Border Agency has as a target under their “public service agreement” that by the end of 2011, the UKBA will conclude 90 percent of new asylum claims within six months from application.⁷³ In 2008, roughly 61 percent of cases in the asylum system were concluded within six months.⁷⁴ The fast tracking of cases is an important part of the strategy to achieve the six-month target. Performance against this indicator will be reported to the Border and Immigration Agency Board, which is charged with intervening with UKBA should performance not reach the target.⁷⁵ As the Medical Foundation for the Care of Victims of Torture put it to Human Rights Watch, “The pressure to meet case conclusion targets may be driving an ever stronger reliance on the DFT.”⁷⁶

The DFT Procedure

As described above, the screening interview—at which no substantive questions are asked—determines whether a woman is routed through the standard asylum procedure or whether she is placed in detention straight away under the fast track procedure. If a woman asylum applicant is identified as suitable for the Detained Fast Track procedure, she is immediately placed in Yarl’s Wood. Her asylum interview with a UKBA case owner usually takes place a day after arrival, as opposed to eight to twelve days after the claim is lodged in the standard procedure.

The decision will usually be served on the applicant about two days after the asylum interview, as opposed to 30 days after the claim in the standard procedure. She has two days in which to lodge an appeal, and there will be a maximum of 11 days before an appeal is heard, as opposed to one to three months within the standard procedure.⁷⁷ This makes the total period of time for a case to be heard from start to the appeal stage about two weeks.

⁷² Home Office, “Controlling our Borders: Making Migration Work for Britain. Five year strategy for asylum and immigration,” February 2005, p. 36.

⁷³ Public Service Agreement Target 3.2, indicator 2 “Reduce the time to conclusion of asylum applications,” http://www.hm-treasury.gov.uk/d/pbr_csro7_psa3.pdf (accessed February 10, 2010).

⁷⁴ Home Office, “Asylum statistics United Kingdom 2008,” Home Office Statistical Bulletin, September 14, 2009, 2008, p. 41.

⁷⁵ Public Service Agreement Target 3.2, indicator 2 “Reduce the time to conclusion of asylum applications,” http://www.hm-treasury.gov.uk/d/pbr_csro7_psa3.pdf (accessed February 10, 2010).

⁷⁶ Sonya Sceats, Medical Foundation for the Care of Victims of Torture, email correspondence with Human Rights Watch, February 10, 2010.

⁷⁷ Refugee Council, “Briefing: The New Asylum Model,” August 2007, p. 3.

Similar to the regular asylum procedure, the applicant can ask for a reconsideration of their appeal⁷⁸ or take the matter to the High Court and ask for a judicial review.⁷⁹

Table 2 gives an overview of the steps in this procedure.

Guidance on Who Should be placed into Fast Track

In 2007 the Home Office issued a guidance note for those who work on fast track case processing, which included a list of 56 countries deemed to be suitable for the procedure.⁸⁰ A list of “safe countries” would not provide an accurate picture of the persecution of women where governments are not themselves the perpetrators of abuse, but where they nevertheless consistently fail to protect women against private abuse. There were countries on the list from which asylum seekers were deemed “likely to be” suitable for fast tracking that do not have laws in place to protect women from various forms of violence, and where laws that are in place are not implemented.⁸¹

A striking example is Afghanistan, which was on the list, and which has failed to protect women who have been and still are denied basic rights either by official government decree or by their own husbands, fathers, and brothers. Most recently, in August 2009 Afghanistan adopted a law which, among other things, gives a husband the right to withdraw basic maintenance from his wife, including food, if she refuses to obey his sexual demands.⁸²

The country list was dropped from the guidance note in the summer of 2008. However, there remains concern among practitioners that the list is actually still in informal use. It contained countries such as Pakistan, Sierra Leone, China, Nigeria, Jamaica, Uganda, and Kenya that even now are among the countries of origin from which applicants are most commonly put into DFT (see table 1 below).⁸³

⁷⁸ Article 26(6), “Asylum and Immigration Tribunal Procedure Rules,” http://www.ait.gov.uk/Documents/2005_ProcedureRules.pdf (accessed February 10, 2010).

⁷⁹ Section 2, “Her Majesty’s Courts Service Guidance note on applying for judicial review,” <http://www.hmcourts-service.gov.uk/cms/1220.htm> (accessed February 10, 2010).

⁸⁰ Home Office, “Suitability for Detained Fast Track (DFT) and Oakington processes,” 28 July 2007.

⁸¹ Border and Immigration Agency: Asylum Process Instruction Suitability for Detained Fast Track (DFT) and Oakington processes, July 2007, http://www.homeoffice.gov.uk/about-us/freedom-of-information/released-information/foi-archive-immigration/8834_fast_track_asylum?view=Binary (accessed November 11, 2009).

⁸² See for example Human Rights Watch, “Afghanistan: New Law Threatens Women’s Freedom”, April 14, 2009, available at <http://www.hrw.org/en/news/2009/08/13/afghanistan-law-curbing-women-s-rights-takes-effect> (accessed September 24, 2009).

⁸³ See overview of countries of origin of women placed into fast track below in Table 2.

The changes to the guidance note in 2008 included the important amendment that any claim is suitable for fast track when it can be decided “quickly”. The 2008 guidance note also includes a list of exceptions which are considered unsuitable for the DFT procedure.⁸⁴ These include women who are more than 24 weeks pregnant, unaccompanied children seeking asylum, “whose claimed date of birth is accepted by the UK Border Agency,” and those requiring 24 hour nursing or care.

Another exception is those for whom there is independent evidence of trafficking or torture. The corollary of this is that victims of torture and trafficking who do not have evidence with them when they apply for asylum, including expert reports and medical reports, may end up being placed into the Detained Fast Track procedure.⁸⁵

According to the DFT intake instructions, any assessment of whether a quick decision is possible must be made in light of all of the facts of the case.⁸⁶ Cases where a quick decision may not be possible may include, but are not limited to:

1. Cases where it is foreseeable that further inquiries (whether by the UK Border Agency or the applicant) are necessary, without which a fair and sustainable decision could not be made;
2. Cases where it is foreseeable that translations are required in respect of documents presented by an applicant.⁸⁷

While this appears reasonable, the assessment of case suitability for DFT is carried out at a screening interview where no substantive questions about the facts supporting the claim are asked.

Once the UKBA officer conducting the screening interview is satisfied that the claimant is suitable for the fast track procedure, he or she will contact the Asylum Intake Unit (AIU) at Yarl’s Wood and fax the screening interview record to AIU. The intake unit then checks the suitability criteria. As noted in the intake instructions, “detention space is limited, and so

⁸⁴Home Office, “DFT & DNSA Intake Selection,” AIU instruction (No date in document), <http://ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/guidance/dftandnsaintakeselection?view=Binary> (accessed October 1, 2009).

⁸⁵Home Office, “DFT & DNSA Intake Selection,” AIU instruction, para.2.3 includes: “Those for whom there has been a reasonable grounds decision taken [and maintained] by a competent authority stating that the applicant is a potential victim of trafficking or where there has been a conclusive decision taken by a competent authority stating that the applicant is a victim of trafficking; Those in respect of whom there is independent evidence of torture.”

⁸⁶Home Office, “DFT & DNSA Intake Selection,” AIU instruction, para.2.2.1.

⁸⁷Home Office, “DFT & DNSA Intake Selection,” AIU instruction, para.2.2.3.

detention resources must be used carefully to achieve the best outcome.”⁸⁸ Practical considerations appear to include whether there are any beds available in the removal center at the time of the claim and whether women can be relatively easily removed, for example whether they have valid travel documents.

Origins of women put into DFT

Publicly available UKBA statistics on countries of origin of asylum applicants are not disaggregated by gender for all asylum seekers, so it is not possible to identify from where women have come across all applications. However, information is available on the top fifteen countries of origin of women put into the DFT procedure in 2007 and 2008.

Table 1: Countries of origin of women placed into DFT 2007 and 2008 in order of numbers

Top 15 Countries of Origin Women DFT 2007⁸⁹	Top 15 Countries of Origin Women DFT 2008⁹⁰
Nigeria	China
Pakistan	Nigeria
China	Pakistan
Sri Lanka	Kenya
Jamaica	Jamaica
Cameroon	Uganda
India	South Africa
Uganda	Sri Lanka
Kenya	Malawi
Ghana	India
Turkey	Turkey
Gambia	Ghana
Malawi	Iran
Dem. Rep. of Congo	Gambia
Sierra Leone	Sierra Leone

⁸⁸Home Office, “DFT & DNSA Intake Selection,” AIU instruction, para.5.1.

⁸⁹Home Office, “Asylum statistics United Kingdom 2007,” Home Office Statistical Bulletin, 21st August 2008, p. 72.

⁹⁰Information compiled from the 4 Quarterly Statistical Summaries for 2008, “Control of Immigration,” available at <http://www.homeoffice.gov.uk/rds/immigration-asylum-stats.html> (accessed September 30, 2009).

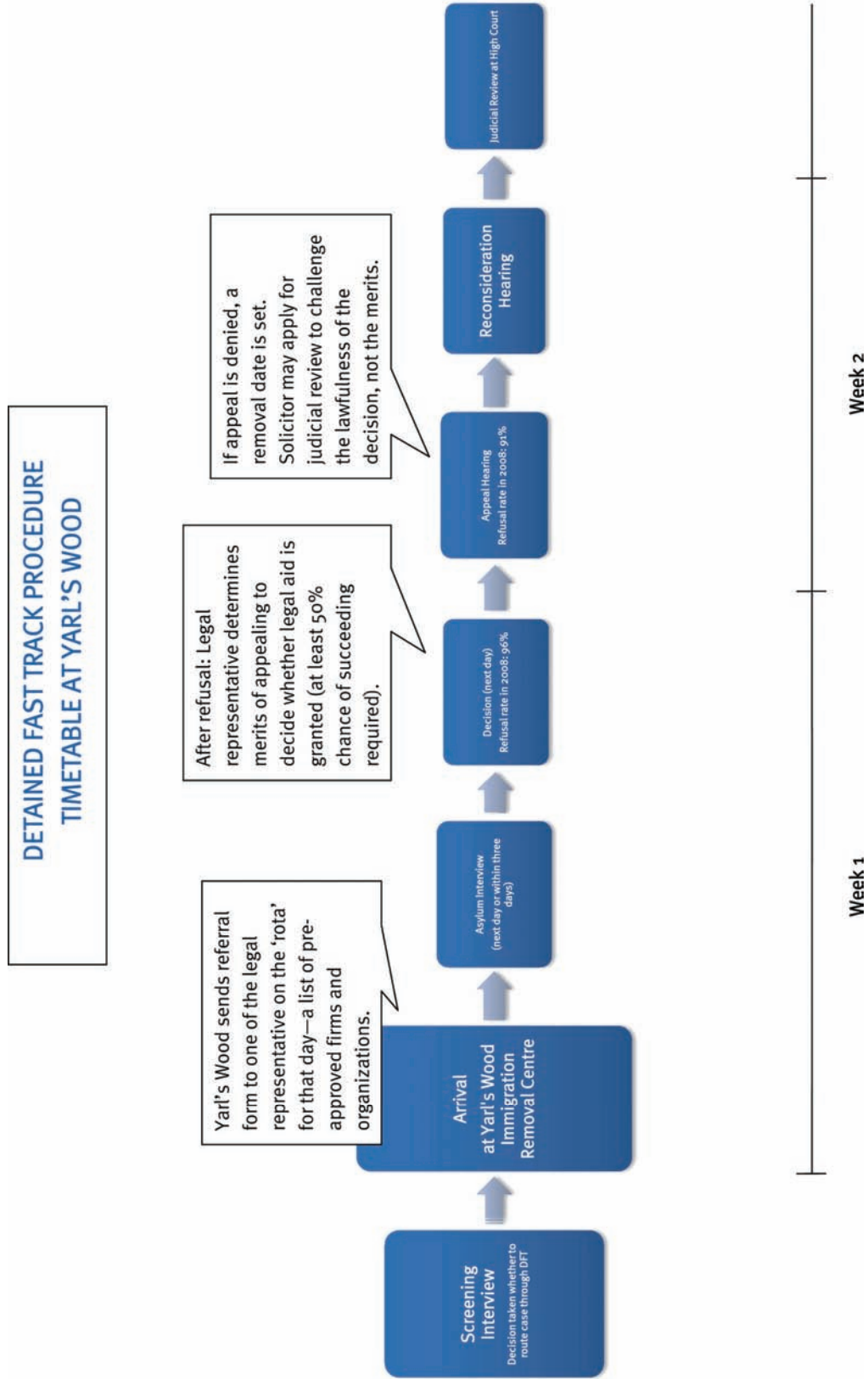
Many of these countries have seriously flawed records when it comes to women's rights. Some such as the Democratic Republic of Congo have well documented and severe problems with sexual violence during conflict.⁹¹ Others, such as Iran and Pakistan, have laws that profoundly discriminate against women and provide limited protection from harmful traditional practices and other forms of violence.⁹² Others still are countries of origin for trafficking for sexual exploitation and other forms of slavery to the UK, such as Nigeria and Uganda.⁹³

⁹¹See example: Human Rights Watch, "Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the Democratic Republic of Congo," July 16, 2009, <http://www.hrw.org/en/reports/2009/07/16/soldiers-who-rape-commanders-who-condone-o> (accessed September 30, 2009) and Human Rights Watch, *We'll Kill You If You Cry. Sexual Violence in the Sierra Leone Conflict*, January 16, 2003, <http://www.hrw.org/en/reports/2003/01/16/well-kill-you-if-you-cry> (accessed September 30, 2009).

⁹²See example: Ali Dayan Hassan, "Living with the Taliban," *Guardian Online*, April 29, 2009, <http://www.guardian.co.uk/commentisfree/2009/apr/29/pakistan-taliban-human-rights-india> (accessed September 30, 2009).

⁹³Eaves, the Poppy Project, "Of Human Bondage. Trafficking in women and contemporary forms of slavery in the UK", June 2009, p. 23, http://www.eaves4women.co.uk/Documents/Recent_Reports/Of_Human_Bondage_trafficking_in_women_and_contemporary_slavery_in_the_UK.pdf (accessed October 1, 2009).

Table 2: Overview of the Detained Fast Track procedure



V. Failure to Protect—the Pitfalls of the DFT System for Women

The worst thing is that after all the suffering, the trauma, the detention in my home country, the pain, and finally the escape, I come for safety, but was put in detention like a criminal. I am not a criminal, criminals did things to me.

— Alicia B., a torture and rape survivor from Cameroon, June 8, 2009.

Speedier decision making must be balanced against the UK’s obligations under international human rights and refugee law.⁹⁴ States are entitled to control their borders, but they are obligated to ensure that individuals in need of international protection have access to fair refugee status determination procedures. In other words, asylum seekers have a fundamental right to a full and fair consideration of their claims.⁹⁵

Liam Byrne MP, then Minister of State for Borders and Immigration, wrote in 2007: “The DFT has a focus on high quality decision-making, with access to high quality legal advice through a panel of duty solicitors.”⁹⁶ Unfortunately however, in its quest to rapidly process certain asylum applications, the UK has sacrificed fairness for supposed efficiency. Human Rights Watch’s research suggests that the safeguards that are in place to prevent the detention of vulnerable persons and to grant protection to those who need it are neither sufficient nor are being properly followed. As a result, women’s human rights to protection and nonrefoulement (which prohibits the UK from returning refugees to countries where they have a well-founded fear of persecution) are at risk of being violated.

Since the DFT procedure for women was introduced in 2005, 2,055 women have been routed into it.⁹⁷ The percentage of claimants recognized as refugees in the fast track system is drastically lower than those whose applications are processed through the standard asylum procedure (where most are also rejected.) In the DFT procedure in 2008, four percent of the 515 women held in Yarl’s Wood in 2008 were granted asylum in first instance. Only nine

⁹⁴Sharon Oakley, “Accelerated Procedures for Asylum in the European Union Fairness Versus Efficiency,” *Sussex Migration Working Paper* no. 43, April 2007, p.5.

⁹⁵See also Human Rights Watch, “Fleeting Refuge. The Triumph of Efficiency over Protection in Dutch Asylum Policy,” April 8, 2003, <http://www.hrw.org/en/reports/2003/04/08/fleeting-refuge-o> (accessed September 30, 2009).

⁹⁶Joint Committee on Human Rights, sixteenth report, Annex 4, Letter dated 10 May 2007 regarding the implementation of judgments of the European Court of Human Rights, <http://www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/128/12814.htm> (accessed September 30, 2009).

⁹⁷ Home Office, Research Development Statistic, “Immigration and Asylum Statistics,” <http://www.homeoffice.gov.uk/rds/immigration-asylum-stats.html> (accessed November 11, 2009).

percent of those who appealed were successful.⁹⁸ In the first quarter of 2009, three percent of claimants at Yarl's Wood were recognized as refugees at first instance.⁹⁹

Around 26 percent of the women in the Detained Fast Track procedure were taken out of the procedure (and detention) in 2008 and routed into the standard asylum procedure.¹⁰⁰ While there are no publicly available records of why cases are taken out of fast track, the figures suggest that in 2008 about one quarter of cases were judged to have been wrongfully screened and inappropriately placed into DFT. According to UKBA, this reassessment is usually done by the caseworker after the initial asylum interview if they consider the claim to be too complex or the claimant not suitable for detention.¹⁰¹

The high refusal rates and the fact that a quarter of women in DFT are routed back into the standard asylum procedure are interpreted differently by the Home Office and by legal practitioners and NGOs. The Home Office claims that the statistics show the fast track system is working.¹⁰² It claims that "the fact the AIT [Asylum and Immigration Tribunal] generally up-holds the initial decision does indicate that the case owner had made the correct decision in the first instance".¹⁰³ According to the UKBA, the fact that case owners are identifying cases to be taken out of fast track means that the safeguards against incorrect processing of claims are working.¹⁰⁴

UNHCR, NGOs working with persons passing through the DFT system and solicitors providing legal representation have a different view. Solicitors and NGOs, for example, claim that women are taken out of fast track because of action by a solicitor and a gathering of evidence by NGOs rather than proactive reassessment by caseworkers.¹⁰⁵ UNHCR has expressed concern that structural features of DFT may affect quality of decisions:

Whilst noting some examples of good practice, the findings from the QI [Quality Initiative] audit indicate that DFT decisions often fail to engage with the individual merits of the claim. Decisions made within the DFT often incorrectly apply and inaccurately engage with refugee law concepts and

⁹⁸Home Office, "Asylum statistics United Kingdom 2008," Home Office Statistical Bulletin, September 14, 2009, table 2s.

⁹⁹Home Office, "Control of Immigration: Quarterly Statistical Summary, United Kingdom - First Quarter 2009", table 1.

¹⁰⁰Home Office, "Asylum statistics United Kingdom 2008," Home Office Statistical Bulletin, September 14, 2009, table 2s.

¹⁰¹Human Rights Watch interview, David Jull, Deputy Director Detained Fast Track & Third Country Unit, UK Border Agency, September 15, 2009.

¹⁰²Human Rights Watch interview, David Jull, Deputy Director Detained Fast Track & Third Country Unit, UK Border Agency, September 15, 2009.

¹⁰³Ibid.

¹⁰⁴Ibid.

¹⁰⁵See e.g. Human Rights Watch email correspondence with BID, October 29, 2009.

adopt an erroneous structural approach to asylum decision making. UNHCR is concerned that the speed of the DFT process may inhibit the ability of case owners to produce quality decisions.¹⁰⁶

Human Rights Watch’s research encountered a lack of serious investigation of claims at the initial asylum decision stage as well as to some extent at appeal. Our view is that there are sufficient flaws within the system to mean that high refusal rates are likely to be a consequence of the speed and structure of the process and weaknesses of gender awareness impacting on applicants being able to make claims effectively, as well as the low merit of some cases.

Others also claim that the numbers refusals do not illustrate the success of the procedure but simply show how easily asylum seekers are refused in DFT. One solicitor who works on fast-tracked cases described it as follows:

I have seen many cases [in DFT] where the woman’s story was simply ignored and dismissed because the Home Office did not believe her, based on assumptions. The figures show a lack of interest in these women, not a successful asylum system.¹⁰⁷

Speed and quality of decision making, especially in the complex field of refugee law and protection, are rarely a matching pair. As said by the Council of Europe’s Commissioner for Human Rights, “Accelerated procedures that may lead to a reduction in quality of examination of asylum claims and of decision-making may not be regarded as efficient.”¹⁰⁸

Accelerated procedures should only be applied to cases within the scope of UNHCR’s EXCOM Conclusion No. 30 which are “clearly abusive” or “manifestly unfounded”, and preferably not in detention.¹⁰⁹ The Council of Europe’s Parliamentary Assembly recommends: “[L]imit the use of accelerated procedures to cases which are clearly well founded (i.e. those whose claims are quickly deemed to merit refugee status), allowing a swift positive decision on the

¹⁰⁶UNHCR, “Quality Initiative Project, Fifth Report to the Minister,” March 2008, p. 8.

¹⁰⁷Human Rights Watch interview with solicitor (name withheld), May 22, 2009.

¹⁰⁸Council of Europe: Commissioner for Human Rights, Memorandum by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, 18 September 2008, para. 19.

¹⁰⁹UNHCR Executive Committee Conclusion No. 30 (XXXIV), “The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum”, 1983 and UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers (February 1999) and UNHCR ExCom Conclusion No. 44 (XXXVII) of 1986 on the detention of refugees and asylum seekers.

asylum application, or those cases which are clearly abusive or manifestly unfounded.”¹¹⁰
The fast track procedure in the UK is being used for a far broader range of cases.

Case History: Lisa O. from Kenya

Lisa O. is a 23-year-old woman from Kenya who lived with her grandmother in a village in Siaya, a district in the west of Kenya. In violence following the 2007 elections, a gang terrorizing their village came to her grandmother’s house and ordered them to leave.

Lisa says she went to the police but did not get any help. Instead, they told her to go to Nairobi. There, in the displacement camp where she lived, she met a man who promised to help her get a job and a place to live. Instead he stole her documents and possessions, imprisoned her in his house, raped her repeatedly, and threatened to kill her if she left. He was a member of the Mungiki group¹¹¹ and made it clear that he expected her to be circumcised.

This man decided to leave Kenya when a conflict arose between him and other group members and he forced Lisa to go with him. He controlled the journey and her belongings, and in May 2009 she arrived in the UK with him. He then disappeared, leaving her destitute.

Disregarding the complexity of her case, her application for asylum was deemed to be a straightforward case and she was placed into the DFT. Her application was refused at all stages, and her final request for judicial review was pending at the time of writing (November 2009). She told Human Rights Watch:

They didn't give me a reason, just that my case will be quick. They wrote everything down from the interview but made many mistakes, they got my town name wrong, my religion, and even said South Africa instead of Kenya when they refused me. They think I didn't tell them the truth, said I should have gone to the police [in Nairobi], but I was scared and couldn't leave [the man I was with] ... It is so stressful to stay in detention, the fast track is so fast, there is no time to think. I told them the truth ... I cannot think about going back.¹¹²

¹¹⁰Council of Europe Parliamentary Assembly, Resolution 1471, “Accelerated asylum procedures in Council of Europe member states”, October 7, 2005, <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/tao5/ERES1471.htm> (accessed October 1, 2009), para. 8.1.3.

¹¹¹Mungiki is a politico-religious group and a banned criminal organization in Kenya.

¹¹²Human Rights Watch interview with Lisa O., July 28, 2009.

Case History: Fatima H. from Pakistan

Fatima H.'s story is another of the lack of protection by the state against abuse by non-state agents.

She is a 28-year-old woman from Pakistan who says she was a victim of sustained domestic violence by her husband, a wealthy and powerful figure in her region. He imprisoned her in her house, abused and attacked her because she did not become pregnant, or simply because he was in a bad mood. She was terrified to go to the police because she was aware that her husband was close to them.

She eventually managed to escape with the help of an “agent” but when she arrived in the UK, seeking protection, she was placed in the DFT procedure. Her claim was refused because of her apparent lack of credibility and because she “could seek gender specific protection at a women only police station” in Pakistan.¹¹³ However, there are only a few of these stations in Pakistan and these lack resources and training (see Quality and Use of Country Information below). Moreover, there are none in the region where she comes from. Fatima was scheduled to be removed to Pakistan and on October 5, 2009. She wrote to Human Rights Watch just before that:

If I go back, my husband and my family kill me. No one to collect me on airport, and you know in Pakistan women are not secure...If there [is] in this world a little bit of humanity or you can say human rights, please protect me from them. If no then allow me to kill myself as a right of human who have nothing in this world, not a little place where I live safe.¹¹⁴

Screening: Putting Women into DFT

UKBA policy is crystal clear: torture victims are categorically unsuitable for inclusion in the DFT. However, in practice significant numbers of torture victims—including many women who have survived horrendous sexual abuse—are winding up in there. We know this because our doctors play a key role in documenting evidence of their abuse.

— Sonya Sceats, the Medical Foundation for the Care of Victims of Torture, February 10, 2010.

¹¹³Reasons for refusal letter for [Fatima H.], June 29, 2009, p. 7.

¹¹⁴Letter from Fatima H., from Yarl's Wood Removal Center, to Human Rights Watch, September 24, 2009.

Even though technically it precedes entry into the DFT system, the initial screening interview marks the start of procedural weaknesses in fast-track. The screening interview takes place either when entering the country or at the asylum screening unit in Croydon.¹¹⁵ As already indicated elsewhere in this report, the initial interview is not intended to elicit detailed information about the validity of the claim, but to obtain basic information about the applicant. However, it is at this point of the process that a UKBA officer takes a decision on how an asylum claim will be processed, including whether a claim is suitable for the detained fast track procedure.

As the Immigration Law Practitioners' Association has stated, "it is a mystery of the fast track process how the straightforwardness of claims can be accurately assessed when the screening interview elicits no or virtually no information about the substance of the claim."¹¹⁶ In truly Kafkaesque fashion, the information needed to assess suitability of a case for fast track is only available at the asylum interview, which takes place after the woman is already in the DFT procedure.

If an asylum seeker does not immediately provide testimony or evidence to support her claim, she can be placed into detention without the full extent of her claim being known. Yet she is not asked to provide this evidence. In cases that require material evidence such as doctor's reports or expert testimony, most refugees are not able to gather such information before they arrive in the UK (and putting her into detention makes gathering such evidence more difficult, see below.) UNHCR has stated that, "Often ... an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule."¹¹⁷

Human Rights Watch encountered cases that could and should have been identified as complex at the screening interview, but that were still placed into fast track. In these cases, UKBA ignored their own Gender Guidelines as well as their intake instructions. Our research suggests that the assessment of whether a case can be decided quickly is often simplistic and ineffective in identifying specific gender-related cases that do not belong in DFT. The referral mechanism is not robust enough to ensure complex cases are kept out.¹¹⁸

¹¹⁵UKBA, "Screening Process Overview," <http://www.ukba.homeoffice.gov.uk/asylum/process/processoverview/screening/> (accessed October 5, 2009).

¹¹⁶Immigration Law Practitioners' Association Training Pack, "Fast Track asylum determination procedures: how best to represent your clients," November 2005, para. 38.

¹¹⁷UNHCR, "Handbook on Procedures and Criteria for Determining Refugee Status Geneva," January 1988, para. 196.

¹¹⁸As also concluded by the Home Office, NAM Quality Team, "Yarlswood Detained Fast track Compliance with the Gender API," August 2006.

Omar B. is a transgender person (female to male, not biologically male) from Pakistan, who was placed into the DFT and eventually spent four-and-a-half months in detention.¹¹⁹ At the screening interview at the asylum screening center in Croydon, he identified himself as a lesbian because his appointed solicitor told him that was what “was wrong with him”.¹²⁰ A medical examination concluded that he was female. Omar told Human Rights Watch: “I had no idea what was happening in my body, all I knew was that I was in love with a girl and that I felt like a boy and man my whole life”.¹²¹

Disregarding his confused sexual identity, the threat of the father of his girlfriend to kill him, as well as the fact that he had already been severely assaulted by the father and abandoned by his own family, his case was deemed straightforward and suitable for fast track.¹²² That this was an inappropriate referral as well as, subsequently, an incorrect refusal of his asylum claim was confirmed by the High Court in August 2009 in a judicial review of the case. Judge Mark Ockelton indicated that he had “real difficulty” in understanding why the Home Office immigration authorities were still defending their decisions to refer Omar’s case to fast track and to refuse the asylum claim, despite “strong evidence” in the asylum seeker’s favor.¹²³ A fresh claim was made and he was eventually granted asylum in August 2009.

Laura A. from Sierra Leone said she experienced serious gender-related abuses in combination with severely traumatizing events, including witnessing her father’s beheading, being raped several times, being imprisoned, being forced to have an abortion by having her stomach cut open, and being trafficked into the UK.¹²⁴ None of these issues were identified during the screening interview, and she was placed into fast track. Laura A. told us “the screening officer at the center in Liverpool was aggressive and said ‘why do you come to this country that doesn’t want you?’ and I was told I was a liar.”¹²⁵ In this instance, after significant interventions by NGOs the case owner recognized that Laura was incorrectly in DFT and transferred her out of fast track. Eventually she was given refugee status.

One of the situations where an officer is clearly required by the DFT intake instructions to consider the claimant’s case in the general procedure is when it is foreseeable that

¹¹⁹Human Rights Watch interview with Omar B., June 8 2009, London. The case description in his reasons for refusal letter, 14 December 2007.

¹²⁰Human Rights Watch interview with Omar B., June 8 2009.

¹²¹Human Rights Watch interview with Omar B., June 8 2009, London.

¹²²Reasons for refusal letter, [Omar B.], 14 December 2007.

¹²³Worthing Herald, August 5, 2009. Human Rights Watch email communication with Omar B.’s solicitor, August 6, 2009.

¹²⁴The transcript of [Laura A.’s] asylum interview at Yarl’s Wood, June 19 2009.

¹²⁵Human Rights Watch interview with Laura A., July 2 2009.

translations are required in respect of documents presented by an applicant.¹²⁶ Even this requirement is not always adhered to in practice.

Aabida M. claimed asylum based on a threat by her family in Algeria after they found out about her relationship with a man who was not her husband.¹²⁷ Her sister sent her a letter in Arabic telling her that she should not come back as her family would hurt or kill her.¹²⁸ She showed this letter to officials as soon as she claimed asylum in Croydon. The officer told her to “leave the letter for now” but to show it at her asylum interview.

At her asylum interview at Yarl’s Wood, she again presented the letter and was told they could not accept it because it was in Arabic. When she subsequently referred to the letter at her appeal hearing, the judge said she should have presented it at her interviews. Aabida wrote about this to her caseworker: “I told about my letter first time, not the last minute as you said in court.”¹²⁹ Human Rights Watch is in possession of several requests by Aabida M. requesting a translation of this crucial letter, but at no stage was the process adjourned to allow it to be translated.¹³⁰ She stated that, “Fast track is just a factory for sending people away ... I think I did everything right, even without lawyer, but they do not care ... I am so scared”.¹³¹ Aabida is certain her family will find her and harm her if she is forced to return to Algeria. The morning after Aabida M. told us this, she was taken out of Yarl’s Wood to an airport and put on a flight to Algeria. Human Rights Watch has not been able to contact her since she was deported.

The UK has recently ratified the Council of Europe Convention against Trafficking in Human Beings.¹³² The then Home Secretary Jacqui Smith stated on the day of ratification: “Ratifying this convention helps us [to turn] the tables on traffickers and providing victims with protection, support and a voice in the criminal justice system.”¹³³ Yet trafficked women are still frequently found among those in the Detained Fast Track procedure. The Poppy Project, an organization that provides expert evidence and housing for women who have been

¹²⁶ Home Office, “DFT & DNSA Intake Selection,” AIU instruction, para.2.2.3.

¹²⁷ Human Rights Watch interview with Aabida M., Yarl’s Wood removal center, June 17 2009.

¹²⁸ Human Rights Watch was not able to see the letter itself, because it was with her solicitor, but we know about the content through the refusal letter and appeal hearings.

¹²⁹ Letter by Aabida M. to her caseworker in Yarl’s Wood, dated April 14, 2009.

¹³⁰ File of Aabida M. provided by herself to Human Rights Watch, including Information Request to UK Border Agency to translate a letter into English, April 6, 2009.

¹³¹ Human Rights Watch interview with Aabida M., June 18 2009.

¹³² Council of Europe, “Convention on Action against Trafficking in Human Beings and its Explanatory Report,” Council of Europe Treaty Series - No. 197, Warsaw, May 16, 2005, ratified by the United Kingdom December 17, 2008.

¹³³ Home Office Press Release, “Government ratifies European convention against human trafficking,” <http://press.homeoffice.gov.uk/press-releases/government-ratifies-convention> (accessed October 4, 2009), December 17, 2008.

trafficked into prostitution, manages to get some women who have been sex trafficked removed from the fast track system, but no specific organization is funded to provide evidence on behalf of victims of other forms of trafficking, such as for domestic work or forced labor.

In May 2009 the House of Commons Home Affairs Committee raised its own concerns about women who are trafficked and the negative consequences of ending up in the fast track system:

We are concerned that the Government's laudable aims of deterring fraudulent applications for asylum and speeding up the decision processes for genuine asylum seekers may disadvantage the often severely traumatised victims of trafficking.... Removing people from the Fast Track does not mean that their cases would be examined less rigorously; it just means that there would be more time in which evidence of trafficking might be adduced.¹³⁴

Xiuxiu L., a 27-year-old woman from China, said she was trafficked into the UK and immediately claimed asylum upon arrival, but could not provide evidence of her abuse and trafficking.¹³⁵ When Xiuxiu L. was 17, she said, she was arrested because her father was accused of selling drugs. She was held at a police station for a week, and then handed to a man she didn't know. She was taken to a bar and told to have sex with customers. She was held as a sex slave and when she refused to have sex, she was severely beaten. She was sold to three other bars over a period of five years. Finally, she befriended a customer who saw her bruises and managed to “help” her escape. He brought her to an airport and gave her a Chinese passport. She left China and travelled for 16 months, always accompanied by different people. Upon arrival in London she claimed asylum. She barely spoke English and was placed into detained fast track because her claim of trafficking and being held as a sex slave were not believed without documentation.¹³⁶

Sensitivity to gender-related issues is important in identifying vulnerable cases and keeping complex gender-related claims out of the DFT, and must therefore be integrated into any intake criteria. This sensitivity is sometimes flagrantly absent. As one NGO explained to Human Rights Watch:

¹³⁴House of Commons Home Affairs Committee, “The Trade in Human Beings: Human Trafficking in the UK”, Sixth Report, May 6, 2009, <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmhaff/23/2302.htm> (accessed October 4, 2009), para. 106.

¹³⁵Determination of Asylum Claim, [Xiuxiu L.], December 11, 2008 and Human Rights Watch interview with her solicitor on May 21, 2009.

¹³⁶Ibid.

The decision to detain is made before the state knows whether the woman was a victim of sexual violence, because those questions aren't asked. So the woman has to present on her own initiative expert evidence that she has been tortured or abused, which of course she isn't able to do most of the time.¹³⁷

Fanita M. from Cameroon claims she left the country because she had lost a daughter to an infection after the child underwent female genital mutilation (FGM), at the insistence of Fanita M.'s husband¹³⁸. She desperately wanted to protect her youngest daughter from the same fate and so she fled from Cameroon with the child. She was placed into fast track because she was educated and was therefore seen as able to move to another part of Cameroon, find work and provide for herself and her daughter. Her husband, however, works for the police and so would be easily able to locate her should she return to Cameroon.

She was eventually granted asylum after appeal, but she was initially considered a quick refusal case. The difficulties she would face as a single woman living apart from her husband having refused to allow her daughter to undergo FGM appear to have been completely disregarded. Fanita M. spent more than a month in detention with her young daughter.¹³⁹ Her solicitor said that in her experience:

[W]hen women are not verbal they are considered liars and not granted asylum. When they are educated and verbal they should be able to live by themselves no matter what the circumstances, and are also refused asylum initially.¹⁴⁰

Solicitors and other practitioners told Human Rights Watch that it is not at all clear what the criteria for placing someone into the Detained Fast Track procedure actually are. The referral form only gives "case can be decided quickly" as a reason. The most commonly used reasons according to solicitors (who hear this from clients or from immigration officers) are the perceived lack of credibility of the person, whether bed space is available at immigration detention centers, the country of origin, and whether the officer thinks the claimant could

¹³⁷Human Rights Watch interview with Amanda Shah, Assistant Director Policy, Bail for Immigration Detainees, May 20, 2009.

¹³⁸FGM is common practice in certain areas of Cameroon. For an overview, see GTZ, "Female Genital Mutilation in Cameroon," November 2007, <http://www.gtz.de/de/dokumente/en-fgm-countries-cameroon.pdf> (accessed October 5, 2009).

¹³⁹Case from interview with Head of Immigration at Lawrence Lupin solicitors, May 21, 2009, London.

¹⁴⁰Human Rights Watch interview with Head of Immigration at Lawrence Lupin solicitors, May 21, 2009, London.

safely relocate somewhere else in her country of origin (in other words, persecution can be avoided by exercising the so-called “internal flight alternative”).¹⁴¹

The fact of the matter is, as UNHCR has reported to the government, that many unsuitable cases are being routed to the Detained Fast Track procedure due to the lack of clear guidance as to which cases may be “decided quickly” and are therefore suitable for an accelerated process, combined with the lack of sufficient information to be able to assess the complexity of a claim.¹⁴²

UNHCR considers that the screening of asylum applicants ... [is] often not operating effectively to identify complex claims and vulnerable applicants. As a result, UNHCR is concerned that inappropriate cases are being routed to and remaining within the DFT.¹⁴³

As an NGO that works with people in the detained fast track put it to Human Rights Watch like this:

First, a decision is taken that someone’s case is simple, and frankly that means ‘easily refused’, before the state knows whether there was gender based violence. Women are supposed to tell an officer straight away, but often aren’t capable to because of shame, fear. Then in the system, when they tell the caseworker about their experience they are often not believed if they haven’t said this in the screening interview. So these figures just show that women are not believed, it does not show they do not have a valid claim.¹⁴⁴

Even the Home Office’s own New Asylum Model quality team concluded in 2006 that the fast track mechanism was not sufficiently implementing its own gender guidelines.¹⁴⁵ In an evaluation of the implementation of the gender guidelines, it concluded that:

¹⁴¹Human Rights Watch interviews with practitioners from Refugee and Migrant Justice, Wilson and Co, Doughty Street Chambers, Lawrence Lupin Solicitors and Bail for Immigration Detainees (BID), June-July 2009.

¹⁴²UNHCR, “Quality Initiative Project, Fifth Report to the Minister”, March 2008, p. 22-23.

¹⁴³Human Rights Watch interviews with practitioners from Refugee and Migrant Justice, Wilson and Co, Doughty Street Chambers, Lawrence Lupin Solicitors and Bail for Immigration Detainees (BID), June-July 2009.

¹⁴⁴Human Rights Watch interviews with practitioners from Refugee and Migrant Justice, Wilson and Co, Doughty Street Chambers, Lawrence Lupin Solicitors and Bail for Immigration Detainees (BID), June-July 2009.

¹⁴⁵Home Office, NAM Quality Team, “Yarl’s Wood Detained Fast track Compliance with the Gender API,” August 2006.

There does ... appear to have been a problem with the referral mechanism to the detained fast track, at least in relation to the early identification of gender-related claims. The mechanism does not appear to be sufficiently robust or substantive to enable it properly to identify complex gender-related claims.¹⁴⁶

So while the Home Office itself already identified problems with referral of gender-related persecution claims four years ago, the procedure is still routinely used to process such claims, often resulting in violations of women's right to a full and fair asylum procedure.

The discretion of immigration officials should be guided by specific and precise legislation to make sure no complex cases or vulnerable groups are routed through the fast track. The Council of Europe's Commissioner for Human Rights noted the failure to clarify the criteria, stating that:

It is of concern that the criteria and details of asylum seekers' DFT are not contained in law (primary or secondary legislation) but in an internal, administrative manual of immigration officers.... In addition, the criteria under which the aforementioned manual allows administrative detention are not characterized by precision, a fact that may lead to an excessive use by immigration officers of their discretion to detain asylum seekers.¹⁴⁷

Assessment of credibility

Assessment of an applicant's credibility is, of course, a critical part of the functioning of the entire asylum system, from the initial screening interview onwards. UNHCR has repeatedly highlighted concerns regarding the way in which UK decision makers assess credibility and establish the facts in asylum claims.¹⁴⁸ A clear understanding of gender and cultural differences must be built into the system. An accurate and gender sensitive assessment of credibility is crucially important for the determination of asylum cases. Women may react differently to questioning than men and differently according to their cultural backgrounds. There can be a misunderstanding of body language, such as looking away during an

¹⁴⁶Home Office, NAM Quality Team, "Yarl's Wood Detained Fast track Compliance with the Gender API," August 2006, p. 14.

¹⁴⁷Council of Europe: Commissioner for Human Rights, Memorandum by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, following his visits to the United Kingdom on 5-8 February and 31 March-2 April 2008. Issues reviewed: Asylum and immigration, 18 September 2008, CommDH (2008)23, <http://www.unhcr.org/refworld/docid/48d351c42.html> (accessed October 1, 2009), paras. 21-23.

¹⁴⁸UNHCR, "Quality Initiative Project, Second Report to the Minister", Section 2.2, UNHCR, "Quality Initiative Project, Third Report to the Minister", March 2006, section 2.3, UNHCR, "Quality Initiative Project, Fourth Report to the Minister", January 2007, section 2.2, UNHCR, "Quality Initiative Project, Fifth Report to the Minister", March 2008, section 2.3.

interview, or a failure to make eye contact, which in some countries is considered a sign of respect from women, rather than evasiveness. Despite guidelines, practice falls short.

In the DFT procedure, there is little time to assess the overall credibility of an applicant. Credibility is particularly difficult to establish if the assessment is based on a screening interview that does not include substantive questions. If a woman's claim is not seriously investigated because of an initial negative assessment of her credibility during the screening interview, dismissing the entire claim violates her right to a fair asylum procedure.¹⁴⁹ A credibility assessment generally requires an examination of the facts and accelerated procedures militate against this.¹⁵⁰

The inability to openly discuss sexual violence is often used to challenge the overall credibility of an applicant. This is recognized by the Home Office itself, in its guidelines on "Gender Issues in the Asylum Claim", which states:

If an applicant does not immediately disclose information relating to her claim, this should not automatically count against her. There may be a number of reasons why a woman may be reluctant to disclose information, for example feelings of guilt, shame, concerns about family dishonour ... Demeanour alone is an unreliable guide to credibility.¹⁵¹

However, Human Rights Watch has come across several cases where this provision was disregarded. Jane S. was told her accounts of being raped and the killing of her family in Sierra Leone was not believed because "It is not plausible that you would not remember these dates when it was a significant date in your motivation to leave".¹⁵² This was decided despite the UKBA Gender Guidelines which acknowledge that "women who have been sexually assaulted may suffer trauma. The symptoms of this include persistent fear ... and memory loss or distortion".¹⁵³

¹⁴⁹Sharon Oakley, "Accelerated Procedures for Asylum in the European Union Fairness Versus Efficiency," Sussex Migration Working Paper no. 43, April 2007.

¹⁵⁰UNHCR, Reflections by UNHCR on some of the issues raised in the Working Document prepared by the European Commission "Towards common standards on asylum procedures," May 4, 1999, p. 5.

¹⁵¹Asylum Policy Instruction (API), "Gender Issues in the Asylum Claim," October 2006, <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/genderissueintheasylum.pdf?view=Binary> (accessed October 5, 2009)

¹⁵²Reasons for Refusal letter for [Jane S.], provided by the Crossroads Women Center, August 14, 2009.

¹⁵³Asylum Policy Instruction (API), "Gender Issues in the Asylum Claim," p. 12.

Commonly assessments of credibility are based on the view of a caseworker or judge who has no particular expertise in assessing such cases nor of what would constitute rational or reasonable behavior in a given situation, including in cases dealing with gender based violence. Mesi C. from Malawi said she was raped by her uncle, but the case owner told her that her rape was fabricated, because “it is very strange that she did not tell anyone in her family about the rape by her uncle”.¹⁵⁴ Sexual violence and rape are often taboo subjects and can bring about feelings of shame. When perpetrated by a family member, the emotional and social complexity can be extreme. Women who have been subjected to sexual assault may be shunned by their community and family if they admit to this and therefore may not disclose it.¹⁵⁵ Indeed, this is recognized by UKBA in its own gender guidelines.¹⁵⁶

Shame and the emotional distance women create from their experiences have a detrimental impact on their ability to tell their story, which demonstrates the need for immigration procedures to be sensitive to these issues.¹⁵⁷ As Laura A. told us:

I was in shock, weak, but I should have told the man who told me I was lying, that if I would get my mother and sisters back I would happily leave ... I loved my old life, people came to my country [Sierra Leone] in the past you know ... I am a fighter, I am used to fight to live, but to be told ‘you faked your life’ is a little like death.¹⁵⁸

Barriers that inhibit women from telling their stories in their own words, a hostile environment, and the tendency to regard factors such as late disclosure, narrative inconsistency, and the lack of demonstrative emotion while recounting traumatic events as indications of a lack of credibility can seriously undermine women’s asylum cases.¹⁵⁹

In refusal letters, references are often made to the overall credibility of women claiming asylum, making general assumptions about their intentions. Yuan C. is a Chinese woman who said she was beaten and abused by her husband who also stole her passport and

¹⁵⁴Human Rights Watch interview with Mesi C., June 19, 2009.

¹⁵⁵D. Bögner and C. Brewin, “Impact of sexual violence on disclosure during Home Office interviews,” *British Journal of Psychiatry*, 191, p. 75.

¹⁵⁶Asylum Policy Instruction (API), “Gender Issues in the Asylum Claim”.

¹⁵⁷D. Bögner and C. Brewin, “Impact of sexual violence on disclosure during Home Office interviews,” *British Journal of Psychiatry*, 191, p. 75-81.

¹⁵⁸Human Rights Watch interview with Laura A., July 2, 2009.

¹⁵⁹ For an elaborate study into how rape victims are perceived in the asylum process: Helen Baillot, Sharon Cowan, and Vanessa E. Munro, “Seen but Not Heard? Parallels and Dissonances in the Treatment of Rape Narratives across the Asylum and Criminal Justice Contexts,” *Journal of Law and Society*, vol. 36, issue 2, pages 195 – 219.

threatened to report her to the police because she is a Falun Gong follower.¹⁶⁰ She was found in a brothel in the UK. Because she did not immediately report to UKBA (because, she alleges, she was forced to work as a prostitute) she was told in her refusal letter: “It is considered that your application is an exaggerated, opportunistic application.”¹⁶¹

The appeal ruling in relation to Fatima H. from Pakistan, whose story was described above, focused on her credibility and raised issues such as the cost of her taxi ride from Heathrow Airport into London. The judge did not believe her and, reasoning that “[i]mmigration judges are appointed because of their experience of life,” suggested that the fare should have been higher, despite the fact that he did not know to where she was taken.¹⁶² The appeal judgment further reads: “The Tribunal’s view is that the Appellant invented [her abuse] ... during the course of cross-examination to seek to pull the wool over the eyes of the Tribunal.”¹⁶³

Quality and use of country information

To assess an asylum claim, UKBA caseworkers and judges require access to sources of information on the country of origin of the claimant to verify elements of her claim. The quality of the country information, as well as how this information is used, is an important barometer of how seriously asylum claims are assessed. As this information often forms the basis of a refusal or acceptance of a woman’s claim, it must be sensitive to women’s rights issues in countries of origin. The UKBA officers who initially decide a claim are required to take several sources into account to check the accuracy of the asylum seeker and to reach a conclusion about the outcome of the claim. It is important, especially in the fast track procedure, that the decision maker has access to accurate and up to date information about the country of origin of the claimant.

Sources of Information

The UKBA Country of Origin Information (COI) Service produces several products that decision makers can use. Country of Origin Information reports are provided for the 20

¹⁶⁰Falun Gong is a Chinese spiritual movement, founded in 1992. An amalgamation of Buddhism, mysticism and traditional exercise regimes, it was outlawed by the Chinese government in 1999, and the country’s authorities have continued to crack down on its adherents. “Falun Gong,” *New York Times*, April 28, 2009, http://topics.nytimes.com/topics/reference/timestopics/organizations/f/falun_gong/index.html (accessed October 19, 2009).

¹⁶¹ Refusal letter for Yuan C., March 20, 2009.

¹⁶² Asylum and Immigration Tribunal, between [Fatima H.] and the Secretary of State for the Home Department, July 8, 2009, p. 5.

¹⁶³ Asylum and Immigration Tribunal, between [Fatima H.] and the Secretary of State for the Home Department, July 8, 2009.

countries which generate the majority of asylum claims in the UK.¹⁶⁴ These reports are summaries compiled from documents produced by a broad range of information sources. The reports are compiled entirely from material produced by external organizations and do not contain any UKBA opinion or policy. These reports are usually updated three times a year.

According to UKBA “Each report focuses on the main asylum and human rights issues in the country, but also provides background information on geography, economy, and history.”¹⁶⁵ For those countries that generate fewer asylum seekers to the UK, COI key documents are put together consisting of a brief country profile and an indexed list of other sources caseworkers can consult for information.¹⁶⁶ COI bulletins are also produced on an ad-hoc basis in response to emerging events.¹⁶⁷ Finally, the COI Service operates a rapid information request service, providing bespoke research responses, usually within one to two working days.¹⁶⁸

The body that is specifically mandated to check the content of the COI reports, the Independent Advisory Group on Country Information (formerly the Advisory Panel on Country Information), does not currently examine their use by officials nor look at other documents and sources used to refuse a claim.¹⁶⁹ The actual content of COI reports has improved under the advisory group’s scrutiny, but the use of information and additional sources remains problematic.

There is lack of information on specific women’s circumstances and status in their country of origin as discussed below. Although COI reports provide sections on issues relevant to the consideration of applications from women, most COI key documents rely upon users accessing original source material via the indexed lists of links. Human Rights Watch’s research encountered incorrect use of available information as well as the use of unreliable sources, such as websites and newspapers.

¹⁶⁴ Currently the list is: Afghanistan, Algeria, Bangladesh, Burma, Cameroon, China, Democratic Republic of Congo, Eritrea, Ethiopia, India, Iran, Iraq, Jamaica, Korea, Kuwait, Nigeria, Pakistan, Occupied Territories of Palestine, Somalia, Sri Lanka, Sudan, Syria, Turkey, Vietnam, Zimbabwe.

¹⁶⁵ Home Office, Country of Origin reports, http://homeoffice.gov.uk/rds/country_reports.html (accessed August 3, 2009).

¹⁶⁶ All COIS Key Documents can be accessed here http://www.homeoffice.gov.uk/rds/country_reports.html (accessed August 3, 2009).

¹⁶⁷ Home Office, Country of Origins reports, http://www.homeoffice.gov.uk/rds/country_reports.html (accessed August 3, 2009).

¹⁶⁸ Human Rights Watch Interview with Nick Swift, Head of the Country of Origin Information Service, July 2, 2009.

¹⁶⁹ The website of the Independent Advisory Group on Country Information: <http://www.ociukba.homeoffice.gov.uk/independent-advisory-group/> (accessed November 6, 2009).

Additional materials used but not monitored

Materials that are sometimes incorrectly used as country of origin information are “Operational Guidance Notes” (OGNs), which are subjective and restrictive views on asylum claims from a certain country from one of the parties in this case—UKBA. Officially:

Operational guidance notes (OGN) provide a brief summary of the general, political and human rights situation in the country and describe common types of claim. They aim to provide clear guidance on whether the main types of claim are likely to justify the grant of asylum, humanitarian protection or discretionary leave.¹⁷⁰

A skeleton argument is the written summary of a legal argument prepared by a lawyer for a case. In UK asylum and immigration cases, skeleton arguments are given to the judge by the lawyer for the appellant and UKBA. OGNs are effectively the skeleton arguments of UKBA.

Even though they are supposed to be “subjective” policy documents, the OGNs are often used as “objective” information.¹⁷¹ They should be used in conjunction with COI information. However, case owners have used the OGNs instead of more detailed country information as the basis for their refusal of asylum cases.¹⁷²

This is a particular hazard in fast tracked cases. First, because there is less time for case owners to assess a case, there might be understandable temptation to look at the simple, straightforward and instructive operational guidance notes.

Secondly, the top 20 countries that produce the most asylum claims do not wholly overlap with the top 20 countries in the fast track system. This means that for many fast track cases, there is no up-to-date COI report and case owners have to rely upon the less user-friendly COI key documents. For example, Kenya, Uganda, South Africa, Malawi, and Sierra Leone are countries of origin of many women in the fast track system and for which there is no available recent COI report.

¹⁷⁰ Home Office UKBA, “Country Specific Asylum Policy OGNs,” <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/> (accessed July 29, 2009).

¹⁷¹ Immigration Advisory Service, “The Use of Country of Origin Information in Refugee Status Determination: Critical Perspectives,” May 2009, p. 19.

¹⁷² Ibid and Home Office Research Study 271, “Country of Origin Information: a user and content evaluation, September 2003.

The quality of information in the narrative section of COI key documents is often not adequate because women and users have to access original source material via the indexed list of links. Kenya is one example of a country where Human Rights Watch believes too little information on women's rights is provided in the narrative section. The narrative section of the latest COI key documents list for Kenya (April 2008) mentions rape, but not rape by government officials, and only focuses on the adoption of the Sexual Offenses Act, which criminalized rape, as a positive step.¹⁷³ The Operational Guidance Note of September 2008 only addresses claims based on fear of female genital mutilation (FGM) and concludes that the government provides sufficient protection.¹⁷⁴ It does not mention rape at all. Human Rights Watch has recently reported incidents of rape by government forces, for example during the joint police-military operation aimed at disarming warring militias in the Mandera region of northeastern Kenya launched on October 25, 2008.¹⁷⁵

Jamaica is an example of a country on which the UKBA's OGN is seriously limited, but where the COI report is more accurate when it concerns women. The operational guidance note states "There is no evidence that lesbians generally face serious ill-treatment in Jamaica and in the absence of evidence to the contrary may be certified as clearly unfounded."¹⁷⁶ However, Human Rights Watch has found that women who are or are perceived to be lesbians are at a great risk of rape, as they may be targeted for sexual violence based on both their gender and sexual orientation. We reported a lack of protection from the police when such violence is perpetrated by non-state actors.¹⁷⁷ Completely ignored in the OGN, this is reflected in the country of information report.¹⁷⁸ However, lesbians from Jamaica have been placed into the fast track system.¹⁷⁹

¹⁷³ Home Office, "Country of Origin Information Key Documents, Kenya," April 2008, http://www.homeoffice.gov.uk/rds/country_reports.html (accessed October 4, 2009), p. 18.

¹⁷⁴ UK Border Agency, "Operational Guidance Note: Kenya", September 2008, <http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/kenya.pdf?view=Binary> (accessed October 4, 2009), section 3.6.

¹⁷⁵ See most recently: Human Rights Watch, *Bring the Gun or You'll Die: Torture, Rape, and Other Serious Human Rights Violations by Kenyan Security Forces in the Mandera Triangle*, June 29, 2009, <http://www.hrw.org/en/node/83969/section/1> (accessed October 4, 2009) and Human Rights Watch, *All the Men Have Gone: War Crimes in Kenya's Mt. Elgon Conflict*, July 2008, http://www.hrw.org/sites/default/files/reports/kenya0708_1.pdf (accessed February 10, 2010).

¹⁷⁶ UK Border Agency, "Operational Guidance Note: Jamaica", June 2009, <http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/jamaica.pdf?view=Binary> (accessed October 4, 2009), p. 8.

¹⁷⁷ Human Rights Watch, *Hated to Death: Homophobia, Violence and Jamaica's HIV/AIDS Epidemic*, Vol. 16, No 6 (B), November 2004, <http://www.hrw.org/reports/2004/jamaica1104/jamaica1104.pdf> (accessed October 1, 2009).

¹⁷⁸ Home Office, "Country of Origin Information Report: Jamaica", August 2008, http://www.homeoffice.gov.uk/rds/country_reports.html (accessed October 4, 2009).

¹⁷⁹ Jamaica is in the top 5 of countries of origin of women placed into fast track and cases included claims based on persecution because they are lesbian. See also Claire Bennett, Asylum Aid, "Relocation, Relocation. The impact of internal relocation on women asylum seekers," November 2008, p. 61.

In 2009 a review by the Immigration Advisory Service of the use of COI reports in the asylum process concluded that “Operational Guidance Notes (OGNs), despite being policy documents, continue to be used as a source of COI as evidenced by their citation in RFRLs [reasons for refusal letters], against UKBA’s own guidance.”¹⁸⁰

The Use of COI Information

When the Country of Origin Information reports on a certain country includes important information relevant to the claims of women, DFT decision makers, oddly, can come to different conclusions without sufficient analysis of the available COI or the applicant’s particular circumstances. In 2008 UNHCR criticized this practice.¹⁸¹

One year on, Human Rights Watch documented a case where country of origin information on protection from domestic violence in Pakistan was misquoted and wrongfully applied. In the reasons for refusal letter for Fatima H., who was beaten and raped regularly by her husband, the case owner stated:

The objective evidence in relation to state protection for women in Pakistan, including the availability of women police stations is clear (Pakistan COIR: 23.54-23.63) ... it is considered that if you were to return to your home area and experience problems, you could seek gender specific protection at a women only police station.¹⁸²

In fact, the latest COI report on Pakistan available to the case owner in April 2009 stated that although the authorities had expanded the number of women only police stations, these stations do not function adequately due to a lack of resources and appropriate training for policewomen.¹⁸³ It highlights the lack of shelters for women who escape domestic violence.¹⁸⁴

Fatima H. told us, “[my husband] abused me over and over again because I did not have children, my husband knows everyone ... I am scared to death.”¹⁸⁵ She was scheduled to be removed on October 5, 2009.

¹⁸⁰ Immigration Advisory Service, “The Use of Country of Origin Information in Refugee Status Determination: Critical Perspectives,” May 2009, p. 9.

¹⁸¹ UNHCR in “Quality Initiative Project, Fifth Report to the Minister,” March 2008, para. 2.3-45.

¹⁸² Reasons for refusal letter for [Fatima H.], June 29, 2009, p.7.

¹⁸³ Home Office, “Country of Origin Information Report: Pakistan,” April 16, 2009, para. 23.54.

¹⁸⁴ Home Office, “Country of Origin Information Report: Pakistan,” April 16, 2009, para. 23.55-23.63.

¹⁸⁵ Human Rights Watch interview with Sadia H. August 4, 2009.

Information is also used selectively and sometimes incorrectly at the appeal stage. Human Rights Watch found the use of dubious sources of information being at both reconsideration and appeal stages. Omar B., whose case was described earlier, went through an assessment with a consultant psychiatrist at the Royal Hospital for Neurodisability in Putney and other experts. The case owner who ruled on whether a fresh claim, this time on the basis of him being transgender instead of lesbian, could be made relied on www.freedictionary.org to determine whether in fact he is transsexual or transgender.¹⁸⁶ In the refusal letter in the same case, *The Boston Globe* was cited as one of the sources to prove that lesbians are not persecuted in Pakistan, stating, “*The Boston Globe* reported that homosexuality is ‘tacitly accepted ... as long as it doesn't threaten traditional marriage.’”¹⁸⁷ This is a very selective quote from the actual article, in which this sentence only refers to one region in Pakistan (where Omar is not from), the Northwest Frontier Province, and the article commences, stating “In the Islamic Republic of Pakistan, homosexuality is not only illegal, it is a crime punishable by whipping, imprisonment, or even death.”¹⁸⁸

Access to Legal Representation and Expert Reports

Legal Representation

The ability to obtain early access to good quality legal advice is of vital importance to people seeking asylum. Where they are detained and their application is fast-tracked, this access is even more important as they will require advice about bail as well as their asylum application.

— Carolyn Regan, Chief Executive of the Legal Services Commission, January 2008.

For women with complex cases, legal representation is crucial to effectively pursue their asylum claims. It is the most important practical safeguard to ensure women are not lost in the system and sent back without an opportunity to fully argue their case. The rules governing publicly funded legal aid and practices in the detained fast track lead to two particular concerns, which in turn could lead to a violation of the right to protection.

First, lack of legal representation for women at the appeal stage due to a merits test creates a lack of equality of arms in court since the Home Office is almost always represented. Secondly, Human Rights Watch is concerned about reports of occasional lack of quality of

¹⁸⁶ Letter from Yarl's Wood stating reasons for refusal of a fresh claim, March 25, 2008, para. 21.

¹⁸⁷ Reasons for refusal letter, Omar B., 14 December 2007, para. 11.

¹⁸⁸ Kennedy, Miranda, “Open Secrets,” *The Boston Globe*, July 11, 2004, http://www.boston.com/news/world/middleeast/articles/2004/07/11/open_secrets/ (accessed August 5, 2009).

legal representation, and in almost every case the lack of time practitioners have to prepare a case for their client.

The screening interview is conducted without legal aid or representation since it is intended to only elicit basic information. Once in fast track, everyone is entitled to publicly-funded legal representation during the asylum interview at Yarl's Wood. Some women, who obtain legal representation through their family or friends, do not use this option, but most make use of a legal representative on the "rota system" (the schedule at Yarl's Wood that lists the solicitor firms that have a contract to work on fast track cases and that indicates which firms are available on any given day.)

Firms have a contract with the Legal Services Commission to provide this representation and legal assistance. Research on the quality of legal representation by other organizations concludes that the quality of legal representatives on the "rota" can vary significantly. "Allocation by the Home Office to a duty representative will prove a life line for the lucky ones, and a fig-leaf of representation for the rest."¹⁸⁹

At the appeal stage legal representation is subject to a so-called merits test.¹⁹⁰ Before legal aid is granted, the solicitor must assess whether the case has more than a 50 percent chance of success, or find that the prospects of success are "borderline or unclear" but of "overwhelming importance" to the client.¹⁹¹ Since 2005 legal representatives are required by the Legal Services Commission to win 40 percent of the asylum cases they represent at appeal if they want a renewal of their contract, which adds pressure and may result in some cases not receiving public funding despite the fact they pass the merits test.¹⁹² Aabida M., who was sent back to Algeria even though her family threatened to kill her,¹⁹³ tried repeatedly to get a solicitor during her case, especially at the appeal stage when she no longer had the option of a funded legal representative because of the merits test. She did not receive any response to her requests (see figure 1 for a scanned request), and once she had a solicitor (through family contacts), she was unable to contact him (figure 2 is a

¹⁸⁹See for example Bail for Immigration Detainees, "'Refusal Factory'. Women's experiences of the Detained Fast Track asylum process at Yarl's Wood Immigration Removal Centre," September 2007, p. 17.

¹⁹⁰Also known as Controlled Legal Representation (CLR). Bail for Immigration Detainees, "'Refusal Factory'. Women's experiences of the Detained Fast Track asylum process at Yarl's Wood Immigration Removal Center," September 2007.

¹⁹¹Human Rights Watch Interview with Gabriella Bettiga, Head of Immigration at Lawrence Lupin Solicitors, May 21, 2009.

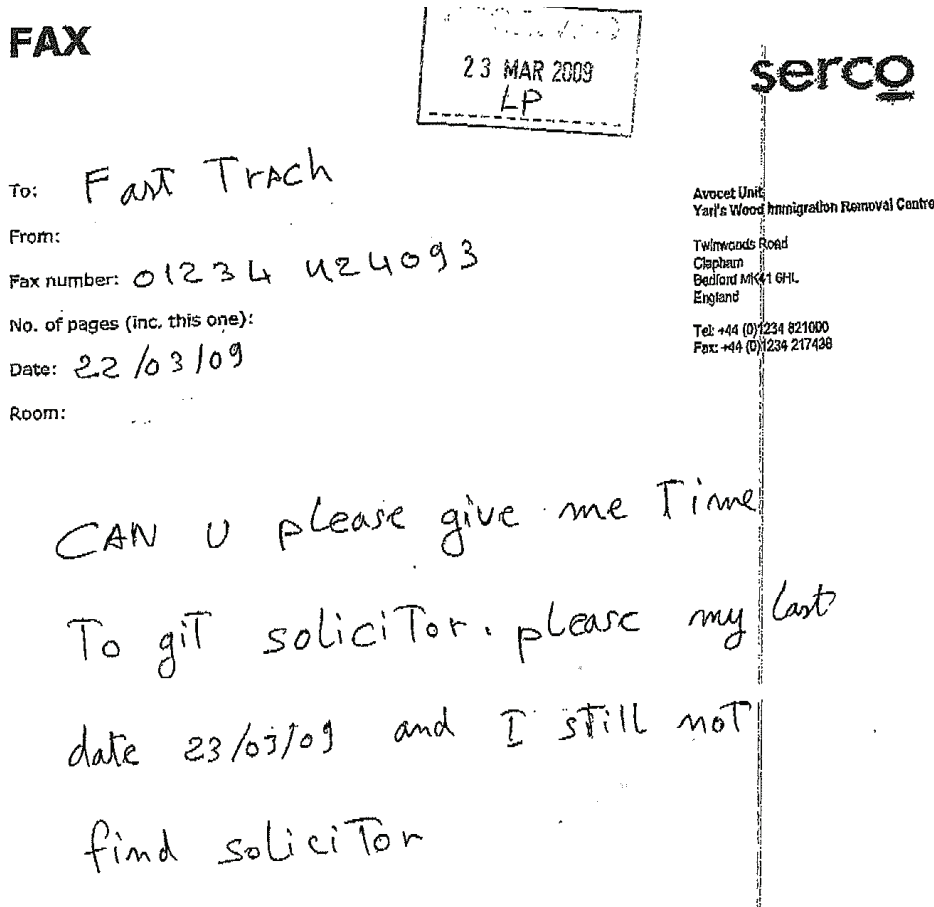
¹⁹² Bail for Immigration Detainees, "'Refusal Factory'. Women's experiences of the Detained Fast Track asylum process at Yarl's Wood Immigration Removal Center," September 2007, p. 25.

¹⁹³Human Rights Watch was not able to establish contact with her again.

scanned request to her legal representative.) She told us “I have to fight for myself constantly, and my English not perfect. I am afraid of what judge will do.”¹⁹⁴

There are no government statistics on how many cases are brought on appeal without legal representation, but practitioners estimate that from one-third to over a half of all women who appeal their case in the Detained Fast Track do so on their own.¹⁹⁵ Since our research shows a lack of quality in referral and initial decisions, the appeal stage is often the first opportunity for independent judicial consideration of the claim, which is why legal representation at that stage is crucially important.

Figure 2 "Can u please give me time to g[e]t solicitor. Please my last date 23/03/09 and I still not find solicitor" Fax sent to DFT by Aabida M. March 23, 2009.



¹⁹⁴Human Rights Watch Interview with Aabida M. in Yarl's Wood, June 17, 2009.

¹⁹⁵ Legal Action for Women, "A 'Bleak House' in Our Times", June 2006, p.12, Bail for Immigration Detainees, "'Refusal Factory'. Women's experiences of the Detained Fast Track asylum process at Yarl's Wood Immigration Removal Center," September 2007, p. 24.

In addition to the unavailability of legal aid as well as its variable quality, solicitors who work on fast track cases told Human Rights Watch repeatedly how difficult it is to adequately assist someone in DFT:


Our hands are tied, both in terms of funding and time. We get a fax from the detention center and usually have to be at an interview the next day or day after, fully prepared. And even if it were true that fast track cases are straightforward that would already be difficult, but it is not. Women with very complex cases still end up in fast track.¹⁹⁶

To illustrate the limited time, we have included an example of a fax from Yarl's Wood, concerning a 29-year-old woman, Jane M. from Tanzania, who only speaks Swahili. She arrived in Yarl's Wood on February 9, 2009 but the fax to the solicitors' firm was only sent on February 16. Her asylum interview was scheduled to take place the next day at 10am. In less than a day, the solicitor was required to prepare a full asylum claim, with translation, brief the client, and be present at the full asylum interview.

¹⁹⁶ Human Rights Watch Interview with Gabriella Bettiga, Head of Immigration at Lawrence Lupin Solicitors, May 21, 2009.

Figure 3 Referral form from Yarls Wood to Lawrence Lupin solicitors, sent February 16, 2009. Name of detainee blanked out.

YARLS WOOD - FAST TRACK


Home Office

Tel: 01234 424000 Fax: 01234 424093

SOLICITOR REFERRAL PRO-FORMA

To: [Redacted]
Firm: [Redacted]
Fax: [Redacted]
Tel: [Redacted]

Solicitor: duty/private [any solicitors not on the duty list will not receive LSC funding]

~~Applicant's details~~

Applicant's name:
Nationality:	TZA.....
DOB:	1980.....
Language:	Swahili.....
Port ref:
Detention location:	Yarlswood, DC, Clapham, Bedford.....
Date entered FT:	09/02/09.....

ASYLUM INTERVIEW DATE, TIME & LOCATION: 17/2/09 @ 10:00 To start promptly!!! <p style="text-align: right;">Yarlswood</p>
--

Besides practical problems, the tight timeframe means solicitors do not have time to build a relationship of trust with their clients. A solicitor working on fast track cases told Human Rights Watch:

A big problem is that it is difficult to identify cases of trafficking and sexual violence, because it takes time to build trust.¹⁹⁷

¹⁹⁷ Human Rights Watch Interview with Rosalyn Akar, solicitor at Wilson & Co, May 22, 2009.

Furthermore, solicitors who have already worked with a client who is applying for asylum, but subsequently placed into DFT might not be able to keep her as a client. As another solicitor told Human Rights Watch:

[I]f I have a client who has/is going to apply for asylum and she is subsequently fast tracked, I cannot keep her as a client (even if my firm does fast track work) unless I have done at least five hours work with her. Therefore, usually the case goes to another firm and the lady was starting to open up with me, she will have to go through the trauma of disclosing the same story again to another representative.¹⁹⁸

Human Rights Watch is concerned that the rigid deadlines in several cases as well as the restricted nature of support for legal representation prevent meaningful access to legal advice and representation and thereby increases risks of refoulement.

A Good Example: The Solihull Pilot

In the framework of the New Asylum Model (NAM) and to improve quality and efficiency of asylum decisions, the Home Office developed the “Early Advice Pilot” project, more commonly known as the Solihull Pilot. This project was introduced in March 2006 by UKBA and the Legal Services Commission and started running in October 2006 at the Solihull public inquiry office. It allows claimants access to quality information and advice from legal representatives from the earliest stages of the asylum process. The purpose was to improve initial decision making and to ensure that the entire case is put forward before the initial decision is made. Furthermore, the project’s objective was to develop a less adversarial approach to decision making and allow agreement to be reached about substantive points and whether further evidence may be required. The pilot’s core is a more interactive role for the legal representatives before, during, and after the substantive asylum interview, prior to the first decision. Simultaneously relevant evidence gathering is funded prior to the initial decision.

The pilot project was evaluated in October 2008 for the UKBA and Legal Services Commission by an independent evaluator and it concluded that it was successful for all parties involved. The evaluation concluded that there was unanimous agreement on the importance of having a witness statement and all relevant evidence in front of the decision maker before the first decision on the claim. The evaluation recommended that this procedure should become “the normal procedure adopted for the decision making

¹⁹⁸ Written comments by Gabriella Bettiga, Head of Immigration at Lawrence Lupin Solicitors, October 26, 2009.

element of an asylum claim.” Those who have a right to and need for protection get recognized and integrated earlier, before the appeal stage. The appeal rate dropped and those who had false claims were more inclined to drop their claim.

Human Rights Watch agrees that the more active role for legal representatives and a gathering and funding of evidence before the initial decision in the DFT procedure would greatly improve quality of initial decisions and avoid unnecessary and expensive detention.

Expert reports

Expert evidence is an important aspect of an asylum claim, as it may provide corroboration of key aspects of it. There are several problems surrounding the use of and access to expert reports in DFT, including the costs of obtaining expert evidence and the strict time frames applied.

Women who have been raped may require a medical examination to assess the existence of injuries that would corroborate claims. The procedure is however usually not suspended for a medical examination, a potentially essential aspect of the case, to take place. UNHCR has stated that “We are particularly concerned that cases which require further medical evidence may be overlooked due to the strict timescale operating in the DFT.”¹⁹⁹

After a refusal in the first stage of the procedure, claimants have two days to apply for an appeal. That appeal should include the full grounds of appeal, including supportive evidence, such as witness statements, medical evidence, and other expert reports. These expert reports are crucial to the success of the appeal. According to one report, women with expert reports corroborating their account of rape are six times more likely to win their case than those without.²⁰⁰

The limited funding solicitors get for taking on fast track cases (they get reimbursed for a maximum of eight hours per case, experts get paid separately) has consequences for each claim and can affect whether or not expert reports are used. As one solicitor stated, “Cases become especially tricky when we need expert reports, which are often necessary for women who have been raped. They [LSC] haggle over which experts are cheaper.”²⁰¹

¹⁹⁹ UNHCR, “Quality Initiative Project, Fifth Report to the Minister,” March 2008, p. 17.

²⁰⁰ Black Women’s Rape Action Project and Women Against Rape, “Misjudging Rape. Breaching Gender Guidelines & International Law in Asylum Appeals,” December 2006.

²⁰¹ Human Rights Watch Interview with Louise Lawson, senior team leader Refugee and Migrant Justice which provides legal representation in fast track cases, June 17, 2009.

Amina A. is a Somali woman from Koyaama Island off the coast of Somalia. A member of the Bajuni clan, said she had been violently attacked and raped by members of a different clan. She told Human Rights Watch, “My mother and I were raped and attacked many, many times, my children crying ... I saw my mother getting slaughtered.”²⁰² She has three children but she has no idea where they are. A medical report by the Medical Foundation for the Care of Victims of Torture stated that “[Amina A.] has numerous scars typical of or highly consistent with being repeatedly attacked with machetes and beaten.”²⁰³

Amina was, however, found to be from Kenya by a language expert who interviewed her over the telephone and who appears to have concluded she must be Kenyan because she speaks Swahili. She had not used a phone before, she could not hear the expert properly, and she was not told who this person was and what their qualifications were.²⁰⁴ She was set to be removed to Kenya.²⁰⁵ In fact, many Bajunis speak Swahili and she was later found by a country expert commissioned by her solicitor to be Somali.²⁰⁶ The Kenyan authorities in the UK are not accepting her nationality is Kenyan, so she cannot be removed for the moment. She is out on bail at the moment awaiting a decision on her judicial review at the time of writing (February 2010).

Solicitors have expressed concern to Human Rights Watch that they are generally unable to access funds to use experts before the appeal stage:

With regard to gathering evidence before the appeal, this is what we thought would happen with the new NAM system (there was a lot of talking about “front-loading” the asylum cases). However, for both [fast track] and non-detained asylum applicants, solicitors are generally unable to access funds to instruct experts prior to the appeal stage, the only exception being funds for the Medical Foundation and usually the Helen Bamber Foundation. Anything else would have to wait until after refusal. At that point Immigration Judges are very reluctant to grant adjournments. [This] illustrates very well the vicious circle in which applicants are. And our frustration: the applicant has no evidence therefore the Immigration Judge does not grant an

²⁰² Human Rights Watch interview with Amina A., July 28, 2009.

²⁰³ Medical report by the Medical Foundation for the Care of Victims of Torture, July 28, 2009.

²⁰⁴ Emergency application for judicial review, between the Queen on the application of [Amina A.] and the Secretary of State for the Home Department, June 26, 2009.

²⁰⁵ Human Rights Watch interview with Amina A., July 28, 2009.

²⁰⁶ A more thorough nationality assessment later carried out by expert of the region Brian Allen (at the request of her solicitor), stated “Her accent [in Swahili] is very much that of a Somali Bajuni,” June 26, 2009.

adjournment – The Immigration Judge does not grant the adjournment and the applicant cannot collect the evidence.²⁰⁷

When Ayoka M. entered the UK from Nigeria, she claims she was “helped” to enter the country by a man who exploited her sexually, but she did not know the word “trafficking”.²⁰⁸ She says she explained the facts in her asylum interview, but only after she was refused in first instance did it become clear that she was trafficked, when she eventually opened up to her solicitor. Her solicitor arranged an appointment with the Poppy Project, an organization that provides expert evidence on behalf of women who have been trafficked into prostitution, for the day after the appeal hearing. She also arranged for the Helen Bamber Foundation to meet with her a few weeks after the appeal hearing (the waiting list is usually this long). The solicitor argued that the appeal should be adjourned or her client taken out of fast track until at least the Poppy Project appointment had taken place. The Home Office representative agreed to have the hearing adjourned. However, the appeal judge stated “I determined ... not to adjourn the hearing of the appeal until a later date. I came to this conclusion because there was no evidence ... that the appellant was indeed a victim of trafficking” and refused the case.²⁰⁹

Besides limited access to expert advice and evidence, there are also examples of case owners making medical judgments themselves or interpreting medical reports without the requisite knowledge. In 2007 a case owner, who did not appear to have any medical expertise, concluded that a report made by the Medical Foundation for the Care of Torture Victims about a woman who was tortured in Cameroon that, “Dr. Cohen’s findings in this respect are somewhat limited and that insufficient alternative explanations have been explored.”²¹⁰ He continues “The Medical Report is not accepted to be of *any substantial diagnostic or clinical value* given that Dr. Cohen is a General Practitioner [emphasis added].”²¹¹ Alicia B. told Human Rights Watch, “First they didn't tell me that I could see a doctor or the Medical Foundation and then when I can finally go, they say they don't believe their judgment. They just did not believe me, no matter what evidence I had.”²¹² Eventually, Alicia B won a case before the High Court to start a fresh claim based on the errors made in

²⁰⁷Written comments by Gabriella Bettiga, Head of Immigration at Lawrence Lupin Solicitors, October 26, 2009.

²⁰⁸Reasons for refusal letter for Ayoka M., April 6, 2009 and Human Rights Watch interview with her solicitor from Wilson & Co, May 22, 2009.

²⁰⁹Asylum & Immigration Tribunal, Appeal Determination and Reasons, Between [Ayoka M.] and the Secretary of State for the Home Department, April 19, 2006.

²¹⁰ High Court of Justice Queen’s Bench Division, the queen on the application of PB v Secretary of State for the Home Department, EWHC 364 (Admin), February 6, 2008, quoting the findings of the Case owner of May 2007, para. 15.

²¹¹ Ibid.

²¹² Human Rights Watch interview with Alicia B., June 8, 2009.

this initial decision on her case and has received refugee status in August 2009, two years after her initial application and after six months in detention.²¹³ The Medical Foundation for the Care of Victims of Torture report other cases:

Case owners regularly challenge our expert medical evidence by substituting their own opinions on clinical matters, for example by venturing alternative causes for scars or suggesting that the impact of an injury could not have been as described by the asylum seeker. We spend a lot of time referring these cases to senior UKBA officials who agree this practice is unacceptable—they usually take action in the individual case, but clearly stronger guidance and training is needed.²¹⁴

Another problem raised by solicitors and women is the lack of female caseworkers, interpreters, and doctors. One example of the lack of female interpreters is a woman who needed a female interpreter because she had very sensitive claims she would not be able to explain to a man and she was granted one. The interview was delayed for that purpose for 20 days. On the date of the interview, the woman and the solicitor walked into the office and found a male interpreter, so they had to continue the interview with him.²¹⁵

Detention: Necessary or Arbitrary and Excessive?

All the challenges to a fair hearing posed by the speed and characteristics of the DFT procedure are exacerbated by the fact of detention.

The very fact that women are told they have a straightforward case that will be determined in a “removal center” can in and of itself have a profound psychological impact.²¹⁶ Amina A., the coastal Somali woman raped and attacked by clan rivals but refused asylum on the basis she was Kenyan because she spoke Swahili, described being detained and how it affected her: “This [detention] will kill me. This is not life. They prefer me to die.”²¹⁷

²¹³High Court of Justice Queen’s Bench Division, the queen on the application of PB v Secretary of State for the Home Department, EWHC 364 (Admin), February 6, 2008.

²¹⁴ Sonya Sceats, Medical Foundation for the Care of Victims of Torture, email correspondence with Human Rights Watch, February 10, 2010.

²¹⁵Case provided by Refugee and Migrant Justice, in interview with Human Rights Watch, June 17, 2009.

²¹⁶ Bail for Immigration Detainees, “‘Refusal Factory’. Women’s experiences of the Detained Fast Track asylum process at Yarl’s Wood Immigration Removal Center,” September 2007, p. 21.

²¹⁷ Human Rights Watch interview with Amina A., July 28, 2009.

For Laura A. who said she was imprisoned, tortured, and raped in Sierra Leone, detention was considered dangerously damaging to her mental and psychological health by the head of the Helen Bamber Foundation,²¹⁸ whom was made aware of her case and wrote a letter stating:

I am taking the unusual step of writing at this stage to highlight my concern and my alarm that this woman has remained in the fast track system....
[D]etention of individuals with a history of such prolonged captivity, social deprivation, and extreme brutality likely leads to severe re-traumatisation and can significantly impair both prognosis for the future in terms of mental health and rehabilitative capacity and ability to give detailed instruction and evidence.²¹⁹

Laura A. told Human Rights Watch: “when I was taken away by two guards to Yarl’s Wood with only the clothes I was wearing, it reminded me of when I was taken away from my house.”²²⁰ After this letter and other efforts by a solicitor and NGOs, Laura A. was finally removed out of the fast track procedure and detention, and she was granted refugee status. Alicia B. from Cameroon, who also said she was tortured and raped, described her experience in detention: “My head exploded, I kept on crying, my head did not work anymore. I could not eat and not speak.”²²¹

Another serious concern arises when women are rushed through the DFT system, have their claims refused, but then remain in detention for months because they cannot be removed. There is no statutory limit to detention and Human Rights Watch has, in the short period of research, encountered several cases of women who had to remain in detention for several months. Generally, women without valid travel documents cannot be sent back to their home country as they will not be accepted. Certain countries have been difficult to send women back to, such as China and Zimbabwe.²²²

²¹⁸ The Helen Bamber Foundation is one of two organizations that take appointments from traumatized asylum seekers for psychological treatment and whose appointments can suspend the asylum process. The other organization is the Medical Foundation for the Care of Torture Victims.

²¹⁹ Helen Bamber Foundation, letter concerning [Laura A.], dated June 19, 2009.

²²⁰ Human Rights Watch interview with Laura A., July 2 2009.

²²¹ Human Rights Watch interview with Alicia B., June 8, 2009.

²²² Although according to a UKBA official, the UK now has an agreement with China that enables people to be sent back. Human Rights Watch Interview, UKBA official, September 15, 2009. Phil Woolas also recently announced that UKBA would start sending people back to Zimbabwe as well.

Detention makes the already difficult task of preparing a case more difficult. Detention cuts someone off from the outside world and even though a woman can communicate by phone, there are limits to who she can access and what information she can gather. Beyond the practical difficulties, being in detention does not create the conditions encouraging women to open up about the often very intimate issues behind their claims. As one solicitor explained: “Detention is just not a conducive environment for vulnerable women to disclose that type of information [about sexual violence or trafficking], but we need it to make their case.”²²³

The 1999 UNHCR Guidelines on detention of asylum seekers reaffirms the general principle that asylum seekers should not be detained. Countries may detain refugees and asylum seekers only when there are no viable alternatives to detention and only as necessary to regularize their status or to protect national security.²²⁴

The detention of asylum seekers is inherently undesirable, in particular in the case of vulnerable groups such as single women, all trauma survivors, and children.²²⁵ Detention should only take place after a full consideration of all possible alternatives, or when monitoring mechanisms have been demonstrated not to have achieved the lawful and legitimate purpose.²²⁶

In its case law, the UN Human Rights Committee has held that the failure by the immigration authorities to consider factors particular to the individual, such as the likelihood of absconding or lack of cooperation with the immigration authorities, and to examine the availability of other, less intrusive means of achieving the same ends, might render the detention of an asylum seeker arbitrary.²²⁷

Whether a detention is arbitrary requires consideration of whether the reasons given by a state party make the detention appropriate, just, proportionate, and reasonable in the

²²³ Human Rights Watch Interview with Rosalyn Akar, solicitor at Wilson & Co, May 22, 2009.

²²⁴ This relates to cases where there is evidence that the asylum seeker has criminal antecedents and/or affiliations which are likely to pose a risk to public order or national security. See the Refugee Convention, art. 31, and the associated UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers, February 1999, <http://www.unhcr.org.au/pdfs/detentionguidelines.pdf> (accessed June 2009).

²²⁵ UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers, February 1999, <http://www.unhcr.org.au/pdfs/detentionguidelines.pdf> (accessed June 2009), Par. 1.

²²⁶ UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers, February 1999, <http://www.unhcr.org.au/pdfs/detentionguidelines.pdf> (accessed June 2009), Guideline 3 (iv).

²²⁷ A. v. Australia, CCPR/C/59/D/560/1993, UN Human Rights Committee (HRC), 30 April 1997, <http://www.unhcr.org/refworld/docid/3ae6b71ao.html> (accessed October 1, 2009) and C. v. Australia, CCPR/C/76/D/900/1999, UN Human Rights Committee (HRC), 13 November 2002, <http://www.unhcr.org/refworld/docid/3f588efoo.html> (accessed October 1, 2009).

circumstances.²²⁸ The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which is incorporated into UK domestic law through the 1998 Human Rights Act, allows detention of a person “to prevent his effecting an unauthorized entry into the country,” among other reasons.²²⁹ However, the European Court of Human Rights has clarified that such detention is permissible only when it is not arbitrary; and that it would not be arbitrary provided that it was “carried out in good faith,” and “closely connected to the purpose of preventing unauthorized entry of the person to the country,” that “the place and conditions of detention [were] appropriate,” and that the length of the detention did not “exceed that reasonably required for the purpose pursued.”²³⁰

The Joint Committee on Human Rights of the UK Parliament has expressed its concerns about the Detained Fast Track procedure:

We are concerned that the decision to detain an asylum seeker at the beginning of the process simply in order to consider his or her application may be arbitrary because it is based on assumptions about the safety or otherwise of the country from which the asylum seeker has come.²³¹

The HRC has also commented on the length of detention. Referring to a Swiss Act that allows for detention for up to one year, the Committee states that it “notes that these time-limits are considerably in excess of what is necessary, particularly in the case of detention pending expulsion.”²³²

The Crossroads Women Centre summarized to Human Rights Watch the consequences of DFT for the women they help:

²²⁸Van Alphen v. The Netherlands, CCPR/C/39/D/305/1988, UN Human Rights Committee (HRC), 15 August 1990 and A. v. Australia, CCPR/C/59/D/560/1993, UN Human Rights Committee (HRC), 30 April 1997, <http://www.unhcr.org/refworld/docid/3ae6b71a0.html> (accessed October 1, 2009), para. 7.6.

²²⁹ European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, entered into force September 3, 1953, as amended by Protocols Nos 3, 5, 8, and 11 which entered into force on September 21, 1970, December 20, 1971, January 1, 1990, and November 1, 1998, respectively, art. 5(1)(f).

²³⁰European Court of Human Rights, Case of Saadi v. the United Kingdom, Application no. 13229/03, Judgment of 29 January 2008, available at www.echr.coe.int, para. 74.

²³¹Joint Committee on Human Rights, “The Treatment of Asylum Seekers,” 10th report, March 22, 2007, available at <http://www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/81/8102.htm> (accessed October 1, 2009), para. 226.

²³² UN Human Rights Committee, “Concluding Observations of the Human Rights Committee: Switzerland,” CCPR/C/79/Add.70. November 8 1996, [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/475617de7537b1bbc12563f40036a3ae?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/475617de7537b1bbc12563f40036a3ae?Opendocument) (accessed June 2009), para. 15.

A woman will arrive in the UK, often having paid someone to help her escape, many times not even knowing which country she has arrived in, sometimes not being able to speak English. On claiming asylum, if her case is deemed “straightforward”, she’ll be put on the fast track and straight into detention. She may still be suffering physical injuries as a result of the violence she suffered. She has left everyone and everything she knew and loved, and is suffering the traumatic impact of rape and other violence but is denied care and support. She faces the additional burden of sexism in making a claim; the rape and other torture she suffers is downgraded or not taken seriously because of a perceived lack of credibility.

The Home Office has institutionalized a procedure which systematically denies her the time to get the thorough and committed legal representation, specialist support, medical or country evidence needed to corroborate her asylum claim. This is especially unjust as the UK has made it a clear political priority to refuse as many applications as possible.²³³

Human Rights Watch’s conclusion is that the complexities of many women’s asylum claims, the challenges the DFT poses to the preparation and proper presentation of viable claims, the poor gender-sensitivity in the way the system is implemented and the consequently overbroad use of DFT, leads to violations of women asylum seekers’ rights to a full and fair asylum determination procedure.

The UK’s Obligation to Ensure the Right to Asylum

We get it right in most cases.

— David Jull, Deputy Director of the Detained Fast Track and Third Country Unit of UKBA.²³⁴

The UK is a state party to the 1951 Refugee Convention and its 1967 Protocol (Refugee Convention).²³⁵ As party to the framework of international legal protections for refugees, it may not punish refugees fleeing from persecution. The Universal Declaration of Human

²³³ Crossroads Women Centre & Women Against Rape, email correspondence on August 14, 2009.

²³⁴ Human Rights Watch interview with David Jull, Deputy Director Detained Fast Track & Third Country Unit, UK Border Agency, September 15, 2009.

²³⁵ Convention relating to the Status of Refugees (Refugee Convention), 189 U.N.T.S. 150, entered into force April 22, 1954, acceded to by the United Kingdom 1954 and the Protocol Relating to the Status of Refugees, 606 U.N.T.S. 267, entered into force October 4, 1967 (abolishing the Refugee Convention’s temporal and geographic restrictions), acceded to by the United Kingdom 4 September 1968.

Rights declares that “everyone” has the fundamental right “to seek and to enjoy in other countries asylum from persecution.”²³⁶

Instruments protecting human rights generally apply to all persons within a state’s jurisdiction.²³⁷

The cornerstone principle of refugee law prohibits the UK from returning refugees to countries where they have a well-founded fear of persecution (“refoulement”) or to third countries that might not respect that prohibition. A similar requirement on states is imposed by the Convention Against Torture (CAT) and the International Covenant on Civil and Political Rights (ICCPR).

The legal prohibition against refoulement is not limited in application to formally recognized refugees, but applies to all persons who are outside their own country and unwilling or unable to return due to a well-founded fear of persecution, and to all persons who would face a substantial risk of torture or cruel, inhuman or degrading treatment on return.²³⁸

Article 3 of the European Convention on Human Rights (ECHR) prohibits “torture or inhuman or degrading treatment.” The European Court of Human Rights jurisprudence is clear that this provision carries a nonrefoulement obligation not to expose an individual to a “real risk” of that treatment.²³⁹ The prohibition against refoulement under Article 3 of the ECHR is broader than that of the Refugee Convention and includes a duty to consider the risk of abuse by non-state actors.²⁴⁰ Claims of asylum seekers must be assessed in light of the UK’s obligations under both instruments not to return any person to a country where they could be at risk of torture or serious ill-treatment, which includes lack of state protection from such treatment by other parties.

²³⁶ Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), art. 14(1).

²³⁷ ICCPR, art. 2(1), requiring states to ensure Covenant rights apply to “all individuals within its territory and subject to its jurisdiction.”

²³⁸ The prohibition against refoulement is enshrined in the Refugee Convention (article 33), the Convention Against Torture (article 3.1), the ICCPR (as derived from article 7), and international customary law. See also *Chahal v. the United Kingdom*, no. 22414/93, judgment of 15 November 1996, (1996, § 80); the New Zealand case of *Zaoui v. Attorney General* (2005), Supreme Court of New Zealand, CIV SC 13/04, judgment of 14 October 2004. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, ratified by the United Kingdom December 8 1988; the International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by the United Kingdom May 20, 1976.

²³⁹ See *Soering v United Kingdom* 98 ILR 270; *Cruz Varas v. Sweden*, 108 ILR 283, *Vilvarajah v. United Kingdom*, 108 ILR 321; *Chahal v. United Kingdom*, 108 ILR 385; and *T.I. v United Kingdom Application No.43844/98*, Decision as to Admissibility, March 7, 2000.

²⁴⁰ *TP and KM v United Kingdom*, ECtHR, 10 May 2001.

The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has recognized that rape can constitute torture.²⁴¹ The International Criminal Tribunal for the former Yugoslavia (ICTY) in the *Furundzija* case noted that “[i]n certain circumstances rape can amount to torture and has been found by international judicial bodies to constitute a violation of the norm prohibiting torture.”²⁴² The International Criminal Tribunal for Rwanda (ICTR) in the *Akayesu* case stated that:

Like torture, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person. Like torture, rape is a violation of personal dignity, and rape in fact constitutes torture when it is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.²⁴³

Most recently, the Rome Statute of the International Criminal Court (ICC) specifies that acts of rape, sexual slavery, enforced prostitution, forced pregnancy, forced sterilization, or any other form of sexual violence of comparable gravity can constitute war crimes or crimes against humanity.²⁴⁴ Even in those cases when rape does not constitute torture, it can still constitute a risk of inhuman and degrading treatment.

The United Nations High Commissioner for Refugees (UNHCR) has determined that accelerated procedures may be used, but they should only be applied to cases which are “clearly abusive” or “manifestly unfounded”.²⁴⁵ These types of cases are defined as those which are clearly fraudulent or not related to the criteria for the granting of refugee status laid down in the Refugee Convention nor to any other criteria justifying the granting of

²⁴¹ United Nations, Report of the U.N. Special Rapporteur on Torture, Mr. Nigel S. Rodley, submitted pursuant to the Commission on Human Rights Resolution 1992/32, E/CN.4/1995/34, Paragraph 19, January 12, 1995.

²⁴² Prosecutor v. Anto Furundzija, Judgement, IT-95-17/1-T, December 10, 1998, para. 171.

²⁴³ Prosecutor v. Jean-Paul Akayesu, Judgement, ICTR-96-4-T, September 2, 1998 (the Akayesu Trial Chamber Judgement), para. 687.

²⁴⁴ Rome Statute of the International Criminal Court (Rome Statute), U.N. Doc. A/CONF.183/9, July 17, 1998, entered into force July 1, 2002. The Rome Statute is the treaty creating the ICC.

²⁴⁵ UNHCR Executive Committee Conclusion No. 30 (XXXIV), “The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum”, 1983.

asylum.²⁴⁶ However, whilst UNHCR accepts the use of accelerated procedures in limited circumstance, the use of detention is not supported.²⁴⁷

²⁴⁶ Ibid. In addition, UNHCR supports the processing of claims on an accelerated basis where there are compelling protection needs, see UN High Commissioner for Refugees, Procedural Standards for Refugee Status Determination Under UNHCR's Mandate, 20 November 2003, available at: <http://www.unhcr.org/refworld/docid/42d66dd84.html> [accessed 22 October 2009]. See Unit 4.6 'Accelerated RSD Processing', 4.6.3 lists the categories of applicant who may have "compelling protection needs"; these include, inter alia, those "manifestly in need of protection intervention" and "women who are at risk in the host country".

²⁴⁷ UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers (February 1999) and UNHCR ExCom Conclusion No. 44 (XXXVII) of 1986 on the detention of refugees and asylum seekers.

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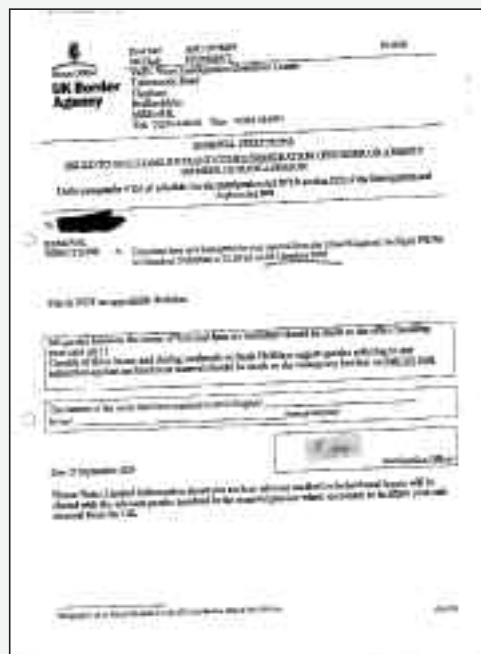
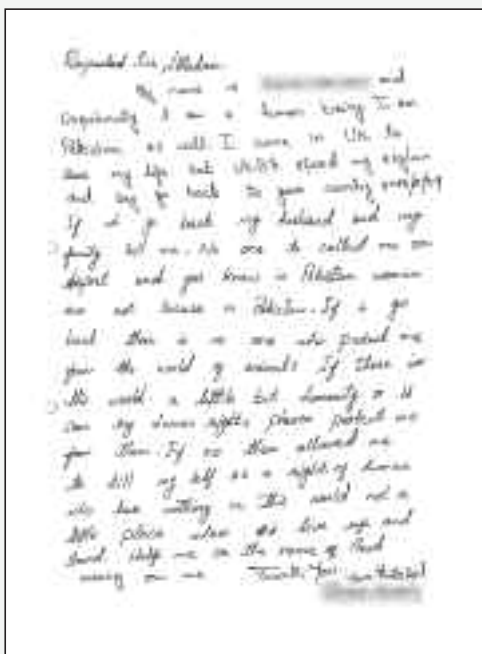
Fast-Track Unfairness

Detention and Denial of Women Asylum Seekers in the UK

“Fast track is just a factory for sending people away ... I think I did everything right, even without lawyer, but they do not care ... I am so scared,” Aabida M. from Algeria, who said she was at risk of an “honor killing”, told Human Rights Watch in Yarl’s Wood Immigration Removal Center near Bedford in the United Kingdom. She was refused asylum and deported after her claim was processed in an accelerated asylum procedure called “detained fast track (DFT).” This procedure is intended for claims that, according to the UK Border Agency (UKBA), are straightforward and can be decided “quickly.”

Fast-Track Unfairness concludes that detained fast track is too fast to be fair, serious consequences for women. Complex cases are regularly routed into it, despite the UKBA’s own gender and intake guidelines. Both men and women go through this procedure and both can have complicated asylum claims. This report, however, focuses on the use of DFT to process claims by women because claims that involve gender-related issues can be particularly complex, especially when they involve persecution by private individuals (like family members or a husband) and the state’s failure to provide adequate protection.

The UK is obliged to ensure that women have a full and fair refugee status determination procedure, a right not guaranteed in DFT. The flaws within the procedure—the breakneck speed that militates against the effective preparation and presentation of a claim, the limitations on legal representation, limited information on the situation of women in the countries of origin, the difficulties of accessing expert evidence, and the very fact of detention itself—leads Human Rights Watch to conclude that it should be abolished. In the interim, more rigorous procedures should be put in place to ensure complex claims do not get routed into the DFT procedure.



Picture 1: A letter from a woman from Pakistan who went through the Detained Fast Track procedure and was refused.

Picture 2: The removal directions from the UK Border Agency for that same woman.