



WOMEN FOR REFUGEE WOMEN

## **Asylum Aid’s and Women for Refugee Women’s evidence for the UN CEDAW Committee’s pre-sessional working group session to prepare for the Eighth Periodic Report of the United Kingdom of Great Britain and Northern Ireland.**

### **Article 9: nationality**

#### **Asylum**

##### **1. Detention of survivors of violence against women and girls in immigration detention.**

###### **a. Evidence**

The Home Office Adults at Risk policy sets out a clear presumption against the detention of people who are vulnerable. Under the policy, survivors of sexual and other gender-based violence are recognised as vulnerable, and so unsuitable for detention.<sup>1</sup>

The policy was introduced in September 2016, but the Home Office has still not explained how it is monitoring its effectiveness in reducing the number of vulnerable people, including survivors of sexual and gender-based violence, in immigration detention. However, research by NGOs and HM Inspectorate of Prisons (HMIP) has shown that in spite of this policy, survivors of sexual and gender-based violence are still routinely being detained. Women for Refugee Women interviewed 26 women who had claimed asylum and been detained since the policy was brought in, and found that 22 of the 26 women (85%) they interviewed were survivors of rape or other forms of gendered violence, including domestic violence, forced marriage, forced prostitution and FGM.<sup>2</sup>

When HMIP inspected Yarl’s Wood detention centre – where the majority of women are detained – in June 2017, they found that vulnerable women were still being detained “despite professional evidence of torture, rape and trafficking, and in greater numbers than we have

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<sup>1</sup> Home Office (2016) Immigration Act 2016: Guidance on Adults at Risk in immigration detention, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/547519/Adults\\_at\\_Risk\\_August\\_2016.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/547519/Adults_at_Risk_August_2016.pdf)

<sup>2</sup> Cope, Sarah and Lousley, Gemma (2017) We are still here: the continued detention of women seeking asylum at Yarl’s Wood Women for Refugee Women: London <http://www.refugeewomen.co.uk/2016/wp-content/uploads/2017/10/We-are-still-here-report-WEB.pdf>

seen at previous inspections”. As a result, they concluded that “the effectiveness of the Adults at Risk policy, which is intended to reduce the detention of vulnerable people, was questionable”.<sup>3</sup>

## **b. Government response**

The Home Office has provided no evidence as to how it is monitoring the effectiveness of the Adults at Risk policy in reducing the number of vulnerable people, including survivors of sexual and gender-based violence, in immigration detention.

## **c. International human rights law and standards**

### **i) Unlimited periods of time spent in detention**

We note that the Human Rights Committee has expressed concern to the UK authorities about there being no fixed time limit on the duration of detention, and that individuals may be detained for long periods.<sup>4</sup> The Human Rights Committee recommended that a statutory time limit should be established on the duration of immigration detention, and that detention should be a measure of last resort and justified as reasonable, necessary and proportionate in the light of relevant circumstances.

Subsequently, the Working Group on Arbitrary Detention has revised its Deliberation 5 on the deprivation of liberty of migrants<sup>5</sup> [UN Doc published on 7 February 2018, following adoption on 23 November 2017.] In paragraph 26, the Working Group said that “Indefinite detention of individuals in the course of migration proceedings cannot be justified and is arbitrary.

### **ii) Detention of women survivors of “serious violent crimes”**

We note that the Human Rights Committee and the Committee against Torture expressed concern to the UK about vulnerable people being detained, including torture survivors, victims of trafficking and persons with serious mental disability were detained while their asylum cases were being decided.<sup>6</sup>

We also note that the Working Group on Arbitrary Detention in its revised Deliberation 5 has said that:

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<sup>3</sup> HM Inspectorate of Prisons (2017) Report on an unannounced inspection of Yarls Wood, <https://www.justiceinspectorates.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2017/11/Yarls-Wood-Web-2017.pdf>

<sup>4</sup>UN Doc CCPR/GBR/CO/7 17 August 2015, paragraph 32.

<sup>5</sup> UN Document published on 7 February 2018, following adoption on 23 November 2017.

<sup>6</sup> UN Doc CAT/C/GBR/CO/5, paragraph 30(a) 24 June 2013; UN Doc CCPR/GBR/CO/7 17 August 2015, paragraph 21.

“41. Detention of migrants in [...] situations of vulnerability or at risk, such as pregnant women, breastfeeding mothers, elderly persons, persons with disabilities, lesbian, gay, bisexual, transgender and intersex persons, or survivors of trafficking, torture and/or other serious violent crimes, must not take place.”

#### **d. Recommendation**

A proactive screening process should be introduced to ensure that survivors of sexual and gender-based violence are identified before detention

The stated presumption against the detention of survivors of sexual and gender-based violence should be implemented in practice

In addition, the Government should stop detaining people while their asylum claims are in progress.

Indefinite detention should be abolished, and a 28-day time limit on all immigration detention should be introduced.

The Government should also work with the voluntary sector to develop community-based alternatives to detention, focused on support and engagement

## **2. Judges’ approach at asylum appeal hearings**

### **a. Evidence**

Research demonstrates a range of approaches by immigration judges at the First Tier Tribunal (Immigration and Asylum Chamber) in women’s asylum cases. Whilst some women who had experienced the asylum appeals process mentioned positive attributes relating to the judge in their case, others raised the following concerns regarding the judge:

- failing to explain the process at the beginning of the hearing,
- an accusatory approach towards the woman,
- appearing not to understand her case or seeming to hold a prejudiced view of her,
- a ‘harsh’, ‘scary’ manner of asking questions of the woman and others in the hearing,
- lack of awareness of gender related harm and cultural norms in countries of origin,
- lack of concern for a woman’s well-being.<sup>7</sup>

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<sup>7</sup> Clayton, Gina et al (2017) Through her eyes: enabling women’s best evidence in UK asylum appeals, Migrants Resource Centre and NatCen, London <https://www.asylumaid.org.uk/wp-content/uploads/2017/10/Through-Her-Eyes- -Final-Report -Nov17.pdf>

*When they finish and the Home Office rep sat there and everyone went out and I was in there with them. They were talking, and he [the judge] said to me, you know, 'But you don't look like a lesbian, you don't dress like a lesbian'. (Asylum seeker)<sup>8</sup>*

*He [the judge] didn't ask me any questions. Up to now, I feel that the judge already made up his mind about our case before we went. (Asylum seeker)<sup>9</sup>*

The judges are expected to work to a Joint Presidential Guidance Note on Child, vulnerable adults and sensitive appellants published by the President of the Immigration and Asylum Chamber.<sup>10</sup>

However the research showed that awareness of the Guidance Note was generally limited, with brief coverage in judicial training. Judges believed that greater awareness of the Guidance Note would be beneficial.

In addition lawyers reported that when there was aggressive cross-examination by Home Office Presenting Officers, the Guidance Note was of limited value in controlling this practice.

### **b. Government response**

The Guidance Note recognizes that applicants who have undergone traumatic experiences may be vulnerable and describes what measures immigration judges may consider to avoid re-traumatizing them, and to ensure that evidence provided by them is admissible and reliable. However, the Guidance Note fails to address the specific problems faced by women seeking asylum and the nature of their claims.

### **c. International law and standards**

We note that in its General Recommendation 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women<sup>11</sup> the CEDAW Committee recommended that States parties to the Convention on the Elimination of All Forms of Discrimination should “institute gender-sensitive procedural safeguards in asylum procedures to ensure that women asylum seekers are able to present their cases on the basis of equality and non-discrimination”<sup>12</sup> and included the recommendation “that a supportive interview environment is established so that the claimant can provide her account, including disclosure of sensitive and personal information, especially for survivors of trauma, torture and/or ill-treatment and sexual violence.”<sup>13</sup>

### **d. Recommendation**

The Guidance Note by the President of the Immigration and Asylum Chamber should be reviewed to ensure it better reflects women’s interests in the First-tier Asylum Tribunal. This should include the importance of judges:

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<sup>8</sup> Ibid, p 31

<sup>9</sup> Ibid, p 31

<sup>10</sup> Tribunals Judiciary (2008) Practice Direction: First Tier and Upper Tribunal: Child, Vulnerable Adult and Sensitive Witnesses, Courts and Enforcement Act <https://www.judiciary.gov.uk/wp-content/uploads/2014/07/FTTPracticeDirectionChildVulnerableAdultandSensitiveWitnesses281008.pdf>

<sup>11</sup> UN Doc CEDAW/C/GC/32, 14 November 2014.

<sup>12</sup> UN Doc CEDAW/C/GC/32, 14 November 2014, paragraph 50.

<sup>13</sup> UN Doc CEDAW/C/GC/32, 14 November 2014, paragraph 50(e).

- making appellants feel comfortable in unfamiliar surroundings, for instance by explaining procedures, introducing all involved and stating that cross-examination should be conducted sensitively.
- using a balanced and objective approach in assessing credibility.<sup>14</sup>
- identifying vulnerable appellants.

### 3. Childcare at the First Tier Tribunal

#### a. Evidence

The Home Office is running a project to bring in childcare provision at all asylum interviews within the coming three years. This is already in place in the majority of interview sites. This is being developed so that women do not have to choose between traumatising their children and not disclosing their full story at their asylum interview.

This follows 'the Protection Gap' campaign led by Asylum Aid. It is disappointing that this very positive initiative is not mentioned in the Government's 2017 report to the CEDAW Committee.<sup>15</sup>

Interestingly, research shows a similar issue at the First-tier tribunal. Lack of childcare undermines the opportunity for disclosure of abuse and violence by women asylum appellants.<sup>16</sup>

Lawyers and judges thought that the presence of appellants' children in the hearing room affected their ability to put their case. They felt it was particularly undesirable if the children were able to understand what was being said, since this could be upsetting and might inhibit their mother from speaking openly. Despite this, participants said that children were sometimes in the hearing room because women lacked trusted friends or neighbours with whom they could leave their children, and there was no organised childcare in the tribunal building. In other cases, the children were left to sit alone in the waiting room.

*I have seen them cope with it by the interpreter rocking the child in a pushchair while interpreting, and children in the courtroom wailing, and the judge just carrying on. (Legal representative)<sup>17</sup>*

Judges and legal representatives participating in this research suggested that having voluntary organisations helping with childcare or crèche facilities attached to the tribunal would have a positive impact on women's appeals.

#### b. Government response

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<sup>14</sup> Mackey, Allan, and Barnes, John (2013) Assessment of Credibility in Refugee and Subsidiary Protection Claims under the EU Qualification Directive, Judicial Criteria and Standards. Haarlem: The International Association of Refugee Law Judges (IARLJ), section A.8

[https://www.iarlj.org/general/images/stories/Credo/Credo\\_Paper\\_March2013-rev1.pdf](https://www.iarlj.org/general/images/stories/Credo/Credo_Paper_March2013-rev1.pdf)

<sup>15</sup> UK Government's report to the CEDAW Committee 2018, Eighth periodic report submitted by the United Kingdom of Great Britain and Northern Ireland under article 18 of the Convention to the CEDAW Committee [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGBR%2f8&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGBR%2f8&Lang=en)

<sup>16</sup> Clayton, Gina et al (2017) Through her eyes: enabling women's best evidence in UK asylum appeals, Migrants Resource Centre and NatCen, London <https://www.asylumaid.org.uk/wp-content/uploads/2017/10/Through-Her-Eyes--Final-Report--Nov17.pdf>

<sup>17</sup> Ibid, p 53

Judges said that previously tribunal staff sometimes looked after appellants' children but this was no longer permitted.

### **c. International law and standards**

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### **d. Recommendation**

The Tribunal Service should provide childcare to safeguard children whilst their mothers attend their appeal hearings at all First Tier Tribunals in the UK.

Debora Singer MBE, Senior Policy Adviser, Asylum Aid  
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## **Migrants Resource Centre**

Migrants Resource Centre has worked for over 30 years to help migrants, refugees, and asylum seekers overcome the barriers that prevent them from fully participating in British society. In this time, we have helped tens of thousands of people secure protection in the UK, regularise their immigration status, learn English, and find work. We have helped people who are stateless and have other nationality issues secure more certain future.

## **Women for Refugee Women**

Women for Refugee Women challenges the injustices experienced by women who seek asylum in the UK. We work to empower women who have sought sanctuary in the UK to speak out about their own experiences to the media, to policy-makers and at public events. We aim to give

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<sup>18</sup> UN Doc CEDAW/C/GC/32, 14 November 2014.

a voice to women who are all too often unheard and unseen. We create a bridge from the least powerful women in our society to the more powerful.