



1. Introduction

Foreign national women, many of whom are known to have been trafficked or coerced into offending, represent around one in seven of all the women held in custody in England and Wales. Yet comparatively little information has been produced about these women, their particular circumstances and needs, the offences for which they have been imprisoned and about ways to respond to them justly and effectively. This Prison Reform Trust briefing, drawing on the experience and work of the charity FPWP Hibiscus, the Female Prisoners Welfare Project, and kindly supported by the Barrow Cadbury Trust, sets out to redress the balance and to offer findings and recommendations which could be used to inform a much-needed national strategy for the management of foreign national women in the justice system.

An overarching recommendation of Baroness Corston's report published in 2007 was the need to reduce the number of women in custody, stating that "custodial sentences for women must be reserved for serious and violent offenders who pose a threat to the public". She included foreign national women in her report, seeing them as:

A significant minority group who have distinct needs and for whom a distinct strategy is necessary.¹

However, when the government response² and then the National Service Framework for Improving Services to Women Offenders were published the following year, there were no references to this group.³

Four years further on little progress has been made. "In spite of their evident needs",⁴ The HM Chief Inspector of Prisons's Annual Report for 2008-9 pointed out that:

Support for foreign national women, a significant proportion of women prisoners, is still not well developed in many prisons.

If anything, due to the government's focus on ensuring that "foreign criminals" do not have rights to remain in the country, the expansion of the Immigration Removal Centre (IRC) estate and a focus on fast track removals, the plight of this group has worsened. One of the key elements of the UK Borders Act 2007, which came into force in January 2009, was automatic deportation of non-British citizens who have been sentenced to a period of imprisonment for 12 months and over. The intolerance of any non-UK national who breaks the law remaining in the country is further emphasised in the most recently published UKBA five year strategy which talks of:

Considering with partners, including the Crown Prosecution Service, the most effective use of out of court disposals such as cautions together with immigration powers, to remove low level foreign national offenders as an alternative to prosecution.⁵

This comes at a time when an increasing percentage of foreign women, who come to the attention of the criminal justice and immigration systems and who end up in custody, have been living in the UK long enough for their children to consider this country as home.

Drawing on Hibiscus' records of its work with foreign national women, this report attempts to gain a better understanding of the current situation for these women, see this in the context of changes over the last few years and outline what needs to be done.

2. Size and nature of the population

The latest annual data published by the Ministry of Justice (MoJ) show that there were 650 non-UK nationals in the female estate.⁶ Although this is only 6% of the total foreign national prison population, the proportion of foreign national women was higher than in the male prison estate, with 15% of the female prison population categorised as non-UK nationals compared with 13% of men.

Further details are provided by the annual Offender Management Caseload Statistics (OMCS).⁷ These show that over the last ten years there has been a 27% growth in the female prison population, but the growth in the foreign national sector of this is much higher at 49%.⁸ However the most recent prison population data show a slight reduction in the overall numbers of women in custody, and a 10% reduction in the number of foreign national women in prison.⁹

1 Corston, J (2007) *The Corston Report: A report by Baroness Jean Corston of a Review of Women with Particular Vulnerabilities in the Criminal Justice System*, London: The Home Office.

2 Ministry of Justice (2007) *The Government's Response to the Report by Baroness Corston of a Review of Women with Particular Vulnerabilities in the Criminal Justice System*: Ministry of Justice; available at www.justice.gov.uk/publications/docs/corston-report-march-2007.pdf

3 Ministry of Justice/NOMS (2008) *National Service Framework: Improving Services to Women Offenders*: Ministry of Justice; available at nicic.gov/Library/023122

4 HM Chief Inspector of Prisons (2010) Annual Report 2008-9; www.justice.gov.uk/downloads/publications/corporate-reports/hmi-prisons

5 UK Border Agency (2010) Protecting our border, protecting the public: The UK Border Agency's five year strategy for enforcing our immigration rules and addressing immigration and cross border crime

6 Ministry of Justice (2011) Offender Management Caseload Statistics Quarterly Bulletin, April-June 2011, (Table 1.5), London: Ministry of Justice

7 Ministry of Justice (2011) *Offender Management Caseload Statistics 2010*, London: Ministry of Justice

8 Ministry of Justice (2011) Offender Management Caseload Statistics, 2010, (Table A1.17), London Ministry of Justice.

9 Ministry of Justice (2011) Offender Management Caseload Statistics Quarterly Bulletin, April-June 2011, (Table 1.5), www.justice.gov.uk/publications/statistics-and-data/prisons-and-probation/oms-quarterly.htm

When we look at more detailed information, we see that the overall increase in numbers of foreign national women in prison is not solely due to an increase in those who are sentenced, but rather there are a disproportionate number remanded to custody to await trial, with a rise of 171% between 2000 and 2009.¹⁰ Figures for 2009 show that foreign national women in prison account for 25% of all untried receptions to custody.¹¹

3. Offence categories

It could be argued that there are more foreign national women remanded into custody and then sentenced to prison because their offences are becoming more serious. But the evidence does not support this hypothesis.

From an analysis of offence breakdown in 2007, the Women and Young Peoples Group (W&YPG) Strategy for managing foreign national prisoners identified the “low rate of violent offences as particularly noteworthy”.¹²

Looking at the OMCS snapshot data, one would draw the same conclusion. They show that whereas 41% of UK nationals are serving prison sentences for the serious offences of violence against the person, sexual offences and robbery only 15% of the offences committed by foreign nationals fall within these three categories.¹³ There is an equally stark contrast when one looks at rates of recidivism and substance misuse, which are high in the UK population and negligible in the foreign population.

So why are there so many foreign nationals within this population? One of the answers to this is that 46% of the foreign national population falls within the drug offences’ category, of which the majority are sentenced

for importation of Class A drugs. (This compares to 21% of the UK population).¹⁴ Within the Hibiscus caseload the average length of sentence given in 2009 for this offence was six years, with findings of guilt after entering not guilty pleas resulting in sentences of up to 15 years. The second main offence group was that of ‘fraud and forgery’ which accounts for 16% of foreign national women in custody.

European woman in her thirties arrested for being ‘knowingly concerned’ in the importation of drugs

‘H’ bumped into an acquaintance whilst looking to book a holiday who said that he was arranging for three people to visit the Caribbean on holiday and that she and her son were welcome to join them, which she accepted.

Everything was arranged for her and she stayed for a week, travelling with the other three guests but spending time on holiday separately. On the return journey they were all arrested. The three individuals were found in possession of five kilograms of cocaine each, however ‘H’ was not caught in possession of any drugs.

‘H’ was charged with being ‘knowingly concerned’ in the importation of drugs and received a 15 year sentence, following a not guilty plea. During her trial she was accused of being the organiser of the operation as she had been in contact with the person who arranged the holiday. All other defendants pleaded guilty.

10 Ministry of Justice (2010) Offender Management Caseload Statistics, 2009 (Table 6.4): Ministry of Justice

11 Ibid.

12 Women and Young People’s Group, Ministry of Justice (2008) *A Strategy for Managing Foreign National Prisoners in the Female Estate*, London: Ministry of Justice.

13 Table A1.19, Ministry of Justice (2011) *Offender Management Caseload Statistics 2010*, London: Ministry of Justice

14 Ibid.

To understand the characteristics of women in prison, an analysis of the population in custody on a given day must be balanced by evidence about the total number of women entering prison in a year; the single day snapshot will always show an over representation of people serving lengthy sentences.¹⁵ It shows that women arrested for drugs importation represent only 12% of new cases. The dominant group (41%) were charged with offences such as deception and fraud, in relation to their immigration status and related paperwork. The average sentences for false documents was eight months and for deception 12 months. The other main area of growth is in relation to theft, which accounted for almost 20% of all new cases opened, with an average length of sentence of 6 months. The other dominant charges were in relation to employment in illegal activities such as cannabis production and selling fake or counterfeit goods. The data also reveal women given custodial sentences for minor offences such as soliciting. What we see therefore is that 12% of this population are serving lengthy sentences. The majority however are serving relatively short sentences, and as pointed out in the Prisons Inspectorate report these foreign national prisoners are:

Disproportionately represented in the 6 to 12 month sentenced population.

This is the very group targeted by the Corston review and brings into question whether nationality is influencing the courts' apparent reluctance to use bail and alternative sentencing options.

There is a similar skew in nationality figures for the static women's population, dominated by those sentenced for drugs importation, with the highest percentage from Nigeria, Jamaica and South Africa. However looking at the

Hibiscus database we get a better picture of the numbers of foreign national women entering the justice system and find that the most dramatic rise is with women from Eastern European countries, representing 20% of all new cases. For example, 106 new cases opened in the second half of 2009 were on women from Bulgaria. This group accounted for the majority of those charged with theft. The other growth was in relation to those from China and Vietnam representing 12% of new cases. These women had been charged with false documents and employment in illegal activities.

Ten countries with the highest number of foreign national women in prison in England & Wales, September 2011¹⁶

| Nationality | Women in prison |
|----------------|-----------------|
| Nigeria | 61 |
| Romania | 52 |
| Jamaica | 39 |
| Vietnam | 39 |
| Irish Republic | 28 |
| Lithuania | 21 |
| Poland | 18 |
| Bulgaria | 17 |
| China | 16 |
| Netherlands | 16 |

What we are seeing therefore is a relative reduction of those arrested at point of entry on drugs importation, that is women whose travel was integral to the offence and who generally have no ties with the UK. At the same time there is a growth of those arrested on offences of immigration status and related deception and fraud and these can be divided into three sub categories. The first are of women who are attempting to enter the UK without valid documentation or for the using use of false documents, a proportion of whom wish to claim asylum. The second group are those who have

¹⁵ These figures are taken from all new case files opened by Hibiscus workers between 2009-10

¹⁶ Ministry of Justice (2011) Offender Management Caseload Statistics Quarterly Bulletin, October to December 2010 (Table 1.5)

been residing here as illegal immigrants, overstayers or failed asylum seekers. Ironically the third group are women arrested at the point of departure using false documents. Some are en route to countries such as Canada where they wish to claim asylum. However the majority arrested on departure are trying to return home and find themselves pulled back into the UK criminal justice system, and sentenced to imprisonment before finally being deported. Practices such as this mean that women who have lived in the UK for a length of time, or entered as minors and have never managed to legalise their residency status, are caught in a trap. Without valid documentation they can no longer access services available to legal citizens, nor can they leave without the threat of arrest.

In understanding the actions of these women it is important to find out why they left their country of origin and took the decision to come to the UK. This is not a decision taken lightly by any woman, as it often means leaving children and the support of the family network. The factors are complex, but for many it is the hope of a better life. For some, this is described as the need to access better education and work opportunities. For others it is the desperate need to support their family and send remittances home. Others said that they had no option to leave because of threats they faced and how they saw the UK as a positive country to seek asylum. For all these women changes in immigration and employment legislation have decreased their ability to enter the UK or access work within the country without breaking the law. This has increased their reliance on agents who exploit their powerlessness.

The factors driving these women to leave home are evidenced by the geographical distribution

Iranian woman in her early-twenties arrested for false documentation

'G' was forced to flee her home country, Iran, in fear of her life. She had been attacked, arrested, detained, and subjected to torture and sexual assault whilst in Iran for her political views. Her family and friends, still in Iran, had been pursued by the authorities and were also at risk. Whilst in prison serious concerns were raised about her mental and physical health and the impact of detention.

Following her court hearing she was sentenced to custody for three months and is now awaiting the outcome of her asylum claim.

of their countries of origin. For example women from Zimbabwe represent 3% of all new Hibiscus cases and almost 75% have been charged with false document, deception or fraud. The same is true for women from other areas of civil unrest or the threat of persecution such as Iran, Somalia and Uganda.

We can see similar geographical patterns in relation to those coming here to alleviate poverty and start a better life. For example a high percentage of those from China and Vietnam have been brought in by smugglers to alleviate family poverty. The same is true with some of those from Eastern Europe, particularly the A8 countries.¹⁷ Unfortunately a number of these women get drawn into sex work and are victims of resultant abuse by pimps and clients.

Research published by the Association of Chief Police Officers (ACPO) in 2010 found that around 17,000 of the estimated 30,000 women involved in off-street prostitution in England

17 A8 refers to the new accession states to the EU including the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia

and Wales are migrants, and that approximately half come from Eastern Europe, and a third from Asia. Asian women, primarily from China, were also more likely to be victims of trafficking, representing 85% of all migrant women deemed to have been trafficked.

Damian Green, Immigration Minister at the Home Office, has stated that combating trafficking and looking after its victims is a priority for the government, and that “having any number of people trafficked into the UK is unacceptable”. Presenting the report, Deputy Chief Constable Chris Eyre said:

Human trafficking for sexual exploitation involves the most extreme abuse of individuals in our communities.

The United Nations’ Protocol for the Protection of Victims of Trafficking¹⁸ covers threats or other coercion to exploit people for the purposes of forced labour or services. The Protocol explicitly states:

The consent of a victim of trafficking in persons to the intended exploitation set forth [above] shall be irrelevant where any of the means set forth [above] have been used.

Rule 66 of the Bangkok Rules¹⁹ encourages States:

to provide maximum protection to victims of trafficking in order to avoid secondary victimization of many foreign-national women.

Worrying cases are also uncovered where the woman has been smuggled into the country to escape persecution or has entered the country on debt bondage or other forms of people trafficking and for whom survival has

necessitated accepting work in illegal activities or use of fake documents to survive.

Consistent failures in the management of these women by the criminal justice system and UKBA, questioning our compliance with the European Convention on Trafficking, is detailed in a report on the criminalisation of migrant women due to be published in February 2012.²⁰ These circumstances are completely consistent with the United Nations definition of human trafficking.

Despite the fact that the UK government has ratified the European Convention on Trafficking, with its emphasis on victim protection, there is little attention given by their legal representatives to identifying evidence of exploitation or persecution, or women acting under duress, and the standard advice given is that there is no option but to plead guilty on the immigration related charges.

These women are therefore sentenced, with the assumption of deportation, before they can disclose the necessary information to be assessed as victims or genuine asylum seekers. Failure to get appropriate legal advice on immigration issues in the early stages of court appearances thus prejudices any chance of a positive asylum or residency outcome, as they are slotted into the category of “foreign criminals”.

The Equality and Human Rights Commission conducted an inquiry into the nature and extent of human trafficking in Scotland²¹, described by Baroness Kennedy as, ‘a human rights abuse of terrible consequences’. The inquiry focused on trafficking for the purposes of criminal and sexual exploitation, forced labour and domestic servitude. It found that human trafficking

18 United Nations (2000) *The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*: United Nations

19 United Nations (2010) *The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules)*

20 Hales L and Gelsthorpe L. (2012 forthcoming) *The Criminalisation of Migrant Women*. Cambridge: Institute of Criminology, University of Cambridge.

21 Equalities and Human Rights Commission, Scotland (2011) *Inquiry into Human Trafficking in Scotland*, available at www.equalityhumanrights.com/scotland/scottish-news/press-releases-2011/ehrc-launch-inquiry-into-human-trafficking-in-scotland-report-baroness-helena-kennedy-qc-investigating-commissioner/

existed throughout Scotland and arose from the exploitation of vulnerable victims, demand for cheap labour, and profit-driven organised crime. It revealed that there was little public or professional awareness of trafficking and insufficient cooperation by agencies, leading to an intelligence gap on traffickers.

The inquiry's recommendations, aimed at those with responsibilities to prevent and tackle human trafficking in Scotland, included:

- Scotland should pioneer a strategic, victim centred approach to trafficking, focussing on human rights and crime prevention. This should be in place before the Commonwealth Games in 2014.
- Scotland needs to raise awareness of trafficking issues so that individuals and agencies know what trafficking looks like, where it happens, and what to do about it.
- Agencies must share information more systematically to improve performance on gathering intelligence, successful prosecutions, and supporting victims.
- There is a case for a new Human Trafficking Act, which would address the crime of trafficking directly, and which would enable more prosecutions of traffickers.
- Scotland needs end-to-end services for victims, with practical assistance accessible wherever a victim is found.

4. Responsibility for offending behaviour

As with UK nationals, some foreign nationals are rightly convicted for illegal activity that they became engaged in, with full awareness of the risks and outcome of arrest. However the Corston review states:

Coercion by men can form a route into criminal activity for women.

Casework evidence demonstrates that together with coercion, misinformation and threats are frequent factors behind the foreign women's offences. More seriously there is evidence that these women have been used as commodities by others who make large profits from their criminal activities.

This is most evident in those used as drug couriers, whose payments bear no reflection to the value of the goods they carry. Many are targeted by the dealers because of their vulnerabilities. This is done by identifying women in debt and offering an "easy, risk-free way out."²²

Recent research by the Sentencing Council,²³ explored the background circumstances of foreign national women offenders convicted of offences relating to bringing drugs into the country. This study found that many of the women had experienced, to varying degrees, chaotic, difficult and stressful lives. Financial difficulties included paying household bills, providing for their children or getting out of debt; some had moved into accommodation with family or friends.

It also found that:

A minority of the women reported either receiving threats from the organisers of the offence before travelling with the drugs or whilst they were in prison, or that family members had received threats after their arrest (sometimes meaning that they had had to move away). These threats related either to the return of the drugs (and a suspicion on the organiser's behalf that the

²² This, and following quotes in this section, are from Hibiscus case notes

²³ http://sentencingcouncil.judiciary.gov.uk/docs/Drug_mules_bulletin.pdf March 2011

woman had absconded with the drugs) or were personal threats relating to safety (tied in with the organiser's fears that they would be reported to the authorities).

More sinister ways are by offering loans and then making threats against the woman or her children if repayment, by carrying drugs, is not consented to.

African woman in her forties arrested with five kilograms of cocaine

'A' had her son kidnapped and needed money to pay legal fees to gain custody and provide for him. She had been introduced to drugs by her former partner, smoking cannabis, cocaine and methaqualone regularly, and was still using drugs at the time of her offence.

She was introduced to a man through a friend and was told that once she had delivered drugs to the UK and had returned home she would receive £2,600. A suitcase containing the drugs was given to her and she was taken to the airport. 'A' was told to swallow the drugs, but refused, fearing for her health.

On arrival to the UK she was caught with five kilograms of cocaine in her suitcase and received a six and a half year custodial sentence following an early guilty plea. 'A' had not thought about the risks that might be involved in importing drugs as everything was arranged for her and she hadn't heard of others being caught.

She said that if she'd thought that she would be caught then she wouldn't have gone through with the trip.

The common theme is the advice given that

The worse that can happen is that you will be sent back.

Indeed in some cases there is no offer of payment and the women do not know that the parcel or case they have been asked to take carries illegal goods. The fact that the arrest targets are the 'mules' at the airports, rather than those who will meet them once in the UK, means that the numbers of those arrested higher up the chain is negligible.

The same is true of the women from areas of poverty who wish to support their families by working overseas and sending back remittances. The payment to agents in Vietnam and China for example is between £12,000 and £20,000 to arrange paperwork, transport and the false promise of "access to good work in the UK."

It is arranged through loans or more formal "debt bondage". However, all passport documents are held by the agents, conditions of transport to the UK are abusive, with a few people dying en route, and once inside the country additional payments have to be paid to agents to access work. These new migrants have no way of repaying the debt and freeing themselves from the agents' hold. Accessing work in the sex trade, on cannabis production, or selling fake goods may often be the only means of survival. Payment for this work is minimal and unfortunately, as with drugs importation, it is the women who are used as expendable commodities and who end up with the two year sentences for offences such as production of cannabis.

At the most severe end of the scale are those who have been trafficked in, and who are arrested after managing to escape from forced prostitution or domestic servitude, due to their

illegal status in this country. With all of these women there are harrowing tales of abuse and rape. Hibiscus is aware of cases where bringing drugs has been the only way women have been offered freedom from enforced prostitution, or prostitution has been demanded as payment for smuggling the individual away from areas of conflict.

With all these women there is evidence of powerlessness. As one woman said:

It feels like an offence just to be a foreign national.

5. Managing foreign nationals in custody

5.1. Identified needs

The last thematic inspection on foreign national prisoners was carried out in 2006 and identified three primary problems of:

*Family contact, immigration and language.*²⁴

These concerns and the recommendations of a report based on research in Wandsworth²⁵ were taken on board by the Women & Young People's Group, who put together and published the strategy document for managing foreign prisoners in the women's estate. This was published in March 2008 and was developed on the basis that:

Equality of treatment for foreign nationals can be achieved by addressing the specific needs and disadvantages they face in the prison system.

Main elements of this strategy were to ensure that each site detaining foreign national women has a foreign national strategy, foreign national committee, foreign national co-ordinator,

foreign national prison liaison officers, prisoner peer supporters and foreign national forums. They were also to ensure that there was specialist immigration advice and the provision for non-English speakers.

Since this report has been published there is evidence within women's prisons of compliance with most of this strategy and recognition that foreign national problems cannot be subsumed into the wider race relations and diversity strategy. However there is still no independent specialist immigration advice, nor funding for this and meeting the specific needs of this growing population increases the challenge for sites with reduced resources. The key areas of concern remain:

- immigration
- language and culture
- family contact
- resettlement.

5.2. Immigration

For many of these women the greatest uncertainty is about their immigration status. Over the last few years the United Kingdom Border Agency Criminal Casework Directorate (UKBA CCD) and the prisons have been pulled into a much closer partnership. Prisons have been obliged to pass on all relevant information on prisoners who cannot confirm they have UK nationality to the UKBA CCDs and their staff run regular surgeries in women's prisons. The main objective of the CCD is to ensure that all foreign nationals who meet the criteria under current legislation are identified and removed and this happens as speedily as possible. It also provides the CCD with the opportunity to offer the Facilitated Return Scheme (FRS) and use this to encourage co-operation with this process. The positive outcome of this is that there are shorter holds in prison custody, purely

24 HM Inspectorate of Prisons (2006) Foreign national prisoners: a thematic review: HMCIP

25 Prison Reform Trust (2004) Going the Distance: Developing Effective Policy and Practice with Foreign National Prisoners, by Hindpal Singh-Bhui.

on immigration warrants at end of sentence, than was the case in the past. However a number of difficulties have arisen with this scheme.

Rule 53 of the Bangkok Rules for the Treatment of Women Prisoners advocates that when the woman is non-resident, transfers back to the person's home country should be considered as early as possible in the sentence, and based on informed consent.

The system is far from perfect. Standard critical paperwork advising on removal and served by the prisons on behalf of the CCD is still sent in English, irrespective of the nationality of the recipient. In addition the recipient has a limited 10 days to appeal, which narrows the time gap to access appropriate advice. There is no automatic procedure by which women access legal representation on their immigration status and they sometimes wrongly assume the representative on their criminal charge will offer this. Prison staff who serve the paperwork on behalf of the CCD are not allowed to offer advice on how the prisoner should respond.

To date only one voluntary sector organisation, the Detention Advice Service (DAS), that works in the female estate has the necessary OISC²⁶ level 2 accreditation to offer advice on immigration issues. DAS input is focussed on giving information to new foreign national receptions and their limited resources prevent individual in depth casework. All other organisations such as Hibiscus have to refer their clients on to specialist firms. The legal aid for such cases is limited and there are often long delays before a visit to the woman in custody can be made.

For women who came into the UK with the intention of claiming asylum there are even more challenges. Experience of rape, loss of

family members and fear is a common experience of this group and subsequent arrest and imprisonment in the UK exacerbates this trauma.

Well recognised symptoms of post traumatic stress disorder are lack of concentration and memory loss, but success in immigration interviews depends on consistency on what is said and full disclosure of all relevant information at the full interview. On completion of this, any key additional information can only be submitted by the legal representative within five working days. The fact that the initial immigration screening interview and the full immigration interview then takes place in the custodial environment disempowers these women, whose perception (probably correctly) is that they are seen first and foremost as offenders. The interviews often take place without legal representation; women are not fully aware of their rights to have the interview tape recorded and find difficulties accessing the interview notes, especially if they are transferred to another prison or IRC in the interim. There is also evidence of failure to give these women the option of being interviewed and case managed by female staff and for any interpreter to be a woman, as is their right.

Due to language difficulties and the last minute serving of Immigration warrants on prisoners, uncertainty is the common feature and as one woman stated:

I was told that I would be leaving today, but after I had packed up my cell and walked to the gate I was brought back in and told there is now an immigration hold on me.

5.3. Language and culture

The use of telephone interpreting systems, bi-lingual staff, peer supporters and information displayed in many languages is evident in many sites.

26 Office of Immigration Service Commission authorisation – a legal requisite of any organisation offering immigration advice

However the largest growth in population has been with those from Eastern Europe, China and Vietnam who have least English and literacy, so that reliance on translated material in language of origin is not always the solution. The reliance on other prisoners to act as interpreters is also fraught with difficulties in terms of trust and confidentiality.

Beyond problems of language, foreign national women find themselves caught up in a system of which they have very little knowledge. This is exacerbated by the fact that, even where interpreters are present in court, all communications from their legal representatives are in English. This contrasts starkly with the UK nationals, of whom many are recidivist, returning to familiar territory inside. There is confusion about the respective roles and responsibilities of immigration and criminal justice systems, legal representatives and staff within the prison, and it is worse for those who do not understand what is being said around them on the prison wings.

A number of women also come from countries where they have experienced abuse by those in authority and they do not know who can be trusted. For those who have been used by others to bring in drugs or work in debt bondage there is huge fear that talking to anyone about what has happened will have repercussions. They do not know whether it is better to trust their duty solicitor or other women who talk of the perils of pleading not guilty. They sometimes liken their experience to trying to walk through a maze or as one woman put it:

It is like trying to cross a busy road in the rush hour in a foreign country. I do not know whose arm to take to ensure I am not killed by the cars.

Culture also has a strong influence on their perceptions of themselves and what they

should and should not say in a public setting. The word shame is used by many and this often results in not telling the family back home what has happened. This also impacts on what they disclose in critical interviews with police, immigration and the courts.

Even for those who have lived in the UK for a number of years and have some familiarity with British culture, there is the new prison culture to be learnt. Women talk of their shock of the reception process where they are alongside others who are detoxing from alcohol and drug use and who are prolific self harmers, and for those attending classes on English as a Second Language (ESL), “prison English” is often a priority.

5.4. Maintaining family contact

Baroness Corston recognised that:

Women prisoners are far more likely than men to be primary carers of young children and this factor makes the experience of imprisonment significantly different for women.

Foreign national women in custody are more likely than UK nationals to have a number of dependent children. With the exception of Chinese nationals, they come from countries where it is the cultural norm to have a number of children. Where imprisonment follows on from unexpected arrest and separation from children, these women are often in a state of shock, and there have been cases of women separated from children they were breastfeeding.

Within prisons this difference is evidenced by the disproportionate numbers who are pregnant at reception and take up places on mother and baby units.

Within the Hibiscus caseload over half have stated that they have dependent children under

18 and like UK nationals the majority of women are their main carers. Of the few who are married, a number are co-defendants with their husbands and the child is separated from both parents.

This has three main impacts on foreign nationals who are mothers. The first is who will care for their children in their absence. Those who act as drug couriers are often trying to find a way out of poverty and they come from countries where the formal safety net of social services does not exist. For women who have acted under threat, there is the ongoing anxiety that the children will be even more vulnerable due to her arrest.

The second is how contact can be maintained with their children. The Corston report talks of the impact of the geographical location of prisons on family contact for UK nationals. For foreign nationals this is far more acute and the isolated locations of some prisons and immigration centres necessitates expensive travel from any port of entry, should the family contemplate visits from overseas. Within the prison service there is the option, for those serving long sentences, of temporary relocation to a London prison for accumulated visits.

For the majority serving a short sentence and for those within the IRCs this option is absent. The five minute free phone call per month, for those in prison who do not get visits, is a meagre compensation and cost of overseas phone calls is a constant grievance raised by foreign nationals. Others decide that the difficulties of travel, and being united in a visits area with a time limit, is too traumatic for their children. The reality for most is often no contact between arrest and final deportation. For women who have been living with partners in the UK, this may be exacerbated that their partner's residency status, his inability to provide the required documents for a visit and fear of his arrest.

Nigerian women in her early twenties trafficked into the UK

Following the death of her father 'R' was trafficked into the UK on a visiting visa as payment for covering the costs of his funeral. On arrival her passport was taken from her and she was forced into prostitution. A few months later she was sold on to another man where she was subjected to physical and sexual abuse and managed to escape after he overdosed.

Following this she had no accommodation and went to a church to ask for support. After moving into shared accommodation the house was raided by Immigration officials and 'R' was arrested as she had overstayed the duration of her visa. She spent seven months in a detention centre until she was moved into HMP Holloway following disturbing behaviour.

Her asylum claim and subsequent appeal were rejected and on release 'R' has been trying to return voluntarily back to Nigeria but has faced difficulties with language barriers and arranging travel documentation.

Along side this is the impact of deportation on the increasing numbers of those arrested in country. These arrests are the most common and the average period of residence prior to arrest for those on the Hibiscus caseload is about four years, with a number residing here for over 10 years. It is hardly surprising to find that a number of these women therefore have partners and children in the UK.

Deportation for the carer includes the legal requirement that she takes her children with her. There is inevitable trauma for any child who is separated from his/her mother due to her

imprisonment. Their insecurity is exacerbated by the process of removal from the UK. This involves another separation from carers, friends and school.

As pointed out earlier a disproportionate number of foreign women give birth in custody. Unlike UK nationals they rarely have the option of having a family member as birthing partners and disclosures indicate that a number of these pregnancies are resultant on rape and/or enforced prostitution. Timing of the birth can also prolong the actual time in custody on immigration hold due to the fact that women should not be flying in the last trimester of pregnancy, nor for a recommended period following the birth. For those who are pregnant at time of arrest and are serving long sentences, there is also the difficult decision to be made in relation to what is in the best interests of the child in terms of the timing of the inevitable separation, and who should be appointed to care for the child until the mother is released. In the case where the mother is facing up to 6 years or more in prison the child may face adoption if no relatives come forward to care for the child. In all of these areas women feel very vulnerable and this is exacerbated by the absence of support from those of their own culture.

5.5. Resettlement

As with national policy, Offender Management guidance to working with foreign national women is absent and the only recommended good practice identified in the 2008 publication was in relation to the use of interpreters.²⁷ It is not insignificant that a higher percentage of foreign national women, particularly non English speakers, enter custody without a completed OASys assessment form.²⁸

These women are rarely prioritised in terms of risk, and the fact that the normal contributory factors to offences committed by female offenders, such as substance misuse, are absent, is evidenced by the low numbers who need or seek the services of CARAT²⁹ teams. For those serving lengthy sentences for drugs importation, the limited delivery of programmes such as the “Drug Importers Group” is appropriate and well received and some women talk of their goal on return to ensure that no one else is pulled into this offence. Women from all cultures are also empowered by programmes and interventions for victims of domestic, physical and sexual abuse.

However other interventions are limited and women serving very lengthy sentences use most of their time in work. Some prisons are attempting to help women gain qualifications that are of value overseas, but those with children often seek the hardest and best paid employment in the prison, which is often kitchen work, and by spending as little as possible try to send savings back to their families. This is sometimes at the expense of missing out on ESOL education.

Resettlement input for those serving sentences under 12 months, especially those who serve part on remand, is minimal with the most important input on pre-release programmes. Resettlement staff are aware that release is often the most traumatic time for all prisoners and the focus is on making women aware of relevant support in the community and making appropriate pre-release links. This is in relation to practical challenges such as accommodation, work, and benefit entitlements and, if there are health/ drug problems, ensuring they have a GP contact. With those who have mental health problems there is also some input on through the gate work.

²⁷ Ministry of Justice/NOMS (2008) *The Offender Management Guide to Working with Women Offenders*, London: Ministry of Justice.

²⁸ OASys stands for Offender Assessment System.

²⁹ ‘CARAT’ Counselling, Assessment, Referral, Advice and Throughcare services, intended to address non-clinical treatment needs of prisoners with substance misuse problems; cf. HM Prison Service (2005) Prison Service Order 3630.

All of this is absent for foreign national prisoners, except for women from the EEA. There is the increasing expectancy that they will be removed at the end of sentence and there is little value in their attending pre-release groups. Currently the only relevant post release support for those being deported is through Hibiscus and in the form of reintegration support by Integrated Offender Management (IOM)³⁰ for the women who are granted a 'facilitated return'.³¹

6. Use of Imprisonment

It is perhaps helpful to remind ourselves of the reasons for imprisonment and, in the light of the Corston Report and the facts outlined above, to see whether it is acceptable that there is still this growth in foreign national women given custodial sentences. The four key justifications are that imprisonment:

- acts as a deterrent to those who may consider offending in the future
- is an appropriate punishment for the offence, through loss of liberty
- reduces reoffending by facilitating resettlement interventions
- protects society from offenders who present a risk.

6.1 Acting as a deterrent

One of the strongest arguments used to continue the use of long sentences for drugs importation is deterrence. However what we see with most couriers is punishment of the victim, not the person whose profit from the offence tallies with the value of the drugs. Indeed one could argue that, due to the severity of punishment, those who profit ensure that they are never the ones to risk arrest, to

the extent that contact details given to 'mules' is always false, as evidenced by police action after arrest.

Similarly, in house raids where cannabis has been produced the organisers are rarely on site and contact with the workers is always one way, from the person who profits from the crop.

6.2 Appropriate punishment through loss of liberty

The fact that many of those arrested are seen as expendable commodities, used by those who profit from organised crime, again raises the question of whether what they receive is appropriate punishment. In addition, if we accept that loss of liberty is punishment, how can we justify this continuing through 'immigration holds' and the expansion of the Immigration Removal Centres, where some women are being held for over 12 months? Uncertainty about when an individual is to be released makes any length of imprisonment far worse and long term causes stress-related symptoms.

6.3 Reducing reoffending

Unlike UK nationals, most foreign nationals are first time offenders. They are so traumatised by the whole process they have gone through that the likelihood of reoffending is not affected by lengthy sentences.

6.4 Protecting society from offenders who present a risk

As outlined above and recognised in the Ministry of Justice Women & Young People's Group manual there is a very low rate of offences with any element of violence within the current foreign national population.

³⁰ The International Organisation for Migration

³¹ The Facilitated Return Scheme is currently available for non EEA foreign nationals who are served sentences of over 12 months and who do not have current asylum applications or appeals against removal.

7. Conclusion and recommendations

Looking at the trends and data outlined above, one cannot help but ask the question as to whether the current ethos of focussing on the risk that “foreign criminals” present to the UK, rather than an appropriate focus on rehabilitation of ex-offenders, is a contributory factor to the growth of this prison population.

We should also recognise that for many women who are imprisoned and then deported there is a long term detrimental impact on dependent children. We therefore propose:

1. The development and introduction of a well informed national strategy for the management of foreign national women in the justice system, taking into account the following recommendations:

- All efforts should be made to ensure that nationality does not prejudice court decisions and that foreign national women are included in any objectives to divert women from custody, both in the context of the remand and sentenced population.
- The reassessment of sentencing guidelines for drug couriers should take account of the role that women play in this offence and introduce scope for mitigation and a greater emphasis on proportionality in sentencing. Those currently serving lengthy prison terms for drug importation should have their cases reviewed.
- Evidence on the degree to which the woman had freedom of choice in her involvement in the offence, by ensuring evidence of coercion, exploitation and duress is examined, should be integral to all sentencing decisions within criminal justice proceedings with women, in compliance with CEDAW³² and the United Nations Protocol to Protect Victims of Trafficking.
- Unless they pose a threat to UK security, those arrested on passport charges at point of departure en route to their country of origin should not necessarily be charged with a criminal offence. In these circumstances many foreign national women could be returned to their country of origin where matters can be dealt with. In the light of this, the UKBA should review and amend its policies.
- Foreign national prisoners with contested or uncertain immigration status should be guaranteed independent immigration advice and no foreign national woman should be compelled to enter a plea on a criminal matter until she has had access to proper legal support and advice.
- Decisions on the management of foreign prisoners and detainees should evidence commitment to the welfare of children and ensure that the human rights of dependents are not violated.
- All courts should be fully informed about dependent children before imprisonment, where necessary deferring sentencing until suitable arrangements are put in place. If the mother faces a custodial sentence, where the child is under six months, then she should be assessed for a place in a mother and baby unit prior to sentencing.

³² United Nations (1979) *The Convention on the Elimination of All Forms of Discrimination against Women* – CEDAW: available at http://untreaty.un.org/cod/avl/pdf/ha/cedaw/cedaw_e.pdf

2. In recognition of the fact that women are used as front line risk takers for those who profit from organised crime there should be:

- Greater focus by police and immigration authorities on identifying those behind the offences, for example by reducing focus on airport arrests and carrying out surveillance on those who meet the drug mules, or oversee the management of cannabis production.
- Rigorous application of guidelines on human trafficking and smuggling developed by the Crown Prosecution Service (CPS) and production and application of ACPO police guidelines
- Expansion of the leave of stay for victims of trafficking and proper protection to facilitate better information gathering on those behind this profitable illegal industry.

3. In recognition that there is greater long term value in tackling the cause rather than the effect we would recommend:

- Expansion of accessible education campaigns in countries of origin advising potential drug couriers of the risks they are taking.
- Investment in similar public education campaigns for those who fall victim to agents who facilitate illegal entry from countries such as Vietnam and China and trafficked women from countries such as Nigeria and from Eastern Europe.
- International co-operation and proactive steps to ensure compliance with CEDAW, the Bangkok Rules and the UN Protocol for the Protection of Victims of Trafficking.



The Female Prisoners Welfare Project (FPWP) is a registered charity established in 1986 to provide support for females of all ethnic origins and nationalities within the UK criminal justice system.

Hibiscus is a branch of FPWP and was set up in 1991 to address the special needs of foreign national women imprisoned in the UK.



The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective penal system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform.



The Barrow Cadbury Trust is an independent, charitable foundation, committed to supporting vulnerable and marginalised people in society. The Trust provides grants to grassroots voluntary and community groups working in deprived communities in the UK, with a focus on Birmingham and the Black Country. It also works with researchers, think tanks and government, often in partnership with other grant-makers, seeking to overcome the structural barriers to a more just and equal society.

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