



# Silenced voices speak:

Strategies for protecting migrant women from violence and abuse

Rights of Women 2011

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## **Front cover image: N Yeman by Hannah Maule-ffinch**

**N Yeman came to this country seeking asylum in 2003 from Eritrea. She lives in a shared house and receives £30 a week in benefits.**

The images in this report are part of the Home Sweet Home photography project. In this project women who have sought asylum in the UK have documented their lives in the UK and their day to day struggles to survive. The project and resulting exhibition are organised by Women for Refugee Women, a charity that challenges the injustices experienced by women who have sought refuge. The exhibition has been shown at Parliament, at the Riverside Studios in London and other venues. For details on how to hire the exhibition or reproduce the images, please contact Women for Refugee Women at [admin@refugeewomen.co.uk](mailto:admin@refugeewomen.co.uk) or 020 7250 1239, or for more information go to [www.refugeewomen.co.uk](http://www.refugeewomen.co.uk).

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# Executive summary

This research, which analyses six months of calls to Rights of Women's immigration and asylum law line, identifies and analyses the key barriers and issues for women seeking safety and protection in the UK.

## Recommendations

These recommendations span Government departments and range from the simple (change the UK Border Agency's fees policies) to the international (sign and ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence (2011)). All of our recommendations are in line with the Government's own commitment to end violence against women and the UK's international obligations to protect women from violence. If implemented, these recommendations will ensure that a particularly vulnerable group of women are able to access protection and live their lives free from violence and abuse.

## Asylum

- ✓ Situate the work of the Gender Champion in the Government's commitments to end violence against women as set out in the *Call to End Violence Against Women and Girls*.
- ✓ Improve the way that decision-makers assess credibility in cases that involve rape and other forms of gender-based violence.
- ✓ Reconsider the decision not to be bound by the recast **Qualification Directive**.
- ✓ Sign and ratify the **Council of Europe Convention on preventing and combating violence against women and domestic violence (2011)**.

## European free movement law

- ✓ Negotiate changes to European free movement law to improve the position of family members whose relationship breaks down because of domestic violence.
- ✓ Review the habitual residence test to ensure that it does not discriminate against women who are temporarily unable to work or seek work.

## Immigration

- ✓ Situate the work of the Gender Champion in the Government's commitments to end violence against women as set out in the *Call to End Violence Against Women and Girls*.
- ✓ Enable applicants who are able to provide evidence of their destitution to be exempt from paying application fees in all gender-based violence and private and family life cases.
- ✓ Change the domestic violence rule to remove the new 'criminality requirement' and to enable other vulnerable victims of domestic violence to be able to apply, for example, those on student or fiancée visas.
- ✓ Retain legal aid for cases that involve violence against women or gender-based violence, including for victims of trafficking, migrant domestic workers and victims of domestic violence. This will include immigration cases but also those that involve other areas of law, for example, in relation to applications for criminal injuries compensation.
- ✓ Retain legal aid in immigration law cases where the right to private and family life is relied upon.

# Overview

## Our international obligations to protect all women from violence

The *UN Declaration on the Elimination of Violence against Women (1993)*<sup>1</sup> defines violence against women in Article 1 as:

*“any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”.*

Article 2 of the *Declaration* states that violence against women encompasses, but is not limited to:

*“...physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution...”*<sup>2</sup>

The Government uses this definition in its *Call to End Violence Against Women and Girls and Action Plan*<sup>3</sup>. In these documents the Government expresses its commitment to work towards the elimination of violence against women and girls.

The UK is a signatory of the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*. CEDAW prohibits discrimination and requires States to respond to violence against women (regardless of immigration or other status) while Article 6 of CEDAW specifically requires States to take “all appropriate legislative and other measures” to deal with trafficking. General Recommendations are issued by the Committee that monitors compliance with CEDAW. *General Recommendation 12 (1989)* sets out the positive obligations on States to eliminate gender-based violence while *General Recommendation 19 (1992)* goes further in describing the positive obligations on States to eliminate gender-based violence and explains that States may be responsible for private acts if they fail to act with due diligence to prevent the violation of rights or to investigate and punish acts of violence.

Article 3(d) of the *Council of Europe Convention on preventing and combating violence against women and domestic violence (2011)* states that:

*“gender-based violence against women” shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately....”*

The Committee that monitors States’ compliance with CEDAW has found that “gender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men”. The European Court of Human Rights has ruled that a State’s failure to protect women from violence is unlawful discrimination because it breaches their right to equal protection of the law<sup>4</sup>

<sup>1</sup> A/RES/48/104.

<sup>2</sup> Article 3(a) of the *Council of Europe Convention on preventing and combating violence against women and domestic violence (2011)* uses a very similar definition, the difference is that in Article 3(a) it is explicitly stated that violence against women is a violation of human rights and a form of discrimination against women.

<sup>3</sup> *Call to End Violence Against Women and Girls* [www.homeoffice.gov.uk/publications/crime/call-end-violence-women-girls/vawg-paper?view=Binary](http://www.homeoffice.gov.uk/publications/crime/call-end-violence-women-girls/vawg-paper?view=Binary).

<sup>4</sup> *Opuz v Turkey [2009] (Application no. 33401/02)* paragraph 191.

Whilst political commitments and legal mechanisms exist to protect migrant women from violence, Rights of Women is concerned that a number of current policies and practices do not reflect these commitments, as proposals to 'reform' legal aid illustrate (see Chapter 4 for further information).

## The legal mechanisms that exist to protect women from violence in the UK

Women who are outside of their country of origin are particularly vulnerable to experiencing gender-based violence as the **Beijing Platform for Action** recognises:

**"Some groups of women, such as...refugee women, women migrants, including women migrant workers.... destitute women, women in institutions.... are also particularly vulnerable to violence".<sup>5</sup>**

Women in this situation may have fled gender-based violence in their country of origin and be experiencing it again in the UK. They may have migrated for family formation or reunion or for economic advantage, but experience violence in the UK. They may be trafficked for the purposes of sexual exploitation. Refugee and asylum-seeking women face multiple forms of discrimination that place them at greater risk of experiencing violence. A literature review carried out by the Refugee Council which analysed the vulnerabilities of refugee women to sexual violence found that they were vulnerable to violence at all stages in the "refugee cycle".<sup>6</sup> Migrant women in the UK who are experiencing violence have an intensified experience of it because their immigration status often prevents them from accessing life-saving services.<sup>7</sup>

Trafficked women are routinely responded to as immigration offenders rather than victims of human rights abuses and returned to their country of origin, frequently to face re-trafficking.<sup>8</sup> Migrant domestic workers are often unable to leave an abusive employer and face proposals which will further increase their vulnerability to exploitation.<sup>9</sup>

A number of international, regional and domestic legal mechanisms have been developed to respond to these issues. These enable women who are outside of their country of origin and who are at risk of or are experiencing gender-based violence to secure safety in the UK.

**The 1951 UN Convention Relating to the Status of Refugees (the Refugee Convention)** has been interpreted to offer protection to women experiencing or at risk of violence in their country of origin, including women experiencing domestic violence and trafficked women.<sup>10</sup> Specific guidance has been developed for UK Border Agency (UKBA) case-owners to enable them to understand and respond to women's asylum claims. *Gender Issues in the Asylum Claim*<sup>11</sup> sets out the different forms of persecution and harm that woman may experience and explains how the **Refugee Convention** should be interpreted to protect them. **The Council of Europe Convention on Action Against Trafficking in Human Beings (2005) (the Trafficking Convention)** enables some victims of trafficking to receive residence permits. The National Referral Mechanism (NRM) has been developed so that the UK meets its obligations under the **Trafficking Convention** to identify and protect victims of trafficking.<sup>12</sup>

The domestic violence rule, paragraph 289A of the **Immigration Rules**, enables those who have come to the UK as partner of someone who is British or settled here and whose relationship breaks down because of domestic violence to apply for settlement in the UK.

The Home Office and Association of Chief Police Officers (ACPO) define domestic violence as:

**"any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality."**

**This definition is also used by the Crown Prosecution Service, the Ministry of Justice and the UKBA.<sup>13</sup>**

<sup>5</sup> **Beijing Platform for Action**, Chapter IV(D) paragraph 116.

<sup>6</sup> *Refugee and Asylum Seeking Women Affected by Rape or Sexual Violence*, The Vulnerable Women's Project, Refugee Council (2009) page 15.

<sup>7</sup> *Measuring Up? UK compliance with international obligations to protect women from violence*, C Briddick, H Camplin, K Perks, E Scott and R Tweedale, Rights of Women (2010) [www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk).

<sup>8</sup> *Wrong kind of victim? One year on: an analysis of UK measures to protect trafficked persons*, L Arocha and M Dottridge, Anti-Trafficking Monitoring Group (2010).

<sup>9</sup> *Ending the Abuse, Policies that work to protect migrant domestic workers*, M Lalani, Kalayaan (2011) and the UK Border Agency's *Employment-related settlement, tier 5 and overseas domestic workers*.

<sup>10</sup> See cases like *Shah and Islam [1999] UKHL 20* and *SB Moldova [2008] UKAIT 00002* as well as the UNHCR's *Guidelines On International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*.

<sup>11</sup> [www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/gender-issue-in-the-asylum.pdf?view=Binary](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/gender-issue-in-the-asylum.pdf?view=Binary).

<sup>12</sup> For further information see Rights of Women's legal guide *Trafficking, sexual exploitation and the law* [www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk).

<sup>13</sup> See the CPS' *Policy for Prosecuting Cases of Domestic Violence* (2010), the Ministry of Justice's *A Guide to Civil Remedies and Criminal Sanctions* (February 2003, updated March 2007); and the UKBA's *Victims of domestic violence* guidance.

The Sojourner Project and the scheme that will replace it in 2012 enables this group of women to access support in a place of safety while they prepare their domestic violence rule application and it is decided by the UKBA.<sup>14</sup>

Women from other European Economic Area (EEA) countries and women who are the family members of EEA nationals have rights in the UK, including to work, seek work, study or be self-employed. Article 13 of the **Citizen's Directive (2004/38/EC)** enables some family members of EEA nationals to retain their rights of residence in the country they are living in if their relationship ends in certain circumstances, including because of domestic violence.

## Our research

The legal mechanisms described enable women who are outside of their country of origin and who are experiencing, or at risk of experiencing, gender-based violence to obtain protection from that violence in the UK (depending on the particular circumstances of the case). However, the ability of a woman to secure this safety will depend on a number of factors of which the availability of a legal protection mechanism is only one. A woman seeking protection in the UK will also need to have legal advice and representation, support from specialist services, financial support and accommodation in a place of safety.

This research, which analyses six months of calls to Rights of Women's immigration and asylum law line, identifies and analyses the key barriers and issues for women seeking safety and protection in the UK. It

highlights the protection 'gaps' that exist and gives a voice to the women who have called us and who have fallen through those gaps. Our report makes clear and concrete recommendations which, if implemented, will ensure that this particularly vulnerable group of women are able to access protection and live lives free from violence. All of our recommendations are in line with the Government's own commitments to end violence against women and the UK's international obligations to protect women from violence.

Throughout this report we have drawn on the statistical information that we collect from our advice line service users. Further information about this is given in Chapter 1 and Appendix 1. We have also, where appropriate, used case-studies from our advice line to highlight particular issues of concern. Where we have done this, details of the caller and the case have been changed to ensure confidentiality.

## Acknowledgements

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### Shadow by Evelyne

I have no place to live and no money. I have nothing except what people give me out of charity. I walk the streets in the day. Today the weather is nice so it's okay, but some days the weather is so bad and I have nowhere to go. On days like those it is easy to feel hopeless and lost.

<sup>14</sup> For further information on the domestic violence rule and Sojourner Project see Rights of Women's legal guide *Domestic violence, immigration law and no recourse to public funds* [www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk).

<sup>15</sup> Women for Refugee Women supports Women Asylum Seekers Together London, a self-help group of women who have sought asylum in the UK. For further information visit [www.refugeewomen.co.uk/index.php/what-we-do/wast-self-help-group/wast-london](http://www.refugeewomen.co.uk/index.php/what-we-do/wast-self-help-group/wast-london).

<sup>16</sup> Women for Refugee Women challenges the injustices experienced by women who seek asylum in the UK, for further information see [www.refugeewomen.com](http://www.refugeewomen.com).

# Chapter 1

## Statistical overview

The statistical information presented in this report provides an insight into the legal problems our callers faced between April and September 2011, the first six months that Rights of Women's immigration and asylum law line operated. The quantitative and qualitative information that we collected details the experiences of migrant women in the UK, demonstrates the prevalence of gender-based violence and analyses the barriers, some of them insurmountable, that women with an insecure immigration status face when seeking to secure protection in the UK.

Between April-September 2011 we provided legal advice to 95 callers. 27% of our callers identified themselves as asylum-seekers, refugees or women with another insecure immigration status. 35% of callers stated that they were supporting a woman in this position.

Our callers contacted us for advice on a range of issues, including claiming asylum, applications under the domestic violence rule, trafficking, and cases based on family life in the UK. The following table provides a break-down of the case categories that we advised on during this period.

### Case categories

Almost all of our callers will have been advised in more than one of the areas of law identified, for example, asylum and sexual violence or immigration and domestic violence.

Percentage of callers	Area of law
14%	Asylum
3%	Asylum support law
42%	Domestic violence
3%	Community care law
19%	European free movement law
22%	The domestic violence rule
40%	Other immigration law issues
4%	International family law
19%	Other financial support issues
1%	Trafficking
10%	Sexual violence
11%	Welfare benefits
1%	Other case categories

The remaining chapters of this report examine some of the most common legal problems faced by our callers in more detail. Further information about our callers during this period can be found in Appendix 1.

# Chapter 2

## Asylum

- 14%** of callers to our asylum and immigration line sought legal advice on asylum law.
- 3%** of callers sought advice on asylum support law.
- 5%** of callers sought advice on asylum and sexual violence. **2%** sought advice on asylum and domestic violence.
- 2%** sought advice on asylum and financial support issues. **1%** sought advice on asylum and asylum support law.
- 1%** sought advice on trafficking law issues.

### Asylum

A claim for asylum is a claim for protection based on the **Refugee Convention** and/or on Article 3 of the **European Convention on Human Rights (ECHR)**, the right to be free from torture, inhuman and degrading treatment. Decisions about asylum claims are made by case-owners from the UK Border Agency (the UKBA) and can be appealed to an independent tribunal. Those who seek asylum in the UK are eligible to apply for financial support while their claim is being decided.<sup>17</sup>

### Asylum and gender-based violence

As a result of work like that of Asylum Aid's *Every Single Woman* campaign under the *Women's Asylum Charter*, there have been significant improvements in the UKBA's response to women asylum-seekers.<sup>18</sup> This is particularly important, not just because of the vulnerability of women asylum-seekers and refugees to further violence and abuse,<sup>19</sup> but also because evidence suggests that the quality of UKBA decision-making in women's asylum cases remains poor.<sup>20</sup> These improvements include the appointment in 2010 of a

Gender Champion for the UKBA and the publication of guidance on gender and sexual orientation in 2011.<sup>21</sup>

**A rape crisis worker sought advice for a woman from Somalia she is supporting. She is HIV+ as a result of rape and has other significant physical and mental health problems. She has been in the UK for 3 years but has not made any claim for protection; she has been too unwell and too afraid. She has family in the UK who assist her but they are unaware of her status or that she has experienced sexual violence.**

However, one area that remains a cause for concern is the assessment of credibility by UKBA decision-makers and Immigration Judges, particularly in cases that involve sexual or other forms of gender-based violence. Women like the Somalian woman referred to above are

<sup>17</sup> For further information about asylum law and process see *Seeking Refuge? A handbook for asylum-seeking women*, C Briddick, Rights of Women (2009) [www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk).

<sup>18</sup> Asylum Aid's *Every Single Woman* campaign under the *Women's Asylum Charter* focuses on the disparity of treatment of asylum-seeking women compared with women settled in the UK, it advocates for a change of culture to produce a genuinely gender sensitive asylum system. For further information see [www.asylumaid.org.uk/pages/charter\\_of\\_rights\\_of\\_women\\_seeking\\_asylum.html](http://www.asylumaid.org.uk/pages/charter_of_rights_of_women_seeking_asylum.html).

<sup>19</sup> *Refugee and Asylum Seeking Women Affected by Rape or Sexual Violence*, The Vulnerable Women's Project, Refugee Council (2009).

<sup>20</sup> *Unsustainable: the quality of initial decision making in women's asylum claims*, H Muggerridge and C Maman with additional input provided by C Querton, R Hargrave, D Singer and N Oakeshott, Asylum Aid (2011) [www.asylumaid.org.uk](http://www.asylumaid.org.uk).

<sup>21</sup> *Gender Issues in the Asylum Claim* and *Gender Identity Issues in the Asylum Claim* can be downloaded from here [www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/).



able to make claims for asylum in the UK; however, delays in making a claim or in disclosing sexual violence are often used by decision-makers to conclude that the applicant's account of the persecution she has suffered (and is at risk of suffering) cannot be relied upon. This contrasts with the criminal justice system where the police and courts are reaching a better understanding of why complainants may delay reporting sexual violence.<sup>22</sup> Decision-makers at the UKBA need to understand what specialists who support survivors of sexual violence do, that disclosure is a process not an event and that delays in making claims for protection or in disclosing sexual violence, either to the UKBA or to others, are not indicators that a person is lying.

## Asylum and financial support issues

**A community mental health nurse sought advice for her service-user Anna. Anna is destitute; her solicitor is preparing a fresh claim for her as she has new evidence that supports her case. However, Anna's mental health has deteriorated significantly recently as a result of her destitution and because she has not heard from her daughter (who is in her country of origin).**

Refused asylum-seekers may be able to obtain financial support from the UKBA (under section 4 of the **Immigration and Asylum Act 1999**) or from their local authority (under section 21 of the **National Assistance Act 1948**).<sup>23</sup> However, a lack of knowledge about these options, the narrowness of the section 4 criteria,<sup>24</sup> poor quality UKBA decision-making<sup>25</sup> and the increasing financial pressures faced by local authorities place women like Anna in a very vulnerable position as they are denied (often wrongly) the support and assistance they need in order to resolve their immigration status or even survive.

## Conclusions

Recommendations:

- ✓ Situate the work of the Gender Champion in the Government's commitments to end violence against women as set out in the *Call to End Violence Against Women and Girls*.
- ✓ Improve the way that decision-makers assess credibility in cases that involve rape and other forms of gender-based violence.
- ✓ Reconsider the decision not to be bound by the recast **Qualification Directive**.
- ✓ Sign and ratify the **Council of Europe Convention on preventing and combating violence against women and domestic violence (2011)**.

The UKBA needs to continue improving its response to women asylum-seekers by reaching an evidence-based understanding of the effects of gender-based violence on asylum applicants and how credibility should be assessed in the light of this. The UKBA also needs to significantly improve its asylum support system to ensure that destitution is not an intended or unintended consequence of the asylum system. It is not acceptable that 82% of UKBA decisions to refuse section 4 support on the grounds that the applicant is not destitute are overturned on appeal.<sup>26</sup> Local authorities need better guidance on their obligations towards refused asylum-seekers and support (including financial support) from central Government in dealing with these challenging cases. The current situation, which sees refused asylum-seekers being forced to approach local authorities for support when they are unable either to resolve their immigration status or obtain section 4 support only serves to shift costs from one area of Government to another at the expense of very vulnerable applicants.

At a European level the revision of the **Qualification Directive** offers an opportunity to raise the standards of protection offered to women and vulnerable persons seeking asylum in the EU. The revised text of the Directive, which has recently been accepted by the European Parliament and is due to be approved by the Council, requires member states to take gender issues into account when assessing asylum applications and specifically refers to forms of gender-based violence

<sup>22</sup> *R.v. Doody* [2008] EWCA Crim 2394.

<sup>23</sup> *SL and Westminster City Council* [2011] EWCA Civ 954.

<sup>24</sup> For further information see Chapter 11 of *Seeking Refuge? A handbook for asylum-seeking women*, C Briddick, Rights of Women (2009) [www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk).

<sup>25</sup> *No credibility: UKBA decision-making and section 4 support*, M Fishwick and R Sweeney, Asylum Support Appeals Project (2011) [www.asaproject.org](http://www.asaproject.org).

<sup>26</sup> *Ibid*, see page 3.

such as female genital mutilation (FGM), forced abortion and sterilisation. As such it represents an improvement in European asylum law.<sup>27</sup>

The **Procedures Directive** (which at the time of writing is under negotiation) offers further opportunities to mainstream gender-sensitivity into EU asylum law and process, and may ensure that the needs of vulnerable asylum-seekers are identified. Rights of Women is disappointed that the Government has announced its intention not to be bound by these Directives<sup>28</sup> as we believe that they would offer asylum-seekers in the UK with gender-based claims greater protection from violence.

Whilst a commitment to securing a gender-sensitive asylum-system is made in the Government's Call to *End Violence Against Women and Girls*,<sup>29</sup> Rights of Women is concerned that this has not been achieved as the issues of concern we have identified demonstrate. Consequently, we call on the Government to sign and ratify the **Council of Europe Convention on preventing and combating violence against women and domestic violence (2011)**, Article 60 of which offers specific protections to women asylum-seekers.



### **My Things by Madeleine**

**I do not unpack because I don't know when I'll have to leave. My friend lets me stay here but it is not forever.**

## **Article 60 – Gender-based asylum claims**

1. Parties shall take the necessary legislative or other measures to ensure that gender-based violence against women may be recognised as a form of persecution within the meaning of Article 1, A (2), of the 1951 Convention relating to the Status of Refugees and as a form of serious harm giving rise to complementary/subsidiary protection.
2. Parties shall ensure that a gender-sensitive interpretation is given to each of the Convention grounds and that where it is established that the persecution feared is for one or more of these grounds, applicants shall be granted refugee status according to the applicable relevant instruments.
3. Parties shall take the necessary legislative or other measures to develop gender-sensitive reception procedures and support services for asylum-seekers as well as gender guidelines and gender-sensitive asylum procedures, including refugee status determination and application for international protection.

The specific recognition of gender-based violence as persecution and serious harm alongside the adoption of gender-sensitive procedures and support services would assist women like those identified in the examples of calls given above. Women who experience gender-based violence would be treated with greater sensitivity and the effects of the harm that they have experienced would be understood. The provision of gender-sensitive support services would benefit women like Anna who have valid claims for protection but are trapped in a cycle of destitution that places them at risk of exploitation and, in Anna's case, serious mental health problems. Rights of Women advocates the adoption of a holistic, human rights-based approach to the challenges of determining entitlement to international protection in cases that involve violence against women. We believe that it is only by doing so that protection for all women can be achieved.

<sup>27</sup> Working Document on directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (Recast) Committee on Civil Liberties, Justice and Home Affairs, Rapporteur: Jean Lambert [www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-448.868+01+DOC+PDF+V0//EN&language=EN](http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-448.868+01+DOC+PDF+V0//EN&language=EN).

<sup>28</sup> See [www.homeoffice.gov.uk/media-centre/news/EU-asylum](http://www.homeoffice.gov.uk/media-centre/news/EU-asylum) and [www.womensviewsonnews.org/2011/10/gender-in-asylum-policies-guest-post-by-jean-lambert-mep/](http://www.womensviewsonnews.org/2011/10/gender-in-asylum-policies-guest-post-by-jean-lambert-mep/) for further information.

<sup>29</sup> *Call to End Violence Against Women and Girls* pages 15-16 [www.homeoffice.gov.uk/publications/crime/call-end-violence-women-girls/vawg-paper?view=Binary](http://www.homeoffice.gov.uk/publications/crime/call-end-violence-women-girls/vawg-paper?view=Binary).

# Chapter 3

## European free movement law

**19%** of callers to our asylum and immigration line sought legal advice on European Economic Area law (EEA law).

**10%** of callers sought advice on EEA law and domestic violence.

**9%** sought advice on EEA law and accessing welfare benefits.

**2%** sought advice on EEA law and other financial support issues.

### The European Economic Area

The European Economic Area (EEA) is the European Union (EU) (Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Greece, Germany, Hungary, the Irish Republic, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK) and three other countries that while not being members of the EU, are treated in a similar way. These countries are Iceland, Norway and Liechtenstein. Switzerland is not a member of the EU or EEA but it is treated as if it were.

The **Citizen's Directive (2004/38/EC)**<sup>30</sup> (the **Directive**) codifies current EU free movement law and sets out the rights of EU citizens and their family members to enter other EU States and reside in them. The **Immigration (European Economic Area) Regulations**<sup>31</sup> (the **Regulations**) aims to implement the **Directive** and sets out the rights of EEA nationals and their family members (whether or not the family member is an EEA national or from another, third country) in the UK.<sup>32</sup> The differences in rights between EU and EEA citizens are becoming less significant as the **Regulations** apply the same rights to all EU/EEA countries and Switzerland.

### EEA law and domestic violence

Regulation 10 enables the family members of EEA nationals who are not EEA nationals themselves (for example, the Malaysian wife of a French worker in the UK) to retain their rights of residence in the country they are living in if their relationship ends in certain circumstances, including because of domestic violence.

Whilst this provision enables some family members of EEA nationals to remain in the UK if their marriage (or civil partnership) ends in particularly difficult circumstances, including domestic violence, the provision is very limited because:

- the perpetrator of domestic violence must be present in the UK and exercising treaty rights at the time of divorce/dissolution; and,
- the survivor must be economically active, self-sufficient, or the family member of such a person.

<sup>30</sup> **Directive (2004/38/EC) on the rights of citizens of the Union and their family members to move and reside freely within the territory of the Member States.**

<sup>31</sup> SI No 1003.

<sup>32</sup> For further information about European law contact the AIRE Centre [www.airecentre.org](http://www.airecentre.org).

**Laila, from Jordan, sought advice following the breakdown of her relationship with her Norwegian husband who had been sexually and emotionally abusive to her. She is concerned because she understands that her rights to be in the UK are dependent on him and the fact that he works here. She wants to know what her rights are to leave the family home and seek a divorce. She is not able to work as she has problems sleeping. She has been diagnosed with depression and is receiving support from her GP. Laila does not want to return to Jordan because she fears how her family will respond to the breakdown of her marriage.**

In order to be able to rely on Regulation 10 the family member of an EEA national has to be divorced for one of the reasons set out above (e.g. domestic violence) and be economically active (or the family member of such a person) and the perpetrator must be present in the UK and exercising treaty rights. If Laila ends her marriage she will not be able to rely on Regulation 10 to retain her rights of residence in the UK unless she is able to work or otherwise be economically active or self-sufficient. For someone in Laila's position, a woman seeking to overcome an experience of violence, this is unlikely to be possible. Other women who may have problems satisfying the requirements of Regulation 10 are those with disabilities or other mental or physical health problems or those with young children or other caring responsibilities. Rights of Women has also advised women whose abusive husbands have ceased to exercise treaty rights in the UK, or who have left the UK before any divorce could occur. Women in these situations have no EEA rights to retain. Whilst a woman in Laila's position may separate from (rather than divorce) her husband, this will not be appropriate for all women and will offer no protection in cases where the perpetrator initiates divorce proceedings or leaves the UK.

## Access to welfare benefits

**Jo, a refuge worker, sought advice on whether or not she could offer a refuge place to a woman they were supporting who was experiencing domestic violence and was Lithuanian. The refuge, which is operated by a woman's organisation facing funding cuts, can only support women who are eligible for welfare benefits and Jo is unsure about the position of this service user because she has a young child and is not currently working or looking for work. Jo is concerned about her service user's safety. She states that if the woman had been British she would have been offered the place and would not be continuing to live with the perpetrator of violence.**

EEA nationals are not defined as 'persons subject to immigration control' and so are not excluded from entitlement to welfare benefits.<sup>33</sup> However, in order to be eligible for benefits such as income support, housing benefit, council tax benefit, income based job-seekers allowance, employment and support allowance and pension credit the applicant has to satisfy the habitual residence test which involves being habitually resident in the UK and having the 'right to reside'. The following are examples of EEA nationals who have the right to reside:

- Qualified persons and their family members (qualified persons are: workers; students; self-employed persons; retired/self-sufficient persons; and job-seekers).<sup>34</sup>
- A person who has resided legally in the UK for 5 years.
- Those who have retained their rights of residence e.g. the family member of an EEA national whose relationship ended because of domestic violence.

The definitions of qualified persons who have a right to reside reflect a male paradigm of 'work' and economic activity that disadvantages women. There is no ability for pregnant women or those with caring

<sup>33</sup> Section 115(9) of the **Immigration and Asylum Act 1999**.

<sup>34</sup> Regulation 6 sets out who is a qualified person while Regulations 7 and 8 define family members. Please note that not all rights to reside 'count' for the purposes of benefits law.

responsibilities to retain their worker status for example (in comparison with those who are temporarily unable to work because of an illness or accident).<sup>35</sup> Similarly, those who are unable to work or seek work because of domestic violence may also be unable to obtain or retain a right to reside. Rights of Women advises many women who are compelled to leave their employment and relocate because of the violence they are experiencing. For EEA women this can have devastating consequences, not just in terms of the loss of independence (both financial and otherwise) that comes from being able to work, but because of the effect that this has on their ability to access welfare benefits. EEA women who do not have the right to reside (because they are not, for example, a qualified person or the family member of such a person) are unable to access welfare benefits that may assist them to go into a refuge or otherwise obtain protection from violence.

## Conclusions

Recommendations:

- ✓ Negotiate changes to European free movement law to improve the position of family members whose relationship breaks down because of domestic violence.
- ✓ Review the habitual residence test to ensure that it does not discriminate against EEA national women who are temporarily unable to work or seek work.

Regulation 10 (which comes from Article 13 of the **Directive**) offers a welcome but insufficient route to protection for the third country national family members of EEA/EU citizens who have experienced domestic violence. As Adam Weiss explains, victims of domestic violence have often lived in a relationship **“defined by power balances”**. The **“very factors that give rise to that dynamic—for example, differences in education and knowledge of relevant languages, which may be particularly acute in E.U.-third country national couples—may leave the abused spouse unable at first, to enter the labo[u]r market. Further, the abuse itself may render an individual unable to support herself.”**<sup>36</sup>

Weiss concludes:

**“We are left with a strange rule. It protects with certainty an absurdly discrete group: abused third-country spouses of E.U. migrants exercising treaty rights, when those spouses are economically active or self sufficient and have obtained a divorce before their spouse left the country. Among migrant couples in abusive relationships, there would appear to be an indirect relationship between the severity of abuse on the one hand and the ability of the abused spouse to support herself in the new country on the other. If this inverse relationship holds true, then the rule becomes less effective as the vulnerability of the individual it is designed to protect increases. The rule covers, with certainty, those abused spouses who demonstrate requisite pluck: those who divorce before the E.U. spouse leaves the country, and who manage to join the labo[u]r force (or have healthy bank accounts and private health insurance) at the time the divorce occurs. Such a rule is arguably an affront to the “human dignity” the Free Movement Directive’s preamble purports to protect.”**<sup>37</sup>

Rights of Women believes that Regulation 10/Article 13 fails to offer third country national family members who have experienced domestic violence sufficient protection. The Home Office should therefore advocate for a more inclusive system of protection at a European level and implement such a system domestically.

In relation to eligibility for welfare benefits, Rights of Women is concerned that the habitual residence test operates in a way that may have devastating consequences for EEA women experiencing violence and women who are not currently economically active. We believe that these consequences are discriminatory in terms of gender and nationality (as a British woman who had experienced domestic violence would be entitled to income support if she was caring for a young child while an EEA woman in the same position may not be). Rights of Women is therefore watching with interest the European Commission’s pursuance of infringement proceedings against the UK in relation to the right to reside test<sup>38</sup> and calls on the Department for Work and Pensions to review the habitual residence test in the light of this and the concerns outlined above.

<sup>35</sup> In *Support for asylum-seekers and other migrants* S Willman and S Knafler LAG (2009) assert at page 97 that it is “difficult to see how refusing social assistance to a pregnant former worker complies with the purposive approach required by EU law and the emphasis on non-discrimination and freedom of movement of workers”.

<sup>36</sup> *Transnational Families in Crisis: an analysis of the domestic violence rule in EU free movement law*, Adam Weiss, Michigan Journal of International Law (2008) page 853.

<sup>37</sup> *Ibid* page 853-4.

<sup>38</sup> The proceedings concern non-eligibility for benefits covered by Regulation 883/2004 as a result of the right to reside test.

# Chapter 4

## Immigration law

- 61%** of callers to our asylum and immigration line sought legal advice on immigration law.
- 22%** of these callers sought advice on the domestic violence rule. 40% sought advice on other immigration law issues.
- 26%** of callers sought advice on domestic violence and immigration law issues (other than on the domestic violence rule).
- 3%** sought advice on immigration law and sexual violence.
- 7%** sought advice on domestic violence, immigration law and other financial support issues, 1% sought advice on domestic violence, immigration law and community care law.

### The domestic violence rule

Paragraph 289A of the Immigration Rules sets out the domestic violence rule:

#### Requirements for indefinite leave to remain in the United Kingdom as the victim of domestic violence

289A. The requirements to be met by a person who is the victim of domestic violence and who is seeking indefinite leave to remain in the United Kingdom are that the applicant:

- (i) was admitted to the UK for a period not exceeding 27 months or given an extension of stay for a period of 2 years as the spouse or civil partner of a person present and settled here; or;
- (ii) was admitted to the UK for a period not exceeding 27 months or given an extension of stay for a period of 2 years as the unmarried or same-sex partner of a person present and settled here; and
- (iii) the relationship with their spouse or civil partner or unmarried partner or same-sex partner, as appropriate, was subsisting at the beginning of the relevant period of leave or extension of stay referred to in (i) or (ii) above; and
- (iv) is able to produce such evidence as may be required by the Secretary of State to establish that the relationship was caused to permanently break down before the end of that period as a result of domestic violence; and
- (v) the applicant does not have one or more unspent convictions within the meaning of the **Rehabilitation of Offenders Act 1974**.

The domestic violence rule was introduced to ensure that women on spouse or partner visas who had been permitted to remain in the UK for a 'probationary period' before qualifying for indefinite leave to remain (ILR) were not trapped in abusive relationships by their immigration status. The protection offered to women by the domestic violence rule was enhanced by the establishment of a process through which women making domestic violence rule applications could receive accommodation and financial support (while women on spouse/partner visas can work in the UK they have 'no recourse to public funds'). This pilot scheme, the Sojourner Project, is due to be replaced in April 2012 by a system which should enable this group of women to receive welfare benefits for a short period of time.

**Max, a probation officer, is seeking advice on the options available to Risa, one of the women he is advising. Risa pleaded guilty to the common assault of her British husband and received a community based punishment. She has now disclosed to Max that her husband has been violent towards her since her arrival in the UK nearly a year ago on a spouse visa. Risa wants to end the relationship but does not know what her rights are in the UK. Her husband has told her that if she tries to leave him he will call the police and have her arrested again. Max is concerned about Risa's safety as she is still living with her husband and his violence appears to be escalating.**

While the establishment of the Sojourner Project and the prospective implementation of a system which will enable this group of women to be able to access welfare benefits are to be welcomed, Rights of Women is concerned that a recent change to the domestic violence rule places victims of domestic violence at greater risk of violence and abuse.

The requirement in the domestic violence rule to be free from unspent criminal convictions (subsection (v) of paragraph 289A) took effect from 6th April 2011. There was no attempt to consult with specialist domestic violence or violence against women organisations prior to the change being made and attempts to persuade the Home Secretary to reverse it were unsuccessful. Cases like Risa's illustrate the complex links between experiencing domestic violence and becoming involved in the criminal justice system; more than half of women in UK prisons say that they have experienced domestic violence.<sup>39</sup> Research confirms that financial abuse is a common feature of domestic violence.<sup>40</sup> Women experiencing financial abuse may be convicted of a minor offence related to their economic dependence on the perpetrator of abuse and be unable to benefit from the protection of the domestic violence rule. Other women may become involved in the criminal justice system because the perpetrator of abuse makes a false allegation against them or because they act in self-defence or in response to their perpetrator's violence. The new requirement is so broad that a woman would not be deemed eligible to receive ILR under the domestic violence rule if she were to receive a minor criminal conviction, for example, for fare evasion. Whilst guidance for UKBA decision-makers on the new requirement has been published, at the time of writing it is contradictory and unclear.<sup>41</sup> The UKBA is engaging in a consultation process which purports to respond to the concerns raised here; Rights of Women submits that these can only be resolved by removing the requirement to be free from unspent criminal convictions from the domestic violence rule.

<sup>39</sup> Women in Prison, [www.womeninprison.org.uk/statistics.php](http://www.womeninprison.org.uk/statistics.php).

<sup>40</sup> 89% of the respondents surveyed by Refuge reported economic abuse as part of their experience of domestic violence; 'What's yours is mine': The different forms of economic abuse and its impact on women and children experiencing domestic violence, N Sharp, Refuge (2008) <http://refuge.org.uk/policy-and-research/research-and-publications/economic-abuse/>.

<sup>41</sup> Compare the *Criminality Requirement for Settlement* guidance with the *Victims of domestic violence* guidance.

## Other domestic violence and immigration law cases

**Margaret was given our number by a nurse in the hospital where she is being treated. She has been in the UK for 4 years; she initially came on a fiancée visa but overstayed it. Her husband, who has ILR, promised to resolve her immigration status after they married. He has not done so. Instead he prevented her from leaving the house and took all her documents from her. There were weeks when she did not see or speak to anyone but him. She attempted suicide which is why she is in hospital. Her professional supporters want her to go into a woman's refuge and have told her that if she does not she might be detained in hospital. She is concerned because her husband always said he would sort out her status and if she does not go home this will never happen.**

**The caller does not want to give her name or say where she is. She has a baby boy who is 10 months old, his father is British and she met him when she was at University. She was on a student visa. When she moved in with him he took her passport and other documents. Initially he supported her with her studies but when she became pregnant he persuaded her to give them up; he then started to frighten her. She has now overstayed her visa. She took her baby and left the family home after an incident where the police were called. She is staying with a friend but can only remain there for a short period of time. Her baby's father says that if she seeks child support or goes to the police she will be deported and the baby will be taken into care. She does not have enough money to buy things for the baby.**

In both of these cases the women who contacted us had experienced violence that had put their lives (and in the case of the second caller, her child's life) at risk. They had both had their immigration status used to maintain and further that abuse. Both had been made destitute as a consequence of the violence they had experienced and their inability to resolve their immigration status. Neither woman was eligible to receive ILR under the domestic violence rule because although the perpetrator of violence was someone who was either British or present and settled in the UK, neither woman was on a spouse or partner visa. Consequently they were also unable to benefit from the financial and other support available through the Sojourner Project (although in both cases support could be sought from the local authority).

Rights of Women believes that cases like these illustrate the need for the criteria of the domestic violence rule to be broadened to enable all women who have experienced domestic violence to be able to seek protection from that violence in the UK. It is telling that such a significant proportion (26%) of our callers were advised on immigration and domestic violence issues in comparison with the percentage of those who were advised on the domestic violence rule (22%). Whilst there are other applications that women experiencing domestic violence who are ineligible for ILR under the domestic violence rule can make (for example, on the basis of their Article 8 ECHR rights to private and family life) these do not offer sufficient protection to women like those whose cases are described above, either in terms of the application process (which is likely to require payment of a fee and be lengthy), the protection available (discretionary or other limited leave to remain rather than ILR) and the financial support available (from the local authority in certain limited cases rather than the Sojourner Project).

### Conclusions

Recommendations:

- ✓ Situate the work of the Gender Champion in the Government's commitments to end violence against women as set out in the *Call to End Violence Against Women and Girls*.
- ✓ Enable applicants who are able to provide evidence of their destitution to be exempt from paying application fees in all gender-based violence and private and family life cases.



- ✓ Change the domestic violence rule to remove the new 'criminality requirement' and to enable other vulnerable victims of domestic violence to be able to apply, for example, those on student or fiancée visas.
- ✓ Retain legal aid for cases that involve violence against women or gender-based violence including for victims of trafficking, migrant domestic workers and victims of domestic violence. This will include immigration cases but also those that involve other areas of law, for example, in relation to applications for criminal injuries compensation.
- ✓ Retain legal aid in immigration law cases where the right to private and family life is relied upon.

Women who have experienced domestic violence and who have an insecure immigration status face many barriers to resolving their immigration status and accessing financial and other support. Removing the requirement to be free from unspent criminal convictions from the domestic violence rule, broadening eligibility under the domestic violence rule and enabling applicants who can provide evidence of their destitution to be exempt from having to pay application fees in gender-based violence and private and family life cases would go a long way towards enabling this very vulnerable group to obtain protection from violence. It would also reduce the costs faced by local authorities who have a legal obligation to support many of the women we advise (such as those with children or physical or mental health problems).

However, while the above recommendations would serve to improve the position of women with an insecure immigration status who are experiencing domestic violence, the Government is instead proposing to make changes to the legal aid system which will place women at greater risk of violence and abuse. At the time of writing the **Legal Aid, Sentencing and Punishment of Offenders Bill** is progressing through Parliament. It proposes to retain legal aid for asylum and domestic violence rule cases but remove it for other immigration law applications that are based on gender-based violence and/or an applicant's private and family life (including in the case of EEA nationals under Regulation 10, see Chapter 3). Rights of Women submits that the availability of legal advice and representation is crucial for all women experiencing violence and calls on the Government to rethink its legal aid proposals.

The Home Secretary Theresa May MP has stated: "The ambition of this government is to end violence against women and girls."<sup>42</sup> In its *Call to End Violence Against Women and Girls* and its associated *Action Plan* the Government sets out its absolute commitment to work towards the elimination of violence against women and girls. Central to both documents is prevention; as the Home Secretary states in her forward to the *Call*:

**"However, at the heart of our approach will be prevention. We will work across the whole of government on preventative measures to stop violence from happening in the first place."**<sup>43</sup>

However, despite this commitment and the existence of a Gender Champion in the UKBA, women experiencing domestic violence who have an insecure immigration status continue to be placed at risk of further violence and abuse as a result of Government policies and practices. The existence of the strategy and its commitment to prevention was insufficient, for example, to prevent the domestic violence rule from being changed in 2011 to prevent those with unspent criminal convictions from being able to receive ILR. The failures identified in this report will be compounded if applicants are unable to access legally aided advice and representation, while the vulnerability of many of the women that we support will be significantly increased if proposals like those in the UKBA's employment and family consultations are implemented.<sup>44</sup>

Rights of Women believes that the Government's commitment to ending violence against women and girls has failed to ensure that women with an insecure immigration status are able to secure protection from that violence in the UK. This position contradicts the work of the Government internationally to promote the human rights of women and encourage them to access protection and justice.<sup>45</sup> Consequently, we call on the Government to sign and ratify the **Council of Europe Convention on preventing and combating violence against women and domestic violence (2011)**, Article 59 of which would offer protection to women in the UK with an insecure immigration status who have experienced domestic violence while Article 57 emphasises the importance of legal aid.

<sup>42</sup> *Call to End Violence Against Women and Girls* page 3.

<sup>43</sup> Ibid

<sup>44</sup> Rights of Women's responses to the UKBA's *Employment-related settlement, tier 5 and overseas domestic worker' and Family Migration, A Consultation* are available to download from here [www.rightsofwomen.org.uk/policy.php](http://www.rightsofwomen.org.uk/policy.php).

<sup>45</sup> *UK Aid: Changing lives, delivering results*, Department for International Development (2011), page 20.

## Article 59 – Residence status

1. Parties shall take the necessary legislative or other measures to ensure that victims whose residence status depends on that of the spouse or partner as recognised by internal law, in the event of the dissolution of the marriage or the relationship, are granted in the event of particularly difficult circumstances, upon application, an autonomous residence permit irrespective of the duration of the marriage or the relationship. The conditions relating to the granting and duration of the autonomous residence permit are established by internal law.
2. Parties shall take the necessary legislative or other measures to ensure that victims may obtain the suspension of expulsion proceedings initiated in relation to a residence status dependent on that of the spouse or partner as recognised by internal law to enable them to apply for an autonomous residence permit.
3. Parties shall issue a renewable residence permit to victims in one of the two following situations, or in both:
  - a. where the competent authority considers that their stay is necessary owing to their personal situation;
  - b. where the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.
4. Parties shall take the necessary legislative or other measures to ensure that victims of forced marriage brought into another country for the purpose of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, may regain this status.

The protections available under Article 59, when taken together with other provisions in the **Convention** relating to support for victims of gender-based

violence, would serve to remove many of the barriers to securing protection identified in this report and enable more women to live lives free from violence.



### Money by Herlinde

I don't have money. I have to live off what the Home Office gives me – the Azure card, which is topped up with £35 each week. That means £5 a day for everything. It is very hard using this card – you cannot use it in most shops, you are not allowed to use it for a bus ticket, for instance, or for a telephone call.

# Appendix 1

## Additional statistical information

### The immigration and asylum law legal advice line

On the 1st April 2011 Rights of Women's immigration and asylum law legal advice line opened. Until then we had been advising women with immigration and asylum law problems on our other legal advice lines as part of our Comic Relief funded work with asylum-seeking women who had experienced gender-based violence. However, as demand for our services increased the need for a specialist legal advice line for all women with an insecure immigration status became increasingly apparent. Unbound Philanthropy recognised this need and, following a reorganisation of all our advice lines to improve our accessibility, we established a dedicated telephone legal advice line for two sessions a week that could advise women on a range of immigration and asylum law issues including the asylum process, the rights of victims of trafficking, domestic violence and immigration law, the rights of European nationals and their family members and financial support for those with an insecure immigration status.<sup>46</sup>

### Our callers

Between April-September 2011 we provided legal advice to 95 callers. 84% of our callers were women and 4% were men.<sup>47</sup> Whilst the beneficiaries of our advice line services are women, we are able to advise third parties such as a professional support workers or family members in some circumstances. 27% of our callers identified themselves as asylum-seekers, refugees or women with another insecure immigration status. 35% of callers stated that they were supporting a woman in this position. 7% of our callers stated that they had accessed our service on more than one occasion; usually this will be as their case progresses.

Our other callers contacted us on just one occasion and then may have gone on to access publicly funded legal advice and representation or another specialist service. 31% of our callers found out about our service by searching the internet, 21% were signposted to us by other women's organisations. 10% found out about us by 'word of mouth' (usually a recommendation from a friend or family member who had used our services on another occasion). Other callers were signposted to us by the police, social services or other advice and information services. Whilst we welcome the fact that so many women are able to find out about our advice lines by accessing the internet, we remain concerned about the visibility and accessibility of our services to women who do not have access to a computer or who are unable to read materials in English. We are committed to working with other voluntary and statutory organisations to ensure that women who need our services are made aware of them and to improving our accessibility.

### Access to legal advice and representation

Publicly funded legal advice and representation is a vital protective resource for women who are experiencing violence<sup>48</sup> yet just 5% of our callers were receiving legal aid. 6% reported that they were ineligible for legal aid (usually because they were working) and a further 50% of our callers were made aware that they could apply for legal aid. Government proposals to prevent those with immigration law problems from receiving legal aid<sup>49</sup> (it will remain available for asylum and domestic violence rule applications but not for other types of gender-based violence cases) will place women at greater risk of violence and prevent those with valid legal reasons for remaining in the UK from being able to access and benefit from their legal rights.

<sup>46</sup> Further information about our advice line services can be found on our website [www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk).

<sup>47</sup> Since April 2011 we have monitored gender identity across all our services. In the period under review no callers to our immigration and asylum law line identified as being transgendered. The gender of 12% of our callers was unknown. This is usually because a caller indicates that she or he does not want to answer this question or questions.

<sup>48</sup> *Women's Access to Justice: A research report*, C Briddick, Rights of Women (2011) [www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk).

<sup>49</sup> At the time of writing the *Legal Aid, Sentencing and Punishment of Offenders Bill* is progressing through Parliament, further information is available from the Ministry of Justice [www.justice.gov.uk](http://www.justice.gov.uk).

## Equal opportunities monitoring

In addition to the information that we collected on our caller's legal problems we collected the following equal opportunities monitoring information. Rights of Women monitors all of its staff, volunteers and service users in accordance with our Equal Opportunities policy. This information is provided voluntarily and collected confidentially.

### Ethnic origin

Our callers were asked to describe their ethnic origin:

Ethnic origin	Percentage of callers
Asian Bangladeshi	1%
Asian Indian	11%
Asian other	7%
Asian Pakistani	4%
Black African	16%
Black British	1%
Black Caribbean	4%
Mixed	3%
Other	4%
Unknown	14%
White British	23%
White European	4%
White other	6%

## Sexual orientation

Our callers were asked how they defined their sexual orientation. 87% of callers defined themselves as heterosexual, 1% defined themselves as lesbian, 1% as bisexual. The sexual orientation of 12% of our callers was unknown.

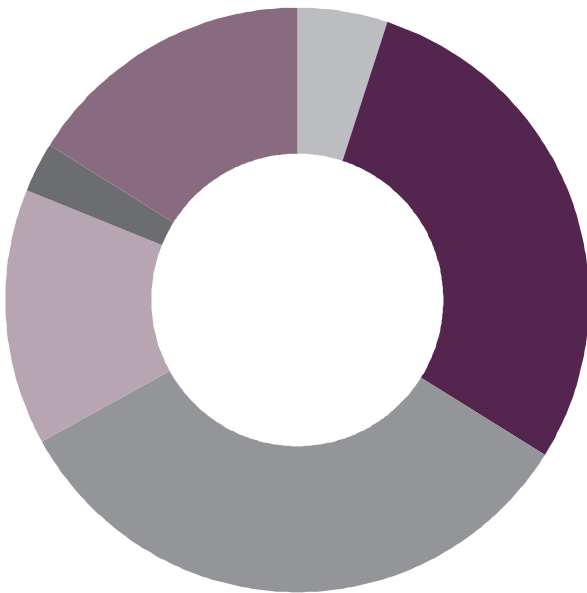
## Disability

No callers to our immigration and asylum law line during this period identified themselves as disabled. In contrast 7% of callers to our family law line and 21% to our criminal law line during this period identified themselves as disabled.<sup>50</sup> The absence of disabled callers to our immigration and asylum law line is of concern and demonstrates the marginalisation of this particularly vulnerable group of women. Research indicates that women with disabilities are particularly vulnerable to violence and often have a greater need for support and services.<sup>51</sup> However, service provision for disabled women who are at risk of or who are experiencing violence is often insufficient as many services are unable to cater for the specific needs of women with disabilities while specialist services are frequently underfunded and oversubscribed. These barriers are compounded when the woman concerned has an insecure immigration status, may be limited in her ability to access public funds, have communication problems, a limited ability to communicate in English and/or be unaware of the services available to her.

<sup>50</sup> Whilst the family law line advises women on a range of family law issues including domestic violence, our criminal law line primarily advises women who have experienced domestic and/or sexual violence and who are going through the criminal justice process as complainants. The percentage of women to our criminal law line during this period who identify as disabled is evidence of the correlation between having a disability and experiencing gender-based violence.

<sup>51</sup> *Making the links: disabled women and domestic violence*, Women's Aid (2008) [www.womensaid.org.uk/domestic-violence-articles.asp?section=00010001002200080001&itemid=1722](http://www.womensaid.org.uk/domestic-violence-articles.asp?section=00010001002200080001&itemid=1722).

## Age



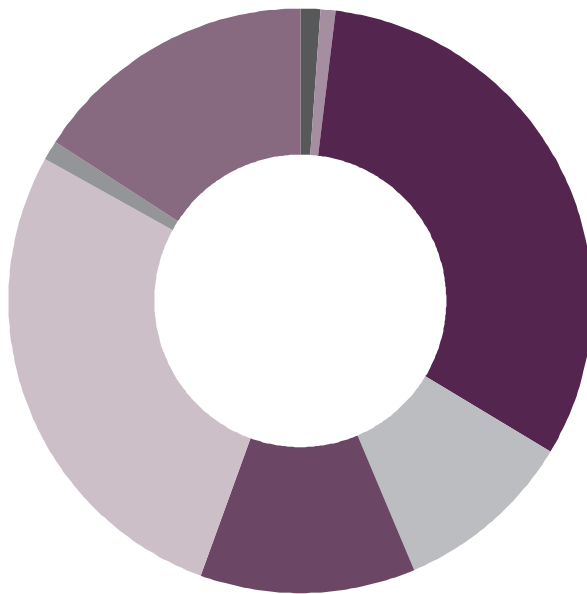
### Age in years

### Percentage of callers

18-24	5%
25-34	29%
35-44	33%
45-54	14%
55-64	0%
65+	3%
Unknown	16%

## Religion and belief

Our callers are asked if they have a religion or belief.



### Religion or belief

### Percentage of callers

Atheist	1%
Buddhist	1%
Christian	32%
Hindu	10%
Muslim	12%
None	28%
Sikh	1%
Unknown	16%

## Location

Our callers are asked where in the country they are calling from. 27% of our callers were outside London, 15% were unknown. All of our other callers were in London. Callers from outside London contacted us from a range of locations, including Manchester, Wales, Cambridgeshire, Hampshire, Kent and Nottinghamshire. The fact that the majority of our callers are in London may be explained by the strength of women's organisations in the capital (in comparison with other areas of the country like the south west) and the fact that we have worked with groups like Women Asylum Seekers Together London to raise awareness of our legal advice lines.



**Herlinde by Aliya Mirza**

Herlinde came to this country in 2005 from the Democratic Republic of the Congo fleeing persecution for her political activities. She has lived destitute for some time, but is currently housed in shared accommodation provided by the National Asylum Support Service and lives on an "Azure card" which is topped up by £35 every week and can only be spent on food and toiletries in specified shops.

**Rights of Women** aims to achieve equality, justice and respect for all women.

Rights of Women advises, educates and empowers women by:

- Providing women with free, confidential, legal advice by specialist women solicitors and barristers.
- Enabling women to understand and benefit from their legal rights through accessible and timely publications and training.
- Campaigning to ensure that women's voices are heard and law and policy meets all women's needs.

For advice on issues including domestic violence and abuse, relationship breakdown and issues relating to children call our **family law advice line** on 020 7251 6577 (telephone) or 020 7490 2562 (textphone) on Mondays between 11am-1pm, Tuesdays and Wednesdays between 2pm-4pm and 7pm-9pm, Thursdays between 7pm-9pm and Fridays between 12noon-2pm.

For advice on issues including sexual violence and other criminal offences, the criminal justice system and the rights of victims, witnesses and defendants call our **criminal law advice line** on 020 7251 8887 (telephone) or 020 7490 2562 (textphone) on Tuesdays between 11am-1pm and Thursdays between 2pm-4pm.

For advice on immigration and asylum law, the rights of EEA nationals and their family members and no recourse to public funds call our **immigration and asylum law advice line** on 020 7490 7689 (telephone) or 020 7490 2562 (textphone) on Mondays between 2pm-4pm and Wednesdays between 11am-1pm.

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## An original publication from Rights of Women

On the 1st April 2011 Rights of Women's immigration and asylum law legal advice line opened. This research, which analyses the first six months of calls to this legal advice line, identifies and analyses the key barriers and issues for women seeking safety and protection in the UK. It highlights the protection 'gaps' that exist and gives a voice to the women who have called us and who have fallen through those gaps.

This report makes clear and concrete recommendations which, if implemented, will ensure that this particularly vulnerable group of women are able to access

protection and live lives free from violence. All of our recommendations are in line with the Government's own commitments to end violence against women and the UK's international obligations to protect women from violence.

**Silenced Voices Speak** is a vital resource for non-governmental organisations (NGOs), such as women's and migrant rights organisations, working to support women affected by violence in the UK. It is essential reading for all those who seek to ensure a future free from violence for all women.

Rights of Women aims to achieve equality, justice and respect for all women.



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