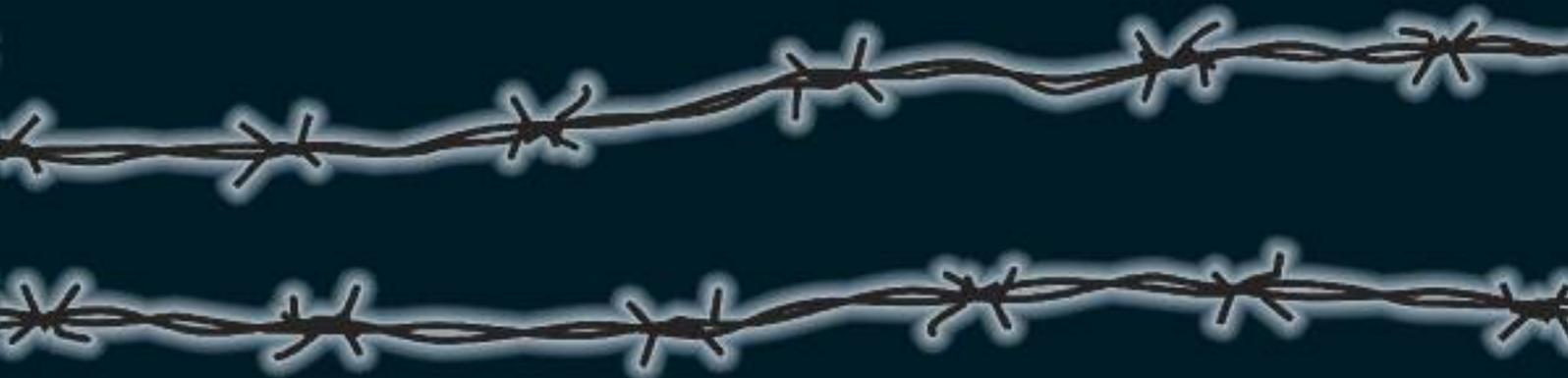


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Ethnicity Religion
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The Criminalisation of Migrant Women — research findings and policy and practice implications

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What happens in the criminal justice system when ‘offenders’ are also victims? Between May 2010 and November 2011, we carried out research on the criminalisation of migrant women (ESRC funded).¹ The overall aim of this research was 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. We have been looking at this in the context of economic and political debates around migration and asylum and the increasing awareness of the scale of international crime that profits from the illegal movement of people across borders, their sale as commodities, and their exploitation and abuse within organised crime.

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 nature of the problem. By identifying and monitoring cases of potential victims, our second task was to provide evidence on how such victims are 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 Trafficking² and the Human Rights Convention.³

In the November 2011 edition of the *Prison Service Journal* (Issue 298) we outlined the background to this research, our research design, the themes that were emerging and progress to date. In this article we summarise the key findings from our research report and the policy and practice implications which emerge.

Key findings

At the start of the research period in May 2010, The Ministry of Justice figures showed that there were 838 foreign national prisoners in the female prison estate, accounting for 19 per cent of the women’s prison population.⁴ The annual figure for foreign national receptions in 2009 was 2,454 of which 1,219 were untried receptions.⁵ 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, one third, were being held post completion of a prison sentence.⁶

The research data on case management focussed on the South-East of England and was gathered in relation to women who were initially held at HMPs Holloway and Bronzefield and then Morton Hall, Drake Hall and Downview.⁷ Interviews were also carried out at Yarl’s Wood IRC.⁸ It is worth noting that on four of these prison sites the average foreign national population was 30 per cent during the period of the research.

Snapshot data gathered on the primary offence charges for the foreign national population in one of the prisons indicated that 33 (26 per cent) of these were in relation to their immigration status, or the use of false instrument, deception or fraud to access work, benefits or pass through customs on entry or exit from the UK. For an additional 26 (24 per cent) the primary offence charges were for cannabis production, street robberies and the sale of counterfeit goods (offences potentially linked with trafficking).⁹ Hibiscus casework data revealed a similar pattern, but with a higher dominance of those charged in relation to deception and fraud.¹⁰

1. ESRC RES-062-23-2348.

2. Council of Europe (2005) *Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report*. <http://www.coe.int/trafficking>.

3. Of equal relevance are the United Nations General *Bangkok Rules for the Treatment of Female Prisoners* approved in October 2010, after commencement of this research.

4. Ministry of Justice (2010) *Offender Management Statistics*. Table 7.14 Population in prison establishments by nationality and sex. (One day count for 30th June 2009).

5. Ministry of Justice (2010) *Offender Management Statistics*. Table 6.4 Untried receptions in prison establishments by sex, ethnic group and nationality 2009.

6. These data were made available for the researchers by the UKBA Analysis, Research and Knowledge Management Team.

7. The key prisons at the time of research for post sentence transfers.

8. The Immigration Removal Centre, used by the UK Border Agency for women in this catchment area for hold, pending removal.

9. From two snapshots of primary offence charges within the foreign national population at HMP Bronzefield in May 2010 and September 2011.

10. Hibiscus, a voluntary sector agency, was working with foreign national prisoners on the five prison sites at the start of the research. Data was accessed from all new case files opened between 2009-10.

Following on from research presentations to foreign prisoners and detainees in the selected sites, 103 migrant women charged or sentenced for offences potentially linked with illegal entry or exit from the UK or work under the control of others consented to attend an initial screening interviews. From these interviews evidence emerged that 43 were victims of trafficking¹¹, of whom two were formally re-assessed as children whilst in the adult estate.¹² An additional 5 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 documents by their smugglers.

With their consent, the progress of these 58 women within this 'target group' was then monitored in terms of their management within the criminal justice and immigration systems. This was carried out by 49 follow up interviews in prison, 10 in Yarl's Wood IRC and 15 more in the community for those who were not immediately deported. We tracked their progress through the courts, observing 33 appearances and gathered additional information by communication by letter and examination of relevant paper documents held by those interviewed, their legal representatives and relevant others, wherever this was feasible.¹³

The screening interviews included women from 32 different nationalities, but the dominant nationalities of those within the target group were Nigerian (21) and Vietnamese (18) with representative from 15 other countries. Only 11 women in the target group had completed secondary education, 6 had only attended school for a couple of years and as a result had problems with literacy and 41 of these women needed interpreter support.

Five of those within the target group had been trafficked as children, one of whom had been re-trafficked after deportation from another EU country. For the others who were initially complicit in the decision to leave their country of origin, reasons for migration included a mixture of economic necessity and need for asylum and for all but eight it was their first move from home. Methods of recruitment showed regional variations in terms of marketing, the level of network involvement, payments and enforced debt bondage.

Eight of those trafficked did not travel directly to the UK, but were first moved to other countries to work en route. Twenty of the women trafficked were forced to work in prostitution and 15 in cannabis production. Six 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 seemingly 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 and for an additional two women 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 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 were

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 them to reveal to us 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. One of the key threats imposed by those who held them was to pass them on to the police or immigration and this, combined with their experiences of multiple trauma, impacted on their ability to cope with arrest, imprisonment and detention.

In terms of the offences for which those within the target group had been charged, the two key offences were for use of false instrument with intent (20) and production of a controlled drug (14). Of those 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

All of those interviewed indicated that they had been victims of physical and/or emotional abuse.

11. Conclusions as to victimisation of trafficking were drawn from accounts of recruitment, transportation, exploitation and evidence of physical and emotional abuse as outlined in the section on Identifying Victims in SOCA (2012) *National Referral Mechanism* (NRM) www.soca.gov.uk/about-soca/ukhtc/national-referral-mechanism.

12. Within this report the term 'women' includes these two children.

13. Formal consent was sought from all interviewees for engagement in this research and before accessing additional information from relevant others.

them, declined to go through this process.¹⁴ With those who did go through the NRM, the Competent Authority¹⁵ was UKBA who were also responsible for assessing their asylum status and in four of these cases they gave negative Conclusive Grounds decision. In these cases evidence was presented by the Poppy Project (three cases) and AFRUCA (one case) outlining the data they gathered from detailed interviews and their specialist experience to indicate a contrary conclusion.¹⁶ 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.¹⁷

For the other 36 there was no formal recognition of their victim status and no access to appropriate support or protection from deportation other than 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. In two other cases, where the women stated they had been held in sex work, there was only one follow up interview in custody by two male officers. In both cases the women, who were still on remand declined to disclose all that they had experienced without legal support. In none of the five cases of criminalisation resultant on work under duress, or in slavery like conditions, was this formally presented to the court in terms of a non guilty plea and only one of the women whose smuggler had stolen her documents was encouraged to plead not guilty to intentionally entering the country without legal documentation.¹⁸

A key question of this research was therefore why so few of those, whose disclosures at interview with the researchers exemplified the key indicators of being a victim of trafficking, had been identified as such within the criminal justice system. Similarly, we looked at why

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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 which inhibited a development of trust. The common experience was a different legal representative at each stage in the proceedings, no legal visits at the prison and the first contact with the barrister at court before the pleas and directions hearing.
- ❑ Only four of the women in the target group were granted bail and this was on average after four months in prison. The psychological impact of imprisonment, from point of arrest impacted on pleas entered and advice from legal representatives was influenced by trying to ensure the shortest term in custody.
- ❑ 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 their roles and responsibilities within the NRM.
- ❑ Reluctance on the part of the adult victim to pursue the formal route of recognition through the NRM.¹⁹
- ❑ In cases where the defence did not raise the issue of trafficking in defence but in mitigation, there were

14. This was due to a wish to return home and/or fear of the repercussions of making full disclosures.
 15. Within the NRM, UKHTC and UKBA are the two named Competent Authorities (CA) which are authorised to decide on whether the evidence gathered indicates the individual is a victim of trafficking. The initial decision is one based on reasonable grounds (RG), but the final decision, which the courts must take into account when deciding whether it is in the public interest to continue a prosecution with a potential victim of trafficking, is the Conclusive Grounds (CG) decision.
 16. These two organisations are recognised within the NRM protocol as First Responders due to their specialist knowledge in relation to trafficking issues with women (The Poppy Project) and children (AFRUCA).
 17. For clarification of the Legal Guidance on how the CPS should manage these cases see section on Prosecution of defendants charges with offences who might be trafficked Victims, Crown Prosecution Service Legal Guidance (2011) *Human trafficking and smuggling*. http://www.cps.gov.uk/legal/h_to_k/human_trafficking_and_smuggling/ (Latest Update April 2011).
 18. This resulted in a finding of Not Guilty.
 19. The consent of a child is not required.

only two examples where the CPS adjourned proceedings for an NRM assessment, resulting on a decision as to whether it was in the public interest to continue with the prosecution. This did not happen in court proceedings for any of those charged in relation to cannabis production.

The greatest fear of most of those interviewed appeared to be that of return to their home country. Thirty-one 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 trafficking or abuse by others. Evidence gathered from interviews with asylum seekers in custody²⁰, indicated that they were disadvantaged in terms of:

- failing to receive appropriate advice from their legal representative 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 not being given advice on how to gather relevant information to ensure that they were adequately prepared for the interview
- seeming failure on the part of asylum officials 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.²¹

One common experience of all women interviewed was not understanding what was happening in terms of management of their cases and not being given the opportunity by the police, courts or their legal representative to tell their whole story. This was evidenced in interviews when the researchers were asked: 'Can you please tell me what is happening' and 'why after all I have

been through are you the first person to listen to my whole story?' The women's experiences in court were that they were effectively 'off stage' and although the majority were technically guilty of the action with which they were charged, they felt that they should have the opportunity to explain why this action was committed.

The difficulties that these women faced in understanding the systems through which they were being processed was exacerbated by failure to ensure the provision of adequate interpreter support and access to documents in a language they could understand. This was observed by the researchers in a number of court appearances 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. This lack of understanding, receipt of letters they could not understand, including those from UKBA with a time limit for response, created many demands for prison diversity teams and a number of women talked of reliance on bi-lingual prisoners for help in understanding these communications.

Twenty-eight of the women in the target group stated they had dependent children and one of their primary concerns was in relation to their children. For the seven who had children within the UK, arrest procedures and refusal to grant bail resulted in traumatic separations, in two cases exacerbated by the fact that children were being breastfed. In three cases monitored, where children were taken into care by social services, re-contact was only re-established after three weeks, six weeks and 14 weeks and one of the women had only one visit by her children during her 16 weeks in custody. Upon release there were further delays in re-unification. This is despite the fact that none of these women were considered to present a risk to their children.

There were equal concerns expressed by the 21 women, whose hold by traffickers had cut off all communications with their children back home. In two of these cases, the mother's escape from her traffickers had repercussions for the children, with carers having to relocate following telephone threats, a kidnap attempt and a violent attack on a family member to establish the children's whereabouts.

One common experience of all women interviewed was not understanding what was happening in terms of management of their cases and not being given the opportunity by the police, courts or their legal representative to tell their whole story.

20. This includes those from the wider screening group.

21. Querton (January 2012) *A gender analysis of UK asylum law, policy and practice*, Asylum Aid, demonstrates how widespread this failure is.

Key Policy and Practice Implications

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

1. The identification of victims could arguably be improved by the following:

- 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.²²
- Exploring of different ways of increasing awareness of the trafficking indicators by the police, DWP²³ 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 a Conclusive Ground 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.²⁴

2. Management through the criminal justice system 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?'
- The routine translation of letters and key court documents to ensure the defendant understands what is happening and their rights in relation to this.

3. Management through immigration procedures 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 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 them 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. They should always be advised of the option of a female case worker and interpreter.
- 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

22. 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. European Union Parliament (05/04/2011) *Directive 2011/36EU on preventing and combating trafficking in human beings and protecting its victims* European Union Parliament (2011).

23. Department of Work and Pensions, who are involved in prosecutions where fake documents have been used to access a National Insurance number or benefits.

24. Authorised healthcare staff are formally recognised as First Responders in the NRM.

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 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 would be of value.

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 to ensure better compliance with the European Convention on Trafficking, the Human Rights Convention and the Bangkok Rules approved in 2010.²⁵

PRISON SERVICE
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Edge Hill
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The Prison and the Public

27 March 2013
Edge Hill University

Plenary speakers:

Dr Jamie Bennett (Governor of HMP Grendon, Research Associate at the Centre for Criminology, University of Oxford, and Editor of the *Prison Service Journal*).

Eric Allison (prisons correspondent for the *Guardian* newspaper, trustee of the Shannon Trust and a former prisoner).

This one-day conference will focus on the relationship and interface between the prison and the public. The imposition of state punishment has historically kindled the public imagination and, as such, the 'private' world of the prison has become increasingly exposed through a range of modes. The aim of this conference is to explore the variety of means through which the prison becomes connected with the public and vice versa. This conference will be multi-disciplinary, topics will include:

- Representations of prisons in film, TV and literature
- The relationship between the prison, prison service and the public
- The role and methods of the media and journalism in relation to the prison
- Academic analysis (criminological, historical) of the prison and the public
- The construction, purpose and diversity of prison exhibitions
- Visual images of, and from the prison in art and photography.

Speakers will include academics, writers, practitioners, artists, journalists, archivists and curators and those who work within TV and film. Selected contributions to this conference will be published in a special edition of the *Prison Service Journal*.

Please submit an abstract of about **250 words** and a short biography by **Friday 22 February 2013** to either Alyson Brown (browna@edgehill.ac.uk) or Alana Barton (bartona@edgehill.ac.uk). To book whether giving paper or just attending see www.ehu.ac.uk/bookthepisonandthepublic

25. UN General Assembly A/C.3/65/1/5 (2010) (2010) *Bangkok Rules for the Treatment of Women Prisoners*. (Of particular relevance are rules 5,10,11,12, 13, 25 and 26).