

# The rights of women seeking asylum: a charter

## explanatory notes

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# Explanatory notes

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**Women seeking asylum have the right to have their protection claims determined by an asylum system in the UK that is informed, in all aspects of its policy and operations, by a thorough understanding of the particular forms of persecution and human rights abuses that women experience because of their gender and of their particular needs as women**

**To realise this right, the UKBA should:**

- a. *appoint a women's champion from its Senior Management Team*
- b. *establish a gender monitoring group to ensure implementation of relevant policies*
- c. *ensure the role of the Race Monitor, expanded to look at equality issues and placed within the new independent inspectorate, includes gender issues*
- d. *undertake a gender impact assessment on all current and proposed asylum policies and procedures and make any necessary adjustments to address discriminatory or negative impacts on women*
- e. *include the implementation and monitoring of the Asylum Policy Instruction on gender issues in the asylum claim (Gender API) in the Diversity Equality Action Plan (or equivalent)*
- f. *provide appropriate training on a regular basis to ensure that staff understand the reason for initiatives related to women's rights and implement them appropriately*
- g. *promote and demonstrate active commitment to non-discriminatory practice as expressed in its gender policies both internally and externally and work within the European Union to promote good practice to ensure that the EU directives on asylum are interpreted in a gender sensitive way*

## 1 EXPLANATORY NOTES

- a** The role of women's champion is to drive a strategy of gender mainstreaming by taking an overview of, and responsibility for, issues affecting women asylum seekers, developing, implementing and monitoring policies and practices that are relevant to women, liaising with stakeholders including women asylum seekers and with named UKBA staff in each region responsible for gender issues.
- b** The gender monitoring group should ensure implementation of an action plan based on the points in this charter. The group should include external stakeholders.
- c** As an independent appointment the monitor for equality issues (formerly the Race Monitor) should provide an oversight of the diversity equality scheme and action plan including the consultation process, inclusion and omission of action points, whether objectives have been achieved or not, etc. The inspectorate is required to report annually to the Secretary of State and the reports are laid before Parliament.
- d** Through undertaking gender impact assessments the consequences of a proposed policy on different groups of women and men should be systematically identified, recognising the different circumstances in which they operate and valuing their difference and diversities.
- e** The implementation of the Gender API should become part of UKBA's compliance with the Gender Equality Duty
- f** New procedures may not be implemented appropriately if staff do not have a fundamental understanding of the underlying reason for introducing them, so their training must reflect this. For example, training for Case Owners should include how women's experience of persecution may differ from men's, how their cases can be interpreted within the Refugee Convention, how to recognise indicators of sexual violence, such as stress reactions, dissociative conditions and feelings of shame, how to access country information relevant to women.
- g** For example gender policies should be referred to in reports to international bodies and the use of UNHCR gender guidelines should be promoted across EU member states.

## 2

## Women seeking asylum have the right to an asylum determination process that recognises and takes into account their experiences of persecution and human rights abuses

### To realise this right, the UKBA should:

- a. *revise the gender API to fully meet women's needs*
- b. *ensure that the full and consistent implementation of the gender API is monitored and regularly reviewed and that a thorough understanding of the gender API becomes a core competency for UKBA Case Owners and a key criterion in their accreditation*
- c. *the detained fast track is incompatible with a gender-sensitive asylum process but whilst it continues, ensure the screening process is sufficiently robust to exclude from the detained fast track those who claim to have experienced gender-based harm and, in line with existing policy, exclude those who are 24 weeks or more pregnant or have serious health issues*
- d. *ensure that those who may have been trafficked into the UK have full and appropriate access to the asylum determination system*
- e. *build on the improvement to country information reports in relation to women and ensure they are used appropriately by Case Owners*

## 2 EXPLANATORY NOTES

- a For example the gender API should include procedures to make it easier for women to disclose their experiences at asylum interviews (eg female Case Owners and interpreters, provision of childcare) and recognise (as the criminal justice system does) that late disclosure of traumatic experiences should not undermine credibility.
- b The gender API should be monitored through the quality audit process and incorporated as a core competency and criteria for Case Owners accreditation

## 2 EXPLANATORY NOTES CONTINUED

- c The suitability criteria for inclusion in the detained fast track is that a case should be one where a quick decision may be made. Women who have experienced gender-based harm such as rape, sexual violence, domestic violence, honour crimes, forced marriage, female genital mutilation or persecution because of their sexuality will need time to build up trust in the officials who interview them. Interpreting their cases in relation to the Refugee Convention is complex and does not allow for quick decisions. The UKBA's instruction for the detained fast track states that a suitability assessment must be carried out throughout the life of a claim. UKBA already has a policy of not accepting women over 24 weeks pregnant or with serious health conditions into detention and it is important that this is strictly adhered to and extended to include all pregnant women. When a woman claims to have experienced gender based harm, her case should be screened out of the detained fast track and should be heard within the non-detained NAM process.
- d Where an issue of trafficking has been raised, there is a need to allow for a reflection period as required by the European Convention on Trafficking, implement the UKBA's policy not to detain or fast track such cases, not remove to a third country (ie suspend the Dublin Convention), maintain an in country right of appeal (ie don't certify cases), not prosecute for offences which women were forced to commit due to their trafficking situation (eg documentation fraud) and ensure country information covers trafficking issues
- e Information on all types of harm affecting women and their social-economic and cultural status in their countries of origin should be incorporated throughout country information reports

### **Women seeking asylum have the right to accommodation, support and healthcare appropriate to their particular needs as women**

#### **To realise this right, the UKBA should:**

- a. *develop and implement minimum standard procedures for UKBA accommodation and support providers*
- b. *ensure girls and young women (including those where there is an age dispute) are placed in women only accommodation*
- c. *suspend reporting requirements on women who are pregnant or have babies or young children*
- d. *provide for the particular needs of women on section 4 (hard case) support*
- e. *alleviate the gender impact of policies that lead to destitution*

# 3

### 3 EXPLANATORY NOTES

- a** For example, provide women-only accommodation if required, have systems to monitor security in mixed accommodation, adhere to Policy Bulletin 70 on Domestic Violence, provide or pay for childcare for attending legal/medical appointments, deliver section 4 vouchers and other services in a timely manner. In considering quality and effectiveness of accommodation, the independent Monitor of Accommodation Centres should take gender issues into account.
- b** Where there is an age dispute young women should be treated as girls for the purposes of providing appropriate accommodation
- c** Women with young children or babies or those who are pregnant should not be expected to undertake long complicated journeys to comply with reporting requirements; their childcare responsibilities make the risk of absconding very low
- d** Automatically give priority A status to applications from women for section 4 support, ensure women who are pregnant and new mothers receiving section 4 support receive the same entitlements such as maternity grants as women on section 95 support, ensure that women with young children or those with health problems do not have to travel long distances to use their section 4 vouchers
- e** Destitute women are vulnerable to sexual violence or exploitation. To alleviate this, the UKBA should grant permission to work, provide financial support, accommodation, access to education and healthcare to refused asylum seekers. At the least they should provide section 4 support to women experiencing domestic violence

## 4

**Women seeking asylum have the right to be treated with dignity in a way that is appropriate to their needs as women and that ensures their safety if in detention or during removal.**

**To realise this right, the UKBA should:**

- a. *prevent women who have suffered gender-based harm from being detained*
- b. *ensure the dignity and safety of women in immigration removal centres*
- c. *take women out of detention immediately if it is discovered that they have experienced gender-based harm*
- d. *not detain women who are breastfeeding or at any stage of pregnancy*
- e. *end the detention of families with children*
- f. *establish a pre-removal risk assessment process ensuring that it is sensitive to the particular needs of women*
- g. *ensure an appropriate gender balance for staff involved in enforcement activity is achieved and that they are appropriately trained and monitored*

#### 4 EXPLANATORY NOTES

- a People who come to the UK to claim asylum should not be detained but if they are, safeguards should be put in place. For example, during screening the UKBA should facilitate access to legal advice and comprehensive health assessments with female medical staff including specific questions regarding experiences of torture or sexual violence and ensure such assessments are carried out before decisions are made on detention
- b The UKBA should provide a staffing ratio in women's immigration removal centres at the same level as in women's prisons, employ female medical and social work staff, provide access to gender sensitive health services, including mental health services, to at least the standard of the NHS as per the HMIP's expectations and UKBA's operating standards
- c For example the UKBA already has a policy that people who have independent evidence of having been tortured are not generally suitable for detention which needs to be adhered to, recognising the difficulties of providing independent evidence.

## 4 EXPLANATORY NOTES CONTINUED

- d** The Enforcement Instructions and Guidance should be amended to prevent pregnant women being detained. They currently say pregnant women should not normally be detained but the exceptions are women where removal is imminent and confinement will not be before then and women less than 24 weeks pregnant who can be detained in the fast track process
- e** Detention is particularly traumatic for children. There is no evidence that families are likely to abscond. Meaningful alternatives to detention need to be explored as announced by the Minister for Immigration, Liam Byrne, in January 2008
- f** Pre-removal assessments need to take into account factors specific to women including pregnancy, post-natal problems, childcare, etc and if a risk is identified, the removal should be stopped and legal advice provided.
- g** All enforcement teams should include women and all staff need training on particular sensitivities of working with women.

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