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CHAPTER 5

How asylum seekers with additional vulnerabilities are treated

Nations are commonly judged by the standards of humanity with which they treat people who are seeking sanctuary from persecution. The Commissioners are disturbed to have found much evidence of shortcomings in the treatment of asylum seekers."

Asylum seekers with additional vulnerabilities

While it is possible to describe all those seeking asylum in the UK as being in a vulnerable situation, it must also be acknowledged that some individuals and groups have specific vulnerabilities based either on experience or situation. This chapter will explore the following additional vulnerabilities:

- Children and young people (both unaccompanied asylum seeking children and those in families)
- Women
- Those with health care needs
- Those with disabilities
- Survivors of torture
- Lesbian, Gay, Bisexual and Transgender

"The UK Government says that Every Child Matters – but if you are a separated child or the child of asylum seekers the Government thinks you don' t matter, as immigration control is given greater importance than child welfare. And even when the policies are good, there is a massive gap between policy and practice."

Dr Heaven Crawley, University of Wales, Swansea.
Hearing: Cardiff.
For full testimonies visit www.humanrightstv.com

1 Children and young people

Children and young people seeking asylum in the UK fall into one of two categories

- Unaccompanied asylum seeking children
- Children and young people in families

1.1 Unaccompanied asylum seeking children

The Border and Immigration Agency (BIA) defines an unaccompanied asylum seeking child as a person who, at the time of making the asylum application:

- is, or (in the absence of documentary evidence establishing age) appears to be, under eighteen;
- is applying for asylum in his or her own right;
- and is separated from both parents and not being cared for by an adult, who by law or custom has responsibility to do so.

In a submission on unaccompanied minors from the Refugee Children's Consortium, a consortium of 30 leading NGOs, it is argued that:

"The asylum system was not designed for children and does not meet their needs...the BIA is not well placed to lead on policy for the care and support of unaccompanied children."

It is further noted that:

"Children do not necessarily understand the complexities involved in the asylum system."

Asylum seeking children are afforded additional protection by the 1989 United Nations Convention on the Rights of the Child (CRC) and the Children Act 1989, which partly brings the CRC into UK law. The UK has placed a reservation on Article 22 of the CRC concerning the guaranteed protection of refugee children. The Joint Committee on Human Rights claims that the reservation of Article 22 leaves asylum seeking children with a lower level of protection in relation to a range of rights that are unrelated to their immigration status, therefore unduly discriminating against this vulnerable group.[1]

1.1.1 Asylum applications and process

When an asylum application is made by an unaccompanied minor, basic information is noted in a short screening interview. Unaccompanied children are given a statement of evidence form (SEF) to complete and a 'One stop notice', which requires them to detail any human rights that would be breached if they were removed from the UK.

"Before I got dispersed from London the Home Office had refused to accept I was underage. I was taken to the social services and a paediatrician concluded that I was 18 + with a two year margin of error."

Submission: Anonymous via British Red Cross

Under the New Asylum Model (NAM) several changes affecting the asylum process for unaccompanied children have been implemented since April 2007. The key amendments include:

- every child is assigned a specially trained case owner who they meet in person and who oversees their application from beginning to end;
- all unaccompanied children aged 12 or over are interviewed by a case owner about the substance of their asylum claim;
- unaccompanied children are given 20 working days to return their SEF form instead of the previous 28 days;
- instead of granting discretionary leave until a child turns 18, it is now granted until the child is 17 and a half.[2]

Refugee children's advocates are concerned that these changes may negatively impact on children's experiences of the asylum process. For example it is noted that if the asylum process, including the application to extend discretionary leave and the appeal against refusal to extend, is concluded before the unaccompanied child turns 18, then they will be classed as 'overstayers' and therefore they will be unlawfully in the UK. This could mean they may no longer have access to employment, benefits or a leaving care service from a local authority and will be potentially destitute.[3]

In February 2007 the Home Office published a consultation paper outlining its reform programme for unaccompanied children. In addition to the four main changes under the NAM explained above, the Home Office sought feedback from stakeholders on several proposals including plans to disperse unaccompanied children to other areas of the UK to relieve pressure on local authorities dealing with high numbers of unaccompanied children in London and the South East; to use x-rays

1 **Joint Committee on Human Rights** (March 2007) *The treatment of asylum seekers, Tenth report of session 2006-7*
2 **Home Office** (5 March 2007) *Letter to members of the NAM and UASC Reform Stakeholder Groups on asylum process for minors – accompanied and unaccompanied asylum seeking children*
3 **Children's Legal Centre** (2006) *Information note on the New Asylum Model – minors segment*

(dental and possibly wrist and collarbone) as an additional age determination method; to extend the use of social workers to assess age at the two Asylum Screening Units; and to develop incentives for the voluntary return of minors by reducing the value of the package the longer the child delays in agreeing to return.[4] According to the Immigration Law Practitioners' Association (ILPA), it is expected that some of these proposals will be implemented in spite of feedback from key stakeholders.[5]

1.1.2 Decision making and credibility

According to government policy, applications for asylum from unaccompanied children should be considered in the light of the child's maturity. More weight should be given to objective factors of risk, for example the use of country evidence and information, from people who know the child, than to the unaccompanied child's subjective assessment of the situation.[6] Research into the quality of decision making for unaccompanied children indicates that this does not happen in practice. For example decisions do not tend to reflect the fact that the claim is by a child and no difference is made between adult and child refusal letters.[7] In addition, the report notes a lack of Home Office research into the reasons why children seek asylum. This it is argued, may be a reflection of the fact that many immigration officers do not accept the reasons children give for seeking asylum, such as 'forcible recruitment as child soldiers' and 'trafficking', as falling under the Refugee Convention. [8]

1.1.3 Support arrangements for unaccompanied children

Under the Children Act 1989 local authorities are responsible for unaccompanied asylum seeking children, as opposed to the Border and Immigration Agency which is responsible for the provision of support to all destitute asylum seekers and their dependants. The two relevant sections of the Children Act are section 17 and section 20. Until the 'Hillingdon Judgement' in August 2003, unaccompanied children under the age of 16 were supported under section 20 and those over that age were supported under section 17. The 'Hillingdon Judgement' means that all unaccompanied children should be supported under section 20 of the Act unless a full assessment of their needs indicates otherwise. The range of support available under section 20 is much more extensive and includes a care plan, the allocation of a social worker and sometimes residential care.[9] Ben Lea of Hillingdon Borough Council and a member of the Local Government Association's High Ethnicity Special Interest Group (HEASIG), told the Commission about some of the financial pressures this places on local councils:

> *"It costs Hillingdon Council £190 a week to look after one young asylum seeker, yet the Government only reimburses us £100 per person, which is paid up to eighteen months after the service has been delivered...it is unfair for our communities to*

4 **Home Office** (February 2007) *Consultation paper – Planning better outcomes and support for unaccompanied asylum seeking children*
5 **ILPA** (April 2007) *Information sheet on children's asylum claims*
6 **Home Office** (April 2006) *Asylum Policy Instruction – Children*
7 **Bhabha, J. and Finch, N.** (November 2006) *Seeking asylum alone – unaccompanied and separated children and refugee protection in the UK*
8 **Bhabha, J. and Finch, N.** (November 2006) *Seeking asylum alone – unaccompanied and separated children and refugee protection in the UK*
9 **Refugee Council** (January 2005) *Ringing the changes: The impact of guidance on the use of Sections 17 and 20 of the Children Act 1989 to support unaccompanied asylum seeking children*

foot the bill. We don' t blame the asylum seekers – it is not their fault – it is the Government' s fault for not making up the shortfall in funding."

Hearing: South London. For full testimonies please visit www.humanrightstv.com

It is the responsibility of the Home Office to ensure that all unaccompanied children have been referred to the relevant social services department as soon as they make a claim for asylum. If the child gives an address in their application, then they will be referred to that area but if the child has no local connection or address then they will be referred to the local authority in which the application was lodged.[10] The local authority has a 'corporate parenting responsibility' for unaccompanied children and the Home Office provides local authorities with grants to cover the costs of the asylum seeking children for which they are responsible.[11] All unaccompanied children should receive a full needs assessment by social services in line with the national framework for the assessment of children in need.[12] Details of all unaccompanied children are passed to the Children's Panel of the Refugee Council who provide a range of support services including ensuring that all referrals have legal advice and interpreters.[13]

1.1.4 Age disputed cases

If an applicant claims to be under the age of 18 but the Home Office believes that they are over 18, then the stated policy is to treat them as adults until credible documentary or medical evidence confirms that the applicant is less than 18 years old. This means that applicants who are age-disputed will be offered the same asylum support as an adult asylum applicant. In borderline cases it is Home Office policy to give the claimant the benefit of the doubt. If a local authority disagrees with the Home Office assessment then the BIA will modify its decision so that it is in line with Social Services.[14]

"When one of your friends disappears it is very sad. But it also makes you think, will I be next? What is the point of studying if I am going to be deported any day now?"

Hearing: Cardiff. For full testimonies please visit www.humanrightstv.com

The Home Office indicates that it will accept medical evidence on the age of applicants but also maintains that this is an inexact science and there can be a margin of error of several years either way of the estimate. The 'Merton case', which resulted in a judgement from the High Court, gives guidance on the requirements of a lawful assessment by a local authority of the age of an asylum seeker claiming to be under the age of 18. The guidance states that the decision-maker should not determine age solely on the basis of the appearance of the applicant, that appropriate information needs to be sought in order to determine age, and that the local authority must give adequate reasons for a decision that someone is not a child.[15]

1.2 Issues affecting children in families

While unaccompanied children have very specific vulnerabilities, it is also important to be aware of the vulnerabilities experienced by children in asylum seeking families, as well as vulnerabilities experienced by young people both in families or unaccompanied.

10 **Home Office** (April 2007) *Processing asylum applications from children – instructions to NAM case owners*
11 **Free, E.** (2005) *Local Authority support to unaccompanied asylum-seeking young people – Changes since the Hillingdon Judgement* (2003), Save the Children
12 **Department of Health** (2000) *Framework for the Assessment of Children in Need and their Families*
13 **Joint Council for the Welfare of Immigrants** (2006) *Immigration, nationality and refugee Law handbook*
14 **Home Office** (April 2007) *Policy instruction for NAM case owners on disputed age cases*
15 **Children's Legal Centre** (2003) *Information note on The Queen on the application of B v London Borough of Merton*, [2003] EWHC 1689 (Admin) (14 July 2003)

1.2.1 Removals

A separate chapter examines removals specifically, however, the Scottish Trades Union Congress (STUC), in their submission to the Commission, express concern about the impact of so-called 'dawn raid' removals on children, arguing:

"We are of the view that such actions by the immigration services breach the human rights of all concerned and also the rights of the children, as set out in the Children (Scotland) Act 1995 and by the UN Convention of the Rights of the Child (UNHRC), to which the UK is a signatory"

The STUC also express concern for the effect of such removals on other children, whether or not asylum seekers, of seeing their friends 'disappeared' overnight by the state.

1.2.2 Support

There are wide concerns over the possible implementation of Section 9 of the Asylum and Immigration Act 2004, which gives the Home Office power to withdraw asylum support from families with dependent children if they fail to take reasonable steps to leave the UK voluntarily when their asylum application has been turned down. If families are deprived of support, the children in these families may be separated from their parents and accommodated by local authorities.[16] Section 9 began as a pilot project in December 2004 in three areas (Central/East London, Greater Manchester and West Yorkshire) and involved 116 families. According to data collated by the Refugee Council, thirty six of the 116 families went 'underground' in order to avoid having their children taken into social services.[17] Whilst Section 9 still remains on the statute books, it has not yet been implemented nationally and both refugee organisations and local authorities alike have called on the government to repeal this piece of legislation.[18]

1.2.3 Detention

A separate chapter examines detention specifically, however, both the NSPCC and Save the Children, in their submissions to the Commission, called for an end to the detention of children for immigration purposes.

1.2.4 Education

Careers Scotland and a number of other organisations expressed concern about access to higher education. Save the Children, in their submission, said:

"Current UK policy does not adequately fulfill UK commitments under the UN convention on the Elimination of Racial Discrimination that: ' State Parties undertake to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of

"I have just finished my A-levels in Maths, Chemistry and Biology. I got As in all of them. The principal of the college called me and asked me which university I was going to? I felt a lump in my throat. I couldn' t even work, had no money."

Submission: anonymous via British Red Cross

16 **ILPA** (February 2006) *Child first, migrant second: Ensuring that every child matters*
17 **Joint Committee on Human Rights** (20 November 2006) *Uncorrected oral evidence on the treatment of asylum seekers*
18 **Refugee Council** (January 2006) *Inhumane and Ineffective – Section 9 in Practice; A Joint Refugee Council and Refugee Action report on the Section 9 pilot* and **ILPA** (February 2006) *Child first, migrant second: Ensuring that every child matters*

everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notable in the enjoyment of the following rights – (v) the right to education and training."

It is further noted that:

"An asylum seeker studying at undergraduate level at an English university must pay around £10,000 pounds per year as an international student, yet has no permission to work or to access a student loan."

2. Women

It has been suggested that women face significant barriers in reaching industrialised countries, including: lack of funds, responsibilities to family and dependents and restrictions on travelling alone.[19] The number of women applying for asylum in industrialised countries is significantly lower than the number of men (approximately 30% compared with 70% for men[20]).

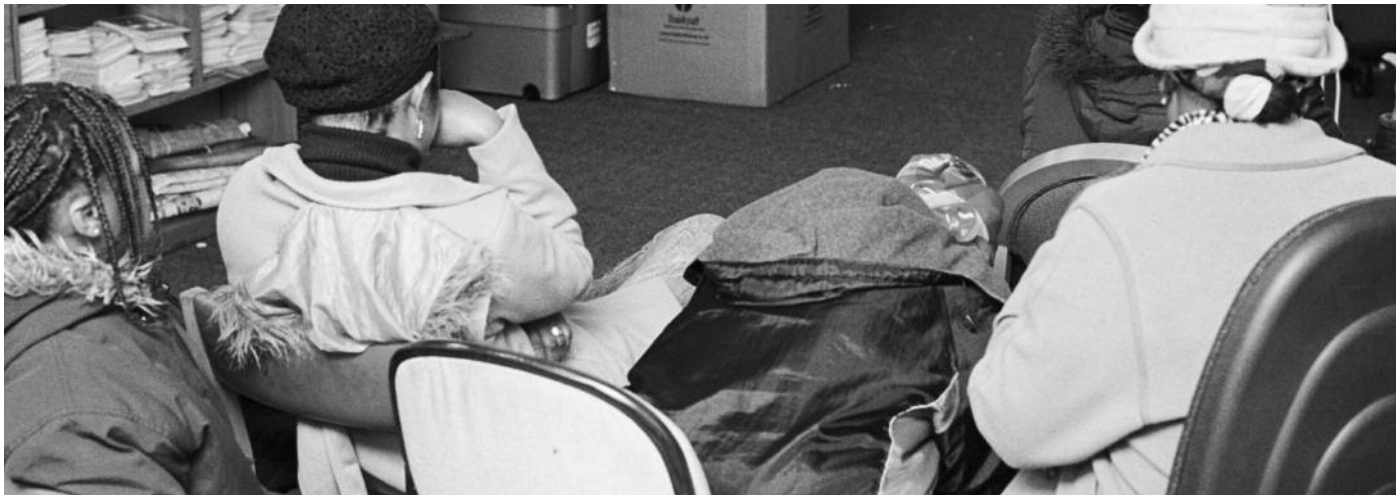
2.1 Male bias in the system

Perhaps as a result of the smaller numbers of women than men applying for asylum, it has been argued that women are rendered 'invisible' in the asylum process,[21] from a lack of documentation of gender-specific persecution to failures to provide appropriate social services to asylum seeker women. Male bias, it has been argued, permeates social and legal processes in the asylum system. [22]

2.2 Specific issues faced by women

Concern exists that women who have been raped often have difficulties in having their claims believed. A submission from a psychotherapist who works with Gloucestershire Action for Refugees and Asylum Seekers, makes reference to one individual's case:

19 **Dumper, H.** (2002) *Is it safe here? Refugee women's experiences in the UK*, London: Refugee Action
20 **Heath, T., Jeffries, R. and Pearce, S.** (August 2006) *Asylum statistics United Kingdom 2005*
21 **Dumper, H.** (2006) *Women Refugees and Asylum Seekers in the UK*, Information Centre about Asylum and Refugees
22 **Dumper, H.** (2006) *Women Refugees and Asylum Seekers in the UK*, Information Centre about Asylum and Refugees



Drop in centre for asylum seekers

"One woman told me that she had been raped in the Democratic Republic of Congo, first by the chief of prison and then in descending order of hierarchy by every male in the prison, ending with the cleaner. She told me this only after 10 or more counselling sessions and then with great shame. Her demeanour was consistent with the nature of the trauma and I believe her. Her shame was then compounded by her failure to be granted Leave to Remain on the grounds of lack of credibility."

Submission: Marina Bielenky Gloucestershire Action for Refugees and Asylum Seekers

The UK added guidance on gender issues to the Asylum Policy Instructions (APIs) for caseworkers in March 2004. The guidelines aim to provide caseworkers with information about the additional issues they should consider in relation to women's claims, how to take gender into account when looking at instances of persecution and whether there has been a failure of state protection in cases involving women. However, a submission from the Scottish Refugee Policy Forum argues that these guidelines are not being followed. Women may not be actively encouraged to submit a separate claim from their husband or partner and many do not know that they have the option to do so. More broadly, women may not realise they have the possibility of claiming asylum. Further, practical arrangements can discriminate against women. The submission states that many women are unaware of their rights in relation to requesting a female interpreter and also draws attention to a lack of childcare facilities for mothers attending substantive interviews:

"If women are unable to find childcare, the interview would go ahead with children present in the room. We believe that this is unacceptable as it prevents women from disclosing traumatic experiences which may be crucial to their claim, can also be traumatic for the children and it can be difficult for both the mother and the case owner to concentrate and therefore can affect the quality of decision making."

Submission: Scottish Refugee Policy Forum

Witness at the Birmingham Hearing

3. Asylum seekers with health care needs

3.1 Access to healthcare

It is estimated that 20% of asylum seekers and refugees in the UK have severe physical health problems.[23] Asylum applicants and people granted refugee status, humanitarian protection and discretionary leave are at present entitled to free primary medical care and medical services provided by the National Health Service (NHS) on the same basis as other residents.[24] However, Department of Health guidance discourages GP surgeries from registering refused asylum seekers[25] and evidence suggests that asylum seekers can find it very difficult to register with a GP,[26] especially due to a lack of suitable documentation to prove their address and identity. This can lead to increased pressures on Accident and Emergency (A&E) departments, as asylum seekers may present with routine conditions that are not usually dealt with at A&E.[27] A report into the gaps and needs within health services for asylum seekers found that some services are struggling with the range of complex issues that are presented to them by asylum seekers. Furthermore, there was concern that some asylum seekers were avoiding using health services because of fear that using the service might negatively impact on the outcome of their asylum application.[28]

3.2 Healthcare for asylum seekers who have been refused

Asylum seekers whose claims have been determined and are not successful are no longer exempt from NHS charges for certain services. The Joint Committee on Human Rights' recent investigation into the treatment of asylum seekers heard testimony that asylum seeking patients with life threatening conditions and people with HIV/AIDS had been refused hospital treatment in the UK. The report documents cases of hospitals wrongly charging asylum seekers who were entitled to free treatment or refusing to treat asylum seekers if they could not pay the charges.[29]

3.2.1 Issues with charging for healthcare

There has been criticism of the change in the eligibility criteria for free access to the NHS. The main objections include:

- that there are moral reasons why anyone who approaches the NHS for assistance should be provided with help. This is especially the case when limited medical intervention is needed

23 **Refugee Council** (June 2006) *First do no harm: denying healthcare to people whose asylum claims have failed*
24 **Joint Council for the Welfare of Immigrants** (2006) *Immigration, nationality and refugee Law handbook*
25 **Joint Committee on Human Rights** (March 2007) *The treatment of asylum seekers, Tenth report of session 2006-7*
26 **Peel, M. and Burnett, A.** (2001) 'Asylum seekers and refugees in Britain: What brings asylum seekers to the United Kingdom?' **BMJ**, vol. 322, pp 485-488
27 **Joint Committee on Human Rights** (March 2007) *The treatment of asylum seekers, Tenth report of session 2006-7*
28 **Kanani, A., Webster, A., Ndegwa, D., Murphy, D. and Stevens, R.** (2001) *Report on the gaps and needs within health services for refugees and asylum seekers*
29 **Joint Committee on Human Rights** (March 2007) *The treatment of asylum seekers, Tenth report of session 2006-7*

even when it may not meet the criterion of being 'immediately necessary', in order to prevent a serious threat to health in the future.[30]

- that there is an economic benefit to treating medical conditions before they become an emergency.[31]
- that asylum seekers that have not been successful in their claim are not necessarily removed from the country straight away. They may remain in limbo for an extended period because it is not safe enough to return them home, or because there is just not the capacity to carry out their removal at that time. Whilst they are waiting to be removed unsuccessful asylum applicants will only be eligible for free access to emergency care or treatment that is 'immediately necessary'. All other forms of treatment will incur charges but they will not be entitled to benefits or able to work.
- that Doctors will have an increased workload as a result of having to administer the system.[32]
- that asylum seekers will be further stigmatised.[33]

3.2.2 HIV in asylum seekers whose applications have been refused

The National AIDS Trust's submission to the Commission states that:

"Asylum seekers are amongst the vulnerable communities most affected by HIV in the UK...The process of migration, including high risk of poverty and poor access to safer sex education and healthcare, can also contribute to the risk of becoming infected." ***Submission: National AIDS Trust***

While HIV testing and any associated counselling is still free for those asylum seekers who have failed in their application, medication is charged. The Refugee Council's 2006 report 'First do no harm: denying healthcare to people whose asylum claims have failed' details how a woman was offered a test but not treatment for HIV. They argue that:

"Not only is it inhumane to diagnose but not treat HIV, it also undermines the Government's commitment to managing spread and effects of HIV worldwide." ***Submission: Refugee Council***

In addition to these difficulties, a submission to the Commission from the George House Trust, a Manchester based charity that works with those with HIV, expresses concern that some of those who are HIV positive are ending up destitute. This exacerbates the complications caused by HIV as they cannot properly manage their condition, with some being coerced into having sex with people unaware of their health needs:

"It is a disgrace that refused asylum seekers are unable to access hospital care. It costs just £6,000 to pay for the medication to prevent the transfer of HIV from a pregnant woman to her baby, and half a million pounds to pay for support for someone with HIV for their whole life. Yet the Government is denying secondary healthcare to refused asylum seekers and babies are being born with HIV, entirely preventable."

Lisa Power, Terence Higgins Trust. Hearing: Cardiff. For full testimonies please visit www.humanrightstv.com

30 **Migrant & Refugee Communities Forum** (2004) *Proposals to exclude overseas visitors from eligibility to free NHS Primary Medical Services: A consultation response* and **Pollard, A.** (7 August 2004) *Eligibility of overseas visitors and people of uncertain residential status for NHS treatment*

31 **Pollard, A.** (7 August 2004) *Eligibility of overseas visitors and people of uncertain residential status for NHS treatment*

32 **Refugee Council** (March 2004) *Changes to healthcare charges for asylum seekers*

33 **Migrant & Refugee Communities Forum** (2004) *Proposals to exclude overseas visitors from eligibility to free NHS Primary Medical Services: A consultation response*

"HIV is a public health issue. Placing people who are HIV positive into destitution means they are far less likely to have protected sex and possibly have to trade sex in some way in order to survive." ***Submission: George House Trust***

3.3 Mental health needs

Much mental ill health amongst asylum seekers is directly related to the asylum process and isolation as a result of living in an unfamiliar environment and culture.[34]

All asylum seekers are eligible to access mental health services at the primary care level and, following a GP referral, at the level of secondary care.[35] Some practitioners would like to see a culturally sensitive assessment of mental health needs built into the asylum process, applicable to all asylum seekers on arrival in the UK, which if necessary, should be conducted using properly trained interpreters.[36] Furthermore, it is recognised that mental health services should respond to the different stages of the asylum process and should be sensitive to periods where clients may be particularly vulnerable, for example on receipt of a negative asylum decision.[37]

Research has shown that in many cases, if social factors are properly addressed, such as poor housing or social isolation, then the mental health of asylum seekers can improve significantly.[38]

"I work as a counsellor with people who have mental health problems. In every case I have seen the asylum seeker has never had a mental health problem until they came to Britain."

Submission: Marion Grant

4 Disabilities

4.1 Disability in asylum seekers

Disabilities amongst asylum seekers may result from their experiences in their country of origin and be connected to the reason they are seeking asylum or they may be independent of it. Their specific needs have particular implications for service provision. WinVisible, a group that works with disabled refugee and asylum seeking women, in their submission to the Commission, argue that:

"The existence and situation of asylum seekers and refugees who have disabilities, often as a consequence of the wars, rape and other torture they fled, is largely invisible in all areas of policy-making, in service provision and public awareness."

Submission: Winvisible

34 **Misra, T., Connolly, A. and Majeed, A.** (July 2001) *Addressing mental health needs of asylum seekers and refugees in a London Borough: epidemiological and user perspectives*
35 **Home Office** (December 2005) *Policy bulletin no. 85 – Dispersing asylum seekers with health care needs*
36 **Watters, C. and Ingelby, D.** (November 2004) *Mental health and social care for asylum seekers and refugees*
37 **Watters, C. and Ingelby, D.** (November 2004) *Mental health and social care for asylum seekers and refugees*
38 **Summerfield, D.** (2001) 'Asylum seekers, refugees and mental health services in the UK', *British Journal of Psychiatry, vol. 25, pp.161-163*

4.2 Services for disabled asylum seekers

Asylum seekers are not entitled to disability-related benefits. They can request a community care assessment from social services and the relevant local authority decides whether they are eligible to receive services and whether they will charge for these services. It has been argued that entitlements to services for disabled asylum seekers are confusing and unclear. Lack of awareness of entitlements exists amongst service providers as well as asylum seekers themselves.[39] The Commission received evidence from a wheelchair user from Kenya who campaigned as a disability activist. No suitable NASS accommodation was available and so a solicitor appealed to the local council to ask them to take responsibility for housing him:

"The only accessible accommodation that the local council could find was in an elderly people's home. I lived there with three young disabled people for more than two years and 24 elderly people as well. The food and care were really inadequate. We had no spending money as the council said our needs were fully met at the home. We hated living there. We complained to the National Care Standards who agreed that the place was not 'ideal'. Now I live in rented accommodation, but it's not accessible. I have to use two wheelchairs to manage about in the house". ***Submission: Anonymous***

"The lodging I was given had no ramp, and so I had to be lifted by my neighbours every time I went into my home. I made friends quickly back then – I had to in order to survive!"

Romeo. Hearing: Cardiff. For full testimonies please visit www.humanrightstv.com

5 Torture survivors

5.1 Identifying torture survivors

The United Nations High Commissioner for Refugees (UNHCR) believes that mechanisms to identify survivors of torture and violence are required at the earliest possible stage of an asylum procedure and that treatment of such persons should be granted to specialist medical staff and organisations.[40] However, the Home Office states that it is not for the Border and Immigration Agency (BIA) to judge whether a referral to the Medical Foundation would be in the best interests of the claimant and only where appropriate will the BIA advise the claimant of the existence of such help.[41]

Under current government policy, in cases where independent evidence of torture exists, asylum seekers will only be detained in exceptional circumstances.[42] However, research has shown that torture survivors are detained even in cases where the Home Office has prior information obtained

39 **Harris, J.** (2003) *All doors are closed to us: a social model analysis of experiences of disabled asylum seekers and refugees in Britain*
40 **Medical Foundation for the Care of Victims of Torture** (2004) *Response to the Implementation of Reception Directive*
41 **House of Lords** (16 April 2007) *Written answers Immigration: Victims of Torture*
42 **Home Office** (2006) *Operational Enforcement Manual, Chapter 38 – Detention and temporary release*

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Witness at Manchester Hearing

during an asylum interview of an applicant's past torture.[43] A submission from Churches Together in Britain and Ireland on behalf of an asylum seeker from Uganda, details how his claims of torture, which he had made in first interview, were ignored and no attempt was made to conduct a medical report on abuse he had suffered. When he was examined there were further issues with access:

"[The Doctor], who had asked for a 90 minute visit, was allocated 60 minutes. He was not given a proper medical examination room, but directed to use a legal interview room in which they placed a couch. [The Doctor] also had problems with security about bringing medical instruments into the centre, such as a tendon hammer, pins, a tuning fork and cotton wool."

Submission: Anonymous via Churches Together in Britain and Ireland

The Medical Foundation is opposed to any asylum procedures taking place until a thorough medical assessment has been carried out and the asylum seeker has been allocated a GP.[44] Under the New Asylum Model, organisations have called for a degree of flexibility relating to the treatment of torture survivors. There are concerns that substantive asylum interviews may take place before a detailed health assessment and therefore potential identification of a torture victim has occurred. [45]

5.2 Issues when applying for asylum facing survivors of torture

A submission from The Bath Centre for Psychotherapy and Counselling highlights some of the issues faced by torture survivors in applying for asylum:

"We are frequently dismayed by the apparent stance of the Home Office in assuming that our clients are lying to gain asylum. Sometimes they look for inconsistencies as proof of this but we know from our understanding of the nature of trauma that memories can easily become fragmented, particularly when under pressure...Feelings of shame are prevalent among people who have been tortured, particularly if this involved their sexual organs. Having to air this as part of an asylum claim is very distressing."

Submission: The Bath Centre for Psychotherapy and Counselling

43 **Bail for Immigration Detainees** (May 2005) *Fit to be detained? Challenging the detention of asylum seekers and migrants with mental health needs*

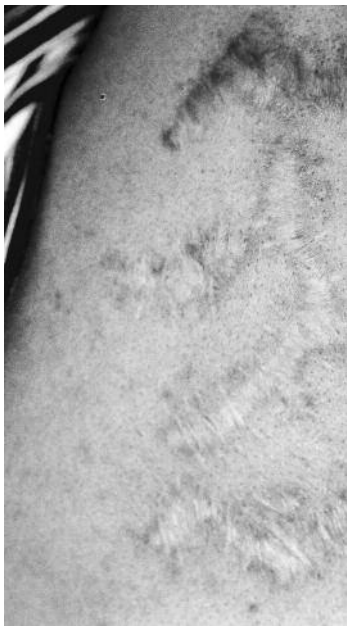
44 **Medical Foundation for the Care of Victims of Torture** (May 2006) *Response to NAM quality team proposition paper: Improving asylum decisions through early and interactive advice and representation*

45 **Medical Foundation for the Care of Victims of Torture** (May 2006) *Response to NAM quality team proposition paper: Improving asylum decisions through early and interactive advice and representation*

A submission from PsyRAS (Psychologists working with Refugees and Asylum Seekers), argues that:

"Torture survivors have been found to be less likely to volunteer information about their experiences at interview when not asked...which reflects the fact that vulnerable people with mental health problems may be reluctant or unable to talk about their experiences and less able to assert themselves if not given appropriate support to disclose." ***Submission: PsyRAS***

Difficulties in disclosing information on torture may lead to some asylum seekers being incorrectly processed in the fast-track system. The Medical Foundation believes that to avoid such mistakes all asylum seekers must be treated as potential torture survivors first and foremost.[46] In the case of allegations of torture, it is Home Office policy for claims to be deferred or put on hold whilst medical evidence is sought, but only if the person has received an appointment with the Medical Foundation in writing. [47]



Scarring on the back of torture survivor

6 Lesbian, Gay, Bisexual and Transgender Asylum Seekers

The Home Office has generally recognised Lesbian, Gay, Bisexual and Transgender (LGBT) asylum seekers as a 'social group' under the 1951 UN Convention on the Status of Refugees since the case of *Shah & Islam* in 1999. In this case the House of Lords decided that groups who share an immutable characteristic "including women and homosexuals or other persons defined by sexual orientation" could constitute a social group if they face persecution in a country for being a member of that group. The UNHCR has recognised LGBT as constituting a social group under the convention since 1993. Since this shift in policy, the burden upon applicants has been to 'prove' their sexual orientation and to provide evidence that their treatment has amounted to persecution.

6.1 Key legal issues

There is no specific legislation relating to LGBT asylum seekers in the UK. Some critics have argued that international refugee law, and its subsidiary UK asylum law, are heterosexist in nature because responses to LGBT issues have been incorporated into existing legislation rather than separate legislation being drafted.[48] It has also been argued that LGBT issues do not appear to be taken into account when countries are included on the 'white lists' introduced in the 2002

46 **Medical Foundation for the Care of Victims of Torture** (May 2006) *Response to NAM quality team proposition paper: Improving asylum decisions through early and interactive advice and representation*
47 **Home Office** (undated) *Asylum Policy Instruction – The Medical Foundation for the Care of Victims of Torture*
48 **De Jong, A.** (2003) *LGBT Navigation Guide*, ICAR

"In Cameroon homosexuality is considered a crime. If you are convicted you can be imprisoned or fined. I was detained for two weeks by my partner's father because he blamed me for her death. Someone who worked with me helped me to escape to the UK."

Eva, asylum seeker from Cameroon Hearing: Cardiff. For full testimonies visit www.humanrightstv.com

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Nationality and Immigration Act. These countries are deemed safe by the Home Office, yet LGBT people may still suffer persecution there, for example in Jamaica.[49]

6.2 Issues of evidence

It has been argued that legal evidence of homosexuality is made problematic by the social realities of LGBT people.[50] The burden of evidence lies with the applicant as opposed to the Home Office. The credibility of LGBT asylum claims is hindered by several factors:

a) The conduct of the appellant – delaying the claim or disclosing new information late in the procedure can have a negative impact on their application. Many asylum seekers are unaware of their right to apply for asylum on the basis of their sexual orientation and this leads to many claiming on false grounds.[51] Many LGBT asylum seekers find it difficult to 'come out' to their legal representative or interpreter, particularly if they are from the same community, thus rendering the credibility of their sexual orientation questionable in the eyes of the courts. [52]

b) The conduct of courts, legal representatives and decision makers – decision makers may see former heterosexual relationships or having children as evidence of a false claim by LGBT asylum seekers.

c) The lack of country information – there is insufficient specific, detailed country information on the persecution of LGBT people for legal representatives to represent clients. Moreover, many human rights groups consider the subject taboo, consider LGBT rights a 'western concept' or risk funding for pursuing such work and therefore refrain from documenting human rights abuses based on sexual orientation.[53]

6.3 Sexual orientation guidelines

The UK Lesbian & Gay Immigration Group (UKLGIG) and the Immigration Law Practitioners Association (ILPA) are drafting sexual orientation guidelines with the purpose of enabling "practitioners and decision-makers to apply the Refugee Convention in a way which embraces the totality of human experiences", raising awareness of LGBT experiences of persecution and to assert and affirm the rights of LGBT individuals to international protection.

49 **De Jong, A.** (2003) *LGBT Navigation Guide*, ICAR

50 **McGhee, D.** (2000) 'Accessing homosexuality: truth, evidence and the legal practices for determining refugee status – the case of Ioan Vraciu', *Body and Society*, vol.6, no.1, pp.29-50

51 **Researching Asylum in London** (2006) *Interview with immigration lawyer working with LGBT asylum seekers*, 20/12/06

52 **Jivraj, S., De Jong, A. and Tauqir, T.** (2002) *Identifying the difficulties experienced by Muslim lesbian, bisexual and transgender women in accessing social and legal services*

53 **De Jong, A.** (2003) *LGBT Navigation Guide*, ICAR; **Amnesty International** (2001) *Crimes of hate, conspiracy of silence: Torture and ill-treatment based on sexual identity*