

# THE CRIMINALISATION OF MIGRANT WOMEN



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## Abbreviations and terms used

APD	Asylum Procedures Directive
ARC	Applicant Record Card (issued by UKBA)
CA	Competent Authority (In relation to decision making within the NRM)
CG	Conclusive Grounds (Decision that the individual is a victim of trafficking)
CPS	Crown Prosecution Service
DAS	Detention Advice Service
DWP	Department for Work and Pensions
ECHR	European Convention of Human Rights
ESOL	English for Speakers of Other Languages
ESRC	Economic and Social Research Committee
EU Directive	European Union Directive on Trafficking
fpwp/Hibiscus	Female Prisoners Welfare Project/Hibiscus
GAATW	Global Alliance Against Traffic in Women
HMP	Her Majesty's Prison
IAS	Immigration Advice Service
IAT	Immigration Appeals Tribunal
IOM	International Organisation for Migration
IRC	Immigration Removal Centre
IS91	Immigration Holding Warrant
MBU	Mother and Baby Unit (within the prison)
NASS	National Asylum Support Services
NGO	Non-Governmental Organisation
OSCE	Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings
PTSD	Post Traumatic Stress Disorder
RCJ	Royal Courts of Justice
RMJ	Refugee and Migrant Justice
NRM	National Referral Mechanism (for potential victims of trafficking)
RG	Reasonable Grounds (Decision the individual is a victim of trafficking)
SCD9	Human Exploitation and Organised Crime Unit of the Met. Police
UKBA	United Kingdom Border Agency
UKBA CCD	UKBA Criminal Casework Directorate
UKHTC	United Kingdom Human Trafficking Centre

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## EXECUTIVE SUMMARY

The work of a number of key organisations, including the International Organisation for Migration, has led to awareness of the extent of national and international people trafficking and exploitation by smugglers and agents of people seeking to leave their country to seek work or asylum. Within the UK, public knowledge has been influenced by the setting up of the UK Human Trafficking Centre in October 2006, the work of a number of human rights organisations, and media interest in some cases. However, to date, there has been no formal recognition of the numbers of potential victims in custody on criminal charges, nor systematic prison based research that provides evidence on how these individuals have been managed within the Criminal Justice System and by the United Kingdom Border Agency, at a time when the percentage of foreign women in the prison estate continues to increase.

**Research Aims.** Our research on the criminalisation of migrant women, funded for 18 months by the ESRC, aimed to fill this knowledge gap. The research was carried out between May 2010 and November 2011 with migrant women in prison and the immigration holding estate in the South-East of England. The key aims were to gather information in relation to the numbers of migrant women being processed through the criminal justice and immigration systems within England and Wales. Within the context of this picture we aimed to see whether there were any women who were victims of trafficking, smuggling and 'work under duress' in custody, and by examining case management identify the extent of compliance in relation to the European Convention on Trafficking and the Convention of Human Rights.

### Key findings

- In 2009 there were 2,454 foreign national receptions into the female prison estate and during the period of the research foreign national prisoners accounted for 19 per cent of the population in custody and 26 per cent of new untried receptions. In four of the five prisons, where the majority of interviews were carried out, the average population was 30 per cent, rising to 31 per cent in HMP Holloway and HMP Bronzefield in the final month. Analysis of data from fpwp/Hibiscus, a key organisation working with foreign women in custody, showed that 41 per cent of their caseload in 2009 involved women charged with offences such as deception and fraud in relation to their immigration status and related offences of use of false documentation to access work or benefits, or pass through customs on entry or exit from the UK. Prison data gathered in the context of the research indicated that 26 per cent overall were arrested in relation to these offences with an additional 4 per cent arrested on offences such as street robberies and sale of counterfeit goods (offences potentially linked with trafficking). Within the immigration estate in 2010, 4,337 women were

taken into detention, of which there were 2,799 receptions at Yarl's Wood IRC, where monthly figures showed that 112 women, one third, were being held post completion of a prison sentence.

- In the context of interviews with 103 migrant women in the prison and immigration holding estate, detained or arrested on charges that are potentially linked with entry to or exit from the UK or work under the control of others, evidence gathered indicated that 43 were victims of trafficking, of whom two were formally re-assessed as children whilst in the adult estate.<sup>1</sup> An additional five women had entered the country independently, but had then been worked in slavery or servitude like conditions and 10 had entered the UK in the hands of agents and had been arrested resultant on the theft of their relevant documents by their smugglers.
- The progress of these 58 women within the target group (that is, those who might have been trafficked or smuggled or made to work under duress) was then monitored in terms of their management within the criminal justice and immigration systems. This was carried out by 59 follow up interviews in custody and 14 more in the community, observations of 33 court appearances, ongoing communication by letter and examination of relevant paper documentation held by the interviewees, their legal representatives and others, wherever this was feasible.
- 38 of the 48 women within the target group (58) for whom there is data on employment were involved in non-skilled work before departure and, for those who were complicit in the decision to travel to the UK, reasons for migration were a mixture of economic necessity and a need for asylum. For all but eight it was their first move from home. Eight of those trafficked did not travel directly to the UK, but were first moved to other countries to work en route. Five had been trafficked as children and one of the children had been re-trafficked to the UK after being deported back to Africa from the first destination country. Twenty of the women trafficked were forced to work in prostitution and fifteen in cannabis production. Eight worked in domestic servitude, two were acting as drug mules and eight were involved in street robberies and the sale of fake goods. An additional five women were forced into these areas of work after entering the country independently of those who controlled them in the work.
- The common experience of all the women within this target group was one of disempowerment and for those trafficked or smuggled this process started from the point of recruitment. All of those interviewed indicated that they had been victims of physical and/or emotional abuse. Twenty-four women disclosed in interview that they had experienced multiple rapes

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<sup>1</sup> Within this report the term 'women' will also include these two children.

and for an additional two this had been an ongoing threat. For those who migrated to seek asylum, disclosures indicated that these experiences started prior to their move and were thus the key reasons for migration. For others, disclosures in interview indicated that it was integral to the relationship they had with those who brought them to the UK, who worked them under duress and to whom they had been sold. For many, the hold and threats made by those who had recruited, moved and controlled them did not disappear on arrest.

- The women's experiences led to them to report that they felt socially isolated, vulnerable, traumatised, subject to flashbacks, ashamed to tell others what had happened and finding difficulty in knowing whom to trust. They indicated that all of this was exacerbated by the experience of imprisonment and uncertainty about the future and it is not insignificant that being handed over to the police or immigration was a common threat used by those who had held them.
- In terms of the offences for which they had been arrested, the two key offence groups were in relation to the use of false identity documentation and the production of cannabis. Within the target group of 58, 20 of the primary charges were for use of false instrument with intent and 14 for the production of a controlled drug (cannabis).
- Of the 43 who were identified as victims of trafficking by the researchers, only 11 were processed through the National Referral Mechanism (NRM) and this did not happen for two of these women until their sentence was completed. Four other women were advised that this option was open to them. Three declined as they were serving short sentences and their goal was to return home as soon as possible, and the fourth was too frightened of the potential implications both to herself and her daughter in making full disclosure of her experiences.
- With four of these cases, the Conclusive Grounds decision made on their victim status by UKBA (which acted as the competent authority) was negative. To date, one of these decisions has been overturned following a successful judicial review; such a review was being considered for a second. Even where referrals were made to the NRM that resulted in a positive decision and non-prosecution, the victims spent on average four months in custody. For the other 37 there was no formal recognition of their victim status and no access to appropriate support or temporary protection from deportation other than going down the route of applying for asylum. Of equal significance is the fact that, to date, in only one of the cases did victim disclosures result in a full police investigation in relation to the actions of the perpetrators.

A key question of this research is therefore why so few of those whose disclosures at interview with the researchers, which exemplified all the key indicators of being a victim of trafficking, had not been identified as such within the criminal justice system. Similarly we looked at why those arrested on offences committed under duress, in ignorance or resultant on the action of those who had controlled them were held entirely responsible for their actions. The findings suggest the following contributory factors;

- Apparent failure by those making the arrest to facilitate or respond appropriately to disclosures of victimisation and to understand the impact of ongoing threats on the arrestee's ability to fully and freely disclose all that had happened at their initial interview.
- Inconsistent and limited contact time with legal representatives.
- The psychological impact of imprisonment, from point of arrest, on pleas entered.
- Possible disempowerment by the criminal justice system where the victim is already traumatised and does not understand the process and/or the language used.
- Lack of knowledge and /or uncertainty by potential first responders in terms of the NRM and roles and responsibilities.
- Reluctance on the part of the adult victim to go down the formal route of recognition through the NRM.<sup>2</sup>
- Narrow interpretation of the European Convention, particularly for those arrested for involvement in cannabis production, use of false documentation after escape and for those arrested after a period of time living physically independently from their traffickers.

The greatest fear of most of those interviewed appeared to be that of return to their home country. Thirty-one women had applied for asylum and at the end of the research period we were aware of 14 outcomes. The two children were given leave to remain for five years. The other 12 applications were all refused, six of which had gone through the appeal process. On the whole, evidence gathered on immigration case management for those in the target group indicated that they were viewed as illegal migrants, rather than victims of abuse by those who had brought them into the UK or by those who were working them in servitude like conditions, and, as with all asylum seekers in custody, they were disadvantaged in terms of:

- The failure to receive advice by the legal representative on their criminal matters on the potential impact of their plea and resultant sentence on their immigration outcome.
- Problems in accessing legal representation in custody for their immigration matters.
- Having full immigration interviews in custody without advance warning and information.

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<sup>2</sup> The consent of a child is not required.

- Seeming failures in the management of asylum claims to recognise the impact of multiple trauma and sexual abuse on the applicant's ability to disclose all experiences in a full and consistent fashion.

Forty-four of the target group did not speak English as a first language and in both the criminal justice and immigration proceedings the interviewees disclosed failures to ensure the provision of adequate interpreter support and access to documents in a language they could understand. This was observed in a number of court appearances by the researchers and by the fact that all communication from UKBA and their legal representatives, with the exception of two letters, were seen to be in English.

Within the target group twenty eight stated that they had children, four of those pregnant at point of arrest gave birth whilst in custody and it is arguable that the management of these mothers impacted on the well-being of their children. For those with children within the UK there was no evidence of appropriate responses which would have taken account of the well-being of these children in relation to;

- Arrest procedures
- Bail decisions
- Facilitation of adequate contact between children and their mothers once in custody

For those whose children remained in the country of origin there were resultant ongoing child protection issues and the women who had been trafficked faced huge challenges in the prison environment in terms of trying to re-establish the links that had been broken by the hold of traffickers. This was exacerbated where the mother's escape resulted in threats to and resultant relocation of these children.

## **Key Policy and Practice Implications**

Our research findings and observations lead us to raise a number of questions and suggestions in relation to policy and practice:

- 1. The identification of victims.** It is arguable that this could be improved by:
  - The use of the transposition phase of the new EU Directive to develop a greater and wider understanding of offences potentially resultant on victimisation by traffickers and for closer adherence to the CPS guidelines.
  - Exploring different ways of increasing awareness of the trafficking indicators by the police, DWP and relevant others, when making arrests for offences such as deception, fraud and cannabis production, where the incidence of links between the offence and trafficking is highest.
  - Where there are indicators of victimisation, irrespective of whether or not this impacts on the decision to proceed with criminal matters, the instigation of automatic follow-up interviews, carried out by female staff

and with appropriate interpreting support, to investigate the alleged abuse of human rights.

- In recognition that defence counsel cannot act as first responders, it may be helpful to establish guidelines to facilitate speedy Reasonable Grounds (RG) assessments by experienced advocates for those appearing in court and for whom bail is routinely denied until this decision has been made. The assumption could then be for bail to be granted for the reflection and recovery period whilst a Conclusive Grounds decision is considered.
- Within the prison environment similar established guidelines for accessing these RG decisions alongside formal record keeping by appropriate members of staff in relation to this.
- Research findings also suggest that the training of and involvement by healthcare staff as active first responders might merit closer examination, as they are often the first staff to be in a position to identify the health indicators.

**2. Management through the criminal justice system.** It is arguable that this could be improved by the following:

- Access to induction videos for all remand prisoners, with interpreted subtitles in the key languages on how the court system functions and what to expect at the different stages, including explanation of legal terms such as indictment, plea and mitigation.
- Standard questions before police interviews and at all court appearances on the need for interpreting support, with follow up checks that the defendant understands what is being said. In some cases it may not be sufficient just to ask; 'do you need an interpreter?'
- It may be worth considering whether the routine translation of letters and court documents would help to ensure that the defendant understands what is happening and their rights in relation to this.

**3. Management through immigration procedures.** It is suggested that this could be improved by:

- Access to an induction video with subtitles available for all foreign national prisoners and detainees who wish to claim asylum, explaining the application procedure within the UK and impact of a prison sentence on this.
- Recognition that the illegal migrant status of many victims of trafficking may be the result of the actions of others who brought them into and held them in the UK, withheld their documents and sometimes issued their victims with false identities.
- Recognition given to the asylum needs of some victims in relation to implementation of threats to the victim and their family and the risk of being re-trafficked to pay off alleged debts.
- In recognition that those in custody rarely have access to immigration solicitors, advance written notice of all immigration interviews, with notes explaining the structure and aims of the interview, advice on how

they can best prepare for this meeting. The option of a female case worker and interpreter would also seem important.

- We suggest that it would be helpful for all communication from the UKBA to be sent in a language that the recipient understands.
- In addition, the experience of our target group suggests that it is important to take account of the multiple trauma, sexual abuse and the disempowering effect of trafficking in the management of asylum claims.

#### **4. Ensuring that the best interests of the child are met where the arrestee is the mother.**

Our policy and practice suggestions here include;

- The need for sufficient time and support to be given at the point of arrest for preparations to be made for the separation and to access a carer known to the child.
- That it is appropriate at all bail applications for the bench to be aware of childcare responsibilities before making a decision, to ensure that there is an appropriate balance between the risk of absconding by the defendant and what is in the best interests of the child.
- Where a placement in the care of social services is the only option, it would seem appropriate to set in place contact arrangements from day one, with provision for a supervised phone call in relation to this between both parents if there are joint arrests.
- The findings indicate that support facilities for those in custody to re-establish links with their families would be of value.

#### **Funding and resource implications**

Throughout this research we have been aware of the impact of resource reductions on the Prison Service, UKBA, Legal Aid, Court Services and Third Sector input. It is arguable that this has had a disproportionate impact on women in this study. However, many of the above observations in relation to policy and practice concern the improvement of procedures within the resources that are currently available. A cost-benefit analysis might suggest that the input costs would be negligible in comparison to the current use of resources in managing victims as offenders, remanding women in custody who pose no risk, the costs of numerous court hearings and care placements for their children. This would need further investigation and analysis, but in line with other areas of criminal justice and social policy thinking, a cost benefit analysis of procedures and practices would make sense, as well as there being important value-based factors (such as the 'best interests of the child') to consider, and all in compliance with the human rights legislation and the European Convention on Trafficking.

# The Criminalisation of Migrant Women

## REPORT

### 1. BACKGROUND

#### 1.1 Contextual Review

The overall aim of this research is to further our understanding of migrant women, that is, foreign national women who enter the UK from overseas to seek work or asylum, voluntarily or under coercion, and who end up in custody on criminal charges.

##### *Migration*

The UK is not alone in experiencing migration on a large scale, yet as Spencer (2011) outlines, around the world, only 3.1 per cent of the world's population are living abroad - a position which has barely changed in two decades. What is notable is that in Europe (including Russia) numbers of migrants have increased from 49 million to 70 million during the same two decades (UNDESA, 2009). The UN Development Programme (UNDP, 2009) indicates that just over a third of international migrants have moved from a developing to a developed country, although in a context whereby international mobility has become easier since the 1980s because of cheaper transport, the communications revolution, the call of sunnier climes for retirement, and political reform, people in the poorest countries remain the least mobile (UNDP, 2009).

Thus it should be recognised that the women we interviewed in custody as part of our study are part of a very wide picture, with international migrants numbering 214 million in 2008, of which nearly half were women (UNDESA, 2010). In developing countries female migrants outnumber male migrants and, as pointed out in the report by the GAATW, it is suggested that those who most need to move are from the lower socio-economic groups who have worked in the informal sector, in areas such as agriculture, the market place and in the domestic sphere (GAATW, 2010). They have the least work security and are also the group that has benefitted least from educational input. They have the least control over their own future and are arguably the most gullible to the promises that are marketed to them of a new life where they can earn 'good money' and feel safer.

In their classic study of migration, *The Age of Migration*, Castles and Miller (2009) comment on six broad trends in current patterns of migration: *globalisation* - more countries being involved, *acceleration* - more people involved, growing *differentiation* - in the range of categories of migrant, *feminisation* - the significance of women in migration flows, *politicisation* - in terms of the impact of migration on domestic politics and international

agreements, and *transition* - with countries of emigration becoming countries of immigration. Indeed, there has been considerable interest in migration issues, with recognition of competing policy objectives (compliance with human rights legislation, economic competitiveness, capacity to deliver public services, and maintaining good international relations). Migration Watch (2010) and other critics of migration have expressed concerns about a population explosion and migrants damaging the employment prospects for British workers. But such claims have been challenged through arguments that the UK experience of migration is unremarkable in an international and European context, and that there has been exaggeration in regard to the potential negative impact of migration (Finney and Simpson, 2009; FOE, 2006).

In regard to migration for work, recent figures suggest that just over 13 per cent of people working in the UK are foreign nationals (ONS, 2010). Commonwealth immigration in the 1950s and 1960s was followed by restrictive policies in the 1970s and 1980s when economic crises meant that there was much less demand for labour. The refocusing of industry and the restructuring of the labour market towards higher skills in the 1980s, however, coupled with an ageing population, led to recognition that the UK needed to be more open to labour migrants if it was to remain internationally competitive (Spencer, 2011). The rationale for labour migration revolved around attempts to fill a skills gap until a domestic workforce could be equipped to do the jobs. In the Labour Government's second term of office there was agreement to allow migrant workers from the newly expanded European Union to enter the UK - with a Workers Registration Scheme quickly being put in place to bar access to benefits and social housing during their first year. As Spencer (2011) notes, that did not stem the flow of arrivals - particularly from Poland (UKBA, 2009). But the numbers arriving, combined with the fact that there had been little preparation in terms of community based services and housing, and the exposure of fraudulent applications for entry to work from Bulgaria and Romania (then outside the EU) led to recognition that the labour migration system was complex and shrouded in difficulty because of weak enforcement mechanisms, leaving the whole system vulnerable to abuse. A review in 2005 led to the emergence of a Points-Based system to streamline channels for entry to work in order to fill job vacancies and sustain economic growth. The new system might be described as an attempt to introduce a clear rationale for migrant labour and facilitate entry channels which might prove of greatest economic benefit and stop abuses of the system. It is not the purpose of this report to examine or critically evaluate such steps, but they help set the scene for our research insofar as concern to stem the general flow of migrant labour and maximise economic interests in attracting only particular kinds of labour from elsewhere, and the wish to stop abuses of the system (through fraudulent applications) establishes a certain frame of reference - within which our own research findings should be considered.

### *Asylum seeking*

Examination of asylum seeking in the UK is relevant in a similar way. Zolberg and Benda's (2001) searching analysis of problems and solutions in relation to *Global Migrants, Global Refugees* highlights the way in which there has been widespread panic about rapid population growth, the break up of multi-ethnic states and increasing economic differentials for instance. Bohmer and Shuman (2008) emphasise how the terrain of asylum seeking has changed in light of September 11. Moreover, the fear of granting asylum to a 'bogus asylum seeker' (a term which has gained currency in the UK media) occupies much of the attention of asylum authorities. As Bohmer and Shuman put it: 'the questions we ask, as well as the way we ask them, about the identity of the applicants, the credibility of their stories, and the possibility that they may face persecution should they return to their countries, may not be the most necessary or useful means for determining who is a genuine asylum seeker' (2008:3). Yet this is precisely the approach taken to determine the 'deserving' and 'undeserving' asylum seeker, and false claims and flawed claims. There are resonances here with the administrative processing of migrant women - who may have come to the UK to seek work or asylum, voluntarily or under coercion, and who end up in custody on criminal charges.

### *Trafficking*

Whilst there has been considerable academic and political interest shown in trafficking and smuggling, particularly in relation to the increasing numbers of men, women and children who are trafficked each year (Blank, 2007), and in relation to the increasing sophistication and complexity of trafficking networks, much less is known about the expectations and experiences of migration, hidden trafficking, and the resultant management of cases within the criminal justice system and immigration procedures. There is a good deal of research which focuses on definitions of trafficking and on the socio-economic conditions which lead to it (Troshynski, 2012; Lee, 2011). Research has also looked at the costs of trafficking. A recent survey carried out by the International Labour Organization (ILO) estimates that the criminal profits of human trafficking exceed \$31 billion, suggesting that this is second only to drug trafficking worldwide in terms of illegal income (Lee, 2011). There is also an international sex industry which involves extensive trafficking (Shelley, 2010).<sup>3</sup>

Thus this contextual review suggests that we need to look at a range of economic, social and political factors to understand the broad frame of reference within which our own study falls. Hawkins (1992) helpfully refers to this as the 'surround' - the broad setting for decision-making. Hawkins (1992) also highlights consideration of 'fields' - meaning a defined context in which decisions are made

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<sup>3</sup> Agustín's (2007) radical analysis of *sex at the margins* shows how complex the relationship between selling sex and trafficking can be and the extent to which migrants make choices to travel and work in the sex industry which forms part of a dynamic global economy. But none of this is to suggest that the treatment of women who are trafficked or smuggled in to England and Wales should not be subject to critical scrutiny.

and then 'frames' - by which he means the structure of knowledge, experience, values and meanings, and the human, interpretative processes of decision-making. Thus our study is set in a surround of economic and political debates about migration and asylum seeking; the field is the criminal justice system - and particularly the courts, prisons and immigration removal centres; and the 'frame' of reference for decision-making in the criminal justice system is informed by the criminal law (and tests of evidential sufficiency and public interest)<sup>4</sup> as a body of knowledge, alongside human rights legislation and media interest in migrant patterns and asylum seeking. In sum, these contextual factors create a 'way of seeing' or not seeing relevant factors. We return to these points in the Conclusion (section 9).

## 1.2 Relevant background information to the research

The latest published figures on the female prison estate show a 34 per cent increase in the number of women prisoners between 1999 and 2009. The number of new receptions peaked at 12,676 in 2008, with a gradual fall since then. However during this period, within the population where nationality has been recorded, receptions of foreign national prisoners have increased from 8 to 19 per cent of the total.<sup>5</sup> In 2009 foreign nationals accounted for 26 per cent of all new untried receptions and for 16 per cent of receptions with an immediate custodial sentence (Ministry of Justice, 2010). Over this time there has been a similar increase in the number of women held within the immigration estate (immigration removal centres).

Alongside this increase has been a shift in the balance of offence categories. The offence profile of foreign national women in prison for drug offences decreased between 2005 and 2009 from 68 per cent to 48 per cent, with indications that an increasing number within this group have been charged in relation to cannabis production.<sup>6</sup> At the same time the proportion charged with offences of fraud and forgery increased from 11 per cent to 24 per cent. This contrasts dramatically with UK nationals where the percentage on fraud charges has remained stable at 3 per cent (Ministry of Justice, 2010). Data on these offence categories given in the report by the Women and Young People's Group demonstrates that one third had been charged in relation to their immigration status or related offences of deception and fraud to enter, remain, leave or secure work within the UK (Women and Young Peoples Group, Ministry of Justice, 2008). There is also evidence of increased numbers of those involved in organised illegal activity such

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<sup>4</sup> We recognise that these concepts are not uncontroversial (see Easton and Piper (2008) for example).

<sup>5</sup> Within the figures presented by the Ministry of Justice (2010) 1.5 per cent are of 'unrecorded nationality'.

<sup>6</sup> This is indicated by the fact that the majority of Vietnamese prisoners are charged with offences in relation to cannabis production and the Ministry of Justice (2010) data show Vietnamese to be the third highest foreign nationality group.

as selling of fake goods or street robberies. Data from voluntary sector organisations<sup>7</sup> working with foreign women in custody indicate that those charged within this offence group tend to be migrant women, that is, those who have entered the UK to seek work or asylum, rather than as temporary visitors or for reasons of current employment, education or marriage.

As indicated in the previous section of this report, this period of growth of migrant women in custody and the immigration estate is perhaps not surprising with what a number of writers on current changes within the criminal justice procedures in Europe have described as the 'Criminalisation of Migrants' (Palidda, 2011). Within the UK the focus has been on tightening up of border security, the introduction of a points based system for those seeking rights to enter for work and raids on premises to identify and prosecute those employing illegal migrants.<sup>8</sup> It has also been a time of tighter regulation of foreign nationals in terms of rights to remain in the country. Automatic deportation provisions came into effect in August 2008 for those who had been sentenced to a period of imprisonment of at least 12 months.<sup>9</sup> This necessitated much closer working and information sharing between the prisons and the United Kingdom Border Agency Criminal Casework Directorate (UKBA CCD). As foreign prisoners are rarely deported at the Earliest Release Date (ERD), this has contributed to a parallel growth of those held solely on Immigration warrants. The legal routes of entry into the country, to seek work or asylum and legally accessing unskilled employment once within the UK, have therefore been closing down at a time when women seeking asylum or the opportunity to support their families by seeking labour overseas and sending money home have been increasing. Many of these women have been employed in the informal sector in their country of origin and as pointed out by the Global Alliance Against traffic in Women (GAATW, 2010)), there is a strong link between trafficking, migration and labour opportunities. In addition non EEA over-stayers or 'undocumented migrants' have found that access to work in the informal sector has become increasingly difficult where they are competing with increasing numbers of A8 and A2 nationals.<sup>10</sup>

Interlinked with this is the increasing criminal activity of illegal recruitment, transportation and employment of these migrants, who are effectively managed as profitable commodities to be bought and sold and whose illegal status is a coercive tool used by their agents (Webb and Burrows, 2009). In 2008 the UK Government ratified the Council of Europe Convention on Action against Trafficking in Human Beings (based on the Council of Europe Framework Decision 2002/629/JHA), to challenge this area of crime and ensure victim protection (Council of Europe, 2005). This was implemented in the first half of

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<sup>7</sup> fpwp/Hibiscus and DAS (Detention Advice Service).

<sup>8</sup> This was resultant on implementation of the Asylum and Nationality Act 2006 in February.2008.

<sup>9</sup> Under the UK Borders Act 2007.

<sup>10</sup> A8 refers to the eight countries from Eastern Europe who joined the EU in 2004 (Poland, Hungary, Slovakia, Latvia, Lithuania, Czech Republic, Slovenia and Estonia) and A2 to the two who joined that joined in 2007 (Romania and Bulgaria).

2009, with the imposition of custodial penalties for those found guilty of offences of trafficking. The Convention adopts the Palermo Protocol definition of trafficking as **acts** such as recruitment, receipt, transportation, by **means** such as threats, coercion, deception, abuse of position of vulnerability, for the purpose of **exploitation** such as sexual exploitation, forced labour or slavery. (UNCHR, 2000, Article 3). It also accepts that the relationship with smugglers, whose assistance is initially sought to escape persecution, can become equally abusive and fall within the same category. In the implementation of the Directive however, problems were identified in charging those who exploit trafficked labour without evidence of their direct involvement in the recruitment and transport sides. Additional legislation was thus introduced in Section 71 of the Coroners and Justice Act 2009 of holding someone in slavery or servitude or requiring a person to perform forced or compulsory labour. This came into effect in April 2010.

During the course of this research the 2002 Framework Decision was replaced by a new fuller EU directive which the UK government applied to opt into in April 2011, with a two year deadline for transposition and, in the new strategy on trafficking announced in July 2011, the UK government committed to improvement of victim care arrangements.

The development of this new EU Directive was in recognition that in Europe more needed to be done in relation to:

*Raising awareness, reducing vulnerability, supporting and assisting victims, fighting the root causes of trafficking and supporting those third countries (of origin and transfer of victims) in developing appropriate anti-trafficking legislation* (European Union Parliament, 2011 Para.3).

As well as sentencing those guilty of the offence of trafficking a key objective of the Convention is recognition and appropriate treatment of anyone subject to these crimes as a 'victim'. In the UK a formal method of identifying potential victims of trafficking and providing a way in which *victims can then access appropriate protection and support* was thus introduced through the National Referral Mechanism (NRM) in 2009. This method has two stages. Frontline professionals in named first responder organisations can, with the potential victim's permission, refer individuals who may be evidencing signs of being a victim to a central contact point using a standard referral form.<sup>11</sup> The case is then allocated to the relevant Competent Authority (CA) for an initial decision based on whether there are reasonable grounds (RG) to believe the individual is a potential victim of trafficking. *The CA aims to make this decision within 5 working days of receiving the referral.*<sup>12</sup>

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<sup>11</sup> First responders are designated Third Sector Organisations, the Police, UKBA, the CPS, Local Authority Childcare Services, the Gangmasters Licensing Authority, and Statutory Qualified Health Officials.

<sup>12</sup> From SOCA website: <http://www.soca.gov.uk/>

If confirmed, the victim is then offered protection and support and *45 days of reflection and recovery* during which time the CA gathers further information relating to the referral from the First Responder and multi-agency colleagues to make a full and conclusive grounds (CG) decision on whether the referred person is a victim of human trafficking. There is then the potential to increase this leave to remain to one year if the victim has agreed to assist the police in their criminal investigations. Any further stay in the UK is at the discretion of the UKBA. For those who do not go through the NRM, due to fear of retribution or the failure of others to make a referral, there is no eligibility for this support or period of time before removal.<sup>13</sup>

In cases where the victim of trafficking is in court on a criminal charge, Crown Prosecution Service (CPS) legal guidance advises prosecutors that where the criminal offence has been committed whilst in a coerced situation, they should consider whether it is in the public interest to stop the prosecution (CPS, 2011).<sup>14</sup> It provides clarity for prosecutors about the circumstances of the person's situation which might support a defence of duress in law, relevant factors when deciding where the public interest lies and clarity around the more subtle forms of coercion exercised by traffickers and exploiters.<sup>15</sup> This guidance has been recognised by the Court of Appeal in the case of *R v O* [2008].<sup>16</sup>

Against this background we were aware that there are still victims of trafficking, work under slavery or servitude like conditions, and asylum seekers whose entry was controlled by smugglers in the female prison estate. In 2008, the Poppy Project, key providers of accommodation and support to women who have been trafficked into prostitution or domestic servitude, reported that 21 per cent of their referrals between 2001 and 2007 had been held within the prison or immigration estate (Stephen-Smith, 2008).<sup>17</sup> This continued between 2007 and 2010 despite formal ratification of the Convention on Action Against Trafficking by the UK Government in 2008. . The Anti-Trafficking Monitoring Group raised concerns in

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<sup>13</sup> See Criminal Justice System 2009 (pages 30 -39) for a full outline of National Referral Mechanism process.

<sup>14</sup> See section on Prosecution of Defendants (children and adults) charged with offences who might be trafficked victims.

<sup>15</sup> The section on the Prosecution of Defendants charged with offences who might be trafficked victims states that even where the circumstances do not meet the requirements for the defence of duress, prosecutors must consider whether the public interest is best served in continuing the prosecution in respect of the criminal offence. The following factors are relevant in deciding where the public interest lies:

- Is there a credible suspicion that the suspect might be a trafficked victim?
- The role the suspect has in the criminal offence?
- Were the criminal offences committed as a direct consequence of their trafficked situation?
- Were violence, threats or coercion used on the trafficked victim to procure the commission of the offence?
- Was the victim in a vulnerable situation or put in considerable fear?

<sup>16</sup> *R v O* [2008] EWCA Crim 2835.

<sup>17</sup> In July 2011 the Salvation Army took over responsibility for the government contract to manage the support of all adult victims of trafficking in England and Wales.

relation to this in their report in 2010, identifying flaws in victim identification by the NRM and stating that victims of trafficking were still routinely prosecuted for offences they commit when coerced (Anti-Trafficking Monitoring Group, 2010).

### **1.3 Research Aims**

The main aim of our research was therefore to take a more in depth look at migrant women who appear before the courts and are in custody in the South East of England, targeting those who may be victims of trafficking, smuggling, enforced labour or conditions of employment that fail to meet the national requirements.<sup>18</sup> Through this we aimed to:

- Identify the extent to which there are victims in the system, and understand the reasons for this in terms of how these women are being managed within the criminal justice and immigration procedures.
- Identify potential failures in compliance with requirements of victim protection in the context of the European Convention and Human Rights Legislation.
- Identify improvements that could be made in terms of identification and management of potential victims, reducing their numbers within the prison and immigration holding estate.
- Identify areas where improvements should be targeted to ensure compliance with the new EU Directive within the period of transposition.

### **1.4 Research Methods**

One aim of the research was to analyse quantitative data in England and Wales over a twelve month period to produce a clear profile of charges, court outcomes and numbers in custody. Whilst we were able to produce a broad picture (as described in Chapter 2) we were somewhat thwarted in our attempts to look at court data because the Ministry of Justice does not publish offence data in a form which facilitates analysis of offences by nationality of offender (despite indications to the contrary when we were preparing the research proposal). Moreover, the data on offence categories does not give specific details; rather different types of offences are grouped together. We pursued this matter with the Ministry of Justice via a member of our Advisory Group, but this came to naught. We also sought advice from legal practitioners, a judge, and a member of the Sentencing Council - without satisfactory conclusion. Each route pursued took time.

We were able to obtain relevant data from HMP Bronzefield, but we were not able to conduct a full analysis of key charges, nationality and numbers in custody

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<sup>18</sup> Throughout this report we use the word women for female victims. However two were identified as under 18 at the point of interview and others had been trafficked in childhood and adolescence

through P-Nomis (the prison database) and the IRC database since as researchers we did not have the authority to access this independently and there would have been considerable demands on administrative staff time to do this on our behalf. We should also acknowledge that we had not anticipated that we would need to develop a data base from prison records, but had thought that we could construct the analysis from Ministry of Justice offence and court data.

Since we are interested in the national picture we intend to pursue the matter further for publications.

A second aim was to conduct analysis of qualitative data on the case management of potential victims and to look at this in the context of the national picture, as evidenced by data on those processed through the courts, prison and immigration estate. Individual interviews with potential victims were carried out at six key sites within the female prison and immigration estate in the south-east of England.<sup>19</sup> To identify women in this target group, presentations were made to groups of foreign national women in the selected sites to explain the aims of the research, what was meant by the words such as ‘trafficking’ and ‘domestic servitude’ and to encourage those who might be victims to attend an initial meeting with the researchers. When this approach failed to identify a sufficiently large number of people, further initial screening interviews were sought with migrant women who had been charged with offences of deception and fraud to enter, remain or secure work within the UK,<sup>20</sup> entry without identity of nationality or citizenship,<sup>21</sup> or involvement in organised illegal work activities such as cannabis production or street crime. Women arrested on other offences such as drugs importation who put themselves forward for initial meetings, stating that their experiences met those outlined in the definition were also interviewed. We were also guided to potential interviewees by prison diversity staff and FPWP/Hibiscus.<sup>22</sup>

With interviewee consent, basic information was gathered within all the initial screening interviews. Where the initial interview indicated that the woman had entered the country in the hands of traffickers or smugglers and/or had been

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<sup>19</sup> Permission was granted to interview women in HMPs Bronzefield, Holloway, Morton Hall, Drake Hall, Downview and Yarl’s Wood Immigration Removal Centre. (Half way through the research Morton Hall ceased to serve as a women’s prison).

<sup>20</sup> Under;

- S3 Forgery and Counterfeiting Act 1981 (using a false instrument)
- S5 Forgery and Counterfeiting Act 1981 (possession of forged passport or identity card)
- S26 (1) Immigration and Asylum Act 1999
- S25(1& 5) Identity Cards Act 2006
- S1 (1) Criminal Attempts Act 1981 (use of false instrument with intent)
- S24A 1971 Act (Deception)
- S26(1)(d) 1971 Act (falsification of documents)
- S111A(1) Social Security Administration Act 1992
- S3 Perjury Act 1911 ( false statement for marriage)

<sup>21</sup> Under Section 2 Asylum and Immigration (Treatment of claimants) Act 2004

<sup>22</sup> A voluntary sector organisation working with foreign nationals in the female prison estate.

working under duress, that is, met the criteria for our target group, we sought consent for future interviews and to monitor management of their cases. This was carried out through follow-up interviews, observation of relevant court hearings, communication by letter,<sup>23</sup> gathering of relevant documentation and discussions with relevant others, with written consent from the interviewee. Where possible, we remained in contact and carried out subsequent interviews as the women moved to other prisons, Yarl's Wood Immigration Removal Centre, and the community, for those who were not deported.

The interview format was prepared in anticipation that the most likely victims would not have English as a first language, could well be traumatised by their experiences, and might still be in fear of those who brought them into the UK or who had controlled them once here. Great care was therefore taken in guaranteeing confidentiality and the anonymity of data gathered. Particular attention was given to the choice of professional interpreters. The initial aim was to record all interviews on a digital recorder to ensure verbatim transcripts. However, this was only granted by the security departments at two of the research sites visited and at these sites not all women granted permission for this form of recording to be carried out, due to ongoing anxieties about disclosures and the potential repercussions. Most of the interviews were thus initially recorded by hand-written notes at the time of interview.

The aim was to gradually gather relevant data in a number of key areas, but to allow those interviewed to recount their experiences and feel in control of the meeting.<sup>24</sup> The key areas of discussion revolved around:

1. The socio-economic background of the woman and her reasons for leaving her country of origin and seeking entry to the UK.
2. Method of contact and recruitment by the travel facilitator, amount paid and information offered in terms of work, payment, intended destination and legality of position on arrival.
3. Journey to the UK, including work en route, control of travel documents and stated experience of threats or coercion to self and others.
4. Access to and control over work choices once within the UK, payment received and experiences of coercion or violence and, for those who escaped from a controlled work situation in the UK, awareness of options and support available.
5. Stated problems in relation to physical and mental health and indicators of stress evidenced at interviews.
6. The criminal justice proceedings, from point of arrest to release from custody, with a focus on facilitation of and response to disclosures.

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<sup>23</sup> These letters were written in English with a translation attached where the recipient stated that they could not read English (The English version was included to facilitate inspection of mail by prison staff). Letters were not sent where the interviewee was illiterate.

<sup>24</sup> This is in line with the ethical and safety recommendations for interviewing trafficked women provided by the WHO, see Zimmerman and Watts (2003).

7. The immigration proceedings, including experiences of initial asylum interviews, full interviews, appeal cases, and outcomes.
8. In respect to criminal justice and immigration proceedings, access to legal representation, appropriate interpreting support and level of understanding expressed.
9. Referral for assessment as victims of trafficking through the National Referral Mechanism and outcomes.
10. Access to support and assistance in custody and back in the community.
11. Childcare responsibilities and management of contacts.

We did not use a formal interview schedule therefore, but approached the interviews with a list of topics to cover. It should be emphasised that extreme care was taken in the interviews, given the sensitivity of the topics. In many cases it was only at the second or third interview that the women felt able to open up to the researchers.

## **1.5 Ethical considerations and interview impact on outcomes**

We made a commitment to those who agreed to be interviewed not to disclose any information that could lead to their identification, due to the threats they had experienced directed towards them and their wider family from those who had facilitated their move to the UK and/or worked them once here. Because of this, in addition to only using numbers in italics for case references, in certain cases we have omitted additional details such as country of origin and these are all identified as X. We have also excluded details that could impact on ongoing cases and appeals.

For some of the migrant women who engaged in this research the researchers were the only people who remained in contact as they moved through the system, between prisons, Yarl's Wood IRC and in the community, were a familiar face when they were in court and had time to listen and give credence to the experiences they recounted. It was therefore inevitable that they asked the researchers for help and advice. Support offered to all those interviewed was in the context of answering any questions where possible on procedures and signposting them to others where they could access help. Direct input on case management was only made in relation to two cases, one due to protection issues of a child victim and the other in response to accessing prison support where a woman's mental state was deteriorating.

However involvement in this research inevitably raised women's awareness that their situation was not unique and that they did have certain rights. It is not unfair to conclude that they became more proactive in fighting for justice than might have been the case for those not included in this study, with a potentially higher number accessing additional support from other staff and organisations.

## 2. DATA ON MIGRANT WOMEN

### 2.1 National Data

The latest population data gathered and recorded at the start of this research indicated that there were 838 foreign national women in the female prison estate in England and Wales.<sup>25</sup> This accounted for 20 per cent of the prison population. The total number of new receptions in 2009 identified as foreign nationals was 2,454, 18 per cent of all new receptions. The figures demonstrated that the pattern of the reception categories was very different from UK nationals, with foreign nationals representing 26 per cent of all new untried receptions and only 17 per cent of those received for immediate custodial sentences.<sup>26</sup> Looking at patterns of reception over time it is also obvious that this differential had grown. Between 2003 and 2009 the number of UK nationals, received as untried, dropped from 4,129 to 3,509, in contrast to a large rise of foreign national untried receptions from 450 to 1,219. Looking at the offence categories of foreign national prisoners, there is no obvious correlation with numbers not granted bail and the seriousness of charges, inferring that the high percentage remanded in custody from point of arrest is impacted on by immigration status. (The impact on being in custody from point of arrest with those within our catchment group is discussed in Chapter 3).

Figures released by UKBA show that, over 2010, 4,337 women were taken into immigration detention, 2,799 of whom were held at Yarl's Wood, the main UKBA holding centre for women. In addition 265 children were taken into detention that year. However this hold on children ended on 16/12/2010 with the formal closure of the family holding centre.

Data on occupancy rates at Yarl's Wood over the 18 month period of the research, show 343 women held on a monthly basis of which 112 (33%) were being held post completion of a prison sentence. 76 (68%) of these women were being held for 6 months and under, 58 (17 per cent) between 6 and 12 months, and 4 (4%) between 24 and 48 months.<sup>27</sup>

In terms of nationality breakdown in the female prison estate the dominant eight countries identified in the Ministry of Justice statistics are outlined in Table 1 below. Monthly statistics within the prisons visited reflected these figures with some variations over time particularly in relation to the sudden rise and then fall of East Europeans, Chinese and Vietnamese nationals.

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<sup>25</sup> Ministry of Justice one day count for 30<sup>th</sup> June 2009.

<sup>26</sup> Ministry of Justice (2010) *Ministry of Justice Caseload Statistics 2009*. London, Ministry of Justice.

<sup>27</sup> This data was released to the researchers by UKBA Analysis Research and Knowledge Management Team. We were not able to identify the offence breakdown for these women for reasons explained in the methodology section (Chapter 1, section 1.4).

**Table 1: Nationality breakdown in the female prison estate 2010, showing the top eight nationalities represented**

Country	Numbers	Percentage
Nigeria	115	14
Jamaica	70	8
Vietnam	56	7
China	48	6
Zimbabwe	38	5
South Africa	32	4
Romania	28	3
Ghana	24	3
Others	427	51

In Yarl’s Wood IRC in 2010 Nigerian nationals again represented the biggest group of those received (10%), followed by Brazil (9%), Pakistan (8%) and China (3.5%). The Vietnamese population only represented 2.5%.<sup>28</sup>

In the four prisons where most interviews took place (HMPs Bronzefield, Holloway, Morton Hall and Drake Hall), the percentage of foreign national prisoners throughout the eighteen month period was approximately 30 per cent and when Morton Hall ceased to take prisoners in 2010 the numbers of foreign nationals the other female prisons increased further. As HMPs Holloway and Bronzefield were local prisons, the percentage of those on untried status remained the highest group.

In this research our focus was on the types of offences where those charged might be victims of trafficking, smuggling and/or enforced labour. We therefore looked at the national statistics in relation to foreign women in custody on the relevant charges to get some idea of the potential extent of this problem. As outlined in Chapter 1 (section 1.4) unfortunately offence categories published by the Ministry of Justice are not specific enough to draw strong conclusions, but we looked at the category of those charged for offences of ‘fraud and forgery’ received into the female estate. It is of interest that over the five year span (2004 to 2009) within this offence category (for all nationalities) untried receptions increased from 263 to 572, and those received under immediate custody increased from 606 to 851. The disproportionate number of foreign national offenders within this group and its relation to the use of false identity documentation is noted in the Race Relation in Prisons Report produced by HMCIP in 2009. More substantial data on offence types was identified in the analysis of charges faced by foreign national women in the fpwp/Hibiscus caseload figures in 2010, where 41 per cent were charged with offences such as deception and fraud in relation to their immigration status and related paperwork (Prison Reform Trust, 2012).

<sup>28</sup> This data was made available to the researchers at Yarl’s Wood IRC.

More specific offence categorisation was also taken from snapshot prison databases at HMP Bronzefield at the beginning of 2010 and end of September 2011 as shown in Table. 2. The offences outlined are those with which the women in our target group had been charged.<sup>29</sup>

**Table 2: Primary offences recorded for snapshot of foreign national prisoners at HMP Bronzefield**

Offence	Numbers Charged May 2010	Numbers Charged Sept.2011	Percentages 2010	Percentages 2011
Importation of drugs	33	11	26	9
Customs evasion (drugs)	15	21	12	17
Illegal Immigrant	1	4	1	3
False instrument	18	20	14	16
Deception	8	3	6	2
Fraud	2	9	2	7
Production of cannabis	3	4	2	6
Theft/ attempted theft/ robbery	Not gathered	22	N.A.	18
Other offences	46	51	37	22
TOTAL Foreign National Population	126	125	100%	100%

It is interesting to note that all those charged with the production of cannabis in these two snapshots were Vietnamese nationals, and 9 of the 22 charged with offences of theft, attempted theft and robbery were Romanians. These two nationalities have been identified in police investigations as involved as facilitators and victims of trafficking.

## 2.2 Screening sample and target group

The total number of women interviewed over the period of the research was 103. From these initial screening interviews 58 women fell within the research target group, of whom two were later re-assessed as children.<sup>30</sup> Forty-three had entered the UK in the hands of traffickers, five had entered independently but had experienced work under slavery or servitude-like conditions within the UK, and 10 had entered the country in the hands of smugglers who reportedly abused the control they held over the women.

<sup>29</sup> At the beginning of the research we did not identify offences of robbery and theft. However as the research progressed we became aware of women committing such offences under duress of traffickers.

<sup>30</sup> Although we use the word 'women' to describe those interviewed, readers should note that this group includes these two children

Conclusions as to victimisation of trafficking were drawn from accounts of recruitment, transportation, exploitation and evidence of physical and emotional abuse in line with the European Convention on Trafficking.<sup>31</sup> Conclusion as to the victimisation of those who had entered the UK independently, but worked under duress or slavery like conditions within the UK was made in relation to the legal definition as outlined in Section 71 of the Coroners and Justices Act 2009. Those who entered in the hands of smugglers were also included where there was evidence of a link between abuse of power by the smuggler and the resultant criminalisation of their victims.<sup>32</sup>

After the initial screening interview, follow up interviews and the monitoring of cases focused on the 58 who fell within the target group. Fifty--nine follow up interviews were carried out with women in custody; 49 in prison and 10 in Yarl's Wood Immigration Removal Centre. Fifteen interviews were then carried out at a later stage when those not deported were back in the community after release from custody. Thirty-three court appearances were also observed and a number of women also took up the offer of maintaining contact by letter.

Although this report focuses on those who are identified victims within the target group, case material gathered from screening interviews with migrant women outside of the target group is included where relevant.

### **2.3 Nationality and language**

Table 3 below gives a breakdown in terms of nationality of those interviewed, identifying those who fell into the category of victim of trafficking and work under servitude and whose entry was facilitated by smugglers. Women of 39 different nationalities were interviewed, with the highest numbers being Nigerian (21) and Vietnamese (18), and a smaller sample of Chinese in terms of total interviews carried out and the identification of victims of trafficking and work under slavery and servitude.

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<sup>31</sup> Patient confidentiality prevented verification of medical evidence from healthcare professionals within the prison and immigration removal centres. Some medical reports used in asylum applications were however shared by the interviewee.

<sup>32</sup> Those whose entry had been facilitated by smugglers were not included when such evidence was not presented.

**Table 3: Nationality Breakdown of Women Interviewed**

<b>Nationality</b>	<b>Total number interviewed</b>	<b>Victims of trafficking or work under slavery and servitude</b>	<b>Entered in hands of smugglers</b>	<b>Others</b>
Nigerian	21	12	1	8
Vietnamese	18	16		2
Chinese	12	4	2	6
Ghana	3	2		1
Iran	3	0	3	0
Dutch	3	2		1
D.R. of Congo	3	2		1
Somali	2	0	2	0
Colombia	2	2		0
Ugandan	2	1		1
Portugal	2	0		2
Malaysia	2	0		2
Iraq	2	0		2
Romania	2	0		2
Czech R.	2	0		2
Rwanda	1	1		0
Zimbabwe	1	1		0
Gambia	1	1		0
Russia	1	1		0
Brazil	1	0	1	0
Sudan	1	1		0
Indian	1	1		0
Kuwait	1	0	1	0
Korea	1	1		0
Venezuela	1	0		1
Italy	1	0		1
Liberia	1	0		1
Spain	1	0		1
Zimbabwe	1	0		1
Jamaica	1	0		1
Barbados	1	0		1
Taiwan	1	0		1
Polish	1	0		1
Angola	1	0		1
France	1	0		1
Algeria	1	0		1
Syria	1	0		1
Cameroons	1	0		1
German	1	0		1
<b>TOTALS</b>	<b>103</b>	<b>48</b>	<b>10</b>	<b>45</b>

There was no attempt to take a representative sample of nationalities at the establishments visited, but rather to identify potential victims and ensure that access to interpreters facilitated initial interviews with those most isolated by

language. Despite this, it is interesting to note that the largest numbers of identified victims came from three of the top five countries identified in the latest statistics published by the Ministry of Justice, for foreign national women in custody. These figures show that Nigerians are the highest nationality groups (14%), with Vietnamese (7%) and Chinese (6%) coming third and fourth.<sup>33</sup> The two other high groups in the prison statistics, not replicated in our interviews are Jamaicans (8%), and South Africans (4%).<sup>34</sup>

Within the target group of 58, 44 (76 per cent) women interviewed did not have English as their first language and 41 (71 per cent) needed some interpreter support.<sup>35</sup> There was also evidence of limited literacy. A number of women attending ESOL (English for Speakers of Other Languages) classes in prison showed an improvement in use of English during the period of the research<sup>36</sup>. The impact of this language barrier is discussed in Chapters 4 and 5 of this Report.

## **2.4 Age and family dependants (within the target group)**

Within the target group the average age at point of arrest was 30 and 25 at point of departure from their country of origin. Five of the victims were children; two aged 14, two aged 15 and one aged 16 when taken from their country of origin. In relation to age it should be noted that from point of arrest, actual age is assumed to be that on documents in possession of the arrestee, even if they are being charged with having false documents. This is only amended if formally contested. This occurred with two interviewees, both of whom were under the age of 17 at point of detention and arrest.

Six women were pregnant at point of arrest and four gave birth whilst in custody. Seven others stated they had dependent children within the UK and 21 had children and dependant others in their countries of origin. Most dependants were their own children, but also included financially dependent siblings. Data in relation to this is missing in nine cases. Only one of the women interviewed had been in a marriage or formal relationship that offered emotional and financial security at the time of departure from her country of origin and linked to reasons for migration were the financial responsibilities they held for their children and the wider family.

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<sup>33</sup> This is a one day sample (30/06/2009) Ministry Of Justice 2010.

<sup>34</sup> The presence of high numbers of nationals from these two countries is probably resultant on high numbers of their nationals sentenced to lengthy periods in custody for the importation of class A drugs.

<sup>35</sup> This includes Nigerian women who spoke Pidgin English and who could not understand English as it spoken in the UK.

<sup>36</sup> ESOL provision at Yarl's Wood IRC was minimal.

## 2.5. Socio-economic background and reasons for departure

Educational achievement recorded with 50 out of the 58 cases shows that six women had accessed less than a couple of years at school and as a result were illiterate and almost half, 24, had only completed primary education. Only 11 had completed secondary education with nine going on to access further education. Of the 48 on which there is data on areas of work before departure, the majority, 38, were in the unskilled sector. Four were studying and only six had worked in the skilled or professional sectors of work.

In relation to reasons for departure, four victims had no involvement in the decision to move them and a fifth bought into what was sold to her, and the others trafficked with her as a 'holiday'. The other 53 women and children had reasons why they initially arranged or consented to leave their country of origin, in response to the offer that was made to them. With each victim it was a unique mixture of push factors in terms of their own survival and pull factors in terms of trying to accessing a better future. The key reasons stated for migration were;

- Accessing work 24 cases
- Asylum 16 cases
- A mixture of asylum and work 9 cases
- Accessing school/education 4 cases

It is relevant to note that five of the victims of trafficking, who came to access work or the offer of schooling, had lost their parents in early childhood and were basically destitute. Others were single parents and the following statements are not atypical.

*After the death of both my parents and their land over a dispute I was left with nothing and I relied on friends. Someone who was very rich then said she would bring me to the UK. When the offer was made I saw no other option. (9 from Nigeria was held in domestic servitude once in the UK)*

*It was impossible to support the family in terms of rent, food and money for school. I had been a cleaner and it was very humiliating working in peoples' houses and earning hardly any money. So when I was approached by a friend of a friend who said you are poor – you should go to Europe where they pay \$50 an hour I knew no better and thought this was for real. (54 from Colombia who had brought up five children on her own following the death of her husband. She was sex trafficked by the agent.)*

*Life was too difficult. I worked in hotels and restaurants doing cleaning work in kitchens. I had to bring up my daughter on my own. This man came to me and said he could employ me in his business in the UK. (69 from Vietnam arrested in a raid on a cannabis farm).*

For those for whom security was all or part of the reason to leave, the socio-economic background is more complex, with victims of domestic violence, political conflict and abuse of human rights coming from all strata of society. Four of the six women who had worked in the skilled sector and attained qualifications from further education fell within this group.

*I left because my life was in danger. I was arrested because of the X group I lead. The first 15 days I was kept in separation and no one was allowed to see me. I was then transferred to X prison where I was held for four and half months. Every day they said they would kill me but first they would rape me. My father got me out by paying a large amount of money...after getting out I fled the country. (50 from X with a degree and successful career who was smuggled into the UK.)*

*My auntie forced me into an arranged marriage when I was 19. I wanted to go to University. I wanted to escape the marriage...He was a lot older and regularly hit me. (26 from Nigeria who was sex trafficked into the UK.)*

*The father of my children died in X. The family said that I was a witch and that I had killed him and said that I must therefore die. They took all my belongings and I fled to Lagos. In Lagos I met this man who brought me here. (X who was sex trafficked to the UK)*

In nine of the cases accessing work was one of the factors and seeking asylum the other. This was often in relation to escaping violence from the husband or wider family, in countries where women could get no support from the local police. A number of Chinese women interviewed also stated these mixed reasons in terms of the one child policy.

*When my son was 9 months old my husband left me and I wanted the opportunity to have another child, should I meet someone else, and so I pulled the coil out and they asked me to pay a fine. The second or third time they said I had to have an operation and so I decided to escape. I knew it (the UK) was a good place to come to as the snakehead<sup>37</sup> said I could come here and have as many children as I wanted and find work. (79 from China)*

With the exception of the four who were effectively enslaved before departure, the decision to move was one of risk management, in terms of how they could support or protect themselves (and their children and other dependants) if they stayed in their home country, against the risk of travelling to unknown countries where they would lose family support. Where risk to the person was perceived to be imminent, decisions to use to the services of an agent were quickly taken.

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<sup>37</sup> A 'snakehead' in this context is someone involved in an organized gang relating to human trafficking.

Where this was in the context of needing income there was a longer planning phase.

As will become apparent in the section on Recruitment in this report, agents who facilitated entry to the UK marketed their services in terms of whatever need they identified in their potential clients/ victims.

### 3. EXPERIENCES PRIOR TO ARREST/ DETENTION

#### 3.1 Recruitment and transport by agents

##### 3.1.1 Initial contact

As pointed out in publications by the IOM the need or desire to migrate is widespread (IOM 2010). With countries such as the UK making legal entry for asylum or unskilled work almost impossible, the potential for agents/facilitators exploiting this has grown. Transporting people at high costs, selling people as commodities and using people to create income from prostitution or cannabis production, for example, are all very profitable areas of crime. It is also important to note that initial complicity by those transported to be moved, even where services of the agent are sought and payment is made, does not exclude those transported from the category of being a victim, when the other elements of trafficking are evident.

From information gathered in interviews and publications it is apparent that those who managed the recruitment transport and work on destination might be a couple of individuals or involve organised groups or cartels in each of the three phases (Webb and Burrows, 2009).<sup>38</sup> Few of the victims knew the real or full names of their agents and the extent of the networks they operated in. Eight of those within the target group had been trafficked to and worked in other countries before arrival to the UK and one had been re-trafficked as a child after deportation from first country where she had been worked as a prostitute. Others were aware that they had been sold between different agents. As the research progressed common themes became apparent in the accounts of victims from specific geographical areas in terms of their experiences and the local culture of migration. This impacted on whether the agent was formally recognised as a service provider, who could be accessed by those seeking help with migration, or whether the agent worked in a more underhand way approaching potential clients, and whether this person had family links or not. There were similar variations in charge made for services and methods of payment offered.

For example in China and Vietnam there is a long established business of helping migrants move to new countries. The Cantonese and Mandarin word for such an agent is *Shétóu*. Those interviewed from this part of the world explained the literal meaning is snakehead, one that leads others on their journey, and use of such an agent is seen by an individual or their family as investing in the opportunity to work overseas and send back remittances to their family.

*We sought out someone to traffic me here...many have been trafficked from the area I live in...an area with rice farmers (99 from Quang Binh, one of the poorest areas of Vietnam)*

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<sup>38</sup> The report identifies key features that define the varied organisation and structure of facilitation businesses.

*I needed to find a way out and I met snakehead in Jian Xi province (70 from Jian Xi in China)*

In other countries agents were more active in their recruitment methods in identifying and approaching potential victims and gathering information to be used in their hold.

*I went to try and locate my son - he is a drug user so I went to Santa Fe where he got his drugs to find him. A man approached me to ask 'what is going on?' He said he would help me to find my son - he was nice and well dressed offering me help and said he would help me as his work was helping people to find jobs. He asked if I had passport and money - when I said no - he said we help women. I had to go to his office and give all my personal details such as where I lived and about my children. I actually had to show him where I lived (55 from Colombia who was trafficked for sex work).*

*I met this lady in 2004 and she introduced me to other young women and said that I needed a break - telling me that she could arrange a vacation – she had great ideas about Ecuador- she made it sound beautiful and sold the idea to 4 of us So we all started making plans –that we would all go the next year for 2 weeks. (22, from a European country. She and the other women were then trafficked to and worked in a number of countries in Latin America)*

For women brought from African countries, it was normally the agent who sought out vulnerable victims. The common pattern was recruitment through the family, friend, or someone aware of the individual's current situation.

*I started fetching water door to door for people in the community. There was a couple I normally fetch water for. I was asked by the couple would I like live in England with them as they normally help people like me that have nobody to further their education and have a brighter future. Not knowing that they are trafficking people to the UK for prostitution. We are five girls that they brought here... (60 who was orphaned in Nigeria at the age of 13)*

*A regular visitor to the house was a friend of my husband...She saw I was not happy and I confided in her. I had no other friends there and she was an older woman in her forties and she said she would help her to get away to England. (26 from Nigeria forced into sex work)*

Orphaned children and those taken into care by close kin due to death or poverty within their family of birth appeared particularly at risk of being moved without any degree of consent. Examples of this are 57 from Vietnam was brought to the UK at the age of 13 and 103 trafficked at the age of 14 from Nigeria.

Insufficient information was gathered in relation to agents, who assisted those who wished to be smuggled out of their country of origin purely for reasons of asylum, to make any generalisations.

### **3.1.2 Expectations and payments**

A common factor for all women interviewed who had been 'assisted' in their migration is a power imbalance from the first point of contact. Agreements or promises used by agents in their marketing strategies were never formalised. With smugglers and traffickers, what they were offering generally covered accessing documentation for travel (legally or illegally), which the victims falsely assumed they would then have possession of, and arranging transport, with no specification of the nature of this or the length of time that would be spent en route.

*An agent approached me and said to me that England was better and that there would be no problems if I went there. I had taken over my father's shop and he knew I had money. He charged me \$10,000. The first \$5,000 before we left and the remainder en route. He said he would get me safely there. That was a lie. He refused to travel the last bit with me and the police knew it was not me on the passport. (3 from Somalia arrested at port of entry for use of a false document.)*

Finding work or accessing education was also on the marketing pitch of those who trafficked women and children. When access to this did not materialise, or they had been misinformed of the nature of the work, their clients could take no action.

*He said I was to pay for passport and journey and they will find a job for me. The snakehead sold a better life to me. We did not know what it would be like. They said they would find us work in restaurants and it would all be legal - so we believed him. But when we got here they sent us to somewhere to stay in London for a few days and then said 'you have to go and find your own job'. (72 from China)*

*He said I would get cleaning work - this was the sort of work I did in Bogotá - but he said in UK I would get fifty pounds plus per day (55 from Colombia who was forced into sex work)*

*It was not what I expected. I had to get up early and bath the kids, make their breakfast and take them to school. I also cooked and cleaned the house. I worked every day...I had no holiday and worked all week-ends, except when we went to church. I never got any money except to take the kids out for fast food and then I managed to hold back a little. No – I never got to go to school. (9 from Nigeria held in domestic servitude for 5 years)*

In terms of payment for services offered by these agents one can identify three categories;

1) The amount was declared at the beginning and these funds had to be handed over before the woman was moved. The high amount charged in this manner by agents in Vietnam and China resulted in further dependence on the wider family group and money lenders, in the expectation that these debts would be repaid in a short period of time, which was rarely the case. The highest two costs quoted were paid by those trafficked in 2010 and 2011 from Vietnam at £25,000 and China at £29,000. The lowest was £1,400 charged in 2004.<sup>39</sup>

*I paid 120 million dong (about £4,000) I paid by borrowing a little from a lot of people. I still have many debts. (29 from Vietnam)*

*We were asked to pay £20,000 pounds. My parents gave the house papers to the bank (form of mortgage) and we borrowed from lots of friends. It all had to be paid before I left. (96 from Vietnam)*

2) Debt bondage where the amount was declared at the beginning, but part or none of this is paid before departure and the individual is made aware that they will have to pay the remainder through working for the agent.

*He asked for £25,000. I paid £5,000 before leaving....the remaining £20,000 to be paid though work. (69 from Vietnam)*

*I had to pay \$5,600 for tickets and paperwork – as I had no money I was told I would have to work to pay this off....This was repeated with the Albanian man who then brought me here (the UK). He said I owed him £1,000. (54 from Colombia).*

*He said 200,000 RMB (about £20,000) I have to work to pay this off – If I do not pay it all back he will get me. (72 from China)*

3) When the offer of assisting movement was made there was no mention of money. However once in transit or in the UK the woman was told that because accessing travel documents and transport were very expensive, they must now work to pay off this debt. This was the normal experience of those held in domestic servitude or moved into sex work.

*She said she had spent £1,500 on getting me here and I had to pay her back. I asked why she had not said this in Nigeria - I would have borrowed from friends. (26 from Nigeria who was forced into sex work)*

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<sup>39</sup> Information gathered in interview indicates that costs have escalated over the last couple of years in response to demand.

In some circumstances threatening demands for repayments were also made on the family whilst the victim was en route.

*After we had left Vietnam I was told I had to start paying money (about £4,500). First they got my mother to send some. (5 from Vietnam who was then told she would have to do sex work en route to earn the rest)*

### **3.1.3 Preparation for travel**

Preparation for travel included accessing travel documentation, which was managed by the agent and in some cases induction training to ensure that the victim gave the correct answer if stopped by customs. For some it was also evident that it was a period where the trafficker was establishing control. With three of the victims, brought from Africa as children, this control was established through abuse of traditional practices such as 'juju'. The rituals described by those interviewed included removal of clothing, numerous body cuts into which powder was rubbed to ensure spiritual control. This spiritual control ensured fear of non-compliance with those who then transported them and instilled a very real fear of death if the victim spoke out to others.<sup>40</sup>

## **3.2 Experiences en route to the UK**

For the majority of women brought in by traffickers and smugglers the recurring theme was being in the control of others. They were not informed of the route taken, some did not know where the final destination would be, they were not allowed to hold onto their travel documents and were intimidated by those who moved them.

*It took us one month from Iran to the UK. We left by land and travelled to Turkey. At this stage it was just me with the agent (3 agents were involved in all). At the border of Turkey we had to walk for five days to make the crossing. The agents did not speak to me... There were two flight changes en route. He gave me a lot of pills and told me to swallow them so I slept for most of the flights, was very dopey and do not know the airports we travelled to... Yes I was very frightened taking these pills - they might have killed me but felt I had no option but to do what I was told. (50 smuggled out of Iran)*

*I left with my genuine passport. In the middle of the trip he demanded that I give him this and any other documents I had... He said if I did not they would take me back to X. (52 from X).*

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<sup>40</sup> For more information on use of such traditional practices see Ellis and Ter Haar (2004).

*We travelled for about 2 months - first to Hanoi and then I do not know. We had a number of flights and travelled by road. It was very hard to travel like that - sometimes there was enough food to eat and sometimes there was not. I really do not know what route we followed. There were many people arranging our moves and we were not allowed to ask questions. (29 from Vietnam)*

For some the experiences were more horrific, including physical and verbal abuse, gang rape and not being offered enough food. A few of these themes are exemplified by extracts from the account of the following victim.

*We travelled first by plane - then in the back of lorries where my arms were badly hurt due to shaking...we stopped off in places in Czech Republic and then Poland where I had to sleep with many boys<sup>41</sup>. In Poland we were kept in a house during the day and at night we were sent out to work, to sleep with boys. One of the girls was too tired and cold and said many times she could not go on working- she was out in the snow and there was a bang - they had shot her. After that I was frightened - I knew if I said I would not sleep with boys they would kill me...When we were given food it was thrown at us...normally bread...sometimes only once a day...no meat or fish. I was always in the control of others. (5 from Vietnam)*

For some it was in this period of transportation that they first became aware of their enslavement as they became aware of negotiations, in relation to their market value, between those moving them to those they were being sold to.

### **3.3 Work within the UK**

#### **3.3.1 Current legislation and access to work**

As will be outlined in Chapter 4, a not insignificant number of women interviewed had been charged with using false documentation to access work. In this section we look at patterns of work engaged in by women whilst in the physical or financial hold of their traffickers and for survival after escape. We also include data gathered from the migrant women interviewed outside the target group, whose immigration status presented a barrier to financial survival.

To access legal work in the UK, any applicant is asked for proof of identity such as a passport, birth certificate or driving licence with photo identity, his or her national insurance number and evidence of place of residence. In addition if the applicant is a foreign national the individual must supply a relevant ID card proving entitlement to work or study here. Some of these documents are also necessary to open a bank account, access accommodation and other vital services. Living as a foreign national within the UK without this Home Office

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<sup>41</sup> Referring to forced prostitution.

documentation categorises the individual as an illegal resident. For those who have applied for asylum, residency is permitted whilst the application is being processed, but the individual is not permitted to seek paid employment within the first 12 months and only with permission after the first year. Eligibility for the limited housing and financial support through Asylum Support for those classified as destitute is terminated once a negative decision has been made.

It is therefore not insignificant that two of the key elements of control imposed by traffickers, over those whose access to the UK they facilitate, was withholding of documents used to access entry, and enforcing a state of financial debt so that finding work is critical. This was the case with all women interviewed in this category. With all of those interviewed who had been held in domestic servitude, withholding documents was again used to impose control. When the women asked for their passports, the request was refused or it was stated that it had been 'lost' and accessing alternative legal employment after escape appeared impossible.<sup>42</sup>

For those whose entry was illegal and this includes most of those who were trafficked from outside of the EEA for work in the sex industry, cannabis production or other organised crime, the fact that the victim had no legal documentation meant that they had no access to alternative legal employment or state support. For those brought in or held under debt bondage, or whose loans to meet the costs of the trafficker were accruing, there was also the knowledge that they had to earn enough to break even as well as to survive. This meant that even when, for example, those trafficked in from Vietnam were not immediately given work in cannabis production, they often felt that they had little option but to accept this 'offer' of work. There are also indications in information gathered that, even when those who arranged the transport did not deliver the victim directly to the place of employment, there were partnership agreements with the others who 'might offer you some work', to whom they were effectively sold.

### **3.3.2 Areas of work engaged in by victims of trafficking, slavery or servitude**

Table 4 outlines the areas of work in women engaged whilst in the hold of others.

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<sup>42</sup> One of the key areas of support offered by Kalayaan, a voluntary sector organization working with victims of domestic servitude is helping women recover their documents from the family that have held them.

**Table 4: Areas of work engaged in by victims of trafficking, slavery or servitude**

<b>Areas of work engaged in</b>	<b>By those who entered UK in hands of traffickers</b>	<b>By those who entered the UK independently</b>
<b>Sex work</b>	<b>20</b> <i>Cases 1, 4, 5*, 10, 17, 18*, 22*, 26, 42, 53, 54*, 55*, 60, 66, 67*, 68, 69*, 89, 101, 103</i>	
<b>Involvement in cannabis production</b>	<b>15</b> <i>Cases 5*, 28, 29, 57, 69*, 72, 73, 81, 82, 83, 85, 96, 97, 98, 99</i>	<b>2</b> <i>Cases 56, 58</i>
<b>Domestic servitude</b>	<b>6</b> <i>Cases 6, 9, 18*, 39, 59, 67*</i>	<b>2</b> <i>Cases 90, 92</i>
<b>Other work such as street robberies, selling fake goods, cockle picking</b>	<b>8</b> <i>Cases 22*, 24, 45, 70, 78, 79, 54*, 55*</i>	<b>1</b> <i>Case 11</i>
<b>Drugs importation</b>	<b>2</b> <i>Cases 22*, 32</i>	
<b>Total Cases</b>	<b>43</b>	<b>5</b>

- Those marked with \* indicate engagement in more than one area of work
- Numbers in italics are case reference numbers

Work in provision of sexual services was the most common (20 cases) followed by involvement in cannabis production (17 cases), 9 in other types of work, domestic servitude (8 cases), and drugs importation (2 cases).

### **3.3.2.1 Sex work**

It would appear from the case histories that the majority of women providing sexual services had been trafficked specifically for sex work. However a number of those trafficked for domestic servitude were also used to service those who paid their owners for sex with them as well as suffering rape in the hands of male members of the household. Similarly, a number trafficked for their eventual use in cannabis production were held and used in prostitution en route by those who moved them. All of these women were told that they had to work to pay off their 'debts' and with subtraction of 'costs' for the provision of food and clothing, there is little evidence, if any, that their earnings cancelled these debts in a reasonable

period of time, or that they moved into a position where they had any control of their earnings.

A recurring theme in interviews was that of being imprisoned in the area of work, with no control over the number of clients to whom they were sold, condoms were not routinely provided and they were forced to engage in vaginal, anal and oral sex. They were used by groups of men and drugged to ensure complicity. A number of women were under the age of sexual consent when first used in prostitution and the first rape was often in the hands of the man who trafficked them. Sexual acts were also photographed. They were given implants or injections to prevent conception and those who got pregnant were forced to have abortions. This abuse had inevitable repercussions in terms of mental and physical health. A number displayed symptoms of post-traumatic stress disorder and were in need of medical support in relation to resultant infections and physical damage.

### **3.3.2.2 Cannabis production**

The second key area of work for victims of trafficking was in relation to cannabis production. Within the total interview sample, thirteen of the eighteen Vietnamese women charged with this offence had been trafficked into the country by agents and moved directly into this area and an additional two came in on student visas and stated they were tricked into going into the house where the cannabis was grown. One Chinese and one Korean woman's accounts revealed a similar picture of being moved into this work by the snakeheads.

All of those interviewed who moved directly into this type of work denied any knowledge that this would be their fate on arrival. They believed the agent who said, *there will be work for you when you arrive*. The promises of work were generally in '*the nail business and in child care*' and there was a common story that when the woman was first taken to the house she was told her work there would be cleaning and cooking, as in the following statement;

*When I arrived I had no family and there was no work here. I asked the people who brought me if there was somewhere I could live and work. I spoke no English and I did not know what to do. They said I could live in this house if I did all the cooking and other work. When I saw the plants being grown I knew that something wrong was happening but I could not get out of it. When I said I did not like it they said '£3,000 is what you cost'.<sup>43</sup> I was scared and so I did not try to escape. Even when I was sick and said I need to go to a Doctor they said they would sort it - but they never did and I could not get out. I could not go anywhere. In the house I was very scared...No I do not know who was actually managing the house - there were many agents working for him - they change their names easily. (29 from Vietnam)*

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<sup>43</sup> Inferring this is the price that was paid to the trafficker to purchase this worker.

*I ended up growing cannabis...I was very isolated and frightened. The house was locked and I could not sleep (85 from Vietnam).*

This involvement of victims of trafficking in commercial cannabis production is formally recognised by the police in the report published in 2010 by ACPO which states that;

*It is generally accepted that a high number of non-British individuals linked to cannabis cultivation are trafficked into the UK and subsequently put to work in factories across the UK. Those arrested when factories are raided by police are predominantly the 'gardeners', who are often Vietnamese or Chinese illegal immigrants.*

*Illegal immigrants can pay up to £10,000 per person to be trafficked in to the UK, and many have to pay their debt by working in premises used for the commercial-scale cultivation of cannabis...they rarely, if ever, leave the property until the crop is harvested.*

The report goes on to recognise evidence that these factories may be controlled by *highly organised criminals with national connections*. Also significant is the recognition that *violence is not only a feature of clashes between rival crime groups involved with this but it is also used to ensure compliance from those working within the factories*. All of this is significant when we look at the formal definition of victims of trafficking and the obligations of the court in relation to this.

When questioned about payment received for this work the majority stated that they had been told they would be paid once the crop had been harvested and inevitably those arrested never recouped this money. Two of those interviewed, who had been involved in this work for a couple of years and who had managed to earn some money, still had huge anxieties about unpaid debts.

### **3.3.2.3 Domestic Servitude**

Domestic servitude is used to describe the situation where a domestic worker is denied the minimum wage and treated in slavery like conditions. Six of the women interviewed had been held in domestic servitude by those who facilitated their entry to the UK. They were all from African countries, none were allowed access to their passports and they were arrested after escape for using false documentation to survive after escape or to return home. The following statement was not atypical of the experiences of these women.

*I paid nothing - but was told that I would have to work with her for 7 years to pay off the debt of being brought here...I got hit regularly...I asked for my passport and said I was unhappy and she said 'Well I can send you back to Nigeria' (X from Nigeria).*

In interview this woman also burst into tears when asked about her treatment by men in the household. She had been subject to sexual abuse but still felt too traumatised to talk about it. In another case the woman stated;

*My uncle said that they would hold me for 6 years and then I could go...She (the mother of the household) and the children referred to me as slave. They also forced me to sleep with men...to this I lost my virginity as a child. (18 who was trafficked at the age of 15)*

Two other women, who were trying to survive as undocumented migrants explained how they had no option but to accept any domestic work that was on offer.

*When I came here I knew nothing about finding work and paying rent. I thought it would be like Gambia - finding people to help you...I met this woman and I was working for her as a house girl - no money...they always feed me. One day I told them I had a problem with the work and so they said they would call the police. (90)*

### **3.3.2.4 Drugs importation**

When the researchers made presentations about this research to groups of foreign national prisoners, explaining what experiences defined being a victim of trafficking, a number of prisoners found guilty of drugs importation asked to tell their stories. Elements of misinformation, duress, threats against family members and the use of debt bondage were evident in a number of cases. However only two cases were assessed to be victims of trafficking from the information gathered.<sup>44</sup> Both had been taken and held in another country and subject to physical and emotional abuse. One was also shown a picture of her daughter and told she would be the one to suffer if she refused to carry the drugs. She had already been held for five years as a victim of sex trafficking and was told that she had to carry the drugs to start and buy herself out. No money was offered to either for swallowing and bringing into the country a dangerous number of packages of cocaine.<sup>45</sup>

This link between those involved in sex trafficking and drug trafficking was also apparent with two other victims, where carrying drugs was also offered as an option of reducing ones 'debt' more quickly.

*In 2008 she said you are eager to go home. You go with four others back home and bring back drugs and then you will only have to work for me for*

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<sup>44</sup> With none of the other cases had there been a defence of duress and interviews with barristers in court indicated that this was a route they were reluctant to follow, due to the difficulty of accessing evidence.

<sup>45</sup> In relation to this it is not insignificant that the new EU directive adopts a broader definition including exploitation of criminal activity where elements of forced labour or services occur in activities such as drug trafficking.

*another 3 months. I thought can I do it? What if I die? I asked what sort of drugs and then I said no. (17 sex trafficked from Uganda and held for 7 years)*

### **3.3.2.5 Other areas of work**

Eight women in the sample had experienced other types of work in the hands of those who trafficked them into the UK, or the agents they had been sold onto. Two who had originally been trafficked in for sex work were carrying out street robberies, as their profitability in sex work had declined due to ill health. Others from China were selling fake goods, again under the control of traffickers.

What was evident from those who escaped the control of their traffickers, as with all undocumented migrants who were interviewed, was their resultant vulnerability to exploitation, payments and working conditions that fail to meet national requirements.

*After I arrived I did not know where I was going to work...The agent took me to Liverpool where he said he would find me a job. It was cockle pickling and I did that work for 6 months. It was not easy. They gave us accommodation - but there were 10 of us in a room (men and women) and they gave us food. One day I returned to the house and there were police everywhere. (The day a number of cockle pickers drowned in 2004.) All my paperwork was in the house and I was too frightened to go in and so I never went back...so I borrowed money and went to London and looked for work in Chinatown. I got work whenever I could in restaurants for about 2 years. I got about £25 for a 12 hour working day and sometimes food and accommodation as well. Then the legislation in the UK changed and the restaurants could not risk taking illegals on and I had to take up DVD work at about £10 a day. (70 from China).*

For those outside the target group who had lived in the UK for a number of years, (often as failed asylum seekers) the presence of children increased the need to find work and accepting illegal low paid work. Using false documents to access this work was talked about by a number of women as *essential for survival*. A number worked in the care sector, with working days of fifteen hours plus.

## **3.4 Trafficked women as resalable commodities**

It is important to note that a number of those interviewed once recruited had (and indeed still were) being managed as commodities and their future destinies were out of their control as they were sold on. This is as true of some of those who made the initial approach to the agent or snakehead to move to a new country, as those who had been approached. Sometimes they were aware of the negotiation and sometimes not. For example 54 from Columbia was sex

trafficked to Spain and controlled by a Colombian cartel. After three years she was sold onto an Albanian who brought her to the UK.

There were similar financial deals between recruiters in Vietnam, different cartels who managed transportation and those who used the labour in the Vietnamese cannabis production sites. Women also got caught up in disputes between cartels about areas of work their owners controlled as the following victim outlined:

*The Latvian group came and said they would shave the head of the girls working for the other gang. They did this to one girl and she was hysterical as this happened - she was screaming and I still have flashbacks from the sound of the electric razor. (53, sex trafficked from Russia)*

### **3.5 Experiences of violence and intimidation**

One of the common experiences of all women brought into the UK by traffickers and worked under duress was that of enforced dependency, followed by emotional and physical abuse and threats of what would happen if they did not comply.

Multiple dependency was first created by ensuring that those being transported or held in work were dependent on those who moved and worked them for accommodation, clothing and food, which was often insufficient to meet their dietary requirements. For those forced into sex work, domestic servitude or cannabis production, this relationship of dependency and the resultant disempowerment was normally established before they were introduced to the actual work, inhibiting any escape.

*After we got here she said I could live in her house in X. She bought clothes for me and I worked in the house and cooked for all in the house. One day I got up and she said 'now you have to start work to repay me the money' (89 from Ghana)*

This enslavement was reinforced by social isolation.

*The rare occasions when I went out I was with him. I did not socialise and I did not know anyone in the country who could have helped me. He prevented me from using a mobile phone or any form of communication. (42 a victim of sex trafficking from the Congo)*

Information gathered on the family of the victim at the time of recruitment was one of the most powerful weapons for intimidation. There is evidence of this being used in seven cases where the woman tried to escape or failed to meet the growing amount of stated debt.

*He had a gun and said he would kill members of my family and sell me into prostitution if I refused. (24 from Vietnam)*

*When I said no, he said 'you owe the money and I have full details of your children'. (54 from Colombia)*

*She said that if I refused to do sex she will kill me or send me back to Ghana to my husband. If that happened he would kill me. (60 from Ghana)*

A frequent threat used was of death to the victim.

*We were put in a room and the people came. I tried running away many times. They caught me and said that they would kill me...They put their hands around my neck. (41 from Nigeria)*

*I was told at the house they took me to "If you run away I will kill you". (60 from Vietnam)*

*They screamed at me 'if you do not stop crying we will do what you do not expect'...they then said I owed £20,000 for bringing me here. (4 from Nigeria)*

As outlined above, this death threat was on occasions integral to a juju ritual in preparation for departure.

Alongside this was the ongoing threat that if they did not do as they were told they would be reported to the police or immigration as illegal migrants.

*I was so scared - she said tell no one or you will get in trouble with the police - you will be arrested' (26 from Nigeria).*

*She said she would take me to the police. (One of a number of threats used against 89 from Ghana when she said she did not want to work as a prostitute.)*

Intimidation by violence was reported in ten of the interviews where the women brought our attention to body and facial scars resultant on violence at the hands of those who managed them; intimidation by violence was commonest amongst victims of domestic servitude and sex work. Emotional scars were equally common amongst all those interviewed, but they were greatest with women who had been used for sex. They talked of the shame they felt, the ongoing threats they felt from the traffickers and the fact that they were plagued with flashbacks that prevented sleep, their ability to concentrate and lack of appetite.

Similar physical and emotional scarring was also evident in a number of other interviews with women who had entered the UK to seek refuge, but who were

arrested for entering with no documents or arrested on document charges - having failed to achieve asylum status. A number of women said that they had been raped in situations of conflict and had seen others, including family members killed.

*My husband had been killed and they were looking for me to tell them the names of the friends of my husband. They held me and tortured me - look at my legs, they sprayed the knees with solder gun. I went to another area and they still found me. (92 from Zimbabwe)*

*I had to escape. We are Bajuni and my father and then all other family members were killed. They snapped the neck of my 3 year old daughter. (3 from Somalia, where this group have been subject to long term attacks within the civil war).*

### **3.6. Survival as an illegal immigrant**

As the offence category breakdown in Chapter 4 will demonstrate, the largest group of interviewees were those arrested in relation to their status and use of false documents to survive.<sup>46</sup> This was as true of those who escaped the agents who brought them and forced them to work under duress as for those who entered independently but had failed to seek asylum, were failed asylum seekers or over-stayers. None of these women had legal rights to access work or state benefits.<sup>47</sup>

In relation to those who had been trafficked the greatest threat was being reported to the police and going to the police to seek help was not seen as a viable option. The few women who did try and access formal help in relation to theft of their documents faced numerous hurdles as demonstrated in the following account.

*I called the police and told them about my stolen passport and gave them her description and the colour of the car and the plate number. I was told that they would send somebody in 10 minutes. They called me 15 minutes later to apologise that they were short of staff. They gave me the code number and told me to report to X police station and tell them the number. But I was then too scared to go. Months later I summoned up my courage again. Auntie X was a woman I met in the church. She said, 'You must go to the police - they will not arrest you'. Before that I went to Nigeria House and said my passport was stolen – I need to get another. They said first I would have to produce a police report. So I went back to X Police station and told them I had reported the theft and I needed the police report. They said; "we don't do police reports*

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<sup>46</sup> Table 3.

<sup>47</sup> See Prior, J (2006) for analysis of the failures of the social welfare system to this group.

*any more” and they gave me a 2 page print out document - I do not know what it was. I could not make sense of this. I went back to the Embassy the next day and said to the man at the door I have been told they don’t do police reports. He said we do not issue new passports where one has been stolen without – so I went away. What else could I do? (26 had escaped from the woman who held her in sex work).*

The same issue was also raised in relation to those who were smuggled in.

*He (the smuggler) refused to give me back my passport so I went to the officer at the airport and said this man is refusing to give me my passport...they then arrested me...why? I am not the criminal. (61 was a refugee who asked for asylum in the UK on arrival).*

For women held in sex work, domestic servitude or other forms of labour under duress the UK remained a foreign land and few had any idea of their actual location. They had no supportive networks when they got away and continued to be vulnerable to those who would abuse them.

*I left the hotel in the morning. I did not know what to do. I was sitting on a (bench) just sobbing. I was so miserable. This man came up to me. He was English – but said he was from Nigeria. He said “what is going on and why are you crying?” I told him that my mother had sent me over here to do sex. He took me home to his flat and I lived with him for 2 months. He was like a boyfriend – but really I had no choice in this. (X).*

*After I got away it was hard to find work. A lady she let me work and then she threw me out. She said I would commit a crime. Then I stayed with the Imam at the mosque - I cleaned the mosque and I cleaned the toilets. Then I had to go to the other mosque. Many times I was sleeping on the streets and picking up any work I could. (60 had been sex trafficked from Nigeria).*

This vulnerability resulted in accepting any work they could, irrespective of whether pay and conditions met national requirements and an inevitable reliance on others who befriended them and offered to sell them documents, assuring them that this would access work or the ability to travel. It also resulted in a number of those who were interviewed being pulled back into abusive sexual relationships for survival. A number talked of living life from day to day in a state of anxiety. Those they had trusted in the past had abused that trust. A phrase used by three women was *watching my back* and knowing that at any time they could be picked up by those they had escaped from, or the police, or immigration. Being arrested was therefore a fruition of one of their greatest fears and although all were the victims of the criminal action of others, the effectiveness of the intimidation to which they had been subjected to for many years ensured that for the majority going to the police or their embassy was not seen as a viable option. By the time of their arrest a number had been living

independently of those who brought them here for a number of years and some had young children. However the impact of being brought into the UK by others under false pretences, being held, worked and abused continued to impact on their coping skills, sense of self-worth and ability to take effective control of their lives.

### **3.7 Concluding Comments**

In conclusion, there were very few interviews where experiences of disempowerment, victimisation and threats against the individual and her family were not reported. Many of the women reported that they had been victims of ongoing brutal sexual, physical and emotional abuse. For those who migrated to escape, these experiences started prior to migration. For others it was integral to the relationship they had with those who brought them to the UK and worked them under duress. For some, the hold and threats made by those who moved and worked them did not disappear on arrest. These apparent human rights abuses and offences to which they were subject reflect the model outlined in the OSCE report on the business model of trafficking as outlined in Figure I below (Aranowitz et al., 2010). The only exception to this is murder and the removal of organs, which two women in the sample witnessed in relation to other victims during their hold in other countries.

## Figure 1: Trafficking in Human Beings as a Process and other Related Crimes

(Taken from OSCE report on *Analysing the Business Model of Trafficking in Human Beings to Better Prevent the Crime*, 2010)

*Offences in italics are those not perpetrated against the individual victim*

<b>Recruitment</b>	<b>Transportation</b>	<b>Exploitation</b>	<b>Victim Disposal</b>	<b>Criminal Proceeds</b>
Fraudulent promises	Assault	Unlawful coercion	Assault	<i>Money laundering</i>
Kidnapping	Illegal deprivation of liberty	Threat	Abandonment	<i>Tax evasion</i>
<i>Document forgery</i>	Rape	Extortion	Murder	<i>Corruption of government officials</i>
<i>Illegal adoption (for purposes of exploiting child)</i>	Forced Prostitution	Sex or Labour exploitation	Victim sold to another trafficker	
	<i>Corruption of government officials</i>	Illegal deprivation of liberty		
	<i>Document forgery</i>	Theft of documents		
	<i>Abuse of immigration laws</i>	Sexual assault		
		Aggravated Assault (cruel and degrading treatment)		
		Forced participation in crimes (forced begging, transportation of drugs, organised theft)		
		Rape		
		Murder		
		Removal of organs		
		<i>Corruption of government officials</i>		

We learned from the women that their experiences had left them feeling socially isolated, vulnerable, traumatised, subject to flashbacks, ashamed and too frightened to tell others what had happened. They indicated that they also found difficulty in knowing whom to trust and were fearful of men. In addition, they reported that one of the biggest threats by those who held them was to hand

them over to the police or immigration. It is important to note this when looking at how these women were then managed from the point of arrest onwards.

## 4. EXPERIENCES WITHIN THE CRIMINAL JUSTICE SYSTEM

### 4.1 Criminal Charges and Sentencing Outcomes

Table 5 below outlines the breakdown of primary offences of all those interviewed (that is the 103 women in the screening sample), with a breakdown of charges for victims of trafficking, servitude and slavery, those who entered in the hands of smugglers and others outside of this target group. The three dominant offence categories are:

- The use of false instrument with intent (27) and related charges of possession of false documents and fraud (9). These were also secondary charges with those arrested for entry into fake marriages (7).
- Production of a controlled drug, that is cannabis (17) with related offences of conspiracy and money laundering (4).
- Importation of a class A drug (12).
- Entry to the UK without valid documentation (6).

Five of those interviewed were being held purely in terms of their illegal immigration status and no criminal charge had been served.<sup>48</sup>

#### 4.1.1 Use of false instrument with intent and other offences of fraud and possession of false documents

This offence group contained the highest percentage of victims of trafficking and it is valid to look at the point of arrest.

- Eleven women in this group had been arrested by immigration as they tried to leave the UK with false ID. They were all charged with Instrument of Fraud with intent. Six of these women were trying to get home having originally been trafficked into the UK and having no access to legal documentation. Five had been held and used in sex work (cases 26, 42, 53, 66, and 68) and one in domestic servitude (case 39). Two were actually arrested in the hands of the traffickers, who ensured that they passed through customs separately from their victims (cases 45, 103). The other three arrests were of two women in transit to Canada where they intended to claim asylum (cases 36, 65) and one, en route home with false documentation.
- Eight other women who were victims of trafficking had all been arrested as they used false documents within the UK to seek work after escaping those who held them. Two victims of domestic servitude were also charged with fraud for claiming benefits under a false name. Paperwork looked at in both cases would support the claim made by these women that the claims were made by those who held them (cases 18 and 59).

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<sup>48</sup> These five cases were detained at Yarl's Wood IRC because of their illegal immigration status. One was released when formally identified as a child and the other, following a protest, was transferred to prison where she was held on an IS91.

- Of the other nine women arrested for offences of fraud or being in possession of false documents, none were victims of trafficking. Six had used or were trying to use false identity to access work and two were in relation to fraudulent benefit claims. One was used by a single mother to try and secure accommodation for her children and only one was for financial gain by a woman who had gained rights to remain in the UK.
- Of the seven women charged with entry into fake marriages, two were victims of trafficking who were sold this as a way of securing British nationality after they escaped those who held them. Two others who bought into this service were undocumented migrants. The other three were EU nationals recruited by those who offer fake marriages to non EU nationals to secure residency and who were being paid for their involvement.

#### **4.1.2 Offences related to the production of cannabis**

This offence group contained the second highest number of victims of trafficking. Of the 17 women charged with production of a controlled drug, that is, managing the crops as gardeners, and the four charged with conspiracy or money laundering<sup>49</sup>, 14 had been trafficked in by snakeheads. Of the 21 women who had been arrested in relation to the production of cannabis, 18 arrests were at the actual premises where the drugs were being cultivated and three in other locations.

Of those who had been trafficked, four had been taken directly into cannabis production (cases 5, 81, 98, and 99). With the other eleven, nine had been told they had to find their own work to repay the debts and this was work 'offered' to them. It was often sold to them in terms of 'work in a house' and once involved, they felt there was no safe escape route (cases 28, 29, 57, 69, 72, 82, 83, 85 and 97). Case 57 who stated that she had originally been brought into the country at the age of thirteen, was held in the cannabis factory against her will. Of the six who had entered the country independently, two stated they had been taken to the cannabis house under false pretences and then locked in (cases 56, and 58). Only one of those interviewed (case 87), appeared to be involved for her own gain and prosecution evidence resulted in her being given a sentence of 6.5 years.

#### **4.1.3 Importation of class A drugs**

Although twelve women interviewed were charged with importation of drugs only two were identified by the researchers as victims of trafficking.<sup>50</sup>

#### **4.1.4 Offence of entering the country without valid documentation**

The six women charged with entering the UK without valid documentation had all claimed asylum at port of entry which, from information gathered, was the first

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<sup>49</sup> Evidence presented to substantiate that was the fact they were involved in the property rental and/or use of their accounts to send money back to Vietnam.

<sup>50</sup> See Chapter 3 of this Report for further discussion on this.

safe country that they had entered. However after their initial immigration interview they were handed over to the police and charged, as their passports had all been withheld or stolen by the smugglers who had facilitated their travel.

#### **4.1.5 Other offences**

Of the 16 migrant women charged with other offences, seven had been trafficked into the UK and one had entered independently but ended up working here under slavery like conditions. They faced charges of attempted street robbery, selling fake and counterfeit goods, and one had been convicted for a more serious offence.

## **4.2 Sentencing outcomes**

Table 5 below also shows the average sentencing outcomes in each of the offence categories. As well as determining the period of time served in custody, sentences given to foreign nationals have a more fundamental impact on their future since those sentenced to twelve months or over are subject to automatic deportation. Within the target group of 58 women, 25 were sentenced to 12 months imprisonment and over. Five of these had been sentenced for use of false instrument with intent, one had been sentenced for entry into a fake marriage, 13 (out of the total of 14) were sentenced in relation to cannabis production and two sentenced for importation of class A drugs.

**Table 5: Offence Category Breakdown and Sentencing Outcomes**

Criminal Charge for primary offence	For victims of trafficking and those worked under slavery or	For those who entered country in control of smugglers	For others interviewed	Total	Average sentence within offence category
Use of false instrument with intent	<b>18</b> Cases 4, 6, 17, 18, 24, 26, 39, 42, 45, 53, 59, 60, 66, 67, 68 90, 92, 103	<b>2</b> Cases 3, 47	<b>7</b> Cases 7, 8, 13, 36, 48, 64, 65	<b>27</b>	<b>10 months</b>
Possession of false documents/ fraud charges	<b>2</b> Cases 18, 59	<b>1</b> Case 2	<b>8</b> Cases 12, 23, 41, 44, 46, 49, 63, 93	<b>9</b>	<b>13 months</b>
Entry in fake marriage	<b>2</b> Cases 9, 89,	<b>0</b>	<b>5</b> Cases 16, 19, 35, 51, 62	<b>7</b>	<b>10.5 months</b>
Production of controlled drug (cannabis)	<b>14</b> Cases 5, 28, 29, 56, 57, 58, 69, 73, 81, 82, 83, 85, 98, 99	<b>0</b>	<b>3</b> Cases 84, 86, 100	<b>17</b>	<b>1 year 9 months</b>
Conspiracy or money laundering offences in relation to cannabis production	<b>3</b> Cases 72, 96, 97	<b>0</b>	<b>1</b> Case 87	<b>4</b>	<b>4.5 years</b>
Entry to country with valid identification		<b>6</b> Cases 43, 50, 52, 61, 74, 102	<b>0</b>	<b>6</b>	<b>3 months</b>
Importation of Class A drugs	<b>2</b> Cases 22, 32	<b>0</b>	<b>10</b> Cases 21, 27, 30, 31, 38, 40, 88, 91, 94, 95	<b>12</b>	<b>8 years</b>
Street robberies	<b>2</b> Cases 54, 55	<b>0</b>		<b>2</b>	<b>4.5 months</b>
Other charges	<b>5</b> Cases 11,70, 78, 79, 10	<b>1</b> Case 71	<b>8</b> Cases 14, 15, 20, 25, 33, 34,37, 80	<b>14</b>	
No charge	<b>2</b> Cases 1, 10,	<b>0</b>	<b>3</b> Cases 75, 76, 77	<b>5</b>	
<b>Totals</b>	<b>48</b>	<b>10</b>	<b>45</b>	<b>103</b>	

## **4.3 Use of the National Referral Mechanism**

### **4.3.1 Cases where women were processed through or made aware of the NRM option**

Of the 43 women identified by the researchers as victims of trafficking, using the indicators as outlined in the European Convention and listed in the Trafficking Toolkit, only 11 had been referred to a Competent Authority for a formal assessment of their victim status during the period of the research. A further four women had been made aware of this option, but declined. With three of these women this was due to the fact that they wished to return to their country of origin as quickly as possible and they saw no benefit in being assessed as victims. The fourth woman was referred to the first responder. However, after an initial discussion she declined to go through the NRM because of ongoing fears of the impact of disclosures on both herself and her daughter, whose details the traffickers held.

Table 6 below outlines the primary criminal charge faced by these victims, the first person to initiate action, the first Formal Responder, the Reasonable Grounds (RG) and Conclusive Grounds (CG) outcomes and their period of time spent in custody. Of those who went through the NRM procedure, two had not been charged with criminal offences, but were detained because of their illegal immigration status. Of those facing criminal charges, one was for offences contrary to section 25 of the Identity Cards Act 2006 and the other eight were for Use of False Instrument with Intent, although the additional primary charge for one was in relation to entering a false marriage (89).

**Table 6: NRM Referrals**

Case	Primary criminal charge	Actor in response to disclosures	Formal First Responder	Timing of referral	NRM outcome	Period in custody/detention
1	None - immigration status	fpwp/ Hibiscus	Social Services	On Immigration detention	Positive RG and CG	31 days (IRC)
4	False instrument with intent	fpwp/ Hibiscus	The Poppy Project	During remand in custody	Positive RG and CG	76 (prison)
10	None -immigration status	fpwp/ Hibiscus	The Poppy Project	On Immigration detention	Negative CG overturned	6 months (IRC), 41 days (prison)
17	False instrument with intent	UKBA CCT	UKBA CCT	After sentencing	Positive RG and CG	93 days
18	Offences contrary to section 25 of Identity Cards Act 2006		UKBA	Whilst in custody awaiting trial	Positive RG, negative CG. Judicial review sought	8 months in custody
22	Importation class A drugs	fpwp/Hibiscus	Migrant Helpline ( <i>Victim did not consent to NRM due to fear of repercussions</i> )			
39	False instrument with intent	fpwp/Hibiscus ( <i>victim did not consent to NRM – arrested trying to get home</i> )				
53	False instrument with intent	fpwp/ Hibiscus	The Poppy Project	During remand in custody	Positive RG, left country before CG assessment	24 days (prison)
54	Attempted robbery	fpwp/Hibiscus ( <i>victim wished to return home</i> )				

55	Attempted robbery	asap) fpwp/Hibiscus (victim wished to return home asap)					
66	False instrument with intent	CPS	The Poppy Project	After entering plea	Positive RG, negative CG	130 days (prison)	
67	False instrument with intent		The Salvation Army	At point of release after completion of sentence	Not yet assessed	5 months in prison	
68	False instrument with intent	CPS	The Poppy Project	After entering plea	Positive RG, negative CG	119	
89	Entering fake marriage	Prison Diversity Team	The Poppy Project	After sentencing	Positive RG, positive CG	11 months (prison)	
103	False instrument with intent	Police	Police	After sentencing	Positive RG and positive CG	123 days plus (prison)	

It is not insignificant that referrals and resultant formal identification was limited to those who had been sex trafficked and with two victims of domestic servitude. There is no record of any action being taken for those charged with cannabis production, despite routine statements made in mitigation that the defendant had been trafficked into the UK and the formal recognition in the CPS guidelines of a potential link between this offence and being a victim of trafficking.<sup>51</sup>

Of those nine facing criminal charges, only five referrals were made in time to potentially stop the proceedings (Cases 4, 18, 53, 66 and 68). With the other four, three were not formally identified until they were serving their sentences (17, 89, 103) and one until she had completed her sentence (67).

With these 15 cases the first response to disclosures was made by fpwp/Hibiscus in eight cases and the Crown Prosecution Service in two cases in response to evidence disclosed in mitigation, after guilty pleas had been entered. With the other five, the responders were UKBA CCT (case 17), the representing solicitors (case 18), Migrant Helpline (case 67), the prison diversity team (case 89) and the Police (case 103).

In case 103 the police were then also able to act as official First Responder. In the other ten cases a referral had to be made to a Recognised First Responder. This was the Poppy Project in six cases, UKBA in two cases, Social Services in one case and Migrant Helpline in another. It is of relevance to note that with a number of these cases there was some confusion on the part of the victim and staff involved as to if, and when, a formal referral had been made and whether the fact that, at a standard prison interview with UKBA CCD in relation to identity documents, disclosures to having entered in the UK in the hands of traffickers would result in them taking responsibility for acting on this.

Of the 11 cases that went through the NRM, a RG decision had not yet been made during the research period on one case (67). A positive RG decision, followed on by a positive CG decision had been made in five cases. In a sixth case the victim agreed to be returned home before a CG decision could be made. In four of the cases there was a negative decision made by UKBA as the Competent Authority; at the RG stage in two cases (cases 10, 17) and at the CG stage in two cases (cases 66, 68). One of these cases was taken to judicial review, resulting in a positive outcome. At the conclusion of the research the defence solicitor on another case indicated his intention to request such a review.

In all four cases where the decision by UKBA was negative, this had been assessed alongside an asylum application for which the applicant also received a negative decision. The researchers did not have access to all these reports to establish how independent the decisions were in relation to asylum and being recognised as a victim of trafficking. However the defence barrister in one of the

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<sup>51</sup> Crown Prosecution Service Legal Guidance (2011) section on Prosecution of Defendants charged with offences who might be Trafficked Victims.

cases pointed out that the UKBA staff members who signed and countersigned the asylum decision and the CG decision were the same, which may bring into question the independence of these two decisions.

In the letter to the applicant in one of these negative decision cases UKBA stated that:

*Careful regard has been given to your account and the objective material available. It is not considered that there are 'reasonable grounds' to believe you were trafficked to the UK for the purpose of domestic servitude and sexual exploitation.*

This contrasted with a 22 page report written by Director of AFRUCA,<sup>52</sup> the result of two extensive interviews with the same applicant. This report was presented by the defence barrister to the CPS for consideration to drop the criminal charges. The report concluded;

*I am convinced that your client's claims of being trafficked into the UK from Nigeria to be abused as a domestic slave, exploited for the sexual gratification of others and coerced into engaging in illicit activities through claiming state benefits and procuring a British Passport in someone else's name, are very plausible. Her case is not a one off by any chance. I also find her claims to be consistent with many of the ILO Operational Indicators of Trafficking in Human Beings.*

The report by AFRUCA also referred to the two key charges related to claiming false benefits under a false identity within a few days of her arrival, stating that:

*I am convinced your client could not have possessed the capacity to initiate, plan and execute a fraud operation on the scope as the one I have read about. As a newly arrived, semi-educated 15 year old, she would not have had the know-how to do so.*

In this case the Abuse of Process application was refused by the CPS and the defence solicitor stated that prior to the trial the grounds of defence such as compulsion and duress were rejected and a plea of guilty was entered.<sup>53</sup>

Clear conflict in assessment by the UKBA acting as the CA and a report by an organisation recognised as having specialist knowledge in this area of work was apparent in two other cases. In one, the judge stated his concern about ignoring the detailed reports by the Poppy Project confirming evidence of victim status and despite a negative CG decision made by the UKBA as the CA it was

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<sup>52</sup> AFRUCA (Africans Unite Against Child Abuse) is formally recognised as one of the organisations offering support and advice to victims of trafficking).

<sup>53</sup> As the researchers were unable to attend this hearing the details of these arguments cannot be verified.

considered not to be in the public interest to continue with the prosecution.<sup>54</sup> In another of the negative CG decisions, the UKBA used as part of its evidence a previous arrest of the claimant three years earlier (following a fight reported by neighbours), the fact that at the police station she had claimed she was in regular employment, and her reluctance to disclose information concerning her abuse when interviewed by the police on the current charge. Their conclusion was that the applicant was not a victim of trafficking but *came to seek asylum*. In a research interview this victim disclosed that the fight was the result of her dependence on a third party after she first escaped, and she had stated at the police station what she had been told to say. She also stated:

*When I was brought to the UK I did not know what asylum was. I came here because I was offered work and then held and used for sex. Why, when I have been through all of this can they possibly say this? (66)*

As well as long delays between arrest or detention and response to potential victim status once the women was in custody, the period of time from referral to a First Responder and a decision by the CA was never less than three weeks. In the two cases where the Crown Court Judge adjourned the proceedings, one of the women was in custody for a further three months before a RG confirmation of her victim status, at which point she was granted bail. With the second woman a RG decision was also received by the court within three months. However bail was refused until there was a CG decision. This decision was negative, bail was refused and there was a further six week adjournment to gather evidence to appeal against this and the case was not back before the court for another ten weeks. In these two cases three court appearances achieved nothing more than a request for further adjournments and increasing anxiety, confusion and frustration by the women. This stress was particularly evident in one of the cases where the defendant's barrister had to spend some time in the cells area persuading her client to appear in the dock and once there she just sat weeping (case 66). It is worth noting that the average period of time spent in custody and/or immigration detention for the eight women who were formally assessed by the CA to be victims of trafficking was 128 days.

#### **4.3.2 Cases not referred through the NRM**

As pointed out in the last section, of the 43 victims identified by the researchers, only 11 were referred through the NRM and in four other cases the victim declined going down this route. In the remaining 28 cases, identification through the NRM was not used, either to stop criminal proceedings, gain release from immigration hold, access appropriate victim support before or after release, or gather information to initiate investigations into their abuse. In the next section we therefore explore common themes in the management of these women through the criminal justice procedures to help explain the reasons behind this low referral rate. For example was lack of recognition due to;

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<sup>54</sup> It should be noted that the defendant had already spent five months in custody on remand.

- Failure to facilitate or respond to disclosures at point of arrest?
- Their management through the court proceedings?
- Ignorance by potential first responders in terms of the NRM and roles and responsibilities?
- Interpretation of current legislation and what is in the public interest?

For the other 15 migrant women who entered the UK independently but then worked in slavery or servitude, or who entered the UK in the hands of smugglers who stole their documents, there was again apparent lack of response to the fact that the actions with which they were charged had been committed under duress and/or were not committed knowingly or willingly. Resultant on this is the fact that in only one case was the defendant encouraged to enter a plea of not guilty. (52, charged with entry to the country without valid documentation)

With all of these cases within the target group there are common factors raised by women, and substantiated by court observations and additional material gathered, in terms of how their cases were managed.

#### **4.4 Experiences of arrest and the laying of charges**

The experience of being arrested is not an easy one for any member of the public. However there were common themes in the accounts of the women interviewed:

1. The fear of what was going to happen. Being reported to police or immigration was a threat used by most agents who controlled trafficked women and, as this was normally their first experience of arrest in the UK, the fear was that it would be like in their country of origin where they risked physical attack, once out of public view, or repercussions from those who had held them for disclosing what they had been through. Few had heard of or knew what the word 'trafficking' meant and none were aware of the rights they might have on arrest.

*At arrest my heart was beating very fast and I told them I was very very cold. I could not eat - I kept in my head 'if you tell - pool of blood'. I think the police will harm me and I am very scared of the police. (60, who had escaped the control of her sex trafficker, who had threatened she would end in a pool of blood if she told.)*

*There was banging on the door - I thought maybe it was neighbour. I was on my own and very frightened and I hid in the corner and then the police came and they just pull me out. There was no interpreter and I was so scared that I peed into my trousers. (85 trafficked Vietnamese arrested at cannabis factory)*

*I do not know if it is safe to talk to the police. I do not know if I have to talk to them and what will happen. (53 sex trafficked from Russia and arrested leaving country with false document)*

2. Confusion as to what was happening and why. This was exacerbated when the arrestee spoke some English but this was not their first language, as was the case with most of the women from non-English speaking African countries.

*At the police station I was confused. They spoke quickly. They never asked if I needed an interpreter. I did not understand what was going on. I was crying...I am just tired of life, dear God...I just wanted to tell them everything - I wanted them to listen and understand. If I had been able to talk then maybe I would not be here. The solicitor just said 'say no comment, no comment, no comment'. The only thing the police told me I could do was to make a phone call. Did they not see I was a foreigner and very frightened? No one would let me talk to them. (4, A victim of sex trafficking, arrested for use of false documents.)*

3. Not being aware what to tell. Some of those who had escaped a situation of trafficking wanted at last to tell someone, others were frightened because of potential repercussions and all were confused when, as with the case above, they were advised by the duty solicitor to say 'no comment' :

*I tried to tell the police about this man but my solicitor said I was to say no comment (58 from Vietnam held at cannabis farm, referring to the agent who had taken her there)*

4. The perception that as a foreign national the police viewed them in a very negative light.

*When they took me to the police station they were not interested in me as a human being. Another woman and a man had been arrested. There were two officers and one, the woman, was very aggressive. Behind me she was saying that people like us deserved to (making a cutting mark over her own wrists) to have their hands cut off. The policia cuando ves agarran creen que ganaron un trofeo. (The police viewed us as a trophy that they had won). Of course stealing is bad but they never ask why. (55 from Columbia, forced by her trafficker to carry out street robberies when she had to be pulled out of prostitution because of medical complications resultant on long term abuse as a prostitute)*

5. The police stated that they did not believe what they were being told because the victim had never sought police help and a standard response to disclosures was:

*If this is what happened to you, why did you not come to the police for help when you got away? (66 a victim of sex trafficking who was not believed when she told the police how she had been trafficked and escaped one week ago)*

*You're saying that after being released by X in X it never crossed your mind to go to the police? (17, victim of sex trafficking arrested for use of false documents)*

6. Where there is evidence that the arrestee was unable, unwilling, or too frightened to give her full account at the first interview, no opportunity was given for further interviews. This is evidenced in Crown Court Probation notes made available to the researchers from court proceedings (not directly observed by the researchers):

*She said she was trying to use it (a false document) to leave the UK. She gave some indication in interview that she had been trafficked and forced to work in the sex trade but police were not happy with this explanation, as every time they asked any questions to verify this she would give no details. There does not seem to be any basis behind what she is saying as nothing was provided that could be checked. As a consequence prosecution is proceeding on basis that it is not true she is trafficked. (68 who was trying to leave the country having escaped from her traffickers and for whom a positive RG decision was made after four months in custody)*

7. Even where notes of the police interview record the question of how the individual entered the country and the response given states being trafficked in and held against their will, no action appears has been taken other than proceeding with the laying of charges. In full police interview notes observed in one case the statement is made numerous times by the interviewing officer that;

*What you've told me today does not make a great deal of sense and I've pointed to the fact that you come across quite sensible and you are trying to tell me that for seven years you've been basically held, held captive for seven years. (17, victim of sex trafficking)*

This response was most common with those arrested for cannabis production, where fear prevented full disclosures.

*I told them I had been brought here (UK) and made to work in the cannabis house – but could not give them the names of those involved. Because of that I do not think they believed me. (81, trafficked into the UK and sentenced to two years imprisonment for the production of cannabis)*

Even when statements indicated that action would be taken, there is no evidence of this being followed through. For example in the following case no statements were made in court by CPS to indicate that they had received this information.

*I told them everything about how I came into the country, was forced into sex work, how my passport was stolen and I tried to get a new one and my reason for going back to Nigeria. When I told them about the woman who brought me the Immigration man said 'he would contact the CPS'. At the time I did not know what that meant (26 a victim of sex trafficking arrested trying to leave the country using a false document).<sup>55</sup>*

In a number of cases it is inconceivable that the physical and psychological indicators used to identify victims of trafficking, which were so apparent when interviewing women in the context of this research, were not evident at the point of arrest.<sup>56</sup> At the first research contact with seventeen victims of trafficking, psychological and/or physical indicators were apparent and noted in interview files<sup>57</sup>. Even with the two women where police concerns about state of health of the arrestee led to referrals to the local hospital for a check-up, this line of enquiry was not pursued.<sup>58</sup>

One can only conclude that these women were processed in the normal manner because the police were focusing on the individual as an offender and did not see it appropriate to act as a 'first response authorised agency' and report the case to UKHTC. In court this response was challenged in only two cases monitored and this was by the judge. In one of these cases, (66) the CPS stated that police had been, *Unable to substantiate this statement* (that she has been sex trafficked).<sup>59</sup> The second case was 68, detailed in point 6.

Of equal, if not greater concern in response to disclosures made, was the failure by the police to comply with their duty to investigate any of the allegations made by these arrestees that they had been treated by those who held them, contrary to their rights to freedom from inhuman and degrading treatment under the European Convention on Human Rights 1950 Article 3, and freedom from slavery or servitude under Article 4.<sup>60</sup> Resultant on this is the fact that to date, of all of those identified in the context of this research as victims of trafficking, there is evidence of only one full investigation and only two other examples of an attempt

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<sup>55</sup> One of the researchers was at the Crown Court for the duration of her appearance.

<sup>56</sup> These are physical and psychological symptoms, as outlined in the CJS Trafficking Toolkit 2009: confusion, memory loss, Post Traumatic Stress Disorder (PTSD), severe headaches and abdominal pains.

<sup>57</sup> Cases 4, 6, 9, 10, 17, 18, 22, 26, 32, 42, 53, 60, 66, 69, 82, 89, and 103.

<sup>58</sup> Cases 60, 103.

<sup>59</sup> In this case a plea of guilty had been entered and the court was only made aware that the woman was a victim of trafficking in mitigation. It was at this point that the judge halted the proceedings for a full assessment of the defendant as a potential victim of trafficking.

<sup>60</sup> Guidance on the duty of police to adequately investigate has recently been given in the case of *OOO, OOA, MTK and RTF v Commissioner of Police of the Metropolis* (2011) EWHC 1246 (QB).

to gather further information by the police. Even where repeated disclosures have been made, as evidenced in the police interview notes in the case of 16, there was no follow-up.

In two of the three cases where there was initial follow-up, this was conducted by two male officers, despite the fact that the victims had stated that they had been repeatedly raped by men. The interviews took place in the prison and the women were not formally advised in advance of the date this was to happen. In these two cases both women identified one of the officers as being at the police station at the point of their arrest and they felt very unsure giving evidence without legal representation. They heard the word 'allegations' used and there was nothing to indicate they were being viewed as a victim. After one interview there is no further evidence of the implementation of a full investigation. Indeed in one of these cases, the police notes of the interviewee's unwillingness to cooperate fully when questioned was used as evidence by UKBA as the CA in concluding that the woman was not a victim of trafficking.

This contrasts strongly with pre-interview meetings observed between SCD9 officers and one of the child victims in custody. In this case there was a female officer, a female interpreter, clarity of victim orientation, and effective management of the meetings which recognised that the child was traumatised.

For women whose entry was facilitated by smugglers who withheld their passports, police arrests at port of entry were equally traumatic. They all claimed asylum at the first opportunity and the case described below is not atypical, where the refugee approached staff to inform them that the man she had travelled with had refused to give her back her passport. After an initial interview with immigration she stated that:

*The next thing that happened was that the police came and put hand-cuffs on me. They said, 'we are arresting you for entering the country without required documents'. I was crying and crying. They took me to the police station with all my belongings and put me in a holding cell (50).*

This woman's father had just managed to get her out on temporary release from a notorious prison in Iran where she had experienced solitary confinement, abuse and daily threat of rape. At interview with the researchers she asked,

*Why did they not try and arrest the man who had stolen my passport? Why did they do nothing about it? (52)*

## 4.5 Management through the court proceedings

There were common elements in the accounts of women about how they experienced the court system and in this section we look at these and their potential impact on facilitation of disclosure, appropriate reaction to them and the recognition of victim status.<sup>61</sup> A number of these experiences were verified in the context of 33 appearances that were observed by the researchers and at which there were out of court discussions with legal representatives and other court staff. Key elements of this were:

1. Being processed through an unfamiliar system in a foreign country when already traumatised by all they had experienced
2. The relationship with the legal representative
3. Minimal success in bail applications and time on remand
4. The impact of limited English, and interpreting facilities
5. The physical structure of the court

### 4.5.1 Being processed through an unfamiliar system in a foreign country

As outlined in Chapter 3 the shared experience of those within the target group was disempowerment through being in the control of others, and being denied any freedom of movement or adequate information on what was happening. For many this was reiterated in their experience of the criminal justice system, as stated by one of the Chinese women trafficked for cannabis production.

*At early stages at court the only thing I understood was the next hearing dates and I just felt I was in their hands - like being in the hands of the people who brought me here. (82)*

When talking about court proceedings, the common theme of those interviewed was utter confusion and being out of control of a process that was about the offence, but excluded the context in which their alleged offence had taken place or indeed them, as real people. Court hearings that were observed validated this. The defendants were in effect 'off stage', reassurances were rarely sought that they understand what was happening, their names were routinely mispronounced and there were physical and language barriers between them and what was being discussed in the Courtroom. At interviews the impact of repeated court appearances, which necessitated long journeys in cellular vans, being handcuffed, not knowing when they were to appear, meeting a new legal representative and being totally confused at the outcome had a detrimental impact on their mental wellbeing. In two cases observed the defendants who had been in the Courtroom cells for three hours and six hours were not even brought

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<sup>61</sup> We should not that some of these common elements were referred to by other migrant women interviewed, and not just those within the target group.

up to the court when a decision was made to adjourn the case (45).<sup>62</sup> One of these was suspected to be a child and finally medically assessed as 15 years of age. When visited by the researcher, together with her barrister in the court cells, her anxiety level was very high and she could not stop crying. She did not get back to the prison until 8 p.m. that evening.

When asked at the end of the research interviews if they had any questions the standard response for those on remand was:

*Can **you** tell me what is happening?*<sup>63</sup> (29, from Vietnam)

and

*I do not understand why I was never allowed to say anything when I was in court. (X)*

Unlike members of the jury or indeed those giving evidence, there was no formal procedure for outlining to the defendant in advance of her appearance, the structure of the court, how it functioned and what to expect from each appearance in terms of procedures.<sup>64</sup>

*I do not know where they took me – was it a court or a police station? Then all I was told was in a letter – but it was in English – I took it to X (another prisoner). She said it gives the date when you go back to court. (29, arrested on cannabis production)*

#### **4.5.2 The relationship with the legal representative**

One of the key elements of effective legal representation is that of trust and taking into account the conclusions in Chapter 3, this is certainly pertinent for potential victims. Few would dispute that trust often requires face-to-face contact, time and consistency. Many of those interviewed reported that they had had no visits from their legal representative whilst in custody, they were limited in telephone contacts they could try to make, and their only contacts were once at court, in the limited time before their case was called.<sup>65</sup> Added to this was the fact that all but two women interviewed stated that they were represented by different people at each stage in the proceedings and did not know whether what they had told one person had been passed on to the next.

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<sup>62</sup> This decision was made with the consent of her barrister who agreed to go down to the cells and explain what had happened. However, when interviewed two days later she still did not fully understand what had happened that day.

<sup>63</sup> This question was also put to the researchers on two occasions where friends/ family of the defendant had sat through a court proceeding and were equally confused.

<sup>64</sup> Brief guidelines are accessible on the Justice website in English. However prisoners do not have internet access and therefore cannot take advantage of this.

<sup>65</sup> It is of relevance to note that under the revised Legal Services Commission payments, that for the defence of those charged in the court of law no additional expenses can be claimed for legal visits to prison.

*They gave me a solicitor at the police station and we spent twenty five minutes together. I did not understand everything. She said she would get me bail but I never saw her again. When I went to court the next day there was another solicitor - I did not talk to him outside of the Courtroom. Then I spent forty to fifty minutes on video link talking to my solicitor the week before I went to Crown Court and I try to tell him everything – but this is my problem – how do you talk to your solicitor on the phone or on video link? I did not meet the barrister until I went to the Crown Court and then I only saw him for fifteen minutes.... No I never had a visit in the prison from the solicitor. (89, a victim of sex trafficking)*

*No I got no visit here (in prison). Only one letter to me and it was in English. I could not understand it and took it to Hibiscus<sup>66</sup> for X to interpret it. The solicitor only talked to me for five to ten minutes in the cells before I appeared in court. (42, who was sex trafficked and spoke no English)*

*I was in court five times. I saw one solicitor at the police station – every other time I only saw them at court - different ones each time. One was a woman (the barrister) the others were male - no one asked if I preferred woman. (69, trafficked for cannabis production, but also force into sex work by the agents who transported her)*

In the following case the defendant indicated to the researchers that she had been held in the hands of traffickers for a number of years and was still in a state of severe post traumatic stress when she appeared for trial. She had brought drugs in under duress from the traffickers (case 22).

*Then this man (the barrister) appeared with the statement that I had spent eight hours with the other person (Clerk from the barristers' office) writing – some of it was wrong and then it was in the hands of another stranger – it felt like another betrayal of trust. I did not know him and did not have any confidence in him. I had always said to the solicitor I am not ready to say this stuff in court and now another had it. I was very upset –some of the statement was wrong. I was crying and he spent 20 minutes with me...I said to the barrister I am not ready to go to trial. He kept looking at his watch and sighing. Then he said he had another case and he would return.*

*He came back about 45 minutes later and was with me for about another 20 minutes. He just kept saying – 'look this is taking too long- why not get into court if this is the story you can tell'. All the time sighing at me. I said I cannot talk about this in front of a jury. Eventually I said 'I am sorry for wasting your time'. His reply was not – 'you are not' but 'thank you'. All the time there was an interpreter there - she was obviously worried because*

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<sup>66</sup> A voluntary sector organisation working with foreign nationals in custody.

*she had to keep telling me to be quick. I could tell her hesitancy because I understood a bit of the English as well. She looked embarrassed.*

*I had only been in the UK for seven weeks. I know no one and did not know who to trust – I could not cope with the humiliation of standing in front of jury saying what had happened (I had never been in a trial before) When I said NOT NOW – they take it to mean no I will NOT say- but that is not the case. It is so hard to tell strangers – I have been abused and humiliated for so long- it so hard to cross that bridge. I said 'I am not ready – I did not know who I was any more'. My only way out was to plead guilty.*

With a number of Vietnamese women, whose arrests were resultant on raids on cannabis farms, this element of trust was further eroded by the fact that they had the same legal representative as their co-defendants, and there were huge fears of the repercussions of co-defendants being made aware of disclosures. This was observed at the pleas and directions hearing for case 56 where she and the other two defendants were being represented by the same firm. A request for a change was made in the Courtroom in terms of conflict of interest. Another woman (case 99), trafficked for cannabis production stated that:

*From the time we were arrested we had the same solicitor. It was the same duty solicitor at the police station, and then four times in court it was the same solicitor. Each time we went to court I said I wanted a different solicitor and they said they would sort it out. He always said 'next time'. It was not until we got to the Crown Court that we got different barristers.*

A further factor that a number of women talked about was what they saw as very poor legal representation. This was mostly in relation to lack of contact time. However there were other factors. For example one victim, arrested for use of a false document, having summed up the courage to tell her legal representative all that she had been through received the response;

*I am not going to mention to the court that you worked in sex work as this will not be in your favour.*

When represented at the Crown Court for her pleas and direction hearing, her barrister advised the judge that her original passport had been stolen and that this had been reported to the police. When asked by the judge for the paperwork to substantiate this, her barrister was observed by the researchers to state:

*"I do not have this because my client has misplaced it".*

This was not the case and the victim had told him it was important that she had time to access this from her house for the hearing.<sup>67</sup> (26, a victim of sex trafficking)

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<sup>67</sup> This court hearing was observed.

### 4.5.3 Bail and time on remand

Within the total group (of 103) there are only five instances where we are aware that bail was granted by the criminal court. Four of these women were victims of trafficking and two were finally granted bail once a Reasonable Grounds decision had been made. This was after four weeks in custody for one (case 53) and ten weeks in custody for the other (case 4). The third woman was only granted bail after 8.5 months in custody (case 59). The victim of trafficking who had not been charged with a criminal offence spent six months in Yarl's Wood and nine weeks in prison on an immigration hold, before being granted immigration bail (case 10)<sup>68</sup>. With one of the cases (66 a victim of trafficking) bail was refused when the court was advised that a Reasonable Grounds decision was made. The UKBA was acting as the CA and concluded that there were no Conclusive Grounds to assess this woman as a victim of trafficking. There was then a further six week adjournment to contest this and bail was again refused resulting on her spending over six months in custody on remand.

With those charged with a criminal offence, and whose cases were observed in court, the standard statement made by the Bench was:

*If given bail we believe you are not likely to surrender due to the serious nature of the offence, the strength of evidence against you, the likely sentence and lack of community links.*

With the exception of one case observed,<sup>69</sup> this decision was not changed for those who provided an address, had responsibility for children in the community and/or were able to offer limited sureties.

With the exception of six cases (four for entering the country without valid documentation and two for selling fake goods) all the court cases monitored went to the Crown Court for pleas to be entered. With charges of deception and fraud, those pleading guilty were in custody for between one and three and a half months before sentencing and five cases were noted where the time had been served (on remand status) at the point of sentence. With a not guilty plea, this was on average four months; for two victims of domestic servitude this went up to just under eight months for one (case 18) and seven months for a second after the original arrest (case 59). In cases of cannabis production, where there were a number of co-defendants, and one or more were entering pleas of not guilty, this was between three months and one year. With those charged with drugs importation the time in custody before sentencing was a couple of months where a guilty plea was entered. This went up to between five and seven months where the plea was not guilty. Within this period of time numbers of court hearings

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<sup>68</sup> This followed input from the Poppy Project which provided further information for her legal representative to request reassessment of her status as a victim of trafficking.

<sup>69</sup> This case (62) is discussed in Chapter 8.

reported ranged between two and seven for all cases monitored.<sup>70</sup> Where there were five or more hearings the norm was for at least two of these to be by video link.<sup>71</sup>

This impact of imprisonment from point of arrest, with a fairly lengthy period on remand status, exacerbated by the entry of a plea of not guilty had a number of impacts on the management of their case:

#### **a) The impact on pleas entered**

Within the total group of those interviewed one in four of the women initially entered a plea of not guilty. However a much higher number stated they were not guilty, but were entering or changing their plea to guilty to avoid lengthening their time in custody and this was exacerbated by separation from children (14 and 15) and, with one case, due to her advanced state of pregnancy (X). With those in the target group this was also influenced by their difficulties in coping in the prison environment after all the trauma that they had been through prior to arrest. As one woman, who had been waiting four months for her trial, stated in tears;

*I just don't think I can cope any more (52)*

In a few cases the decision to plead guilty was contrary to the advice of their solicitors, who were confident to proceed to a trial in terms of the evidence presented by the CPS. However, more generally, the solicitor warned of the impact of a non guilty plea on the time in custody. For example 53, a victim of sex trafficking, arrested for leaving the country with a false document was advised that it would be better just to plead guilty in terms of length of sentence and time in custody. A duty solicitor was quite candid when interviewed in relation to the advice he gave his clients in such cases stating;

*With foreign defendants they will not get bail. Secondly, if they plead not guilty and are then found guilty, the sentence is going to be much longer – so to reduce the time in custody I often say the best option is to enter a guilty plea and get out as quickly as possible.*

One victim, who disclosed her trafficked status to the police and her solicitor, said she felt bullied by her solicitor to enter a guilty plea to use of a false document provided by her trafficker. She consented to share the following letter with us from her solicitors which stated:

*I advised you to make an official report (in relation to being held by her trafficker as a slave) to the police about this as soon as possible otherwise*

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<sup>70</sup> It was only possible in a few cases to verify history of court hearings from the prison data held on P-Nomis (the prison data base).

<sup>71</sup> A video camera and screen is used in a specialised room in legal visits in the prison and in the actual court-room. Video link facilities are also set up in courts for use by solicitors and the Probation Service.

*your evidence at trial would not carry much weight. If you make an official complaint to the police they would then carry out a detailed investigation into your account.*

*If the police conclude that your account is false then you risk being charged with wasting police time and/or perverting the course of justice which are, potentially more serious than the charge you currently face. I advised you to think carefully about this (X).<sup>72</sup>*

It is evident that a focus on reducing time in custody was also shared by the judges in three cases observed. For example, in the following case when there was discussion in court in relation to arranging the trial date the judge stated:

*You do realise don't you – that if she pleaded guilty today she is likely to have served the sentence this court is likely to impose? (52)*

One of the victims of domestic servitude (59), changed her plea on two of her key charges (related to fraud and false representation) to guilty 11 months after her arrest, having spent eight and half of those in custody. The other two charges were put on hold and she was sentenced to 15 months imprisonment (time served). The delay in this case was due to events in the initial trial where the court was advised that she was no longer instructing her barrister to represent her.<sup>73</sup> With awareness of the fact that she had four years law training in her African country of origin, the court then invited her to represent herself. She was then left to cross examine the women who had held her in domestic servitude and who claimed she had stolen her true daughter's identity. As she stated in interview:

*I could not even look that woman in the face, never mind ask her questions. (59)*

She was challenged by the judge for speaking to the jury and the Bench rather than the person in the witness box, and proceedings were suspended on day two for a new trial in five months' time. When visited in custody by the researchers it was evident that this delay was having a detrimental impact on her well being. She seemed to be extremely depressed and withdrawn, but had ceased to take her prescribed medicine, stating it *made her mad*. She had also stopped all visits from her partner and child. Contact was lost with this woman after she was granted bail, but from information gathered in the context of three interviews one might conclude that this plea had more to do with her inability to cope with a new trial rather than her guilt in relation to the charges.

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<sup>72</sup> Identity withheld due to ongoing appeal.

<sup>73</sup> In interview she stated that, following a number of altercations between her legal representative and the judge (observed by the researchers), her barrister stated he was no longer willing to represent her and told her to inform the court she was no longer instructing him. This was verified by her stating that she was entirely satisfied with how he was managing her case.

### **b) The impact of co-defendants held in the same prison.**

This was most common with those arrested in relation to cannabis production. In one of the cases observed where three of five co-defendants were held on remand in the same prison, two pleaded guilty but their sentencing awaited a third case where the defendant was pleading not guilty. In interview with the researchers the third defendant, who had entered the not guilty plea, expressed concern about sharing a cell with her co-defendant.<sup>74</sup> Before going to trial she changed her plea to that of guilty stating that;

*The others pointed out that my not guilty plea would impact on the length of sentence we would all get – so I gave in and changed my plea. (57)*

More serious threats were reportedly experienced from a co-defendant charged with drugs importation, outside of the target group.

### **c) The impact on asylum applications**

The longer a woman remained in custody the more likely it became that her asylum interviews would be processed in the prison environment without access to legal representation. This was an additional factor with one of the women who felt she just could not cope and had been refused asylum before she went to trial (52). (This is discussed more fully in Chapter 5).

#### **4.5.4 Provision of interpreting facilities for non-English speakers**

As pointed out in section 2.1, 44 (78 per cent) of those who fell within the target group did not speak English as a first language. Police and the courts are obliged to deliver services in line with the requirements as outlined in the national agreements,<sup>75</sup> and a key element of this is compliance with Article 6 of the ECHR which states that everyone charged with a criminal offence has the right:

- To be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
- To have the free assistance of an interpreter if he cannot understand or speak the language used in the court.

Listening to women's experiences and court observations revealed some examples of good interpreting provision. However, there was also evidence of repeated failures to meet these requirements. This was particularly so if the defendant spoke limited English, as was the case with a number of Nigerian nationals within the target group. For example, in the following case the defendant, a victim of sex trafficking, who had been arrested whilst in the hold of the trafficker en route to France, was given a 12 month sentence for use of a false document. She indicated that she had had no interpreter support when

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<sup>74</sup> At court the researchers talked to the CPS and Probation staff about whether there was a routine method of advising prison staff of the need to consider re-location of co-defendant in circumstances such as this. The answer was 'no'.

<sup>75</sup> Office of Criminal Justice Reform 2007.

interviewed by the police, in her brief meetings with her solicitor and barrister and when in court.

*They were talking to me at police. I did not understand. Were all talking too fast... they asked if I need an interpreter. I said X (a West African language) - they said 'it is not on the system'. They took me to court on the third day where they asked me what language and I said X and they said they would get interpreter next time. There was never any interpreter. I never understood (103).<sup>76</sup>*

In another case where the defendant was a Dutch speaker, it was clear at the research interview that interpreting support was needed, but again, at no point was an interpreter provided for her meetings with her solicitor or barrister.

*I spoke to solicitor on video link before going to court. I said I do not understand and want Dutch speaking solicitor. (32, a victim of trafficking forced to carry drugs)*

She restated this in her request to change her legal representative and the following is an extract from the letter sent in response.

*You should write again to the court, giving them a much stronger reason why you want legal aid changed. The fact that there is no Dutch speaking solicitor is no use at all. Nobody in this firm speaks Dutch.*

Her request to have her legal aid transferred, which she had to make in English, a foreign language, was never taken as an indication that interpreting support was essential. When this woman was at court for the pleas and directions hearings there was again no interpreter and the question was never put to her whether she needed one or understood what was happening.<sup>77</sup>

The women within the target group most regularly in need of interpreting support were those charged with offences of cannabis production. They were also one of the groups who felt most threatened, least able to disclose and likely to be in the dock with those who had power over them. The assurance of individual and confidential support was therefore essential, together with an interpreter they could trust. However in three cases observed, their respective barristers were seen queuing up for the use of the same court interpreter to interview their clients prior to their appearances. This same interpreter then provided ongoing interpretation for the group of defendants in the dock. Additional difficulties this caused are outlined in the statement below:

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<sup>76</sup> It is of interest to note that neither in this case (at which the conviction was overturned at appeal), nor the case of R v O [2008] EWCA 2853, were the lack of interpreting facilities highlighted by the appeal court.

<sup>77</sup> This was observed by the researchers.

*Too many people (there were twelve co-defendants) and different languages - some Cantonese, some Mandarin - the court is a mess. They were using the wrong interpreter with the wrong defendants - they asked Cantonese speakers to translate for people who speak Mandarin. The judge got very angry with this confusion. I heard translator saying different things to defendant than what judge said. I had not right to tell people this was wrong in court. (87 from China)*

There were also two cases where we were informed that the interpreter used at the police station was the same one used in court the following day, which is contrary to the national guidelines for use of interpreters in criminal justice matters.<sup>78</sup>

*I did not trust the interpreter used by the police and then by the court. In the police station she was not just interpreting - she was saying lots of other stuff to the police. She was used to interpret for all of us arrested and then my solicitor had to use her and then she was the court interpreter the next day. (55 from Colombia)*

This failure to ensure that non-English speakers understood what was happening was further exacerbated by the fact that, with the exception of two letters, all communication from solicitors observed and discussed were in English, even when the firm of solicitors was aware that there had been the need for an interpreter in court. Unfortunately the only option for women in custody needing a translation of such communication was through bi-lingual prisoners.<sup>79</sup> Unlike other prisoners they indicated that they never had the option of making an independent telephone call to their legal representative for an update, as this would have involved the use of a telephone interpreting service which they could not independently access. Time constraints limited the number of calls that could be made on their behalf by a member of the Diversity Team or fpwp/Hibiscus.

In only one case, where the defendant faced a very serious charge, was there evidence that key CPS documents were translated on behalf of the defendant and, according to the interviewee the translation was *so inaccurate that it made nonsense in places (101)*. Similar complaints were made about the inaccuracy of statements gathered with the assistance of an interpreter, which the defendant was only shown on the morning of the hearing (22).

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<sup>78</sup> Section 4.4.1 of the national CPS guidelines state that: *It is important that so far as possible the interpreter arranged for court is not the one who interpreted at the police station either for the police or the defendant's solicitors at any stage prior to the court appearance. If however it is not possible to find another interpreter (where for example the language is rare) then the court and all parties must be notified of the intention to use the same interpreter for the court proceedings and agree to that course of action.*

<sup>79</sup> The prison work experiences of one of the researchers suggests that bi-lingual prisoners may be those higher up the chain in criminal activities and those whose trustworthiness might be questioned in terms of sharing the content of legal documents. But this is an informal observation and not validated.

In the rare cases where Pre Sentence Reports had been requested for non-English speakers, these were carried out with the assistance of an interpreter by video-link.<sup>80</sup> The reports were prepared in English, with no translation and in only one case did the barrister ensure that the defendant understood a summary of what had been stated. Indeed two of women interviewed by the researchers stated they had no idea who it was interviewing them and why.

#### 4.5.5 The physical structure of the court

Court cases were observed in two magistrates' courts and seven Crown Courts.<sup>81</sup> With the exception of three appearances observed by the researchers, the dock area where the defendants were held when not giving evidence, was behind a ceiling high glass screen.<sup>82</sup> There were two key impacts from this. The first was the difficulties these screens caused for the defendants, desperate to hear all that was said.

*What was going on in court I do not know - I could not hear because of the glass (9, from Nigeria charged with entering a fake marriage after escaping from domestic servitude)*

*In the glass box if you miss a word you cannot stop to ask. You have to concentrate so hard to understand (22 describing the experience of trying to understand the simultaneous interpretation of what was being said in the court)<sup>83</sup>*

The frustration expressed by those interviewed, that it was hard to hear all that was being said in court, were reiterated by two court interpreters when asked about this at two different courts. In both courts they stated that microphone and speaker systems were apparently often faulty.

The second was the fact that the legal representative was positioned in most courts about three metres in front of and with his/her back to his/her client. There was therefore no eye contact. One interviewee responded to this by stating:

*I hit the glass with my shoes because this was wrong and I did not understand nothing they were talking. We went out the court and he (the barrister) was angry and said why did you act like this? (94 who was totally*

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<sup>80</sup> The researchers were advised that in most of the courts visited there were no funds to visit prisons for the preparation of PSRs and video-link was the standard method of interview.

<sup>81</sup> Uxbridge Magistrates' Court, Richmond Magistrates' Court, Canterbury Crown Court, Coventry Crown Court, Southwark Crown Court, Isleworth Crown Court, Harrow Crown Court, and Croydon Crown Court, Woolwich Crown Court. Appeals were also observed at the Royal Courts of Justice.

<sup>82</sup> These are used for security reasons to prevent the defendant escaping into the public court area.

<sup>83</sup> Informal exchanges with probation officers within the courtroom suggests that this is sometimes known as 'whispering interpreting' – where there is no formal dialogue between the defendant and the Bench.

frustrated at a change in the indictment and her inability to catch her barrister's eye to challenge this)

In conclusion, all of these factors would appear to support what critics of Courtroom design have described as an ongoing disempowerment. A number of interviewees (from the larger screening sample as well as from the target sample) indicated that they felt completely out of control as they were processed through the court system. However, with the victims of trafficking, it is arguable that the lack of an opportunity to tell their whole story in a safe environment might have more serious repercussions in terms of their future safety.

#### **4.5.6 Management of disclosures**

Section 4.4 outlines some of the factors that may inhibit the sharing of evidence to indicate victim status. However there were a number of cases where the fact that disclosures had been made to the legal representative was evidenced in open court, when the legal representative stated:

*My client is a victim of trafficking*

However, this was largely in mitigation after the plea of guilt had been entered.

The current CPS Legal Guidance (2011) states that where there is evidence that the defendant is a victim of trafficking and the offence has been committed under duress by those who trafficked her, they should consider whether it is in the public interest to continue with the prosecution. It goes further, stating that even where circumstances do not meet the requirements for the defence of duress, prosecutors must consider whether the public interest is best served in continuing the prosecution in respect of criminal activities. To do this they should consider the following factors:

- *is there a credible suspicion that the suspect might be a victim of trafficking?*
- *the role that the suspect has in the criminal activity?*
- *was the criminal activity committed as a direct consequence of their trafficking situation?*
- *were violence, threats of coercion used on the trafficked victim to procure the commission of the offence?*
- *was the victim in a vulnerable situation or put in considerable fear?*

**(Crown Prosecution Service Legal Guidance (2011: Paragraph 9). Section on Prosecution of Defendants charged with offences who might be Trafficked Victims).**

In cases where the defendant tells her legal representative that false documentation had been accessed for survival or to attempt to leave the UK after escape from the hold of the trafficker, and that she had lived physically independently of the trafficker for a period of time, it might be argued that there was discretion as to whether having experiences of being trafficked was a strong enough reason to drop the charges.

However, in this study, even when evidence was available to confirm duress, there were cases where this was not raised by the defence or the CPS. In only two of these cases (66 and 68), both of whom claimed that they were fleeing from the hold of their traffickers, was the judge's response to stop the prosecution and ask for a further assessment before deciding whether the charges should be dropped.

These two cases were the exception and in the context of this research, the researchers were not aware of any cases where the CPS made such a decision on the basis of current/new evidence before them. The only case in which a defence of duress was raised was with one young woman who pleaded not guilty, alleging that she had been unlawfully imprisoned in the house.<sup>84</sup> This plea was later withdrawn (57).

One of the women sentenced for cannabis production expressed frustration when talking with us:

*I told everything ....how I was locked in and I could not get away. The barrister said that with the evidence there was no way that I could plead not guilty – but this means I was blamed for everything that happened in the house. (83, trafficked from Vietnam)*

One Vietnamese woman stated:

*I told the solicitor everything. We talked about the trafficking and she said, 'Did I want to go?' and I said yes. She said I therefore went willingly. (5 trafficked for cannabis production. Despite all the other factors of trafficking being evident the barrister advised entry of a guilty plea on the basis that she had approached the snakehead)*

In another interview with a woman trafficked for cannabis production, she stated;

*The solicitor did not ask how I got to England. When I tried to tell him he said he was only interested in the criminal side of the case. (72)*

The legal definition of duress also seems to have a narrow definition. Most of those held in sex work, domestic servitude, on cannabis farms or organised

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<sup>84</sup> This imprisonment against her will in the cannabis house was disclosed in two research interviews and confirmed in a statement made by a co-defendant in interview.

crime indicated that they had been illegally brought into the country by others, and their experiences, outlined in Chapter 2, indicate the levels of intimidation to which they were reportedly subjected. They had been warned what would happen if they approached the police or immigration, and if legal passports had been used to facilitate entry to the UK, they were inaccessible to the victim. The impact of this is long term and evidence gathered in the context of this research indicates a direct link between this kind of victimisation and the resultant perceived options to facilitate survival or return home. In many interviews it was also evident that physical escape, even where there had been a number of years of physically separate living, did not reduce the fear of repercussions.

In addition to the element of duress, there were other ways in which the actions of their traffickers impacted on them. Two of the victims of domestic servitude were charged with making false benefit claims that had been made in their names as soon as they arrived in the UK and not all were aware that documents provided for them to use were false. For example in one of the cases, where the defendant was charged with Instrument of Fraud with Intent, in relation to use of a false passport six months after her escape, her barrister advised her to enter a guilty plea. He had been fully informed by his client of her experiences as a victim of trafficking, as was the CPS who reiterated her trafficked status in open court. The defendant had told her barrister that this was the document given to her by the woman as she threw her out on the streets, after seven years of being held as a prostitute and she did not know it was a fraud (case 17). Despite this, the barrister advised her to plead guilty and when sentencing her the judge stated:

*I take this (the fact that she was a victim of trafficking) into account, but due to the fact that she had **knowingly** used a false document I have no option but to sentence her [to imprisonment] for six months.*

With the knowledge that this document had been used to bring her into the country the judge also stated that he assumed that she was also guilty of illegal entry. He had to be reminded by the defence that this was not one of the indictments in this case.

After sentencing the barrister was candid in explaining the reason why he did not recommend a not guilty plea.

*It is only her word that she was trafficked. There is nothing to substantiate this. The longer she delays her plea the more credit she loses. How does this help her if she delays the sentencing? There is no defence in the law in relation to this that I am aware of...She was not held under duress at the point she used the fake document.( 17)*

This fact that there was '*nothing to substantiate this woman's claim*' in court was arguably due to the fact (as reported to the researchers) that when she told the

police at the point of arrest a number of times that she had been brought into the UK and held captive for seven years, they seemingly neither acted as first responders by gathering more information and making an NRM referral, nor did they initiate any investigation following her statements. From information she shared in interviews with the researchers there was every reason to think that there was substantial evidence that might have been gathered to substantiate her claim of being a victim of trafficking and thus to facilitate appropriate response.

Similarly, in another case where the victim of sex trafficking was charged for using false documents to access work after her escape, her barrister stated to the researchers:

*Yes I know she was trafficked - I did not mention it as I did not want to get on the wrong side of the judge - by raising this he would say, 'Why are you wasting my time as this is not relevant to the charge she is facing?' There is no way in which this would be helpful. (60)*

Looking beyond the issue of using the Convention on Trafficking to prevent prosecution of women who are possibly victims, a number of other issues were raised, including the difficulty of the clear cut 'guilty or 'not guilty' plea. Many of those interviewed by the researchers accepted their guilt in relation to the actual offence with which they had been charged (such as possession of a false document, the watering of cannabis plants, or acting as a drug mule) but they strongly expressed the need for an opportunity to explain to the court something of the duress under which they had acted, their lack of complicity and/or ignorance of the fact that the document they had been given was false. The feeling of injustice of not being allowed to do this was expressed very forcefully by one woman who, when asked in court whether she pleaded guilty or not guilty, stated:

*I want to explain to you **why** I did this. (52)*

The response from the Bench was a sharp retort,

*We are **asking you** whether you plead **guilty or not guilty***

This woman, who entered the country with no valid documentation, due to its theft by her smuggler, was the only one in this offence category supported by her defence lawyer in entering a not guilty plea. It is relevant to note that when we talked to her at the end of the trial, whilst the jury were out, she stated:

*What the jury decides is important - but what is more important is that I have had the opportunity to tell what happened and for that to be listened to. (52, who was found not guilty)*

In another case, a woman who had paid to have a residence visa updated, (she assumed legally), the same issues were raised when she recounted discussions with her solicitor:

*I said if I tell the truth, that I am not guilty, what happens? He said you will remain in prison for three or four months and then you may get a longer sentence. I said to him (the solicitor), 'I will plead guilty ...but I want to tell the whole story in court. He said no you can't, it is not allowed. (64 from Syria)*

Through information gathered in our interviews, and discussion with family members at court, there was nothing to dispute the possibility that her 'criminal actions' were ones of naivety.

With others there was huge frustration at the seemingly limited and sometimes inaccurate information that was presented in open court in relation to their actions. Legal representatives clearly found it difficult to give them time and credence to what they were saying. The following statement was reiterated a number of times to the researchers:

*Why after all I have been through have you been the first person who has had the time to listen to **the whole story?** I have been here (in prison) for three months - why are you the first person to sit down and listen? They do not understand. (45)*

In this case the issue of being a potential victim of trafficking was raised and an adjournment sought. However the failure to gather information to substantiate her claim by the following hearing was not challenged and she pleaded guilty. At this hearing, errors in statements made by the CPS were not challenged by her barrister.<sup>85</sup>

## 4.6 Concluding Comments

Within the target group the highest numbers of women were arrested in relation to document fraud and the production of cannabis, with smaller numbers charged with offences committed under the control of others such as drugs importation and street crime. Of those trafficked a low number were referred through the NRM at some stage in the criminal justice proceedings, and both those referred and not referred spent long periods in a custodial environment. For victims of trafficking and those whose offences were resultant on the abuse of others, such

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<sup>85</sup> This may have been due to his lack of knowledge on the case as she only had limited interview time with him before both hearings, due to his other court commitments on those days and the limited availability of the court interpreter. An additional factor was that this interpreter spoke French and the victim was a French Lingana speaker.

as smugglers, there is a seeming lack of advice to enter a plea of not guilty, with evidence of a perspective from barristers and judges that reflects the idea that the best way to reduce the women's time in custody is via a guilty plea.

The case management of all of those in the target group was impacted on by imprisonment from the point of arrest, where women reported that they had to try to make their way through a foreign system with inadequate interpreting and translation provision, and inadequate contact with legal representatives. The women's ability to cope through all of this was impacted on by the multiple trauma many of them reported that they had experienced prior to arrest.

Even where trafficking indicators were evident and/or disclosures were made to the police, and/or the women's legal representatives, and in the court setting, there are clear examples of strong suspicion and disbelief, and non-compliance with the Convention on Trafficking. This was most obvious with those arrested in relation to cannabis production and this would appear to reflect a view within the criminal justice system that involvement in a serious offence such as cannabis production, or indeed drugs importation, inhibits recognition and appropriate reaction to victim status.<sup>86</sup> Following on from this, there is reported evidence of a lack of investigation in response to victims' allegations of abuse and a resultant failure to gather vital information which might facilitate prosecution of traffickers. Failure to do this, of course, denies justice to the victim and their opportunity to receive compensation where this is deemed to be relevant.<sup>87</sup> Of equal importance is the failure to prevent traffickers destroying the lives of their current and future victims.

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<sup>86</sup> On January 24<sup>th</sup>, 2012, the Sentencing Council issued new guidance on the Sentencing of Drugs Offences. The guidance indicates a change in sentencing norms, distinguishing between 'social users' and dealers, and more importantly in the context of this research recommends a less draconian approach to the sentencing of 'drug mules' - recognised as often being women who have been coerced or exploited by organised criminals (see <http://sentencingcouncil.judiciary.gov.uk/guidelines/forthcoming-guidelines.htm> - Drug Offences Definitive Guideline, 2012). It is possible that this change in approach will have impact in relation to 'offenders' who are also 'victims' elsewhere, including situations where women have been trafficked, smuggled or made to work under duress.

<sup>87</sup> For discussion on compensation see Lam and Skiravankova (2009).

## 5. EXPERIENCES WITHIN THE IMMIGRATION SYSTEM

### 5.1 Seeking Asylum

As outlined in Chapter 2, within the target group of 58 women, reasons for migration in the first place included the need to seek asylum. This was stated to be the primary reason in 16 of the cases and to be one of the key elements in another nine. For 22 of the 43 women who had been trafficked, the additional need for asylum was in response to the threat of being sent back into the hands of those who had trafficked them in the first place, and to whom they were still 'in debt'. The women indicated that their position on return would be even more vulnerable than on departure and the risk of re-trafficking was high.<sup>88</sup> Being sent back was the key stated reason for anxiety and this was exacerbated by difficulties in accessing immigration advice in custody. One emotional plea in an interview was:

***Please** do not let them send me back. I will be killed (X)*

Two of the women seeking asylum did not fear persecution, but had been trafficked into the UK as children or young women and had since escaped and they felt that there was nothing to return to but the horrific memories of where their abuse started. They stated that there would be no support they could access and for those (the majority) who had been used in sex work, there would be no one they could talk to on return to explain their absence, without bringing huge shame on themselves.

For those from Vietnam and China, whose families had supported their migration as a means of sending back money, the women indicated that there was also shame about failing to deliver, and in some cases anxiety about having brought further destitution to dependent family members through the accruing debts. Seven of our interviewees had also given birth to children in the UK and as undocumented migrants they had tried to establish some sort of meaningful life here.

Where victims are formally identified on the basis of Reasonable Grounds decision, the reconciliation and reflection period is 45 days. At the end of this period they, as illegal migrants, are subject to deportation, unless they are cooperating with a police investigation. For all those interviewed their only option for long term protection was to apply for asylum. However throughout the period of this research there were only two positive outcomes in relation to being granted leave to remain in the UK. These were for the two child victims and even with these cases there was a proviso in that they would have to re-apply within five years. Communication from UKBA observed in relation to one of these (case 1) stated that:

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<sup>88</sup> For example case 1 from Nigeria had already been re-trafficked.

*Should she wish to apply for an extension (beyond the five years when she would be 21)) she should apply before the limited time expires - explaining why she is seeking further leave to remain.*

With the exception of three cases still going through the initial application stage, all asylum applications had been turned down and were going through the appeal process. From analysis of these cases there is certainly cause to question how much progress has been made, despite a commitment to adopt the Convention on Trafficking to protect victims of trafficking.<sup>89</sup>

## 5.2 Immigration Case Management

All those interviewed within the context of this research were non UK nationals and as such they would at some stage be processed through the immigration system in parallel with the criminal justice system. In looking at their experiences of management through this system they gave clear indication that they were being dealt with in terms of their lack of residency status, rather than as possible victims of trafficking, smuggling or work under duress. It is also relevant to note that for all non EU women held in the prison or immigration estate, the Competent Authority with responsibility for establishing the CG (Conclusive Grounds) decision on their status as victims of trafficking is also the UKBA and not the UKHTC, suggesting that it is seen as an immigration issue.

In terms of processes, criminal justice and immigration function as separate systems; however they each impact on the other. The UKBA Criminal Casework Directorate (CCD) is automatically advised of any new reception within the prison estate who is not a UK national. Where interest is expressed an Immigration holding warrant (IS91) is issued and even if there is not one at time of release, confirmation must be sought from the CCD by the prison before any foreign national is discharged. Unlike UK nationals there is therefore no certainty of release at end of sentence, or indeed after a finding of not guilty. This was described as some women as *being punished for being a foreigner*.<sup>90</sup>

Since the implementation of the UK Borders Act 2007, the judge no longer makes a recommendation in relation to deportation, but when sentencing a

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<sup>89</sup> Indeed, it is not clear that there has been much development in practice from since 2006. In their own analysis of cases Young and Quick (2006) concluded that the chances of a trafficking victim being able to prove that they would qualify for asylum or humanitarian protection under UK law were very limited. Young and Quick (2006) also pointed out that of the cases they examined, no appeals were allowed on the basis of a risk of re-trafficking or on the basis that victims might be at risk of revenge by former traffickers.

<sup>90</sup> This was extreme in some cases. For example, in the case of 71, a co-defendant in a trial, whose charges were dropped after seven months in prison. At this point she was transferred to Yarl's Wood IRC as her visa had expired whilst in custody. At the point of interview she had been held for the previous 4 weeks with no confirmation of date of removal

foreign national, he/she is aware that a term of imprisonment of 12 months or more will lead to automatic removal. However, there is no evidence from the interview material of discussions on this between the legal representative and his/her client prior to entering a plea. In only two cases was there evidence of such advice once sentenced. One typical response to the question at interview about knowledge of likelihood of deportation was:

*He (the barrister) told me nothing about it - he just said you can seek asylum once this [that is, the criminal justice proceedings] are all over. (89)*

As with criminal justice proceedings there was confusion and misunderstanding in relation to immigration matters. There was no evidence of UKBA CCD informing those for whom they had issued holding warrants and this confusion was exacerbated by the fact that holding warrants, unlike court warrants were not issued in a public arena where the recipient had legal advice. Those who were held on such warrants were often ignorant of this fact as in the following case where the interviewee was asked, ten days from her release date, if an IS91 had been issued. She stated;

*What is that? I saw that number (i.e. IS91) on my file when I went to court but did not know what it was. No one told me. I have had nothing from Immigration. I am so stressed about what will happen. Will they take me and my daughter to an immigration place? (67, a victim of domestic servitude)*

Without understanding the system, few women therefore approached prison staff to ask whether such a warrant had been issued. The first formal notification of Immigration control was normally a letter to advise the prisoner of a decision to deport, giving the recipient ten days to respond if they were going to contest this decision and to give the reason for this. For those held solely on an immigration warrant at end of sentence the only obligation is for UKBA is to send a monthly update to the detainee and those viewed gave no specific reasons for the hold other than that the case was being processed.

All correspondence received from UKBA was sent in English. It is the expectation that when a prison officer delivers such a letter to a prisoner he or she might explain the contents. However, prison staff are not allowed to give advice in terms of a response. There were no additional resources in the prisons to help with this routine need for interpreting and explaining official letters and most women said they had to seek help of co-nationals who were bi-lingual.

*Before the end of the sentence I got letter from Home Office saying they will deport me. This was in English. I had to get another woman to translate. (72, a victim of trafficking from China)*

### 5.3 The process of claiming asylum

At a very basic level those trafficked into the UK to escape persecution often had no idea of asylum procedures. Their thoughts were focussed on finding somewhere where they could live without the daily fear of abuse.

*X (the trafficker) who brought me here did not allow me to seek asylum. I only heard the word from other women...then at that prison they did not have diversity team and only one man – they said I could tell my story after my sentence - but it was too late - he said the Home Office could do nothing until after I had been sentenced - then I could claim asylum. I never heard the word asylum - I don't know what it is called. (89)*

*I told the police everything [on arrest]. They said, 'Why did you not go to the Government and claim asylum?' I said I did not know how to do this. (90, who had come to the UK independently to escape an arranged marriage)*

The standard procedure for an asylum claim is an initial interview, followed by a full interview with UKBA. For those who claimed asylum at port of entry, this initial interview to establish identity, nationality, route of entry and reasons for claiming asylum was carried out by immigration before they were then handed over to the police. These details were then used alongside that gathered in the full interview for evidence of consistency in what was being disclosed. For others who made their asylum application once in prison or in an immigration removal centre, the initial interview was carried out by representatives of the UKBA CCD on site. The location of the full interview was the local UKBA office for those in the community. For those in custody it was carried out within the prison or IRC.

Once women were aware of the need to claim asylum they invariably experienced huge barriers to accessing legal representation and appropriate advice, and it is not insignificant that, during the period of the research, legal aid cuts and new billing procedures resulted in the two major providers, Refugee and Migrant Justice (RMJ) and the Immigration Advice Service (IAS) going out of business in June 2010 and July 2011 respectively.<sup>91</sup> There were further financial cut-backs in 2011 in terms of claimable costs per case, which inhibited prison visits by legal representatives, and firms approached on behalf of the women all had long waiting lists. This resulted in most women having their full interview with no prior consultation with an immigration solicitor. Most women in the target group who had accessed an immigration solicitor indicated that they had done this with the assistance of the two key voluntary sector organisations,

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<sup>91</sup> For more details on this see reports by Information Centre about Asylum and Refugees ICAR (2010) and the Institute of Race Relations (2010).

fpwp/Hibiscus and the Detention Advice Service (DAS). Their input was again seriously impacted by budget cuts within the prisons.<sup>92</sup>

The common experience of those interviewed, who had an ongoing asylum claim whilst in custody was to be told by staff on the morning of the initial or full interview: '*Immigration want to see you*'. There was no prior warning, and no woman in our sample recalled receiving documentation in advance explaining the format of the interview, how to prepare, her rights, the question of whether she would prefer a female caseworker and a female interpreter and the option of delaying the interview for health or other reasons. Indeed when asked by the researchers whether they had attended a full interview, they could not always answer whether what they had experienced was an initial or a full one. Issues raised by these two women were not atypical:

*It (the interview) was in one of the interview pods in resettlement area of the prison. I had no advance warning. I had gone to work. (81)*

(In response to questions about advance information)

*No-one told me I had the right for women to interview me or to have the interview tape recorded. There were two immigration officers, one male and one female. It lasted all day from nine to twelve thirty and then from one thirty to three pm. My immigration solicitor was cross I had not been warned in advance. Yes I told them a lot - but not everything. I was told that I had five working days to add anything- but I could not work out what they had on the notes. (These notes were hand written in English) No one told me what rights I had - I never knew what the procedures were supposed to be. As far as I remember I answered every question they asked - but nothing more. (69 from Vietnam for whom asylum was refused)*

This interviewee told us that she had been sold into sex work en route by those who trafficked her although she was hesitant about talking about this in interview because of the 'shame'. Her asylum was refused and Refugee and Migrant Justice (RMJ), who represented her, worked hard on preparing for an appeal. The week of the appeal, RMJ closed because it lost its funding.<sup>93</sup> By this time the woman had been held in detention for six months at Yarl's Wood IRC. After waiting an additional two months for a replacement solicitor she gave up her appeal and was deported. Another woman stated:

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<sup>92</sup> Between April 2010 and March 2011 fpwp/Hibiscus; long term providers of support services for foreign nationals in custody, lost 60 per cent of their prison funding for support services in the female estate.

<sup>93</sup> Whilst the Government claimed that RMJ had lost their funding because of inefficiencies, the Law Society argued that the new legal aid payment regime was the cause of RMJ's demise (The Law Gazette, 24<sup>th</sup> June, 2010). [www.lawgazette.co.uk/.../legal-aid-payment-regime-blamed-rmj-coll](http://www.lawgazette.co.uk/.../legal-aid-payment-regime-blamed-rmj-coll).

*I had no legal representation but they said I could not adjourn it. The interpreter was ignorant of some of the political issues I was referring to and gave inadequate interpretation. It only lasted two hours. When I went back to my cells I panicked. I had not given enough information... no I knew it was going to happen one day but I could not prepare. Nothing I wrote down was safe. The other woman in my cell (who was a co-national) would go through all my stuff - she was crazy.<sup>94</sup> (52)*

In interview it was clear that this woman was very anxious about the risks her disclosures might present to her family. She knew that her interview would be soon and wanted to prepare. However, she did not feel safe writing notes in preparation for her interview where her cellmate, a co-national, always went through her belongings. Several weeks after the full interview this woman received a decision which was one of refusal. This standard refusal letter stated that the applicant had five working days in which to appeal and if she wished to appeal she had to complete the attached document. This was a lengthy document asking for details of the basis of the appeal and contact details for the immigration solicitor. It was not an easy document to understand for an English speaker and despite the fact that UKBA knew that an interpreter had been necessary for the interview, this and every other correspondence was again in English. It was nearing the deadline before she accessed support from fpwp/Hibiscus for help with this. She still had no confirmation that an immigration solicitor was going to take on her case and the agency worker had to negotiate to get the deadline extended.

In relation to these procedures we should note that Article 10 (1) of the Asylum Procedures Directive (APD) requires:

*Member states to inform asylum applicants of the decision on their application in a language that they must reasonably be supposed to understand, **unless they are represented by a legal adviser or free legal assistance is available, in which case the requirement may be waived.***<sup>95</sup>

A recent UNHCR research project on the application of key provisions of the APD in selected Member States identified a number of failings in procedures in the UK and other countries and recommended that:

- *All member states provide a complete written translation of the decision and/or the provision of a written translation of the decision. Along with oral interpretation of the decision in its entirety.*

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<sup>94</sup> The cellmate was finally relocated after numerous requests.

<sup>95</sup> EU member states remain committed to the APD under Article 68 of the Treaty and Functioning of the EU.

- *All information must be provided to the applicant in a language s/he demonstrably does understand, and not merely she is reasonably supposed to understand.*
- *Article 10(1) 9b) APD should be amended to provide that all applicants receive the services of an interpreter as necessary when informed of the decision of the application.*<sup>96</sup>

In relation to Person Interview preparation they recommended that:

- *Member states should ensure that all applicants are informed in a language they understand and at the earliest point in the procedure, of the purpose and significance of the personal interview, the form of the interview and their rights and obligations during the interview. This information should be provided sufficiently in advance to the scheduled interview so that the applicant has time to prepare for the interview, taking into account their special needs.*
- *Applicants should have an effective opportunity to consult a legal adviser prior to the personal interview*
- *Of equal relevance is the recognition that: where an applicant is in detention, s/he should be offered all the safeguards necessary to ensure that s/he can pursue and support his/her claim, including thorough gathering of evidence. **The disadvantages faced by detained applicants in pursuing their claims should be taken into account.***<sup>97</sup>

In the asylum cases followed within this study there was no evidence of compliance with any of these recommendations. The women found themselves being interviewed without adequate support (including having to disclose information which was often in relation to sexual violence), and where any lack of consistency in disclosure or failure to give full disclosure was held against them. The following refusal letter was not atypical.

*In your account of the rape you first stated 'when we got somewhere they took me. They took me from a different place they took him. From there they raped me'. You also state, 'after they raped me they took him to a different place'...it is considered that you have supplied conflicting accounts of the rape and consequently it is difficult to accept that this is a true account of a real event.*

The research findings also raise questions about comprehension of the hold that traffickers have over their victims, and their methods of disposal where their victims are of no further value, as indicated in the following letter from UKBA:

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<sup>96</sup> UNHCR (2010) s. 2.1 Articles 9 and 10 on Requirements for a Decision by the Determining Authority.

<sup>97</sup> UNHCR (2010) s. 2.6 Article 22 on Collection of information in Individual Cases.

*It is noted that you claim that after you entered the UK the man who brought you here became abusive. However it is noted that he sold or gave you an X passport which you used in your attempt to leave the UK. He also took you to a place from where you were to take the coach. These actions suggest that your relationship with this man was of a different nature and not as abusive as you claim. (Notice of decision by UKBA for 42, who claimed that she was the victim of gang rape in her home country and then rape by the man who trafficked her to the UK and worked her as a prostitute.)*

At the time of her full immigration interview this woman was unable to disclose her experiences to us because of the impact of flashbacks. At her Immigration and Asylum Tribunal (IAT) the impact of these and the manner in which she was being asked to give evidence caused her to collapse in court and for the case to be adjourned. When seen in the community she was suffering acute depression.<sup>98</sup>

In another IAT, the level of interpreting was so poor that the applicant had to question two things he had wrongly interpreted (including, at one stage, the country she came from). In addition, he failed to get across the intonation of what the applicant was saying. To ensure the court fully understood her she then asked to speak in her own limited English. This was denied to her by the judge who stated:

*We have an interpreter in court. I will ask my questions to the interpreter who will interpret them to you. You will answer to the interpreter who will interpret to me what you have said. (X)*

This barrier between what she was saying and what was being told to the judge caused huge frustration and in the end she was weeping in the dock. This compares dramatically with how she coped in her trial with excellent interpreter support and where, despite this, the judge advised the jury in his summing up:

*You must of course make allowance for the fact that the defendant has given evidence through an interpreter...It is more difficult to get across the real flavour of what you want to say if it is done through an interpreter. Someone...I cannot remember who it is...once said poetry is lost in translation. Inevitably you lose the poetry, that is the feeling, the nuances, the clarity of what a witness said when his or her evidence is interpreted. So you make allowance for that as you think is appropriate.*

The experiences of asylum interviews and reasons given for refusals gives further evidence to the conclusions drawn by Asylum Aid on the quality of initial decision-making in women's asylum claims of:

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<sup>98</sup> As observed by one of the researchers.

*Failures by the UKBA to adequately assess claims for international protection made by women asylum seekers. (Asylum Aid 2011)<sup>99</sup>*

Women also talked about the location of interview impacting on how they were viewed, with those in prison feeling that they were being assessed by UKBA as offenders. This was reiterated when they went for IATs. These were held at courts where they could be held in a locked cell prior to the hearing and, with one of the cases observed, the applicant was held and cross examined in the screened off dock area for the entire hearing, with her interpreter on the outside of the dock in the open court (case 52).

#### **5.4 Impact of prison sentence on asylum decisions**

A number of other asylum seekers who were victims of trafficking had been sentenced to 12 months or over and therefore received a standard statement from UKBA. An example of this was sent to case 42, (who spoke no English), stating that:

*Your eligibility for Humanitarian Protection has also been considered against the criteria in paragraph 339C of the Immigration Rules. A person is excluded from a grant of Humanitarian Protection under paragraph 339D where the Secretary of State is satisfied that:*

*There are serious reasons for considering that he has committed a crime against peace, a war crime, a crime against humanity, or any other serious crime or instigated or otherwise participated in such crime.*

*A 'serious crime' for the purpose of 339(D) (1) is defined in the Humanitarian Protection Asylum Policy Instruction as:*

- *one for which a custodial sentence of at least twelve months has been imposed by the United Kingdom; or*
- *a crime considered serious enough to exclude the person from being a refugee in accordance with Article 1F9b) of the Convention (see the API on Exclusion)*

The notification goes on to state that as she:

*was sentenced to 12 months imprisonment for with intent knowingly possessing a false or improperly obtained document you fall within the exclusion criteria set out in Rule 339D (1) Exclusion under this rule is*

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<sup>99</sup> Conclusions of this research based on the legal analysis of 45 files state that:

*Psychological trauma was neither acknowledged nor considered as a form of harm and its effects were downplayed... Women interviewed recounted being seriously affected by the asylum process. Some said that not being believed by the case owner after disclosing information relating to sexual violence contributed to their depression. Asylum Aid: 2011: 67)*

*mandatory in respect of persons falling within its scope and there is no provision to exercise discretion in respect of a grant of Humanitarian Protection.*

In a comparable case, 89, a victim of sex trafficking had been sentenced to imprisonment for two consecutive periods of 12 months for using a false document with intent and making a false statement for the purpose of marriage, 12 months after her escape. Her barrister, who was aware of her possible victim status, and who used this in mitigation, did not advise her to appeal against this and it was not until she was serving her sentence that a formal referral through the NRM was made by the Poppy Project, resulting in a Conclusive Grounds decision confirming her victim status.

Two weeks before her release date she then received another communication from UKBA stating that:

*Section 72 (2) of the Nationality, Immigration and Asylum Act 2002 states that, A person shall be presumed to have been convicted of a final judgment of a particularly serious crime and constitute a danger to the community in the United Kingdom if he is:*

- a) convicted in the United Kingdom of an offence, and*
- b) sentenced to a period of imprisonment of at least two years*

The conclusion therefore was that she was considered *to have committed a particularly serious crime and to constitute a danger to the community in the United Kingdom* and told that she *would not be eligible to stay for reasons of asylum.*

By this stage another legal firm had taken over and were representing her for an appeal against sentence, and further information, prepared by the Poppy Project on her experiences as a victim of trafficking, was presented to the Court of Appeal. On the basis of this her sentence was reduced to five months for each count and she was therefore not automatically deported. However a number of letters received by the researchers from this victim indicated her increasing level of stress as her release date neared. This was focussed on the threat of deportation and it may be that the letter from UKBA stating that she 'constituted a danger to the community' could be interpreted as having exacerbated this.

## **5.5 Concluding Comments**

Women in the target group reflected that finding their way through the complexities of the immigration system, in a custodial environment, without access to legal representation and appropriate translation provision presented what felt like an 'impossible challenge'. The management of their asylum applications in terms of interviewing and cross examining at IATs points towards

a lack of recognition of the impact of the repeated trauma that a number of women indicated that they had suffered, especially where applications were rejected on the basis of inconsistency. In addition, there appears to be little recognition of the continuing threat that traffickers present to those they control through 'indebtedness'.

The failure to be granted leave to remain in the UK, by all but two of those cases monitored in the target group to date, has meant that they have all had to go through the appeal process. In addition to being treated as offenders in the criminal justice system and given custodial sentences that in some cases have excluded their right to asylum, they have been dealt with as illegal migrants in the immigration system. In both systems effective challenges to this require good legal representation, access to which is fraught with difficulties. Looking at the common experiences through both systems we see what has been described by writers, such as Sayad, as 'double punishment'.<sup>100</sup>

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<sup>100</sup> Sayad (2004) refers to double punishment as being subject to penal sanctions and administrative measures (such as expulsion) for the same offence.

## 6. THE PRISON EXPERIENCE

### 6.1 The impact of imprisonment

As pointed out in Section 1, one of the key goals of the NRM is to ensure that victims of trafficking can access protection and support. However, as demonstrated in Chapter 4, of the forty-three victims identified only eleven had formal NRM referrals through the period of this research and all of these women spent lengthy periods in custody before this referral resulted in release. Prison was thus the environment in which all the women had to cope, whether referred or not, and in which they had to deal with their confusion and uncertainty about what lay ahead.

The immediate impact of imprisonment was one of shock and the realisation that, all they had been threatened with, had come to fruition. For those arrested after escaping traffickers it was described as a return to the experience of being locked in, isolated and in territory over which they felt they had no control. For asylum seekers it was also described as one of injustice.

*I came to the UK to seek asylum – why am I being locked up with offenders? (102)*

At the initial interview stage newly arrested women said they found it difficult to come out of their cells and socialise. They did not know whom they could trust, language presented a huge barrier and, unlike some of the UK nationals, they had no previous experience of imprisonment in the UK. They talked of their fear of other prisoners who appeared loud and demanding and one of the victims was housed for the first three weeks in the location used for new receptions who were engaged in detoxification. Three women, who were victims of rape, talked of their fear of male officers. Being locked into the cells often created flashbacks and the nights were normally the worst time for them.

*The first night in prison I was doubled up with another woman and going through nightmares. I was crying all the time - I was ashamed and did not want others to ask "what is wrong?" It was an ugly experience for me. The ladies thought I was crazy and one said I am a sick person. I was embarrassed and could not explain - they judge you every time they see you and every time you go out of your cell you see people looking at you. (22, a victim of long term trafficking).*

Some of the women described how, over time, their trust and ability to socialise with others increased. However, for many this was not the case.

*The officers ask me why I keep myself to myself. It is my coping mechanism. I do not trust others. (59 a victim of domestic servitude)*

## 6.2 Healthcare

Of the 20 women who had been forced into sex work, with the exception of one who did not disclose information in relation to this, they all stated that they had resultant health problems. Only one had been given the opportunity to access a hospital appointment by her traffickers prior to her arrest<sup>101</sup>. The majority of symptoms described were of severe abdominal pain, heavy bleeding and discharges. As one woman described:

*In prison I explained to the doctor as well (about fleeing for life) that I was in severe pains and bleeding because of extensive rape. (42)*

Another victim of trafficking who could not sit down because of the pain caused by infection and repeated rape stated:

*I said (to the Doctor) this was because of the bad things they had done to me (X).*

There was no contact with healthcare staff by the researchers, but women talked about being offered the standard pregnancy tests, swabs for GU infections, and HIV blood tests. Some were then referred to outside hospitals for medical tests and interventions. However none of the women found this an easy process. They stated that there was no interpreting support other than the occasional use of telephone interpreting. Due to security reasons they were not advised in advance of the dates for outside appointments and for some this felt just another element of being under the control of others.

Other common symptoms of ill-health reported by the target group of women were severe depression, inability to sleep, persistent headaches, general abdominal pain, loss of appetite and digestive problems, resultant on the repeated traumas they had experienced.<sup>102</sup> A few women also talked of additional symptoms such as deafness and joint pains following violent blows to their bodies. Some of the women bore the visible scars from beatings (normally on the legs and head) and cuts inflicted as punishment for non-compliance. Two interviewees also bore the scars of body cuts on the head, arms, back and breasts inflicted in juju rituals.<sup>103</sup> None had been allowed access to medical support for injuries sustained whilst controlled by their traffickers or those to whom they had been sold.

A number of women also reported symptoms of PTSD in terms of flashbacks as well as the symptoms described above. However, none of the women interviewed described immediate referrals for counselling from the healthcare

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<sup>101</sup> The goal of which was to cure her symptom of STI which impacted on her value as a prostitute.

<sup>102</sup> Described as 'Chronic trauma' in Zimmerman, (2003).

<sup>103</sup> Many of the women insisted on showing their scars to the researchers.

department. Only four women were able to access counselling, one from the psychology department, one from an outside counsellor and two from Care Confidential.<sup>104</sup> Two women were also receiving support in the context of Music Therapy. In terms of support through medication, four stated that they had been prescribed anti-depressants and an additional three were offered medication to help them sleep. Others were given painkillers, but as two of the interviewees stated, this did nothing to stop their constant headaches. Although a number of women said that they had thought about or attempted to commit suicide and one stated that she had self-harmed whilst being held by her traffickers, the researchers were advised by staff that only one of the women was being monitored on an open ACCT file at the time of interview (case 102).<sup>105</sup>

Despite the presentation of these symptoms by prisoners in the target group, there was no evidence in this research of prison Healthcare Teams acting as First Responders. Linked with this is may be patient confidentiality or lack of training in relation to identifying and responding to the key indicator of trafficking.

### **6.3 Support services and potential for disclosures**

In response to a question about by whom the women had felt most supported during their time in custody, few stated that they benefited from outside support. Those who had recently escaped from the hold of traffickers had no social networks in the UK and others, who were asylum seekers, did not wish to cause greater anxiety to their families by admitting they had now been imprisoned. For victims of long term trafficking, being in custody offered the first opportunity to explain to their families that they were safe. However, to tell their stories felt too shameful for many and re-establishing contact, after a number of years was not easy. They stated that their escape also exposed them and their families to risks of further abuse by the traffickers to whom they were in debt. Three of our interviewees received visitors from the church or mosque, however, where this had been a source of support between escape from those who worked or held them - and their arrest.

Within the prison those most frequently mentioned as supportive others were fpwp/Hibiscus staff (19) and the Foreign National Co-ordinators (6). They were also the staff who did most to help facilitate legal aid, make contacts with legal representatives for updates, explain what was happening and help access support from outside third sector organisations. The organisation fpwp/Hibiscus appeared to play the biggest role in re-establishing family contact and maintaining long term support when the woman was relocated. The Detention

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<sup>104</sup> A voluntary sector organisation offering supportive help for those facing a crisis pregnancy, or pregnancy related issues, or needing specialist post-abortion recovery support.

<sup>105</sup> An ACCT (Assessment, Care in Custody and Teamwork) file is opened on any prisoner where there is assessed to be a risk of suicide. It outlines a Care Plan and records all staff involvement with the vulnerable prisoner.

Advice Service (DAS) was also mentioned by a number of women for the help they gave women to access legal representation in relation to immigration matters.

Interviewees also stated they benefited from the support they received from Prison Chaplaincy and the Education Department and in a number of cases the Tutor or Chaplain was the first person where they felt a degree of trust to start talking about their experiences. ESOL (English for Speakers of Other Languages) provision also contributed to their ability to understand what was happening and one woman reported that she had learnt to read for the first time through provision of one-to-one tutoring in the Toe by Toe scheme.<sup>106</sup> A number of women talked of their pride in receiving qualifications from the Prison Education Department.

UKBA CCD staff were also accessible when they did their weekly surgeries. However, those interviewed were uncertain about their role, other than being that of a decision maker. They did not put them in the category of a supportive other.

In theory, those in the target group also had the same access to resettlement services as all other prisoners. However, due to the fact that the majority of their time in custody was on remand, resettlement input was minimal and they felt that their eligibilities were impacted on by their immigration status.

*The nearer the end of sentence the worse it gets. As an illegal immigrant I am totally powerless...I went to housing. They asked for NI number - because I do not have one they say they can offer no help. The problems I have had with social services in relation to contact with X (her young child in care) is because I am an illegal migrant. (67 who reported that she was a victim of domestic servitude)*

Two groups of women who reported that they did not feel the benefit of supportive others were Chinese and Vietnamese, particularly those whose English was limited. They felt very reliant on co-nationals.<sup>107</sup>

*I work in the X workshop where the other Vietnamese women work. I am too scared to do anything else in the prison (99 from Vietnam)*

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<sup>106</sup> This scheme involves prisoners who are literate in helping to tutor those who are not through a structured reading programme

<sup>107</sup> This was similar in Yarl's Wood IRC. When the researchers visited with interpreters, large groups of Vietnamese and Chinese women talked of this sense of isolation and frustration that they never knew what was happening with their cases.

## 6.4 Staff Views

At the research proposal stage there was an intention to carry out formal interviews with staff members in the prisons visited. However, due to the fact that there were new foreign national representatives appointed on three of the five sites visited during the course of the research, this proved to be difficult, and discussion was therefore informal rather than formal. In addition, the one site where staff demonstrated a high level of understanding of work with this group of women was re-rolled to the immigration estate.<sup>108</sup> However, there was much evidence that staff with managerial responsibilities for work with foreign prisoners, as well as those working in the diversity teams in prisons, were interested in the research. They welcomed the opportunity to talk about the challenges of their work and improvements in service delivery to potential victims on an informal basis when the researchers met them on site, or at a number of external meetings.

Prison staff pointed out that the needs of those within our target group exemplified the specific needs of foreign nationals in general, with whom they talked about the challenges in finding time to meet their *duty of care*. As one Senior Officer with many years of experience of work with this group stated:

*Foreign nationals are so demanding. They need help to understand what is happening or rather why nothing is happening.*

His view was that *prisons fail foreign prisoners a lot. Trust with this group takes time to build and the resources are not always there.* This was particularly so in relation to the language issue where using interpreters with non English speakers without enough time to listen to their questions *can go down the route of Chinese whispers...so that there are the wrong interpretation of the truth with harmful results.*

This was encapsulated in his views of how prison disciplinary hearings should be carried out with foreign national prisoners, with:

*more focus on explaining the process, ensuring that they knew their rights, explaining the importance of telling the whole story...the use of telephone interpreter support with a three way speaker so that the defendant could ask questions and ensuring that the defendant understood the relationship between the charge and what the outcome would be.*<sup>109</sup>

This language issue dominated discussions with diversity staff on other sites, particularly in relation to the challenges they faced in delivering the increased number of notices from UKBA CCD, as these were all in English which some

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<sup>108</sup> HMP Morton Hall.

<sup>109</sup> These suggestions are potentially of equal relevance to criminal proceedings.

described as *difficult to understand for an English speaker*.<sup>110</sup> They talked of the need to spend time explaining the contents and offering support, particularly where the news was not what the recipient was hoping for.

One of the general issues raised was the need for better training in this relatively new area of work and the need to *pool experiences and resources between different prisons*. One other issue raised was that although there was a Diversity Team, effective management and information sharing in relation to this group was essential across all departments, especially Reception and Healthcare. The diversity manager in one of the prisons described the work with their first identified victim of trafficking as *a huge learning experience* and on a second site the researchers were approached for advice on how to improve identification procedures for potential victims.

## 6.5 Concluding comments

A key element of imprisonment is loss of liberty and as women stated;

*I lost seven years of my life in custody in the hands of that woman (who worked her as a prostitute). Having escaped from that I am now back in prison (case 17, a victim of sex trafficking)*

There is no doubt that the impact of imprisonment on women in the target group was acute and disadvantageous in terms of the fact that they spent most of their time on remand status. The women were isolated in terms of language and lack of outside support, and some reported that they experienced triggering flashbacks. The women indicated that their prison experiences had also had a negative impact on the management of their asylum applications.

At the same time, imprisonment also offered a relatively safe environment where there was the potential to make and respond to disclosures. However, this required the development of trust in others and as Table 6 shows this is more likely to happen with workers in specialist voluntary sector organisations which can take on a role of advocacy. With the loss of funding for such organisations new effective routes for accessing effective first responders might be seen as critical.

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<sup>110</sup> The issue of un-translated UKBA *notices* being served to foreign prisoners who do not speak English has been raised with UKBA by prison diversity leads over a number of years. At a conference on Foreign National Prisoners in December, 2011, the response to this issue, from the Deputy Director of UKBA CCD, was that *this was not feasible within the current budget*.

## 7. LIFE AFTER RELEASE

### 7.1 Numbers released and in contact at the end of the research period

By the end of the research period, we had updates on 46 of the 58 cases within the target group. Of these:

- 13 were still being held in the prison estate,
- 12 had been deported following IS91 holds in prison and/or Yarl's Wood IRC of between one week and nine months
- 2 were still on hold in the IRC
- 19 were residing within the community

Ongoing contact by letter or meeting in the community after release was offered to all research participants. Of those deported, this offer was only taken up by one woman to confirm her safe arrival.<sup>111</sup> In the community in the UK seven women took up the offer of one or more meetings after release as well as communication by letter. One of the migrant women who fell outside the target group also requested a meeting post sentence and this was set up.

### 7.2 Residential status, accommodation and support

With the exception of the two children who were provided with safe accommodation by social services, the biggest issue for all those within the target group who were not deported was gaining some residency status and access to accommodation and means for survival. As all were effectively illegal migrants the latter necessitated qualifying for support as a victim of trafficking through the NRM or through Asylum Support services by ensuring that an asylum claim had been made. The housing need was most acute where there were also dependent children and for the two mothers who had lost their social housing when found guilty of using false identity documents, re-unification with their children was dependant on this.

One of the women interviewed six weeks after her release had still not managed to arrange an initial asylum interview, despite three costly visits to Croydon and endless attempts by phone to arrange an interview time. She was therefore totally dependent on a friend for accommodation and food. As she stated at interview:

*Without paperwork I am nothing. I do not appear to exist. (87)*

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<sup>111</sup> She had been advised by the researchers of support for victims of trafficking she could access back home in Bogotá.

The majority of the women released in the community were further down the line with their asylum applications or appeals and were accessing Asylum Support in terms of accommodation and financial support whilst their asylum applications and appeals were being processed. One of these women was moved to temporary accommodation in Liverpool and then we lost touch. Three of those visited had been moved into temporary Asylum Support accommodation in Cardiff. Four weeks later two were then re-located one to North Wales and one to Plymouth. Two others, who were victims of trafficking, had been moved to Dover and one to the North of England<sup>112</sup> to access accommodation provided through the Salvation Army. This inhibited effective contact with their immigration solicitors who were London based. Their weekly cash support was £36.62, from which they could not afford to visit London for face to face consultation, nor could their solicitors access funding to support them in their immigration hearings.<sup>113</sup> They had no friends in the communities in which they were living.

### 7.3 Long term impacts of experiences

Emotions expressed at these meetings in the community indicated the long term impact of all the experiences that women in the target group had endured prior to arrest and how this was impacted on by their experiences of the criminal justice and immigration procedures. There was very evident need for ongoing support in relation to physical and emotional health problems. Three women demonstrated acute difficulties in facing the outside world. All had a low sense of esteem, a feeling that they were somehow to blame for all that had happened and they talked of the difficulties in coming to terms with what they had been through. As one stated:

*There is a part of me that I hate and I do not how to live with it. I cannot make sense of anything any more (X)*

Only three had accessed counselling in the community and the feeling of isolation was common as expressed by the following two interviewees:

*When I got here I just cried for three days. I knew no one. (67 given emergency accommodation in Dover after her release)*

*Yesterday I was crying - but my social care worker said – do not worry. Everything will be OK. I am so lonely here. Sometimes I think it was better in Yarl's Wood – I had people to talk (I)*

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<sup>112</sup> This location was not confirmed as contact was not maintained.

<sup>113</sup> Even this financial support was not guaranteed and one of the women who advised UKBA at her initial interview that she was being housed by a boyfriend was told she was not eligible and was therefore totally dependent on this man for all her living costs,

At a second interview several months later she had started to attend college and make friends, but said that she told no one where she was living as:

*I have been abused by everyone I have lived with in the past (X)*

All the women interviewed were prevented from accessing work because of their asylum status and this was stated on their ARC (Application Record Card) issued by the UKBA to those who had applied for asylum, and for whom it was the only current form of ID. For those in temporary Asylum Support accommodation there was a sense of isolation in terms of how to make sense of the endless days with nothing to do. There was an absolute sense of despair expressed by all at the outcomes of their asylum claims. They could not cope with the thought that they might have to return to their country of origin. The ongoing fear of the future was exacerbated by the knowledge that those who had abused them were still free to implement threats to them and abuse future victims. The most positive outcomes were perhaps with the child victims, who unlike the others saw they could work towards a more positive future. This may have been due to their age and relative fitness, but was also impacted on by the fact that they would not be seen as criminals, (one had not been charged and the other had her conviction overturned), they had been given leave to remain in the UK and did not bear the guilt and anxiety in relation to children or other dependent relatives who were impacted on by their being trafficked and then arrested or detained. However, as with the adults, their experiences would always impact on their views of themselves and the world and at the last research contact visit neither had been offered access to counselling services.

## **Concluding Comments**

Life in the community for those in the target group was far from easy. By the end of the research project there were no examples of life having returned to, or the potential for it returning to, any form of acceptable normality. One of the key elements of the Convention is protection and support for victims. Statements and emotions expressed in post release interviews demonstrated that this is dependent on early and effective recognition of their victim status, criminal investigations into their abuse and for those with grounded fears of return, leave to remain in the UK and re-start their lives.

## 8. CHILDCARE ISSUES

The previous chapters demonstrate a number of common experiences expressed by women in this study. However for many women parental responsibility was a key factor in migration. It was also a key focus of many of their concerns and to deal with the issues of childcare in this final chapter is not to underestimate its importance.

### 8.1 Migration and children

As pointed out in Chapter 2 (section 3) just under half the women in the target group stated that they had children aged 17 and under and all but two bore the financial and care responsibilities of their children when they left or, for parents of children in the UK, when they were arrested. A number also felt responsible for younger siblings and elderly parents in their countries of origin and it is of relevance to note that only two women in the target group came from countries where there was any form of state support for dependent children or adults. Twenty-one stated that their children had been left behind in their country of origin and six had children in the UK. Six women were also pregnant at point of arrest.

Supporting children was one of the commonest factors behind looking for work abroad and the following statements are not atypical.

*I have five children and no husband. It is impossible to sustain the family in terms of rent, food and studies, (54 sex trafficked from Colombia)*

*I had nothing and was dependant on a friend when I was told I could earn enough in 12 months to support my younger brother through school and my own 2 children. (17, sex trafficked from Uganda) <sup>114</sup>*

For women from China and Vietnam using the services of snakeheads was also seen as a family investment where remittances would help the aging parents as well.

Supporting families was again one of the most common reasons stated for those who worked as over-stayers or failed asylum seekers.

*I have to work (in the UK) or my children will not get enough food. My sister does not have enough. (92, who fled from Zimbabwe, where her children still live)*

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<sup>114</sup> School fees quoted in African countries were approximately £60 per term for primary education.

## 8.2 Risks presented to children of trafficked victims

As outlined in section 3.4 one of the biggest threats made by traffickers to their victims was that failure to do what they were told, repay debts or pass on information to others would impact on their children. The two dominant themes were that the children would be trafficked themselves or killed.

*I said no...I do not want to do sex again...he said you owe money and you have no other option - I have full details of your children. My youngest daughter was 16...I was frightened that they would get her (54 from Columbia).*

One of the victims of domestic servitude was also very worried that those who had brought her over from Nigeria were trying to recruit her younger sister with others that they were trafficking. (67)

Implementation of threats was evidenced with one of the victims of sex trafficking (X). Whilst in custody she re-established contact with those back home, to try and access information on how her passport was procured. Within a short period of time there was a failed abduction attempt on one of her children and the friend who was caring for them had to flee, as word had got out that X had been asking questions. A subsequent interview with this victim after her release in the UK indicated this threat was uppermost in her mind. Two months later the researchers were advised that her friend's brother had been beaten up and his leg had been broken when he refused to confirm where they were now living. The friend stated that she could no longer risk her life and that of her new born caring for X's children. In a second case (66), the victim's escape from the trafficker's hold resulted in a series of threatening phone calls to her mother in Nigeria in relation to her and the victim's children. As with case X, the victim's mother had no option but to relocate with the two children in the hope that they would not be found.

## 8.3 Childcare arrangements

Of those children left in the country of origin the stated carers were as follows;

- Maternal or paternal grandparents 12
- Friend of mother 3
- Mother's sister 2
- Child's father 2
- Other 2

The stated carers for most of those children whose mother came from Vietnam or China were grandparents. Few of the mothers were in active relationships with their children's father when they left, due to his death, domestic violence or other problems, and the key reason given for migration of two of these women was to

escape the partner, stating there was no protective support they could access<sup>115</sup>. One of these women said she had no option but to leave the child with the father from whom she was escaping because of domestic violence over a number of years (70 from China) and the other fled with the children to escape her husband. She then left the children in the temporary care of the village pastor before leaving the country (89 from Ghana).

For the victims of trafficking the goal of earning money to support their children and ensure that they attended education was rarely achieved. Instead of saving for the future and sending back remittances to their carers, debts increased. These were particularly problematic for those whose families had borrowed large amounts to pay snakeheads in China and in Vietnam.

On departure the expectation was to maintain contact with their children and return within between six months and three years. The hold of traffickers stopped this happening and the loss of contact between the victim, her children and their carers damaged relationships. With some of the women this period of being out of communication was as long as eight years (22 and 17). The following victim had been out of contact for almost three years and had last seen her children when they were two and a half and four and a half years.

*I could not call my mother and tell her what had happened to me. (when held by the trafficker) Finally I called her at end of June (from the prison). My mother wept. Because she had heard nothing she thought she was dead. I have also managed to talk to the children a few times – but it is so difficult with five minute calls. (66, victim of sex trafficking)*

Some others said that they would never be able to tell the whole story and felt that they had failed not only their children, but the wider family. They all felt guilt and a degree of responsibility for the abuse they had suffered.

*I can't say. If they find out back home my whole family will be tarnished - I will be rubbish, a slut. My children will not be able to walk down the street. (54, sex trafficked from Columbia)*

Seven of those within the target group had children within the UK. There were ten children in all separated from their mother in the UK at point of arrest and their average age was three. Within this group the carers were as follows:

- Social services 6
- Child's father 1
- Mother's sister 1

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<sup>115</sup> Those migrant women who had attended groups in the women's prisons for victims of domestic violence stated that, unlike in the UK, there was no local culture of support for victims and they were sometimes ridiculed for making complaints within their own communities about their husbands' violence towards them.

- Mother's friend

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The children of three of these women were taken into care by social services at point of arrest and in one of the cases this followed on from arrest of both parents. Of the six women who were pregnant, four gave birth whilst in custody, one lost her child at 4.5 months into her pregnancy and one had a termination. Two of the women who gave birth in custody also had children in the community.

#### **8.4 Separation from the mother at her point of arrest**

One of the most traumatic experiences described by women in this research was separation from children on arrest and in only one case observed was bail subsequently granted. Women described what felt to them like punishment of their children in relation to the unplanned separation, with an inevitable long term impact on the children's wellbeing. Most arrests were in relation to document fraud. Because these issues of child separation were top on the agenda in discussions with migrant women outside of the target group, we have included relevant material from these cases as well.

The following examples reflect the accounts given.

*They came at six o'clock in the morning. There were five, four police officers and one woman from DWP. They were not nice. They gave me no time to say goodbye to my children (aged four and two). They left them with their father - my boyfriend - but he could not cope and two days later they went to my friend. I have not seen them since. When bail was asked for, the fact I had children was mentioned but they did not ask for any details. (18, A victim of domestic servitude who had been in custody for 7 months awaiting her trial)*

*They came at five in the evening, two police officers and two immigration officers...That night they took me to X Police Station and X (daughter) to Y Police Station. I said I want to leave my daughter with my 'mother' (Word she used to describe a woman who had supported her ever since she escaped from domestic servitude). Then they wanted all her details, such as when she was born. I could not give them. By the time I contacted my mother and she arrived at the police station - X was already in care with the foster family (67).*

*I was told to go into a room and leave my children with X...I was very frightened and my daughter was saying 'Mummy I want you'. I had just picked her up from School and Y (age two) was throwing himself around on the floor. They said they would get a taxi after they had spoken to me and take me home. It was all a lie...In the police van they asked about someone to care for the children - but the separation was terrible...They*

*said social services are looking after your children. (63 from X, outside the target group separated from children aged 5 and 2).*

Where both parents were arrested it was similarly traumatic:

*Nine or ten officers from Immigration (the Crime Team) came early in the morning. The children were at home at the time. They did not allow us to make arrangements for the children - I just gave them a hug and they took us off to the police station. In the van they said have you got someone who can care for the children? I said yes I have aunties and a sister in law - but they would not let me contact them or do anything about arrangements for the children. I cannot do anything about it now in prison as I have not yet got my phone pin number.<sup>116</sup> I do not know where my children have gone. (62, a migrant women outside the target group separated from three children aged 4, 3 and 9 months)*

*It was five thirty in the morning...about ten police came and banged on the door. My husband answered and asked them to wait whilst I got dressed. They said they had arrest warrants for us issued at X. They asked if we could provide someone to care for the children. We called our friend, but social services said he could not use him as he was a man. (47 from Nigeria arrested with husband and separated from three children aged 3, 2 and 11 months).*

With the two women whose children were aged 11 months and 9 months these separations also took place when they were still breastfeeding their babies. In addition to the emotional pain was the impact of the sudden cessation of breastfeeding on the mother and the child. For both these women lactation had ceased by the time they were finally re-united.

## **8.5 Pregnancy at point of arrest**

The trauma of separation at point of arrest was exacerbated when the mother was also pregnant, as was the case for two women. They faced the multiple anxieties of how their other children were going to be managed in their absence, the nature of the court outcome, and whether they and their children would be allowed to stay in the UK, as well as how they would cope giving birth with no family support.

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<sup>116</sup> The researchers were told by prison officers with responsibility for foreign national prisoners (foreign national co-ordinators) that all new receptions in prison are issued with a pin number to use the prison phone system and with a limited list of contact numbers. However, this may take up to a week to be processed.

The impact of these stresses was very evident with a woman within the target group who was arrested when she was seven months pregnant attempting to enter a fake marriage to establish residency (9). She had been brought into the UK under domestic servitude and after escaping had struggled to survive. Her case was listed for sentencing around the same time the child was due. At the first interview appointment she stated that she was too depressed to talk, but agreed to meet when offered a second interview saying:

*I just cry all the time. I am so worried about the sentence and whether we (she also had a 6 year old daughter) will be sent back. I just lie on my bed the whole time.*

Due to an early and problematic birth she remained in hospital for about 10 days. She was sentenced two weeks later and released straight away, having served her sentence, due to the number of days she had been held on remand. Her six year old had no contact with her throughout her time in custody and hospital due to the fact the mother was *too ashamed*. She also found telephone contact difficult due to her emotional state.

The four women who gave birth in custody all expressed a degree of isolation living on the Mother and Baby Units (MBU) where they could not as easily access support from co-nationals. Being in the last phase of pregnancy or having a new born also delayed deportation until all paperwork was completed and with the case of one of the women in the target group, the result was six months residency on the MBU, solely on an immigration hold (28).<sup>117</sup>

Having a dependent child on the MBU also meant that if there were court appearances the child had to attend with the mother:

*I was told I would have to be up and ready at five in the morning. I had no breakfast but I fed A (son aged 12 months) in my room. Yes he had to come to court with me - I was told there was no one here (the prison) who could care for him. They rang for me at five forty five and said you will be taken to the court within half an hour. At six thirty I went from the MBU and waited for 30 minutes with A in the room in Reception. Finally we left the prison in a taxi at seven and got to the court at eight ten...No I was never in handcuffs but we were put in an ordinary cell at the courts with no special facilities and nothing to entertain A...the door was not locked – but there were no toys, nothing...I could not go up to the Courtroom with A and so they had to arrange a nurse to look after him and it was two hours before she arrived from the X Hospital. She was surprised at what she was asked to do. Yes – A did not know her and I left him crying when I went up to the court and eleven fifteen and then back at twelve fifty for sentencing. It was two thirty by the time we got back to the prison. I had*

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<sup>117</sup> This was an indirect consequence of closure of the family unit at Yarl's Wood IRC.

*had nothing to eat and all A had was the biscuits and the one bottle of milk I had brought. (64)*

## **8.6 Children and Bail applications**

With all these mothers, bail applications at the first court appearance were all refused, despite childcare responsibilities being highlighted and there is no evidence of the courts requesting more detailed information in relation to the children's needs or the likelihood of birth in custody. Additional bail applications were equally unsuccessful except in the case of 62 where bail was granted at the Crown Court eight days after arrest. At this appearance the barrister outlined the impact on the mother of eight days of separation from her children and the fact that the eldest had serious ongoing medical problems. However none of the wording used inferred that the court should consider what would be in the best interests of **the children**. Bail was then granted on the basis of:

*Childcare responsibilities, community support, a surety of £3,000 and the fact that her husband would remain in custody.*

It is perhaps not insignificant that the barrister's comment to the researcher out of the Courtroom was that he had:

*Not expected this outcome and that this defendant was lucky to find a judge who showed such empathy.*

## **8.7 Re-establishing and maintaining contact with parents**

Not only were these separations traumatic for the children but there were unacceptable delays in re-establishing any contact with their mothers/fathers. When we met with 47, four weeks after her arrest, she stated that the children had only seen her once and that was three weeks after her arrest.

*They are all in the care of X social services and I have only seen them once. Last week they were taken for meeting with my husband and I have been told I have to wait 28 days for an inter-prison phone call with my husband so I cannot even talk to him about it. I have given them all the details but still no call arranged. I do not know where the children are living - I have no address, no phone number or the name of the carer. I think that they are all in one house, but I have not even been able to talk to them on the phone. Because of how we were arrested I have not even been able to bring any photos of them into the prison. X (fpwp/Hibiscus worker) has been helping me to get in touch with the social worker - but she is never there to answer the phone. I wrote to my husband to see if he*

*had the children's' carer's phone number...I went to see doctor - I cannot sleep because I was so worried about the children. (47)*

This mother was finally granted a place on the prison Mother and Baby Unit and was reunited with her youngest child the day after being seen by the researchers. The social worker also brought the other two children for a two hour visit. For the three and two year olds this was probably the first time they had seen their younger sibling who had been with a separate carer, since the arrest. The mother was advised that her two children would be brought in again for the family visits day in just over two weeks.

The four year old daughter of 67 had no contact with her mother for 2.5 months, at which time twice weekly phone contact was granted.

*After I came to prison I had to wait two weeks before I could call my 'mother' and find out what was happening - because I had no pin. The family liaison officer has been talking to social services. I was only allowed to speak to the foster carer but not X (her daughter) until the end of March. The care worker said she would try and arrange visits, then she (the care worker) moved on and the case was transferred. I have tried so many times to get through on the phone I have given up. I had to get her number from the foster mother. Now I speak to her (her daughter) on the phone 3 times a week at 5 pm.*

A visit was finally arranged for this four year old, three and a half months after her mother's arrest and the researchers received a letter from her mother saying it was *the happiest day of my life*. However the separation had left its mark. As her mother stated at the next meeting with the researchers:

*She (her daughter) was stand-offish, she was anxious, she did not want to get close.*

It took time to re-establish trust when she then started visiting for between one and one and a half hours most weeks. However on release the mother still faced uncertainty. She had no home, she was formally identified as an illegal migrant and Social Services said they would have to *meet and re-evaluate her position* in terms of returning her daughter at the end of sentence. On release she moved to temporary housing on the south coast in X and it was over two weeks after her release that Social Services made a visit to assess the suitability of this accommodation and allow her daughter to join her. However this woman had concerns that having been apart from her daughter for five months, reunification now meant her daughter would be taken away from her old school and friends. At her prison visits she had kept asking her mother '*When are we going home?*' Her mother knew that this would never be the case. They had lost their home and ended up sharing a cramped two bedded room in a hotel, where neither she nor her daughter had any friends and where the mother felt intimidated by the

large resident population of young males also accommodated there under Asylum Support.<sup>118</sup>

Similar impacts on the wellbeing of the two children age two and five and a half were observed in relation to a migrant woman from outside the target group (63)

*After my arrest I heard nothing for 3 weeks about where children were. The social worker came and said the children were fine in good health but said she was not allowed to disclose where they were staying and would not give me the phone number. She said she would try to arrange a visit in the next few weeks. It was actually 6 weeks before I saw them again. Her manager had actually said 'I could not see the children until I had been to court' WHY I had done nothing to hurt them and I am not even yet found guilty?*

This woman was then advised by social services that they were not going to bring the children again because last time they came they were too distressed. The children therefore only had one visit during a 16 week separation from their mother. The mother was neither given the contact details for the carer nor offered the option of maintaining daily contact by phone. At the time of release she was homeless and was granted a two hour visit with the children four days later. The mother was finally re-united with the children two weeks after her release when emergency Asylum Support accommodation was accessed. This was initially hotel accommodation for three days. She was then moved to temporary hostel accommodation in Wales for three weeks and then moved to Plymouth. The accommodation location meant a break for the children with all local ties and removal from school for her daughter. When interviewed at the hostel in Wales at end of June, the stress caused to the daughter was evident in her reluctance to allow her mother out of sight and her desire to put on her school clothes each morning in the false hope she could go to school. The hostel had no special childcare facilities other than a special sleeping area for families; the child was not registered to attend the local school and her two year old was observed running around in the one common room with nothing to play with other than stacking piles of DVDs.

It is worth noting that in none of these cases were social services managing the children because of issues around of child protection. None of these women had previous convictions, none were users of drugs or alcohol and the charges were all in relation to the use of false documents. Given appropriate time to make contacts, alternative care could have been explored in most of these cases.

Where children were being cared for by family members there were different inhibitors to regular contact and one that emerged in two cases outside of the target group was the fact that the child's father and another carer had anxieties about visiting a prison or immigration removal centre because of their own

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<sup>118</sup> This hotel room was visited by the researchers.

immigration status. In three cases within the target group, where long imprisonment on remand contributed to their depression, the women stated that they did not want a visit, either because the inevitable separation at the end of the visit was too traumatic, or because she could not bear the shame of the child knowing that she was in prison.

Where the children and family were overseas, establishing and maintaining contact with children was difficult and expensive. The free monthly phone call for those who received no visits was inadequate to maintain meaningful contact. Making phone calls and knowing what to say was also very stressful. The shame of imprisonment and what they had suffered was apparent with many of the women in the target group and where the family was in another country the common story given was; *I am being held by immigration*. This was also stated to reduce anxiety. As one woman put it, '*my mother would have a heart attack if she knew I was in a prison*'. Actual visits from family overseas were a rare occurrence for migrant women in custody due to the costs of travel and visa arrangements. The only two such visits the researchers were made aware of were for women outside of the target group, serving long sentences for drugs importation.<sup>119</sup>

As demonstrated, all these separations were detrimental to the best interests of the child and could be challenged in the context of the UN Convention of the Rights of the Child as in:

- Article 3 Protection in terms of the best interests of the child.
- Article 9 The rights to have direct and frequent contact with parents from whom the child is separated.
- Article 16 The child's rights to protection of their family life and privacy.<sup>120</sup>

In a relevant court of appeal case the judge stated that in sentencing a mother with dependent children, the rights of the child have to be weighed against the seriousness of the offence in a 'balancing exercise'. Magistrates and judges must therefore;

- a) acquire information about dependent children and
- b) balance the Article 8 rights of the child against the seriousness of the mother's offence.<sup>121</sup>

This and other appeal cases on the basis of Article 8 of the Human Rights Convention have not yet addressed these rights when court bail is refused.<sup>122</sup>

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<sup>119</sup> Family contact was one of the three primary problems identified in the last Thematic Inspections on Foreign National Prisoners carried out by HMIP for England and Wales in 2006 - see page 6, Table 2, Problem areas identified by prisoners and their severity.

<sup>120</sup> Martynowicz (2011: 6))

<sup>121</sup> R (on the application of P and Q) v Secretary of State for the Home Department & ANR (2001) EWCA 1151

<sup>122</sup> See Epstein (2011).

With these migrant women full information of the children was never sought by the court, nor were the full factors that might contribute to the risk of absconding. None of them had previous convictions, their children were accessing schools and other local facilities and there is no evidence that the stated risk of absconding was thoroughly explored. Community sentences and suspended prison sentences were sentencing options, as evidenced in the judge's statements in relation to 63 and the sentence given to 62. Resultant on this, it seems that decisions were made that were not in the best interests of any of these children.

## 8.8 Concluding Comments

In 2008 the first recommendation made by the Secretary of State in response to a discussion paper on prison mother and baby units was that:

*Women who are pregnant or who have young children should only be imprisoned when there are no suitable alternatives to custody (Ministry of Justice, 2008).*

For the migrant women whose cases we have followed in this research and who have dependants in the UK, this appears to have been ignored or overridden by other factors from the point of arrest onwards. In addition, there is consistent evidence of failure to focus on the best interests of the child in relation to arrest procedures, bail decisions, contact procedures for those in the care of social service, and for those dependant on Asylum Support on release, in terms of re-location outside of London. It is relevant to ask to what extent decisions are influenced by the mother's immigration status.

Added to this is the seeming constant anxiety by the mother in regard to what will happen next in terms of immigration decisions and the inevitable impact of this on her children, for whom the UK is the only country they have known. For those whose children remain in the country of origin, they remain vulnerable to the threats made by traffickers to their mothers or to the violence from which their mother was seeking asylum.

## 9 CONCLUSION

The overall aim of this research was to fill the knowledge gap in terms of migrant women, that is foreign nationals, who enter the UK from overseas to seek work or asylum, voluntarily or under coercion, and who end up in custody. Our first task was thus to identify whether there are potential victims of trafficking, smuggling and work under duress in custody and, in the context of national data, give an indication of the scale of the problem. By monitoring individual cases within the target group our second task was to provide evidence on how they were being managed within the Criminal Justice System and by the UK Border Agency. From this our intention was to identify current compliance with the rights of victim protection in the context of the European Convention on Trafficking and the Human Rights Convention. As presented in this report we identified 58 women within the target group and, for those whom we concluded were victims of trafficking, only just over a quarter were processed through the NRM.

As described in Chapter 1 sections 1.3 and 1.4, it proved difficult to gain an overall picture of the problem because national data sets on offences and sentences are no longer broken down into categories which lend themselves to an analysis of women in prison for offences which may mask 'victim experiences' pertinent to the focus of our study. However, the extent of the problem cannot be underestimated and in the final stages of the research, as an element of trust was established with those engaged in this research project, we were told about other women in custody with similar experiences. We also received letters from other potential victims who wished to tell their stories. However, because of the late timing of their contact, we could not incorporate their stories or insights into this research.

Importantly, this research has identified a number of issues in terms of the management of cases which impacts on migrant women's periods of time in custody, the women's future options, the lack of investigations on those who had abused them, their human rights, and the well-being of their children. In addition, the findings highlight concerns about the impact of the women's extended periods in custody, repeated court appearances and resultant childcare costs, all within a context where managers of service provision are subject to reduced budgets. Indeed, the study points up a need to pursue a cost-benefit analysis.

One of the issues raised in the CPS guidelines and reiterated to the researchers in court is the concern that some individuals who entered the UK illegally to access work or asylum may state that they have been trafficked, when this is not the case. The researchers remained objective in relation to this and long-term contact and additional evidence gathered rarely caused us to doubt the accounts that were presented. It is notable that some of the more horrific elements of abuse were not disclosed until trust was established and the full story was often much worse than the story told in initial meetings. A second reason why we would posit that more credence should be given to such accounts is that the

word 'trafficking' was not one used by the interviewees and they often felt unfounded responsibility for having been recruited under such false pretences, and huge shame in relation to what had happened to them and the impact of this on their close family. The damaging implications of not believing, not gathering information or following up disclosures with full investigations may far exceed the cost of accepting what is initially considered to be an unsubstantiated statement.

## **Key Policy and Practice Implications**

Our research findings and observations lead us to raise a number of specific questions and suggestions in relation to policy and practice:

**The identification of victims.** It is arguable that this could be improved by:

- The use of the transposition phase of the new EU Directive to develop a greater and wider understanding of offences potentially resultant on victimisation by traffickers and for closer adherence to the CPS guidelines.
- Exploring of different ways of increasing awareness of the trafficking indicators by the police, DWP and relevant others, when making arrests for offences such as deception, fraud and cannabis production, where the incidence of links between the offence and trafficking is highest.
- Where there are indicators of victimisation, irrespective of whether or not this impacts on the decision to proceed with criminal matters, the instigation of automatic follow-up interviews, carried out by female staff and with appropriate interpreting support, to investigate the alleged abuse of human rights.
- In recognition that defence counsel cannot act as first responders, it may be helpful to establish guidelines to facilitate speedy Reasonable Grounds (RG) assessments by experienced advocates for those appearing in court and for whom bail is routinely denied until this decision has been made. The assumption could then be for bail to be granted for the reflection and recovery period and consideration of a Conclusive Grounds decision.
- Within the prison environment similar established guidelines for accessing these RG decisions alongside formal record keeping by appropriate members of staff in relation to this.
- Research findings also suggest that the training of and involvement by healthcare staff as active first responders might merit closer examination, as they are often the first staff to be in a position to identify the health indicators.

**Management through the criminal justice system.** It is arguable that this could be improved by the following:

- Access to induction videos for all remand prisoners, with interpreted subtitles in the key languages on how the court system functions and what

happens at different phases, including explanation of legal terms such as indictment, plea and mitigation.

- Standard questions before police interviews and at all court appearances on the need for interpreting support, with follow up checks that the defendant understands what is being said. In some cases it may not be sufficient just to ask; 'do you need an interpreter?'
- Sufficient translation of letters and court documents which would help to ensure that the defendant understands what is happening and their rights in relation to this.

**Management through immigration procedures.** It is suggested that this could be improved by:

- Access to an induction video with subtitles available for all foreign national prisoners and detainees who wish to claim asylum, explaining the application procedure within the UK and impact of a prison sentence on this.
- Recognition that the illegal migrant status of many victims of trafficking may be the result of the actions of others who brought them into and held them in the UK, withheld their documents and sometimes issued their victims with false identities.
- Recognition given to the asylum needs of some victims in relation to implementation of threats to the victim and their family and the risk of being re-trafficked to pay off alleged debts.
- In recognition that those in custody rarely have access to immigration solicitors, advance written notice of all immigration interviews, with notes explaining the structure and aims of the interview, advice on how they can best prepare for this meeting. The option of a female case worker and interpreter would also seem important.
- We would also suggest that it may be helpful for all communication from the UKBA to be sent in a language that the recipient understands.
- In addition, the experience of our target group suggests that it is important to take account of the multiple trauma, sexual abuse and the disempowering effect of trafficking in the management of asylum claims.

**Ensuring that the best interests of the child are met where the arrestee is the mother.**

Our policy and practice suggestions here include:

- The need for sufficient time and support to be given at the point of arrest for preparations to be made for the separation and to access a carer known to the child would be helpful.
- That it is appropriate at all bail applications for the bench to be aware of childcare responsibilities before making a decision, to ensure that there is an appropriate balance between the risk of absconding by the defendant and what is in the best interests of the child.

- Where a placement in the care of social services is the only option, it would seem appropriate to set in place contact arrangements from day one, with provision for a supervised phone call in relation to this between both parents if there are joint arrests.
- The findings indicate that support facilities for those in custody to re-establish links with their families in their country of origin would be of value.

### **The Bangkok Rules**

The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) were approved by the Third Committee of the General Assembly at its 65<sup>th</sup> session in New York on 15 October 2010 (U.N. General Assembly, 2010). The rules not only acknowledge that many of the existing prison facilities worldwide were designed for male prisoners, but recognise that women prisoners are one of the vulnerable groups that have specific needs and requirements. The rules also emphasise that when deciding on pre-trial measures for a pregnant woman or where a woman is a child's sole or primary caretaker, non-custodial measures should be preferred where possible, with custodial sentences only being considered where the offence is serious or violent. Rule 6 highlights the need for 'comprehensive health screening to determine primary health care needs', including (under Rule 6e) 'Sexual abuse and other forms of violence that may have been suffered prior to admission'. Moreover, Rules 10, 11, 12 and 13 draw attention to the need for gender-specific health care and mental health care. Specific mention is made (in Rule 13) that 'Prison staff shall be made aware of times when women may feel particular distress, so as to be sensitive to their situation and ensure that the women are provided adequate support'. Under Rule 25 (1.) it is stated that 'Women prisoners who report abuse shall be provided immediate protection, support and counselling, and their claims shall be investigated by competent and independent authorities, with full respect for the principle of confidentiality. Protection measures shall take into account specifically the risks of retaliation'. And under Rule 26 we learn that 'Women prisoners' contact with their families, including their children, their children's guardians and legal representatives shall be encouraged and facilitated by all reasonable means. Where possible, measures shall be taken to counterbalance disadvantages faced by women detained in institutions located far from their homes'. Other elements of the Bangkok Rules are also relevant, but there is sufficient here to reinforce earlier research findings from this study not only in regard to contravention of the Convention of Human Trafficking, but in regard to the rights of the child. These new rules serve to emphasise good practice and how far, in light of the research findings of this study, existing practice falls short.

### **Funding and resource implications**

Throughout this research we have been aware of the impact of resource reductions on the Prison Service, UKBA, Legal Aid, Court Services and Third Sector input. It is arguable that this has had a disproportionate impact on women

in this study. However, many of the above observations in relation to policy and practice concern the improvement of procedures within the resources that are currently available. A cost-benefit analysis might suggest that the input costs would be negligible in comparison to the current use of resources in managing victims as offenders, holding women in custody who pose no risk, the costs of numerous court hearings and care placements for their children. This would need further investigation and analysis of course, but in line with other areas of criminal justice and social policy thinking, a cost benefit analysis of any procedures and practices would make sense, as well as there being important value-based factors (such as the 'best interests of the child') to consider, and all in compliance with the human rights legislation and the European Convention on Trafficking.

### **Inquiry into Human Trafficking in Scotland**

As this research was nearing completion the findings from an Inquiry into Human Trafficking in Scotland were published (EHRC, 2011). The findings indicate that human trafficking exists throughout Scotland, with victims found not only in the sex industry, but in hotels, restaurants, farms and domestic homes. The Inquiry found it impossible to establish the extent of trafficking in Scotland because of the absence of reliable data<sup>123</sup> but nevertheless urged that the issue be taken seriously, partly in light of the fact that there had only ever been one successful prosecution of traffickers (secured in September 2011).<sup>124</sup> The findings draw attention to the need for greater police recognition of trafficking as a crime rather than just an immigration issue, and question whether the Border Agency is so alert to the issue of illegal immigration that a culture of disbelief is the default position when hearing the accounts of those who may have been trafficked. The Report of the Commission more generally highlights the experiences of people who had been 'deceived, manipulated or coerced' and which 'demonstrate the harsh reality of trafficking'<sup>125</sup>. What that report does not do however, is address the experiences of those caught up in the criminal justice system as potential victims of trafficking. Our wider focus on migrant women, who enter the UK from overseas to seek work or asylum, voluntarily or under coercion, and who end up in custody thus adds depth of understanding to concerns about access to justice.

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<sup>123</sup> EHRC, Scotland, Executive Summary 2011:12

<sup>124</sup> EHRC, Scotland, Executive Summary 2011:8

<sup>125</sup> EHRC, Scotland, Executive Summary 2011:36

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