



ICAR Briefing - July 2007

Women refugees and asylum seekers in the UK

Seeking asylum in western industrialised states has traditionally been associated with young, single men. As a result, women have at times been rendered effectively invisible within the male dominated discourse on asylum law and policy. In recent years however, more attention has been given to issues specifically affecting women refugees and asylum seekers.

While women may claim asylum for the same reasons as men, research has demonstrated that women's experiences of persecution are often different to those of men.¹ Women, for example, are more likely to flee from gender-specific forms of persecution: sexual violence, marital rape, domestic violence, female genital mutilation, forced abortion or sterilisation.

This briefing addresses four key issues relating to refugee women: the introduction of gender guidelines, female genital mutilation (FGM), the trafficking of women and women in detention. The briefing aims to complement ICAR's [Navigation Guide on Women Asylum Seekers and Refugees in the UK](#), which provides a broader overview of this subject.

Gender guidelines

The United Nations High Commission for Refugees (UNHCR) produced guidelines that promote a gender-sensitive interpretation of the 1951 Refugee Convention in 1991 and 2002.² Individual states including Canada, the United States and Australia have incorporated those guidelines into their domestic practices. Although some states within the European Union have

included gender-related references to existing asylum laws, only the UK and Sweden use specific guidelines for the determination of gender-based asylum claims.³

The Home Office added guidance on *Gender issues in the asylum claim* to its asylum policy instructions (APIs) for caseworkers in March 2004. The guidelines address the additional considerations caseworkers should have in mind when assessing claims for asylum that could include gender-related issues. They include also advice on how to take gender issues into account when looking at the persecution experienced and whether there have been failings in state protection in cases involving women.⁴ The failure to implement the guidelines effectively, however, has been criticised by some commentators.⁵

An additional issue of concern for non-governmental organisations (NGOs) working on behalf of refugee women is the removal of the *Asylum Gender Guidelines*, adopted by the Immigration Appellate Authority (IAA) in 2000 from the Asylum and Immigration Tribunal's (AIT) website in September 2006. According to the AIT's President, Henry Hodge, the guidelines are not, and have never been, the policy of the AIT.⁶

¹ See for example **Crawley, H.** (2001) *Refugees and Gender: Law and Process*, Jordans and Refugee Women Legal Group and **Ceneda, S.** (February 2003) *Women asylum seekers in the UK: A gender perspective - some facts and figures*, London: Refugee Women's Resource Project at Asylum Aid http://www.asylumaid.org.uk/New%20RWRP/RWRP_RRP_Publicationsdownload.htm

² **UNHCR** (1991) *Guidelines on the protection of refugee women*, Geneva: UNHCR <http://www.unhcr.org/publ/PUBL/3d4f915e4.pdf>
See also **UNHCR** (2002) *Guidelines on international protection: 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*, UNHCR, HCR/GIP/02/01 <http://www.unhcr.org/publ/PUBL/3d58ddef4.pdf>

³ **Refugee Women's Resource Project** (November 2005) *Gender issues in assessing asylum claims: spreading good practice across the European Union*, briefing by the Refugee Women's Resource Project, tabled by the UK Government at the Intergovernmental Committee Asylum Working Group meeting in Geneva on 15/16 November 2005 <http://www.asylumaid.org.uk/New%20RWRP/RWRP%20Publications/GenderissuesintheasylumclaimintheEUNovember2005.pdf>

⁴ **Home Office** (October 2006) *Asylum Policy Instruction on Gender Issues within the Asylum Claim* <http://www.ind.homeoffice.gov.uk/documents/asylumpolicyinstructions/apis/genderissueintheasylum.pdf?view=Binary>

⁵ **Ceneda, S. and Palmer, C.** (March 2006) 'Lip service' or implementation? *The Home Office Gender Guidance and women's asylum claims in the UK*, London: Refugee Women's Resource Project at Asylum Aid http://www.asylumaid.org.uk/New%20RWRP/RWRP%20Publications/Gender_GuidanceFeb06.pdf

⁶ **Refugee Women's Resource Project** (January/February 2007) *Women's Asylum News*, issue no 66, p 11 <http://www.asylumaid.org.uk/New%20RWRP/WAN/Issue%20No.%2066%20JanFeb%202007.pdf>



Female Genital Mutilation

Female Genital Mutilation (FGM) is the collective name given to a number of cultural practices, which involve the partial or total removal of the female genitals. The most extreme form is infibulation, which is performed on as many as 90 per cent of women in Somalia, Djibouti and northern Sudan.⁷ The practice is usually carried out by elderly women within the community and performed on girls between the ages of three and ten years, although it may be carried out during infancy, adolescence, on marriage, or during a first pregnancy. In 2000 the World Health Organisation (WHO) estimated that between 100 and 140 million women and girls have undergone FGM, with a further 2 million girls at risk of undergoing FGM every year.⁸

Types of FGM

The World Health Organisation (WHO) identifies four different types of FGM practised today:

Type I – involves the excision of the prepuce, with or without excision of part or all of the clitoris.

Type II – consists of the excision of the clitoris with the partial or total excision of the labia minora.

Type III – the excision of part or all of the external genitalia and stitching/narrowing of the vaginal opening (infibulation)

Type IV – involves the pricking or piercing of the clitoris and/or labia.

World Health Organisation, *Female genital mutilation*, Fact Sheet No. 241

<http://www.who.int/mediacentre/factsheets/fs241/en/>

FGM is practised throughout the world but is highly prevalent in 28-30 countries within Africa and the Middle East.⁹ 75 per cent of all FGM

cases are from Egypt, Ethiopia, Kenya, Nigeria, Somalia, and the Sudan.¹⁰ The prevailing view of FGM is that it is primarily a religious practice, associated with Islam. However, FGM is not required by any religion and is believed to predate Islam, although some Muslim communities practise FGM in the belief that it is demanded by certain interpretations of the Islamic faith. It has been argued in the literature that FGM is mainly a socially-based practice, defended by people that practise it as a rite of passage and a requirement of marriage. Elsewhere it is argued that FGM is performed in order to control and contain women's sexuality by protecting virginity and reducing sexual desire, serving to reinforce, in an extreme way, the inferior status of women within certain societies.¹¹

Consequences of FGM

FGM can damage a woman both physically and psychologically. The immediate consequences of the procedure may include extreme pain, shock, haemorrhage, and chronic infection, which may cause death. Long-term consequences may include cysts and abscesses, infertility, severe scarring, damage to the urethra causing urinary incontinence and fistula, dyspareunia (painful sexual intercourse), sexual dysfunction and difficulties with childbirth. FGM can affect a woman throughout her life. An infibulated woman may, for example, be cut on her wedding night to allow intercourse and then closed again to ensure fidelity. During childbirth an infibulated woman may undergo a further procedure to open her, in order to ensure the delivery of the child.¹² Concern has recently arisen over the possible transmission of HIV, due to the use of one instrument in multiple operations. In some societies, women who refuse to undergo FGM may not be considered marriageable and may be despised and ridiculed. If they continue to resist, and a marriage cannot be arranged, their communities may cast them out.¹³

⁷ **Toubia, N.** (1995) *Female genital mutilation: a call for global action*, New York: Rainbo, in **Richard A. Powell, R., Leye, E., Jayakody, A. and Mwangi-Powell, F. and Morison, L.** (2004) 'Female genital mutilation, asylum seekers and refugees: the need for an integrated European Union agenda,' *Health Policy* 70, p 152

⁸ **World Health Organisation** (2000) *Female genital mutilation*, Fact Sheet No.241

<http://www.who.int/mediacentre/factsheets/fs241/en/>

⁹ **World Health Organisation** (1997) *FGM: a joint WHO/UNICEF/UNFPA statement*. World Health Organization,

Geneva cited in **Momoh, C.** 'Female genital mutilation,' **Momoh, C.** (ed) *Female Genital Mutilation*, p 5

¹⁰ **Crawley, H.** (2001) *Refugees and Gender: Law and Process*, p 176

¹¹ *Ibid*, pp 177-180

¹² *Ibid*, p 186

¹³ *Ibid*, p 189



FGM's status within human rights law

FGM is increasingly recognised as a fundamental violation of the human rights of women and girls. A number of principles exist which oblige governments to take effective action against FGM. It constitutes 'cruel, inhumane and degrading treatment' prohibited under Article 5 of the Universal Declaration of Human Rights (UDHR).¹⁴ The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) calls for the 'elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women.'¹⁵ The UN Declaration on the Elimination of Violence against Women condemns forms of gender-based violence whether in 'public or private life.'¹⁶ The Convention on the Rights of the Child requires States to 'take all effective measures with a view to abolishing traditional practices prejudicial to the health of children.'¹⁷ The 1995 Beijing Declaration and Platform for Action adopted by the Fourth World Conference on Women, calls for governments worldwide to make efforts to eliminate violence against women, such as dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women.¹⁸

Gaining international protection

As a result of the international recognition of FGM as a human rights issue, the UNHCR has stated that FGM is a form of persecution, and can be the basis for a successful asylum claim:

'FGM, which causes severe pain as well as permanent physical harm, amounts to a violation of human rights, including the rights of the child, and can be

*regarded as persecution. The toleration of these acts by the authorities, or the unwillingness of the authorities to provide protection against them, amounts to official acquiescence. Therefore, a woman can be considered as a refugee if she or her daughter/daughters fear being compelled to undergo or allow her daughters to undergo the practice.'*¹⁹

The failure of state protection is especially pertinent to FGM-based asylum claims. In Sierra Leone, for example, FGM is not illegal; it is accepted as the norm in society and is even viewed as a vote winner by politicians.²⁰ A number of countries have passed national laws to protect women and girls from FGM. These are Benin (2003), Burkina Faso (1996), Central African Republic (1966), Chad (2003), Cote d'Ivoire (1998), Djibouti (1994), Egypt (ministerial decree, 1996), Ethiopia (2004), Ghana (1994), Guinea (1965, 2000), Kenya (2001), Niger (2003), Senegal (1999), Tanzania (1998), Togo (1998) and Nigeria (multiple states, 1999-2002). The penalties imposed range from a minimum of six months to a maximum of life imprisonment. Some countries include fines as part of the punishment.²¹ However, concern has been expressed about the quality of these laws and the protection they afford. In most countries, laws prohibiting FGM are rarely enforced due to reluctance on the part of the authorities to interfere with a practice rooted in tradition.²² The Home Office Gender Guidelines explicitly refer to the failure of state protection and FGM-related asylum claims, asserting that a 'state may make an act that can amount to persecution, such as FGM, illegal, but continue to condone or tolerate the practice or be unable to put an effective end to the custom because of its

¹⁴ **United Nations** (1948) *Universal Declaration of Human Rights* <http://www.unhcr.ch/udhr/lang/eng.htm>

¹⁵ Article 5, paragraph (a) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1981)

<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#intro>

¹⁶ **United Nations** (1993) *Declaration on the Elimination of Violence Against Women* <http://www.ohchr.org/english/law/pdf/eliminationvaw.pdf>

¹⁷ **United Nations** (1990) *Convention on the Rights of the Child* <http://www.unhcr.ch/html/menu3/b/k2crc.htm>

¹⁸ **United Nations** (15 September 1995) *Beijing Declaration and Platform for Action, Fourth World Conference on Women* http://www.unesco.org/education/information/nfsunesco/pdf/EIJIN_E.PDF

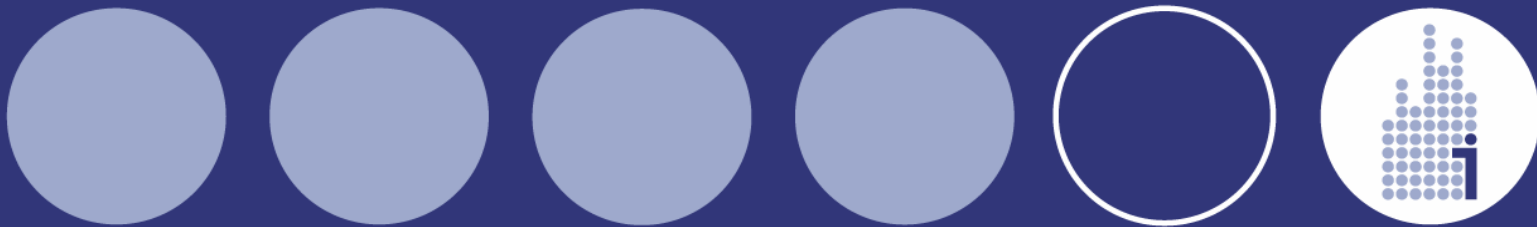
¹⁹ Letter to the Refugee Legal Centre from UNHCR 1994 cited in **Crawley, H.** (2001) *Refugees and Gender: Law and Process*, p 181

²⁰ **Home Office** (15 December 2006) *Sierra Leone Operational Guidance Note* <http://www.ind.homeoffice.gov.uk/documents/countryspecificasylumpolicyogns/sierraleoneogn.pdf?view=Binary>

²¹ **Center for Reproductive Rights** (March 2007) *Fact sheet on Female Genital Mutilation (FGM): Legal Prohibitions Worldwide* http://www.reproductiverights.org/pub_fac_fgmicpd.html

²² **US Department of State** (2001) *Laws/Enforcement in countries where FGM is commonly practised* <http://www.state.gov/g/wi/rls/rep/9303.htm>

See also **Equality Now** (2002) *Update on Women's Action 20.2, Tanzania: Enforcement of the Law Against Female Genital Mutilation* http://www.equalitynow.org/english/actions/action_2002_en.html



widespread cultural acceptance.²³ A woman in fear of FGM may not gain state protection or be expected to alert the authorities in such circumstances.

A few countries have granted asylum to women on the basis that if returned to their country they would be at risk of FGM. Canada was the first country to grant asylum on the basis of FGM in 1994. The case of Farah involved a woman from Somalia who argued that if she were returned to her country, her daughter would be forced to undergo FGM. The child was granted refugee status due to her membership of two particular social groups: women and minors.²⁴ A particularly renowned case is that of Fauziya Kasinga, a 19-year-old woman, who fled Togo for America in order to escape FGM due to her late father's opposition to the practice. She argued that the Togo government and the police in the country would not protect her from FGM. After claiming asylum in the US, Kasinga was detained for more than a year and her claim was initially refused. The US Board of Immigration Appeals, however, granted asylum to Kasinga in 1996.²⁵

FGM and asylum in the UK

In the UK, the debate on asylum and FGM has centred on the issue of whether women from a particular country or ethnic group, who are at risk of FGM, constitute a 'particular social group' within the meaning of the Refugee Convention as the characteristic or attribute common to all members of the social group cannot be the shared fear of persecution.

The case of Fornah, a young woman from Sierra Leone who had fled to the UK in 2003 at the age of 15 in fear of FGM, highlights this. She had been refused asylum on the basis that she would not be persecuted for reason of her membership of a particular social group.²⁶ On appeal, the Adjudicator found that her fear was for a

Convention reason, i.e. because of her membership of a particular social group, that of young, single Sierra Leone women, who are clearly at considerable risk of enforced FGM. Yet, on the Secretary of State's appeal to the Immigration Appeal Tribunal, the decision was reversed. The Tribunal was not satisfied that the social group, identified by the Adjudicator, could be properly regarded as a particular social group within the meaning of the Refugee Convention. The Court of Appeal agreed with this view, putting forward the argument that the social group of young, single and uncircumcised women in Sierra Leone did not have immutable characteristics because women who undergo FGM are not at further risk of persecution and that the practice is 'clearly accepted and/or regarded...as traditional and part of the cultural life' of Sierra Leone and therefore not discriminatory.²⁷

The case proceeded to the House of Lords who granted asylum to Fornah in October 2006.²⁸ In their decision they unanimously accepted that either 'all women in Sierra Leone'²⁹ (wider definition) or 'intact or uninitiated women and girls who are in tribes in Sierra Leone which practise FGM'³⁰ (narrow definition) constitute a particular social group because women in Sierra Leone are discriminated against and seen as wholly inferior to men. Lord Bingham of Cornhill stressed that 'women in Sierra Leone are a group of persons sharing a common characteristic which without a fundamental change in social mores is unchangeable, namely a position of social inferiority as compared with men. They are perceived by society as inferior. That is true of all women, those who accept or willingly embrace their inferior position and those who do not. To define the group in this way is not to define it by reference to the persecution complained of: it is a characteristic which would exist if FGM were not

²³ Home Office (October 2006) *Asylum Policy Instruction on Gender Issues within the Asylum Claim*, p 6

²⁴ Dumper, H. (November 2003, updated May 2006), *Navigation guide on women asylum seekers and refugees in the UK*, London: ICAR, pp 15-16

²⁵ For more information on this case see Crawley, H. (2001) *Refugee and Gender: Law and Process*, p 182

²⁶ She was instead granted humanitarian protection until her 18th birthday. For more information on the Fornah case see **Refugee Women's Resource Project** (July/August 2005) *Women's Asylum News*, issue no 52 <http://www.asylumaid.org.uk/New%20RWRP/WAN/RWRP%20WAN%2052%20JulAug%202005.pdf>


²⁷ Paragraph 44, *Fornah v Secretary of State for Home Department* [2005] EWCA Civ 680 (09 June 2005)

²⁸ **House of Lords** (2006) *Judgments - Secretary of State for the Home Department v. Fornah*, UKHL 46 <http://www.publications.parliament.uk/pa/ld200506/ldjudgmt/jd061018/sshd-1.htm>

Also see **Refugee Women's Resource Project** (October 2006) *Women's Asylum News*, issue no 64, for a summary of the judgment http://www.asylumaid.org.uk/New%20RWRP/WAN/Issue%20No.%2064%20Oct%202006_printers%20version.pdf

²⁹ Paragraph 31 of the House of Lords Decision

³⁰ Paragraph 71, 72



practised, although FGM is an extreme and very cruel expression of male dominance.³¹

Cultural obstacles

Establishing that their persecution would be for a Convention reason is not the only obstacle women fearing FGM have to overcome in order to secure asylum. Concerns over dictating to other cultures on women's human rights issues have been used, in some instances, as justification for refusing asylum claims made by women who flee FGM, such as the Fornah case.³² It has been argued however that it is not impossible to reconcile culture with universal human rights norms concerning the FGM asylum debate.³³ Some decision makers, for example, reject a view of human rights that 'precludes flexibility in [its] conceptualisation, interpretation and application within and between cultures.'³⁴ Culture, it is argued, cannot be used to undermine the values and principles of universal human rights.

Trafficked women

The UK is recognised as a major destination country for trafficking.³⁵ Evidence suggests that most victims are trafficked directly to the UK, while others are brought to the UK in stages and exploited in transit countries before arriving here.³⁶ The majority of women trafficked to the UK are from Eastern Europe, Asia and West Africa, in particular Lithuania, Romania, Moldova, Ukraine, Thailand, Vietnam, the Democratic Republic of Congo, Sierra Leone, Ghana and Nigeria.³⁷ Forced prostitution is believed to be the main reason why women are trafficked to the

UK.³⁸ Although the exact scale of the problem is unknown, a Home Office study from 2000 estimated that between 142 and 1,420 women were trafficked to the UK for this reason during 1998.³⁹ They estimate that during 2003, 4,000 victims were trafficked into the UK for forced prostitution.⁴⁰ ECPAT UK has stated that the increasing number of sex workers originating from outside the UK indicates that sex trafficking is escalating.⁴¹

What is human trafficking?

Human trafficking is defined as:

"...the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."

Article 3, paragraph (a) of the *Protocol to Suppress and Punish Trafficking in Persons, Especially Women and Children to the Convention against Transnational Crime*

The trafficking of human beings is different from the smuggling of migrants. The UN Office on Drugs and Crime outlines the key difference: 'the smuggling of migrants while often undertaken in dangerous and degrading conditions, involves migrants who have consented to the smuggling. Trafficking victims, on the other hand, have either never consented or, if they initially consented, that consent has been rendered meaningless by the coercive, deceptive or abusive actions of the trafficker.'

³¹ Paragraph 31

³² **Crawley, H.** (2001) *Refugees and Gender: Law and Process*, p 183

³³ *Ibid.*, pp 183-84

³⁴ **Crawley, H.** (2001) *Refugees and Gender: Law and Process*, p 184, cited in **Anker, D.** (Spring 2002) 'Refugee Law, Gender and the Human Rights Paradigm,' *Harvard Human Rights Journal*, vol 15, p 145

<http://www.law.harvard.edu/students/orgs/hrj/iss15/anker.shtm>

³⁵ **House of Lords** (October 2006) *House of Commons Joint Committee on Human Rights, Human trafficking*, Twenty-sixth report of session 2005-06, volume 1, p 28

<http://www.publications.parliament.uk/pa/jt200506/jtselect/jtrig/hts/245/245.pdf>

³⁶ *Ibid.*

³⁷ **Women's Commission for Refugee Women and Children** (June 2005) *The struggle between migration control and victim protection: The UK approach to human trafficking*, p 15 http://www.womenscommission.org/pdf/UK_Trafficking.pdf

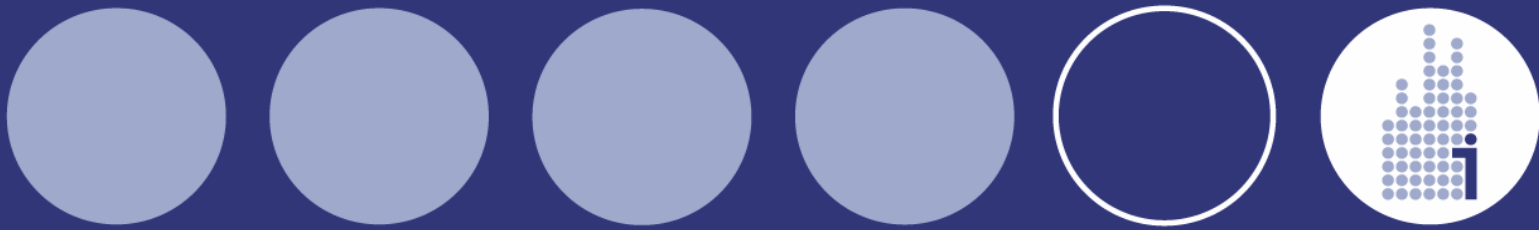
³⁸ **House of Lords** (October 2006) *House of Commons Joint Committee on Human Rights, Human trafficking*, Twenty-sixth report of session 2005-06, volume 1, p31

³⁹ **Kelly, L. and Regan, L.** (2000) *Stopping traffic: Exploring the extent of, and responses to, trafficking in women for sexual exploitation in the UK*, Home Office Police Research Series Paper 125, p 22

<http://www.homeoffice.gov.uk/rds/prgpdfs/fprs125.pdf>

⁴⁰ **House of Lords** (October 2006) *House of Commons Joint Committee on Human Rights, Human trafficking*, Twenty-sixth report of session 2005-06, volume 1, p 28

⁴¹ **Somerset, C.** (November 2001) *What the professionals know: The trafficking of children into, and through, the UK for sexual purposes*, ECPAT UK. Cited in **Women's Commission for Refugee Women and Children** (June 2005) *The UK approach to human trafficking*, p 17



United Nations Office on Drugs and Crime, FAQ's on Trafficking in Human Beings
http://www.unodc.org/unodc/en/trafficking_victim_consent.html#how

Causes of trafficking

Women who are trafficked into the UK often come from countries that routinely practice gender discrimination and violate women's human rights. The POPPY Project reports that many of their clients experienced domestic violence before being trafficked. Some women had been sexually abused or raped; for the majority of these women the rapes were not isolated incidents but were repeated over a long period of time by the same perpetrator. The POPPY Project argues that there are two possibilities explaining the high incidence of violence perpetrated against women who are trafficked. The first possibility is that trafficking networks and recruiters appear to target women who have previously experienced male violence. Women who have suffered domestic violence or rape are particularly vulnerable; their desire to escape the persecution consequently leads them to become a victim of trafficking. The second is that violence is being perpetrated against women with the explicit intent of grooming them for trafficking. In support of this, the POPPY Project state that several women have had the threat of the violence they experienced preceding the trafficking, being exposed as part of the trafficking process.⁴² Traffickers may rape the women themselves with the intention of increasing the pressure on the women to leave; due to the social stigma surrounding rape these women are likely to be rejected by their communities.⁴³ Evidence also suggests that some traffickers pose as 'boyfriends' in order to lure women to the UK.⁴⁴ Other women are brought to the UK with promises of travel; due to restrictions on women's mobility in some countries, such

⁴² Dickson, S. (April 2004) *When women are trafficked: Quantifying the gendered experience of trafficking in the UK*, The POPPY Project, pp 2-3
http://www.eaves4women.co.uk/POPPY_Project/Documents/Recent_Reports/WHen%20Women%20are%20Trafficked,%20April%202004.pdf

⁴³ Women's Commission for Refugee Women and Children (June 2005) *The UK approach to human trafficking*, p 16

⁴⁴ House of Lords (October 2006) *House of Commons Joint Committee on Human Rights, Human trafficking*, Twenty-sixth report of session 2005-06, volume 1, p 31

promises appear attractive.⁴⁵ Women are in some instances sold to traffickers by their own families.⁴⁶ The POPPY Project reports that most women are trafficked aged 17-19.⁴⁷ The majority of trafficked women are generally uneducated and come from a poor socio-economic background.⁴⁸

UK policy

The UK government has implemented legislation to prohibit trafficking in human beings. The Sexual Offences Act 2003 established wide-ranging offences for the trafficking of people into the UK for sexual exploitation. Under the Act the maximum penalty for trafficking is 14 years' imprisonment.⁴⁹ The Asylum and Immigration Act 2004 expanded the definition of trafficking under UK law beyond trafficking for the purposes of sexual exploitation to other forms of exploitation, such as forced labour and domestic slavery. This was in response to EU legislation requiring member states to introduce a framework to combat all forms of trafficking.⁵⁰ Under section 15 of the Immigration, Asylum and Nationality Act 2006, employers who employ illegal migrants are subject to a maximum civil penalty of £2,000 per illegal migrant. Section 21 makes it a criminal offence to employ illegal migrants with a maximum penalty of 2 years' imprisonment and an unlimited fine.⁵¹ Article 3 (prohibition on torture) and Article 4 (prohibition on slavery) of the European

⁴⁵ Women's Commission for Refugee Women and Children (June 2005) *The UK approach to human trafficking*, p. 16

⁴⁶ US Agency for International Development (USAID), Office of Women in Development (2003) *Albania Assessment and Analysis Report*, p 33, cited in Refugee Women's Resource Project (June 2004) *Safe for whom? Women's human rights abuses and protection in 'safe list' countries: Albania, Jamaica and Ukraine*, p 65
<http://www.asylumaid.org.uk/New%20RWRP/RWRP%20Publications/RWRP%20Safe%20for%20Whom%20Jun04.pdf>


⁴⁷ Dickson, S. (April 2004) *When women are trafficked: Quantifying the gendered experience of trafficking in the UK*, The POPPY Project, p 3

⁴⁸ Refugee Women's Resource Project (June 2004) *Safe for whom?*, p 158, citing the 2003 United Nations Development Programme (UNDP) study on gender issues in Ukraine

⁴⁹ Sexual Offences Act 2003
<http://www.opsi.gov.uk/ACTS/acts2003/20030042.htm>

⁵⁰ Council Framework Decision 2002/629/JHA on Combating Trafficking in Human Beings (July 19, 2002); Hill, A. (November 9, 2003) 'Child Smugglers will Face Jail At Last' *The Observer*. Cited in Women's Commission for Refugee Women and Children (June 2005) *The UK Approach to Human Trafficking*, p 14

⁵¹ Immigration, Asylum and Nationality Act 2006
http://www.opsi.gov.uk/ACTS/acts2006/ukpga_20060013_en.pdf



Convention on Human Rights can also be invoked in relation to a trafficking offence.

Although the UK government is making a clear effort in the investigation and prosecution of trafficking, it has been condemned by NGOs for its failure to effectively protect the victims of trafficking and its tendency to misinterpret trafficking 'as a migration problem rather than a human rights violation.'⁵² In its October 2006 report on human trafficking, the Joint Committee on Human Rights (JCHR) also criticised the UK approach for the lack of support and protection given to trafficking victims. Noting the assistance given to the victims of trafficking by the POPPY Project, the JCHR expressed concern about the lack of a nationwide support scheme in place to help trafficking victims.⁵³ The JCHR also criticised the number of trafficking victims arrested, detained and deported; receiving evidence from the POPPY Project that many victims are detained and deported once they have cooperated with the police and often without a risk assessment conducted prior to their removal.⁵⁴

The POPPY Project

Set up in 2003 as a pilot scheme by the charity, Eaves Housing for Women, the POPPY Project provides safe accommodation, language support, medical treatment, counselling, legal advice and support through the asylum and immigration process for up to 25 women who have been trafficked into the UK for the purposes of sexual exploitation. The Home Office and the Association of London Government (ALG) fund the project.

Women at the POPPY Project are initially given up 28 days to consider whether they wish to give evidence to the police and/or claim asylum. After that period has elapsed a further two months is usually allowed.

To be eligible for the POPPY Project's support, trafficked women must meet the Home Office's strict criteria (currently under review): they have been forced to work as a prostitute in the UK within the last 30 days and are willing to cooperate with the authorities.

⁵² **Women's Commission for Refugee Women and Children** (June 2005) *The UK approach to human trafficking*, p. 18

⁵³ **House of Lords** (October 2006) *House of Commons Joint Committee on Human Rights, Human trafficking*, Twenty-sixth report of session 2005-06, volume 1, p 52

⁵⁴ *Ibid*, p 60

Women who are given protection by the project are required to cooperate with any arrangements made for their removal, if the police investigation is brought to an end and if an asylum claim is refused. These criteria have been criticised for excluding women who have been trafficked into forms of exploitation other than prostitution, women who have been exploited in transit countries before the UK, those who escaped from their traffickers more than a month ago or those who do not wish to testify.

The project to date has only been able to help a small number of eligible women referred to the project, due to a lack of space. It has been suggested that the POPPY Project should be expanded and similar projects established in other UK cities.

Referrals can be made by contacting the duty officer between 9.30am and 5.30pm on: 020 7735 2062.

A 24 hour recorded advice line can be reached on: 020 7840 712.

For general enquiries contact Louise Hinchliffe.
Tel: 020 7840 7141.
Email: louise.hinchliffe@eaveshousing.co.uk


POPPY Project website:
http://www.eaves4women.co.uk/POPPY_Project/POPPY_Project.php

Claiming asylum

In order to receive protection from the UK, victims of trafficking are at present required to apply for asylum.⁵⁵ The right to claim asylum is important for the victims of trafficking in a number of ways. Many may have been trafficked because they were escaping armed conflict or human rights abuses, experiences that would qualify them for refugee status, as the Women's Commission for Refugee Women and Children notes.⁵⁶ Trafficking victims, if returned to their country of origin, may be re-trafficked or

⁵⁵ The UNHCR has recognised trafficking for the purposes of forced prostitution or sexual exploitation as a form of persecution. See **UNHCR** (2002) *Guidelines on international protection: 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*

⁵⁶ **Women's Commission for Refugee Women and Children** (June 2005) *The UK approach to human trafficking*, p. 19



subjected to reprisals by trafficking rings. Women who were trafficked for the purposes of forced prostitution may face severe discrimination or be ostracised by their communities due to the social stigma surrounding prostitution in many countries. If their country is unable or unwilling to protect them they could have the basis for an asylum claim.⁵⁷

It is however extremely difficult to secure asylum in the UK for women victims of trafficking. The Refugee Women's Resource Project (RWRP) and the POPPY Project report that out of 32 asylum claims, made by women victims of trafficking who have used the Poppy Project, 26 were refused at the initial decision stage.⁵⁸ Yet, 12 out of the 26 decisions were overturned at the appeals stage displaying flawed initial decision making in the opinion of the RWRP and the POPPY Project.⁵⁹ 16 out of the 26 cases were refused partly on the basis that there was protection in their country of origin despite evidence which suggests otherwise. Twenty-six out of the 32 women claimed asylum due to their membership of a particular social group. Although the Home Office Gender Guidelines explicitly state that trafficked women may have a valid asylum claim on this basis, 17 out of the 26 were refused in whole or part because their asylum claim was not based on a Convention ground. Ten out of the 26 cases were refused for credibility reasons.⁶⁰ One of the possible reasons cited for the high success rate at appeal for POPPY cases is the cooperation trafficked women at the POPPY Project give to the authorities. This, the RWRP and the POPPY Project claim, is a concern. They state that 'whether or not a woman succeeds in her asylum claim *should not* depend on her willingness or otherwise to cooperate with the police and immigration authorities in relation to any prosecution they may wish to bring against her traffickers.'⁶¹

⁵⁷ See the UNHCR's Gender Guidelines, p 5.

⁵⁸ Richards, S., Singer, D. and Steel, M. (March 2006) *Hope Betrayed: An analysis of women victims of trafficking and their claims for asylum*, London: The POPPY Project and Refugee Women's Resource Project at Asylum Aid, p 9 <http://www.asylumaid.org.uk/New%20RWRP/RWRP%20Publications/Hope%20Betrayed%20March%202006.pdf>

Of the 12 successful appeals 9 were granted indefinite leave to remain, and 3 were granted humanitarian protection.

⁵⁹ Ibid, p 24

⁶⁰ Ibid, pp 13-19

⁶¹ Ibid, p 21

'Safe' countries

Particular concern has been expressed about the list of countries the UK government believes to be safe, referred to as the 'white list.' Asylum applications from 'safe' countries are presumed to be clearly unfounded unless the applicant can prove otherwise. Their claims are fast-tracked and applicants have no right of appeal in the UK if they receive a negative decision; an appeal must instead be made in their country of origin or a 'safe' third country.⁶² Yet, many of these countries, as the US Department of State notes, have a severe trafficking problem.⁶³ Moreover, according to the RWRP, some of these countries also fail to protect women from human rights violations.⁶⁴

The adoption of a safe country list, it is argued, negatively affects women, especially trafficked women; forcing women to return to their countries of origin, in order to appeal, merely increases the likelihood of them being re-trafficked. It is also claimed that the current emphasis on fast-tracked asylum procedures may make it difficult to identify cases of trafficking. The Women's Commission for Refugee Women and Children received evidence from the Refugee Arrivals Project that 'It's quite feasible that trafficked persons will be reluctant to tell their story, will get caught in detention, will be shipped home and then will be re-trafficked.'⁶⁵ This is particularly the case with women trafficked into forced prostitution as their experiences may be especially difficult to speak about.

However, in May 2007 several countries were added to the safe country list. Significantly, most of the restrictions relate to men only, which suggests that gender issues are being taken into consideration by the Home Office.⁶⁶

⁶² These are: Albania, Bolivia, Brazil, Ecuador, India, Jamaica, Macedonia, Moldova, Mongolia, Montenegro, South Africa, Serbia, Ukraine, Ghana (male applicants only) and Nigeria (male applicants only).

⁶³ US Department of State (2006) *Trafficking in persons report*, pp 29-31, see also p 46 <http://www.state.gov/documents/organization/66086.pdf>

⁶⁴ Refugee Women's Resource Project (June 2004) *Safe for whom?*

⁶⁵ Women's Commission for Refugee Women and Children (June 2005) *The UK approach to human trafficking*, p. 23

⁶⁶ Home Office (22 May 2007) *Asylum applications continue to fall* <http://press.homeoffice.gov.uk/press-releases/asylum-apps-continue-to-fall>



EU Convention against Trafficking

Following the JCHR human trafficking report, the Prime Minister in January 2007 announced Britain's intention to sign the Council of Europe Convention on Action Against Trafficking in Human Beings 2005.⁶⁷ The UK signed the Convention in late March 2007, the 200th anniversary of the country's decision to abolish the slave trade.⁶⁸ Under the provisions of the Convention, victims of human trafficking will be given help with housing, medical advice and a minimum 30 day reflection period, allowing victims to recover from their experiences and decide whether they will help the police prosecute their traffickers. The Convention also allows state parties to issue temporary residence permits (with the possibility of renewal) to trafficked people.⁶⁹ The JCHR in its report noted that Italy has provided residence permits and other assistance to trafficking victims without experiencing an immigration 'pull factor', the government's longstanding objection to the Convention.⁷⁰

Women in detention

Over recent years there has been a significant increase in the detention of asylum seekers. Immigration Removal Centres (IRCs) currently have a total capacity of 2,545 places.⁷¹ A decade ago there were only around 200 places. It is reported in a 2000 study by UNHCR that the UK detains more people for longer periods and with less judicial supervision than any comparable

country in Europe.⁷² Various NGOs have expressed concern about the government's use of detention, particularly the way in which detention is utilised in order to decide an asylum claim and the detention of vulnerable people, such as women who have been found to experience particular problems whilst subject to immigration detention.

The detained fast-track process

The New Asylum Model (NAM) Quality Team recently undertook an evaluation relating to the compliance of the Home Office Gender Guidelines at Yarl's Wood IRC. This involved examining all cases passing through the female detained fast-track process at Yarl's Wood during February 2006. The main recommendations included the need for a more effective referral system mechanism for female cases, which considers the basis of an asylum claim prior to deciding whether it is suitable for a quick decision and improved training for caseworkers on gender issues in the asylum process.⁷³

NGOs however, remain concerned about the treatment of women within the detained fast-track process. BID, an organisation that campaigns to increase access to bail procedures for immigration detainees, is concerned about the quality and accessibility of legal representation provided for these women and has recorded cases where women in the detained fast-track process were not given enough time to prepare their case and were subsequently unable to disclose information about rape and sexual violence in time for it to be considered. Of the 345 cases heard at the Yarl's Wood Asylum and Immigration Tribunal between May 2005 and September 2006, when the fast-track centre began to process the cases of women asylum seekers, 26% of women did not have legal representation at their appeal.⁷⁴ It is unclear whether this figure is due to the women being unable to access legal representation or failing the initial merits to qualify for legal representation.

⁶⁷ **Wintour, P.** (13 January 2007) 'Trafficking victims to get housing and medical aid,' *The Guardian* http://www.guardian.co.uk/uk_news/story/0,,1989417.00.html cited in **Refugee Women's Resource Project** (January/February 2007) *Women's asylum news*, issue no 66, p 12

⁶⁸ **Amnesty International UK** (23 March 2007) *Amnesty International applauds UK Government decision to sign up to European Convention Against Trafficking* http://www.amnesty.org.uk/news_details.asp?NewsID=17312

⁶⁹ Article 14 states that the granting of a residence permit should not prejudice a victim's right to seek and enjoy asylum. The Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report http://www.coe.int/t/dg2/trafficking/campaign/Source/PDF_Co_nv_197_Trafficking_E.pdf

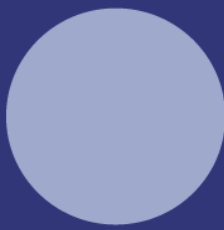
⁷⁰ **House of Lords** (October 2006) *House of Commons Joint Committee on Human Rights, Human trafficking*, Twenty-sixth report of session 2005-06, volume 1, p 63

⁷¹ **House of Lords** (March 2007) *House of Commons Joint Committee on Human Rights, The Treatment of Asylum Seekers*, Tenth report of session 2006-07, volume 1, p 69 <http://www.publications.parliament.uk/pa/jt200607/jtselect/jtrig/hts/81/81i.pdf>

⁷² **UNHCR** (July 2000) *Reception Standards For Asylum Seekers in the European Union*, Geneva: UNHCR <http://www.unhcr.org/home/RSDLEGAL/3ae6b3440.pdf>

⁷³ **NAM Quality Team** (August 2006) *Yarl's Wood detained fast-track compliance with the Gender API*

⁷⁴ **Bail for Immigration Detainees** (2006) *Memorandum to the Joint Committee on Human Rights – Uncorrected evidence on the treatment of asylum seekers* <http://www.publications.parliament.uk/pa/jt200607/jtselect/jtrig/hts/uc60-iii/bid.htm>



Where are women detained?

Women asylum seekers can be held in the following detention facilities:

- Dungavel IRC in Scotland
- Tinsley House IRC
- Yarl's Wood IRC
- Oakington Reception Centre

Yarl's Wood detains only women and children. Since May 2005, it has also operated as a fast-track asylum-processing centre for single women. Decision making in the detained fast-track process (also known as the super fast-track) at Yarl's Wood is extremely quick. The asylum applicant is interviewed on day two, served with a decision on day three and given two days to lodge an appeal with the appeal hearing on day nine. There is a court on site where appeals and applications for bail are heard.

Tinsley House, Dungavel and Oakington Reception Centre detain women, men and families with children.

At Oakington, women asylum seekers who originate from countries on the 'white list' and whose cases are deemed 'clearly unfounded' are detained whilst their claims are fast-tracked. They will only have a non-suspensive appeal – no appeal within the UK – and if they receive a negative decision will be removed from the country. Women in the fast-track process at Oakington are detained until they receive a decision but have an in country-right of appeal if their asylum claim is refused.

In Northern Ireland, female asylum seekers are sent to Hydebank Wood Prison, which is run by the Northern Ireland Prison Service.

Impact of detention on mental health

Detention has been found to have a particularly deleterious effect on asylum seekers' mental health. Research has identified the way in which 'detention can induce fear, isolation and hopelessness, and exacerbate the severe

psychological distress frequently exhibited by asylum seekers who are already traumatised.⁷⁵

Research conducted by BID and the RWRP on the impact of detention on women in the UK found that the issue of mental health was significant. When asked about how they felt many of the women interviewed for the research used terms such as 'awful/unwell,' 'feeling bad/like criminals,' 'stressed,' 'depressed,' 'sad,' 'lonely,' 'upset,' 'suicidal.'⁷⁶ BID and the RWRP found that the unpredictable nature of detention, the fear of being arbitrarily moved to other IRCs around the country and never knowing if they were going to be released or removed, in addition to the experience of forced removal attempts, increased the stress felt by women in detention, affecting their ability to resolve problems with their asylum claims.

Particular concern has been raised about the way in which detention may re-traumatise women who have suffered repeated rape over long periods whilst in detention in their countries of origin.⁷⁷

The BID/RWRP report identified that women's mental health problems were not taken seriously by staff in detention centres, including women who were at risk of self-harm and depression.

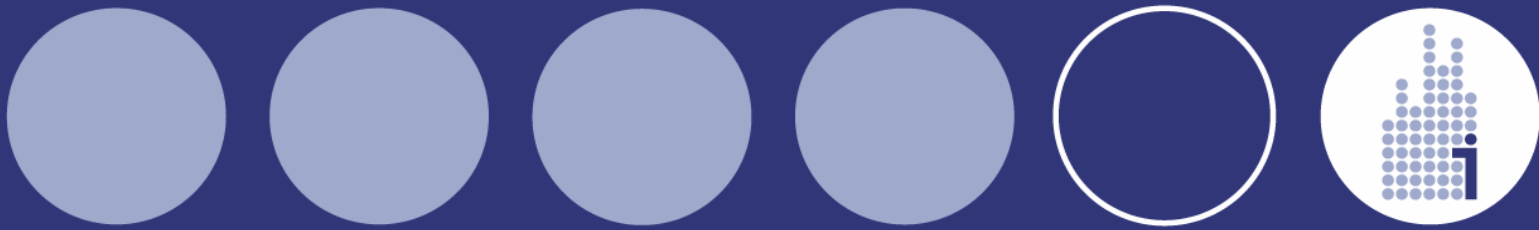
Her Majesty's Chief Inspectorate of Prisons (HMIP) in a report from an unannounced visit of Yarl's Wood IRC, the main centre for the detention of women, recommended that primary mental health care services should be developed to provide a more comprehensive service for detainees.⁷⁸

⁷⁵ Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture (June 2003) *From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers*, cited in **Ceneda, S. and Cutler, S.** (August 2004) 'They took me away'- Women's experiences of immigration detention in the UK, London: Bail for Immigration Detainees and Refugee Women's Resource Project, p 68 <http://www.asylumaid.org.uk/New%20RWRP/RWRP%20Publications/Women%20in%20detention%20Final%20version%2031Jan05.pdf>

⁷⁶ **Ceneda, S. and Cutler, S.** (August 2004) 'They took me away'- Women's experiences of immigration detention in the UK, p 65

⁷⁷ **Ceneda, S. and Cutler, S.** (August 2004) "They took me away"- Women's experiences of immigration detention in the UK, p 70 citing an interview and email follow up with Women Against Rape and Black Women's Rape Action Project.

⁷⁸ **HM Chief Inspector of Prisons** (2006) *Report on a short follow-up inspection of Yarl's Wood Immigration Removal Centre*, 13-16 February 2006, p 32



Statistics on women in detention

It is difficult to portray an accurate picture of the number of women asylum seekers detained due to the lack of relevant and detailed statistics. The Home Office quarterly statistics on asylum seekers only provide a 'snapshot' of people detained under Immigration Act Powers on a particular day, with information on the percentage of those who have claimed asylum at some stage, gender, place of detention, the length of time spent in detention and nationality. It is clear, however, from information currently available that the majority of asylum detainees are men. At 30 December 2006, for example, 87% of detainees were male. Only 170 out of a total of 1,320 asylum detainees were female.

In a study by BID and RWRP on women's experiences of immigration detention, the Research and Development Statistics Directorate of the Home Office, on request provided a breakdown by gender of the categories according to nationality, place and length of detention from the quarterly snapshot taken on 27 March 2004.

On this day, 135 out of 185 women detained were asylum seekers. Of this number, fifty were detained at Oakington, twenty-five at Tinsley House, ten at Dungavel, forty at Yarl's Wood and five women asylum seekers were detained at unspecified prison establishments. Women were detained for periods ranging from less than 14 days to over a year. 55 female asylum seekers originated from African countries such as Cameroon, Congo, Kenya, Nigeria and Uganda; 40 came from Eastern European countries; 25 came from Asian countries including China, Pakistan and Sri Lanka and 15 were from Jamaica.

Ceneda, S. and Cutler, S. (August 2004) *They took me away - Women's experiences of immigration detention in the UK*, London: Bail for Immigration Detainees and Refugee Women's Resource Project at Asylum Aid

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http://inspectorates.homeoffice.gov.uk/hmiprison/inspect_reports/irc-inspections.html/yarlswood.pdf?view=Binary

Pregnant women

The detention of pregnant women is a major issue for organisations representing refugee women. A recent report by the Maternity Alliance, BID and the London Detainee Support Group highlighting their plight draws attention to the inadequacy of care for pregnant and nursing women in detention. The report also found that pregnant women experienced extreme depression, profound loneliness and feelings of powerlessness that can create chronic stress.⁷⁹

The detention of pregnant and breastfeeding women has been criticised by UNHCR whose guidelines state that 'as a general rule the detention of pregnant women in their final months and nursing mothers, both of whom have special needs, should be avoided.'⁸⁰ In addition, the Immigration Service's own instructions state that pregnant women are a category of people who are 'normally only considered suitable for detention in very exceptional circumstances.'⁸¹ Despite these instructions and the UNHCR guidelines, organisations have recorded instances where pregnant asylum seekers and their babies are detained, sometimes for many months.⁸² The Maternity Alliance/BID report calls on the government to stop the prolonged use of detention for pregnant women and mothers with young children and consider other alternatives, such as regular reporting.

⁷⁹ **McLeish J., Cutler, S. and Stancer, C.** (2002) *A crying shame: Pregnant asylum seekers and their babies in detention*, London: Maternity Alliance, Bail for Immigration Detainees & London Detainee Support Group

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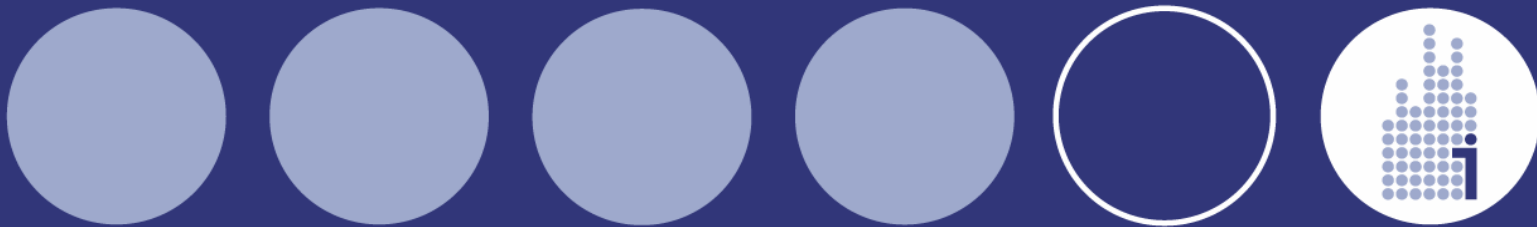
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