

Liberty Denied:

Women Seeking Asylum Imprisoned in the United States



Women's Commission
for Refugee Women and Children

April 1997

Mission Statement

Since its founding in 1989 under the auspices of the International Rescue Committee, the Women's Commission for Refugee Women and Children has sought to improve the lives of refugee women and children through a vigorous and comprehensive program of public education and advocacy. The Commission is the first organization in the United States dedicated to speaking out solely on behalf of women and children uprooted by civil war, violence, or persecution.

The initial work of the Commission has focused on refugee emergencies in overseas settings. Its mandate, however, is to work on behalf of all women and children who flee their homes and communities, including those who seek refuge in the United States. In the spring of 1995, the Commission initiated a project to assess the treatment of women asylum seekers in the United States. This evaluation considered the physical conditions in which women are detained; their access to legal counsel and interpretation; the protection they are provided to ensure their safety; and their physical, mental, and social well-being.

In order to make a comprehensive assessment of these conditions, the Women's Commission visited nine detention centers in which women seeking asylum in the United States are detained by the Immigration and Naturalization Service. It also interviewed former detainees about their experiences. The following is a compilation of the findings from these assessments and a proposed platform of action for changes in U.S. detention policy to better address the needs of women asylum seekers.

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TABLE OF CONTENTS

Executive Summary	2
I. Overview	3
Introduction	3
The United States Asylum System	4
The United States Detention System	5
Synopsis of Applicable International Legal Standards	11
The Women's Commission Detention Project	11
II. Conditions of Detention	13
Security Issues and Physical Settings	13
Treatment of Detainees by INS and Prison Staff	15
Translation Assistance	17
Health Care	19
Hygiene	23
Diet	24
Recreation and Exercise	28
Education	29
Spiritual Support	30
III. Access to Detention Centers	31
Visitor Access.....	31
Attorney Access	34
Access to Outside Monitoring	36
Oversight of Facilities by the INS	37
IV. Asylum Proceedings	39
Implementation of APSO	39
Impact of Detention on Detainees' Ability to Win Asylum	40
V. Conclusions and Recommendations	41
Acknowledgements	44
Endnotes	45

EXECUTIVE SUMMARY

Each year, the Immigration and Naturalization Service (INS) imprisons thousands of asylum seekers, including hundreds of women, in detention centers and prisons across the United States. In its two-year investigation of the treatment of women seeking asylum in the United States, the Women's Commission for Refugee Women and Children has found that women asylum seekers face physical and verbal abuse in prisons used by the INS and frequently endure prolonged detention in conditions that fail to meet international principles of refugee protection and basic standards of decency and compassion. Many of these women have fled gender-based persecution, including gang rape by military forces, forced marriage, or female genital mutilation.

Asylum seekers are frequently jailed for months, and even years, with little contact

refuge to those fearing persecution.

Women asylum seekers are particularly at risk of neglect and abuse. The Women's Commission found that the physical and psycho-social needs of women were not addressed. Inadequate translation assistance results in women being held in prison virtually incommunicado, unable to voice their needs or draw attention to any abuse they experience. Their medical problems are mismanaged or ignored, including critical reproductive health services and gynecological care. Access to the outdoors is nonexistent in some cases and severely limited in most others. The diet provided to women asylum seekers is often insufficient and almost never culturally appropriate. Most disturbing are reports of abuse at the hands of the officers charged with their care, in some cases eerily reminiscent of the abuses the women fled in their own countries.

Moreover, women in detention are virtual-

“The right to liberty is a fundamental right, recognized in all the major human rights instruments, both at global and regional levels. The right to seek asylum is, equally, recognized as a basic human right. The act of seeking asylum can therefore not be considered an offense or a crime. Consideration should be given to the fact that asylum seekers may already have suffered some form of persecution or other hardship in their country of origin and should be protected against any form of harsh treatment.”

From the United Nations High Commissioner for Refugees Guidelines on Detention of Asylum Seekers.

with the outside world. They become indistinguishable from the criminal inmates with whom they often share space. Locked in cells, hidden behind fences, forced to wear prison uniforms, and shackled when transported, they lose hope and sometimes abandon their asylum claims to risk return to their home countries. Their dream of freedom in the United States becomes a nightmare of despair.

The United States is favoring deterrence of asylum seekers over serious commitment to its legal and moral obligations to provide

ly sealed off from the outside world. The remote locations of many of the facilities, inaccessible and inadequate telephone services, and the INS's widespread practice of frequently transferring detainees from facility to facility undermine the ability of women to maintain the contact with their attorneys necessary to prepare their asylum cases. These problems, combined with the limitations placed on visitors, also prevent them from seeing their families, friends, and others interested in helping them.

In some cases, women are denied services

provided to their male counterparts, including translation, English instruction and, in one case, access to attorneys. This is an unacceptable form of discrimination. Ironically, the United States government has shown tremendous international leadership in its support of efforts to address the needs of refugee women in overseas settings. It does not reflect well on these efforts to deny equivalent services here at home.

The United States must change its detention policy to ensure that asylum seekers do not suffer further trauma in this country. This is particularly crucial for women and other populations at risk. The United States must adopt a serious release policy so that asylum seekers are not subjected to incarceration. The INS should develop alternatives to detention that address the physical, medical, reproductive health, mental health, social, cultural, and legal needs of asylum seekers. Finally, the INS should institute detailed standards of detention and ensure their enforcement for those few individuals for whom detention is appropriate.

The Illegal Immigration Reform and Immigration Responsibility Act of 1996 calls for an increased emphasis on detention as an immigration enforcement tool. As the INS moves toward implementation of this new regime, it should not use its limited resources to incarcerate individuals whose only “crime” is to ask the United States for the protection they so desperately need.

I. OVERVIEW

Introduction

“They told me that they were taking me to a place called ‘home, American home.’ It was then that I was taken to the Berks County Prison. When we arrived there, the man said, ‘This is the American home I was telling you about.’ ”

Affidavit of Aicha Garba, a 20-year-old Togolese woman, who fled her homeland to escape female genital mutilation and a forced marriage and was detained in the Berks County and York County Prisons in Pennsylvania for a total of five months.

As part of a two-year assessment of the treatment of women seeking asylum in the United States, the Women’s Commission for Refugee Women and Children has interviewed dozens of women like Ms. Garba, detained by the Immigration and Naturalization Service (INS) pending the outcome of their asylum proceedings.¹ These women, representing many nationalities, are scattered across the United States in prisons and immigration detention centers, cut off from the outside world and separated from their families and friends. Often, they are incarcerated in the same cells with criminal inmates.

In some ways, Ms. Garba was lucky; she was released from detention after five months, whereas other women spend as long as four years in prison. Their only “crime” is to seek protection in a country that prides itself on its tradition of welcoming the “tired, huddled masses, yearning to breathe free.”

This report highlights conditions of detention in nine detention sites in which women seeking refuge in the United States are held pending the outcome of their asylum proceedings. It then offers recommendations for reform of the United States detention system to better protect women asylum seek-

ers and their families and ensure that United States and international standards of refugee protection are respected.

The United States Asylum System

“We know the Americans have big hearts. We almost starved to death on the *Golden Venture*, but the Americans saved us. We hope to be saved again. We’re dying in here. We didn’t do anything bad, we just wanted to have more children. Please let us out.”

Comment of Chinese woman, detained in the Hancock County Justice Facility for 21 months, explaining that she came to the United States to escape China’s coercive family planning policies.

In the wake of World War II and the growing recognition of the atrocities committed by Nazi Germany, the world community joined together to establish international standards for the protection of refugees. This effort culminated with the 1951 United Nations Convention Relating to the Status of Refugees and its 1967 Protocol, which impose on countries the obligation to protect any individual found to have a well-founded fear of persecution on account of race, religion, nationality, political opinion, or membership in a particular social group.

It was not until 1980 that the United States finally incorporated the Refugee Convention into its domestic law.² Among other reforms, the Refugee Act of 1980 mandated establishment of an asylum procedure to protect individuals with a well-founded fear of persecution in their homeland who are physically present in the United States. This provision recognized that the United States at times acts as a country of first asylum. As such, it has an obligation under international law to offer refuge to those individuals who need it.

In 1991, the United States finally fulfilled the requirements of the Refugee Act by

establishing a specialized corps of asylum adjudicators. These adjudicators are trained in human rights and country conditions, a response to years of criticism of the United States asylum system for biased and politically motivated adjudication of asylum claims.³

The asylum corps is charged with addressing asylum claims presented to it affirmatively by persons who are in the United States but fear returning to their homelands. Recent legislation, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), places an additional restriction on asylum applicants who present their claims through this system by requiring them to submit their applications within one year of entering the United States, with a few limited exceptions.⁴

IIRIRA also creates a system of “expedited removal,” which imposes new hurdles at U.S. ports of entry on asylum seekers who lack the required documentation to enter the country.⁵ Under this system, scheduled for implementation in April 1997, an INS inspector posted at a port of entry will screen individuals lacking the appropriate documents to enter; if an asylum seeker fails to articulate a fear of persecution or an intent to apply for asylum, she will be immediately returned to her homeland. This inspection will occur without a potential asylum applicant having had the benefit of rest, consultation with an attorney or other interested party, or possibly even translation.

Even those who make it over this difficult hurdle will then have to satisfy an asylum officer that they have a “credible fear” of persecution, a process the INS proposes will take place within two to seven days. Those deemed not to have a credible fear will be ordered removed or can request a review of that determination by an immigration judge. Those deemed credible either by the asylum officer or after review by an immigration judge will still need to meet the higher evidentiary standard to show a “well-founded fear” of persecution required to obtain asylum.

Not all the recent developments in asylum law have been negative. Although rooted in the refugee experience of the Second World War, United States law has slowly developed to recognize the many forms that human rights abuses can take. Included is a growing acknowledgment that violations of women's rights are violations of human rights. In 1995, the INS issued guidelines to the asylum corps designed to enhance the treatment of women asylum seekers, particularly those who have faced gender-based persecution.⁶ While implementation of these guidelines has been spotty, they represent a significant step forward in the recognition that women may experience unique forms of persecution that are often difficult to discuss or prove.

In recent years, approval rates for asylum applicants in the United States have hovered between 20 and 25 percent.⁷ It remains to be seen what effect implementation of IIRIRA and the "gender guidelines" will have on asylum approval rates.

The United States Detention System

"We were not prepared for this. It makes no sense. I've talked to the lady in charge of deportation. I explained everything. She acted like it meant nothing to her."

Comment of Haitian woman, detained for five months, first in the Wicomico County Detention Center and then in the Dorchester County Prison, both in Maryland, about the detention of herself and her sister.

Contrary to popular belief, the United States does not always open its doors to individuals seeking protection from persecution. Each year, the INS detains thousands of asylum seekers, including hundreds of women, pending the outcome of their asylum proceedings.

The use of detention as an enforcement mechanism has existed for decades, and in fact has been on the upswing since the early 1980s, with an emphasis on detention of individuals who appear "inadmissible" to the United States.⁸ An individual is typically deemed inadmissible if she or he lacks the required documentation to enter the United States. This emphasis on paperwork, however, fails to recognize that asylum seekers are often unable to procure the documentation necessary to enter the United States through regular channels. By definition, the extraordinary circumstances provoking a refugee's flight frequently preclude taking the time or risking the exposure to government authorities necessary to obtain travel documents.⁹

"When she arrived she had false documents for fear of leaving the country under her real name. In the U.S. she was put in secondary inspection where she was asked lots of questions by a male officer about why she had fake documents. After about an hour she asked for a female officer. Even with the female officer she couldn't tell the details of the gang rapes she'd experienced. She was

Aicha Garba

Aicha Garba, from Togo, arrived at Newark International Airport on February 21, 1996. In her affidavit, she states that she went to the immigration desk and explained that she was applying for political asylum. She states that she was taken to a "big, cold room with a toilet." After spending the night alone, hungry and shivering from the cold, immigration officers entered.

Excerpts from Ms. Garba's affidavit:

Finally two men came in and they had chains. This was so different than what I was thinking about. My heart started beating so fast. I felt very scared then.

One man told me to stand up and to hold up my hands above my head. He put one chain around my waist. And then he chained my hands together and chained them to my waist. So I couldn't even move my hands or arms. Then he told me to hold my feet together. They chained my feet together. I used to see this on TV and thought this would never happen in my life.

They brought me something to push my luggage with. He told me, "Now, you must push your luggage. We can't do this for you." I couldn't walk even because of the chains around my feet. "You must move very fast because we have to go."

But I couldn't move fast.

In the room, I could move my luggage a little easy. But when I got out of my room, it was filled with people. I had to turn corners to avoid hitting people. The guards yelled at me not to hit anyone. "You don't see people standing there!" he yelled at me. I almost fell down but the other man held me up.

Finally, I got to the car.

I still didn't know where I was or where I was going.

When I got in the car, they told me they were taking me to one place called "home, American home."

It was then I was taken to Berks County prison. When we arrived there, that man said, "This is the American home I was telling you about."

They removed my leg chains. They took me to a huge room with two long benches. I stayed in this room a very long time.

Finally, a woman came in and took off my hand and waist chains. She told me to go into the bathroom. She told me to take off all of my clothes. She told me to bend over and she looked very closely at my body.

She took me to the shower, I had no soap. Another woman came and handed me sheets and uniform. I still had no clothes on.

I got dressed. But I asked: "Pad. Please pad. I have my period, I need pad."

I was taken to a very small room. She said this is where I was going to live.

I asked again: "Pad please. Pad please. I need to protect myself." She seemed very angry that I kept asking for this. She left the room.

They did not come back. I was bleeding all over myself and onto the floor. She came back with a pad but she was angry that there was blood all over the floor. "What is this?" she yelled. She threw the pad at me.

I said: "Please can I have pant. I cannot use pad without pant." She came back soon with underwear.

For five days, I stayed in this room. I did not see anyone. They let me take a shower after three days, but that was the only time I was allowed out of this room.

After five days, they came and put chains on my hands and waist. They took me to the big room with two benches again.

They brought one girl who was in chains too. She was very young. They locked the door. I looked in her face and saw she was crying.

assumed to be an economic refugee, was charged with having false documents, and was sent directly to detention.”

Excerpt from interview with Anna Marie Gallagher, attorney and Director of the Legal Action Center of the American Immigration Law Foundation, who represented a Nigerian woman whose request for asylum was originally denied and then granted on appeal. She fled Nigeria after being repeatedly gang raped by military police due to her husband's political activism.

Nonetheless, under United States law, the Attorney General holds broad authority to detain anyone who appears inadmissible, including asylum seekers. The INS exercises this authority, typically through its 33 district offices, with very little oversight from its Central Office in Washington, D.C.

The INS also has the authority to parole individuals out of detention for emergent or humanitarian reasons. Under INS regulations, certain categories of persons are eligible for parole, including detainees with serious medical conditions, pregnant women, juveniles, and those whose detention is not “in the public interest.”¹⁰ Parole authority is lodged with the individual District Directors, whose decisions are generally not subject to further administrative review.

In 1992, the INS Central Office issued non-binding guidelines to its districts on how their parole discretion should be exercised for asylum seekers. This program, known as the Asylum Pre-Screening Officer Program (APSO), allows for the release of asylum seekers from detention if they meet several criteria, including if their asylum claim is judged by a trained immigration officer to be credible and if they are found not to pose a flight risk.¹¹ The APSO program, at least implicitly, represents an acknowledgment by the INS that detention of asylum seekers is inappropriate and unnecessary in many cases.

Implementation of APSO, however, has been inconsistent. In many ways, the lack of follow-through is not surprising; the INS has

a longstanding reputation for allowing its districts unfettered discretion to follow directives from the Central Office as they choose, resulting in sporadic, and sometimes nonexistent, implementation. One observer has noted:

For the most part, district directors (and, by delegation, lower-level enforcement officers) have enjoyed broad discretion to detain or parole arriving aliens as they see fit—or as space allows—with very little administrative or judicial oversight of their detention decisions... [APSO] has largely faltered due to a lack of commitment and resources.¹²

Moreover, there is a strong sentiment within the enforcement branches of the INS that detention serves a useful purpose as a deterrent to “illegal immigration,” including organized smuggling efforts such as the one that brought hundreds of Chinese nationals to the United States in 1993. In a response brief to a lawsuit challenging the detention of the *Golden Venture* Chinese in Pennsylvania, the United States government conceded, “detention of inadmissible aliens was one aspect of the government’s proposed program ... to deter alien smuggling...”¹³ This policy was certainly witnessed during the Women’s Commission’s assessment of the detention of the Chinese; in one case, the INS continued to detain a Chinese woman in the New Orleans Parish Prison for four months after an immigration judge had granted her asylum. As one expert has explained, “The concept is that incarceration, particularly if it is prolonged and under onerous circumstances, may prompt an individual to leave and encourage others contemplating a sojourn to go elsewhere.”¹⁴

In addition, included in IIRIRA are changes to the detention system that carry potentially serious repercussions for asylum seekers subject to expedited removal. The INS will immediately transport individuals who express a fear of persecution from the airport to a detention center. They will be held in detention for the two to seven days

allotted to perform the credible fear determinations. If they fail to show a credible fear, they will remain in detention pending either review of that decision by an immigration judge or their deportation.

For those individuals who succeed in demonstrating a credible fear to the satisfaction of an asylum officer or immigration judge, the legislation leaves open the possibility for parole out of detention, albeit on a case-by-case basis. The legislation thus has repercussions for continuing or even improving the APSO program, since there are obvious connections between the credible fear determination under expedited removal, to which presumably all asylum seekers who make it through the initial port of entry screening will have been subject, and the APSO criteria allowing release.

The INS itself has voiced its commitment to continuing and expanding APSO. Following through on its intent will be fundamental to ensuring that asylum seekers are not unnecessarily subjected to prolonged detention after they are found to have a credible fear of persecution.

Unfortunately, the interim regulation to implement IIRIRA's enforcement provisions fails to address in a straightforward manner whether or not an individual will qualify for parole after satisfying the credible fear requirement. One expert has posited:

[C]onsolidating credible fear interviews at INS detention facilities could mean that some arriving aliens are transferred away from family and other sources of support to very remote locations. Moreover, there is a danger that once asylum applicants have been transferred to a detention facility they will, in the absence of meaningful release procedures, remain incarcerated even after they have demonstrated the plausibility of their claims.

The experience with the asylum pre-screening program bears out this concern. APSO has not functioned effectively as an informal program. Countless asylum seekers have languished in detention simply because a screening interview was never scheduled, or a parole recommendation

was never acted upon by the district director. The INS is poised to implement a plan to "revitalize" this program, which would address some of these problems. Nevertheless, the Service has been reluctant to commit itself to the animating principle of APSO—that asylum applicants who have established a credible fear of persecution ordinarily should be released from detention—by codifying this principle into regulations.¹⁵

In addition to the potentially harmful effect that detention can have on asylum seekers and the fact that asylum seekers pose little threat to United States society, there are practical considerations arguing for a generous release policy for asylum seekers.

First, the INS simply lacks the detention space to detain everyone whom it theoretically could. The Vera Institute of Justice has reported that the INS typically has detention space available for less than 10 percent of the individuals whose removal it is pursuing before the immigration courts.¹⁶

In 1996, the INS reported that it had a total of 8,592 bed spaces available to house individuals in removal proceedings. Due to its new mandate under IIRIRA and continuing pressure from Congress, the INS is moving rapidly to increase its detention capacity. In testimony before the House Subcommittee on Immigration and Claims in February 1997, the INS testified that it plans to have more than 12,000 bed spaces available by October 1997.¹⁷ However, IIRIRA also places new demands on that space by subjecting more people to removal and mandating their detention until their deportation is carried out.¹⁸ In fact, one of the INS's first responses to its new legislative mandate was to notify Congress that it lacks sufficient detention space to fulfill its new responsibilities and to exercise an option giving it a year to expand into the new detention regime.¹⁹

Second, detention is extremely expensive. In the past, the INS has described the cost of detaining all excludable individuals as "astronomical."²⁰ More recently, in the inter-

im regulation to implement the enforcement provisions of IIRIRA, the INS indicated that it pays an average of \$63 per day per bed space. It also estimated its annual cost just to detain criminal aliens, which does not even include asylum seekers and others in removal proceedings, to be at least \$205 million.²¹ It remains to be seen whether Congress will be willing to provide sufficient funding to meet the new demands placed on the INS detention program.

Currently, the INS utilizes four types of detention facilities. The agency operates nine of its own detention sites, known as Service Processing Centers. It jointly manages two facilities with the Bureau of Prisons, a sister agency within the Department of Justice. It contracts with for-profit facility operators, primarily correctional companies that have benefited from the national trend to privatize

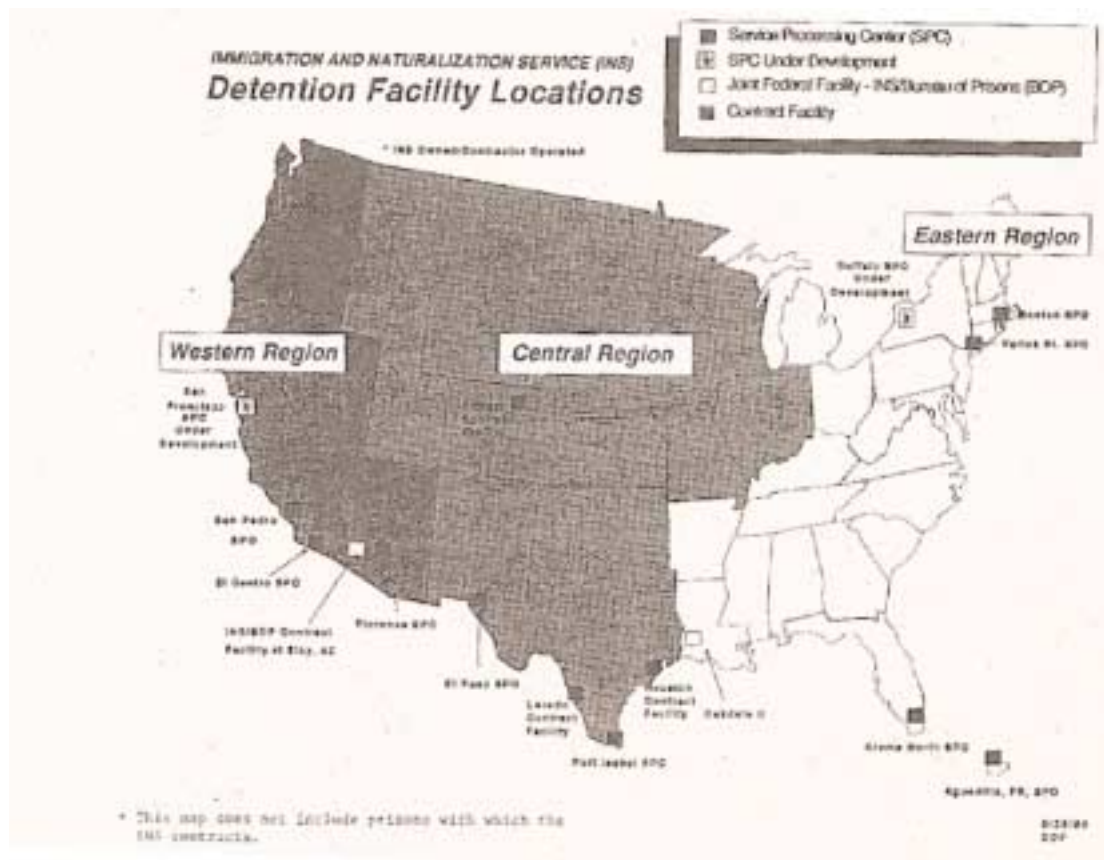
prison operations and have also found it lucrative to manage centers solely to hold immigration detainees.²² Finally, the INS contracts with federal, state, county, and local prisons to access bed space as needed, paying for that space on a per diem basis. In a pending class action suit addressing conditions of detention, the INS revealed that since 1990 it has entered into such contracts with more than 200 prisons across the country.²³

Number of Facilities Used by the Immigration and Naturalization Service To Detain or Incarcerate Persons for Periods Exceeding 30 Days, January 1, 1990 to Present

Texas	33	Maryland	4
Florida	32	Massachusetts	3
New York	27	Kansas	3
Virginia	13	Oklahoma	3
Louisiana	12	Arizona	3
Pennsylvania	12	Nevada	3
New Jersey	12	Vermont	3
Washington	10	U.S. Virgin Islands	3
California	9	Idaho	2
Colorado	8	Alaska	2
Minnesota	6	Washington, D.C.	2
Michigan	6	Ohio	2
Maine	5	Illinois	1
Puerto Rico	5	Utah	1
Georgia	5	Guam	1
Missouri	4	Oregon	1
Wisconsin	4	Connecticut	1
New Hampshire	4	North Carolina	1

Source: *Kaitola v. Reno*, No. CV 94-4859 Kn, U.S. District Court for the Central District of California.

From Refugee Reports, U.S. Committee for Refugees (August 30, 1996).



Synopsis of Applicable International Legal Standards

Both treaty and customary international law prohibit prolonged arbitrary detention. Article 9 of the Universal Declaration of Human Rights states that “No one shall be subjected to arbitrary arrest, detention or exile.”

Additional support for this principle is found in the International Covenant on Civil and Political Rights, article 9(1) of which states that “No one shall be subjected to arbitrary arrest or detention.” Article 9(4) of the Covenant elaborates, “Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”

The United Nations High Commissioner for Refugees (UNHCR), the primary international agency mandated to protect refugees, has raised concerns with the United States about its detention practices.

The UNHCR Executive Committee has expressed deep concern about the detention of refugees and asylum seekers merely on account of their undocumented entry or presence in search of asylum. Executive Conclusion No. 44 recommended that ‘in view of the hardship which it involves, detention should normally be avoided.’ Detention of refugees and asylum seekers should normally be limited to the shortest time necessary to establish the applicant’s identity and the elements of the asylum claim.²⁴

UNHCR has also issued Guidelines on Detention of Asylum Seekers. They recommend that detention be limited to the time it takes to identify a person and the elements of his or her asylum claim, and call for special protection of populations at risk, including single and pregnant women.

The United States has been a strong supporter of human rights instruments and UNHCR efforts. It is important that the

United States respect these instruments in its own practices in order to lead internationally.

The Women’s Commission Detention Project

The Women’s Commission has assessed conditions of detention in nine detention sites used by the INS to detain women asylum seekers. These include seven county prisons: the New Orleans Parish Prison in New Orleans, Louisiana; the Hancock County Justice Facility in Bay St. Louis, Mississippi; the York County Prison in York, Pennsylvania; the Berks County Prison in Reading, Pennsylvania; the Wicomico County Detention Center in Salisbury, Maryland; the Dorchester County Prison in Cambridge, Maryland; and the Kern County Lerdo Detention Center in Bakersfield, California. The Commission has also visited two detention sites in Puerto Rico: the Aguadilla Service Processing Center in Aguadilla and the Metropolitan Detention Center, a federal prison in San Juan. In addition, it has interviewed detainees who have been released.

In order to make a comprehensive and accurate assessment of each site, the Women’s Commission sponsored delegations of from two to six individuals each with expertise in refugee protection, asylum law, and the psycho-social needs of women. The delegations interviewed women detainees from China, Cuba, the Dominican Republic, Ghana, Guatemala, Guinea, Haiti, Ivory Coast, Nigeria, Somalia, Sri Lanka, Togo, Trinidad, and Zaire. The delegations also interviewed INS staff in the relevant district offices, as well as on site in the facilities; the prison staff; and attorneys and other advocates in the community who had contact with the detainees.

The timing of these delegations paralleled some highly visible developments in United States asylum law and detention policy, including the highly contentious debate over IIRIRA.

In June 1995, the Esmor Immigration

Detention Center in Elizabeth, New Jersey erupted when detainees housed there rioted to protest the horrendous living conditions they had endured. This resulted in the temporary closing of the facility, a damning internal assessment of the facility's operations by the INS itself, and the immediate transfer of detainees to other detention centers. The women in Esmor were moved to the York County Prison, where the Women's Commission interviewed many of them about their experiences in Esmor as well as York.

In addition, in April 1996, United States public attention was caught by the story of Fauziya Kassindja, a young Togolese woman who fled her homeland to escape a forced marriage and the dangerous and often debilitating ritual of female genital mutilation, and was detained by the INS for almost two years before being granted asylum. Ms. Kassindja was one of the women transferred from Esmor to York County Prison.

During this time, one of the harshest detention policies ever undertaken by the United States government targeted the Chinese asylum seekers who were passengers on the *Golden Venture*, which arrived on Rockaway Beach, New York in June 1993. At that time, the INS adopted, under orders

from the Clinton Administration, a blanket detention policy to deter further Chinese arrivals. Many of the Chinese languished in detention for almost four years until their release in February 1997. The Women's Commission visited the *Golden Venture* women twice, first in New Orleans and later in Bakersfield, California.

Finally, in May 1995, a congressional delegation visited the Krome Service Processing Center in Miami, Florida, one of the largest INS detention centers. The INS was criticized when it was discovered that it had deceived the delegation by transferring detainees to other facilities to alleviate overcrowding and poor living conditions.

The following discussion highlights United States detention policy and the often disparate, but seldom appropriate, treatment that women asylum seekers receive in detention facilities across the country.



The York County Prison, Pennsylvania

II. Conditions of Detention

Security Issues and Physical Settings

All of the facilities used to detain women asylum seekers that were investigated by the Women's Commission are prisons or the equivalent. Locked doors, hi-tech security systems, and fences topped with concertina wire define the detainees' living space.

"I feel as if there is something wrong with me when I wear these prison clothes."

Comment of Chinese woman, detained for three years and eight months, first in the New Orleans Parish Prison and then the Kern County Lerdo Detention Center.

Moreover, the remoteness of many of these facilities creates a psychological barrier between the detainees and the outside world. Most are located far from urban areas and strong immigrant or immigrant advocacy communities. The Hancock County Justice Facility is located in a small community on the Gulf of Mexico, approximately two-and-a-half hours from New Orleans, where the INS District Office is located. The York County Prison is two hours from Philadelphia. The Wicomico County Detention Center is in an agricultural area on the eastern shore of Maryland and is a three-hour drive from both Washington, D.C. and Baltimore. The Kern County Lerdo Detention Center in Bakersfield, California is a five-and-a-half hour drive from San Francisco and a two-hour drive from Los Angeles.

The prisons with which the INS contracts for detention space present special problems. The contractual arrangements made with these facilities fail to specify that any special provision be made to accommodate immigration detainees generally, let alone asylum

seekers. Moreover, the INS almost completely relinquishes its detention authority to the facility in question; INS officials at all levels of the agency refer to themselves as "guests" of the prisons, completely disregarding the fact that the facilities are INS contractors and, as such, ought to be supervised more closely by the INS. In response to concerns raised by the Women's Commission about conditions in the Wicomico County Prison, the Baltimore INS District Director stated, "As tenants of these institutions, the INS is bound by their regulations and procedures."²⁵

This hands-off approach results in asylum seekers being treated almost exactly the same as criminal inmates, and sometimes worse. As the York County prison warden put it: "As far as I'm concerned, when you come through that door, you're all the same. The worst thing you can do in a prison is separate a group out for special care. Any changes have to work for the whole group. When we call this a prison, that's exactly what we mean. This isn't a camp."²⁶

INS detainees are, at best, provided the same services as the criminal inmates, and in some cases, fewer services, such as more limited education programs. They wear prison uniforms, are stripped of their personal belongings, and are subjected to the rigorous rules and regulations considered necessary to keep order in a correctional facility. Housed in dormitories or "cell pods" (a common living area with two or more cells attached to it), they are under constant surveillance and have little privacy.

"Asylum seekers have fled oppressive, repressive, and life-threatening situations in their homelands. Imprisoning them is a continuation rather than an alleviation of the oppression. Detention does not permit them to heal and become whole, but rather increases their fear and hinders the healing process. Detention is a punishment—we should welcome and shelter not punish and detain."

Joan Maruskin of the People of the Golden Vision, a community organization that was formed to support and advocate on behalf of the Chinese men and women from The Golden Venture

Frequently, even though various levels of security are available in the prisons, asylum seekers are housed in maximum security, despite not having committed a crime. At the time of the delegation's visit to the York County Prison, asylum seekers were split between maximum and minimum security. Criteria for placement in the much more restrictive maximum security area include the detainee's "adjustment" to prison life and the inability to speak English, the latter taken as an indicator that the individual may present a "security risk." No consideration was given to housing friends or persons of the same nationality together. At the time of the Women's Commission's visit, the Chinese women were split between the two areas, unable to contact their friends in the other area.

Most disturbing is the commingling of INS detainees with criminal inmates. In the York County Prison, Berks County Prison, Wicomico County Detention Center, Dorchester County Prison, and the Metropolitan Detention Center, women asylum seekers shared living space, and sometimes even cells, with criminal inmates. The mixing of the two populations is more common for women asylum seekers than their male counterparts. The INS and prison administrators justify this practice with the rationale that the limited number of female INS detainees makes it impractical to provide living quarters separate from those housing criminal inmates.

However, as an asylum seeker in the Wicomico prison noted, "I could be sitting next to a mass murderer and not know it." An attorney who frequently represents asylum seekers in Puerto Rico indicated that the women detainees in the Metropolitan Detention Center often have contact with violent criminals, including being placed in

cells with people convicted of drug trafficking and murder.²⁷

"A woman ... walked into my cell and ordered me to give her my apple. When I protested, she told me that I could give her the apple or sleep with her. I was not quite sure what she meant by sleep with her... I now understand that she had sexual intentions. This woman told me that if I told the officer on her she would do what she wanted to do to me."

Excerpt from Fauziya Kassindja's affidavit regarding the mixing of criminal inmates with INS detainees in the Huston County Correctional Facility, New Jersey.

Women asylum seekers in the York County Prison reported being harassed by the criminal inmates when they spoke their own languages or tried to select a television show. After a Women's Commission delegation raised concerns about the commingling of inmates and detainees in the facility, the INS Philadelphia District Director indicated that he planned to discontinue this practice.²⁸

From the perspective of the staff in many of these facilities, there is little difference between the asylum seekers and the criminal inmates in their custody. Consistently, they admit to not knowing why the INS has asked them to house the detainees, often assuming that the detainees must have committed some crime.

The INS's failure to require prisons to distinguish between INS detainees and criminal inmates and provide services appropriate to the situation of asylum seekers is particularly perplexing in light of the fact that the INS consistently pays these facilities almost twice the going rate for criminal inmates. Congressman Bill Goodling, who represents York County in the House of Representatives, stated at a congressional hearing: "My County loves it because, of course, as taxpayers, you are paying 48 bucks a day. It costs us \$24 a day to keep them. So

we are balancing our County budget on the backs of people who are being incarcerated with no indication as to what their future will bring them.”²⁹ A prison guard in the Berks County Prison described the INS as the County’s “cash cow.” Kern County has found contracting with the INS so profitable that it has turned its entire facility over to the housing of federal detainees and is building another prison for its own incarceration needs.

In terms of security measures and the physical plant, however, little distinguishes the INS service processing centers from the county prisons, despite the fact that the former only house immigration detainees. Detainees in the Aguadilla Service Processing Center are also locked in 24 hours a day, must wear uniforms, and are subjected to constant supervision.

Any differences derive from the fact that the Aguadilla staff are employed by the INS and, as such, seem at least somewhat familiar with the reasons why the detainees are there. However, this matters little to the women detained in Aguadilla; they are soon transferred to the Metropolitan Detention Center, a federal prison in San Juan. The INS justification for this practice is that it is too expensive to maintain a female staff at Aguadilla to care for the few women it detains.

Treatment of Detainees by INS and Prison Staff

“You keep using the term asylum seekers, like there are good people and bad people. They’re all the same. You can’t educate them or rehabilitate them. They’re in detention.”

INS Deportation Officer, Wicomico County Detention Center.

Detainees reported physical and verbal abuse, frequent strip searches, and excessive use of prolonged isolation as punishment for minor infractions. The INS and prison staff who

have direct contact with detainees exhibit mixed behavior, professionalism, and attitudes toward the women in their care.

In one case, a detainee was very upset because she believed that another detainee was trading sex for favors from the prison guards. Although it was difficult for the Women’s Commission delegation to assess the verity of the allegation, it was clear that the prison administration and INS staff had done little to quickly investigate the situation.

Other women have reported the humiliation and embarrassment they experience when strip searched by the INS and prisons. While in the York County Prison, the Women’s Commission delegation witnessed one woman being patted down, hands against the wall and feet spread, before she was placed in a van for transfer to another facility. This search was both inappropriate and unnecessary; the woman had not been outside since her detention began.

“When I finished speaking to my attorney, I left the visiting room and walked back to the dormitory. A female officer stopped me on my way back. I was subjected to a strip search. The officer made me take off all of my clothes, squat and cough. This was also very humiliating to me since before I arrived in the U.S., I never would undress before strangers.”

Taken from Fauziya Kassindja’s Petition for Writ of Habeas Corpus.

Many women feared leaving their cells, because they were frequently subjected to arbitrary disciplinary actions. The Chinese women in the Kern County Lerdo Detention Center had been placed in solitary confinement for minor rules infractions. Exacerbating this treatment was the fact that no one had ever explained the facility rules to the women in Chinese, forcing them to learn by trial and error. One woman was kept in solitary confinement for five days because she failed to use a pencil sharpener properly.

“If you are young and pretty, the guards will like you and give you lots of attention. My English is not very good. Others who can speak English are treated much better by the guards, but I can’t communicate so well with the guards and I wouldn’t flirt with them so I was treated much worse. For example, sometimes even when I had money to buy things in the commissary, they wouldn’t let me buy things.”

Excerpt from interview with a Chinese woman who had been detained in Bakersfield, CA.

Another woman complained that a guard had denied her sanitary napkins. After her request was twice refused, she was forced to use toilet paper. The guard got angry with her for using “too much” toilet paper, shoved her, and placed her in disciplinary isolation for 15 days.

Prior to the Women’s Commission visit to Bakersfield, a detainee misunderstood which bed she was to use. A guard dragged her from the top bunk by her hair, sat on her, pulled her arms behind her back, handcuffed her, and put her in solitary. Ten days later, a member of a local organization reported that the woman’s bruises from this incident were still visible. One of the women said, “The guards treated me as less than a person.”

The INS staff posted in the Wicomico County Detention Center seemed indifferent, and at times callous, about the needs of the women detainees. They rejected the notion that INS detainees, let alone asylum seekers, merited specialized assistance, including translation services.

“Although she did not participate in the riots which occurred at [Esmor] in June of 1995, she was beaten, kicked, and tear-gassed during the incident, as well as being insulted with profanities by immigration officers. One officer told the detainees: ‘[y]ou f—ing people, you are

going back to your f—ing country.’ ”

Taken from Fauziya Kassindja’s Petition for Writ of Habeas Corpus.

Despite the fact that more than 20 INS officers were working on site in the Wicomico facility, the only contact that the Guatemalan detainee had with the INS staff was a weekly visit by two female deportation officers who spoke rudimentary Spanish. The purpose of their visit seemed to be to pressure the woman to abandon her asylum claim and agree to deportation, which the woman did after approximately five months. Early in the Guatemalan’s detention, one of the officers encouraged her to sign papers agreeing to deportation, and told her that her signature would allow her to go home, and that otherwise she would be in prison for a very long time. The detainee refused to sign, and when she later inquired about the status of her asylum case, the INS officer responded: “You told us you want to stay. If you want to get out, we can fix your papers quickly.”

In contrast, in the Aguadilla Service Processing Center, detainees seemed to enjoy a genuine rapport with the INS staff charged with supervising them. This may be attributable in part to the fact that most detainees, like the largely Puerto Rican staff, are Spanish speakers and are therefore able to communicate easily. However, women detained in Puerto Rico generally spend little time in the Service Processing Center and are instead transferred to the Metropolitan Detention Center.

In the Hancock County Justice Facility, the prison staff were friendly and solicitous toward the Chinese women. They had arranged for their wives and others in the community to visit the women.

Translation Assistance

“She can communicate with the universal language—sign language. I know the sign for pee, poop, and even sex and fist fight. What more does she need to tell us? She’s Hispanic, right? If she needs to tell us something, there are plenty of Hispanics back there who can help her. And anyway, she’ll learn English quick enough.”

Statement of INS deportation officer posted at Wicomico County Detention Center when asked about the availability of Spanish interpreters to assist a Guatemalan asylum seeker.

The lack of readily available translation services is a pervasive problem in detention facilities. Generally, the INS only provides interpretation during emergencies or medical examinations, and that is frequently done by telephone. The inability to communicate compounds detainees’ sense of isolation.

While interpreters are not accessible to most INS detainees, women are disproportionately impacted. In the York County Prison, for example, two Mandarin interpreters were posted in the male wing of the prison to provide translation for the 118 Chinese men from the *Golden Venture* who were detained there. At the time of the Women’s Commission visit to York, there were six Chinese women also detained in the facility. Because there were comparatively so few women, they were required to formally request the assistance of an interpreter when they needed one. The male interpreters were then made available, and were used to translate even sensitive medical information for the women. When the INS Philadelphia District Director was asked about this practice, he indicated that he had thought that female interpreters were being used.³⁰

Moreover, the quality of translation provided by the interpreters was dubious. Local attorneys in York reported that there had been complaints from the Chinese men about

one of the interpreters. He told the Chinese men that he was an “INS special agent.” In addition, he would mistranslate their requests unless they gave him the art work they had worked on in prison in exchange for his assistance. He then sold the art in local bars.

In the two Maryland facilities, the women complained that no one had educated them about the facility’s rules and regulations in their native languages. As a result, they had to learn the prison rules through “trial and error.” For example, the Guatemalan woman had not been outside during her four months of imprisonment because no one had explained to her the rules dictating such access. She spent the day lying in her cell, too afraid to venture out.

One Haitian woman, who was first detained in the Wicomico County Detention Center for almost five months before being transferred to the Dorchester County Prison, cried quietly as she described the horror of her first five days in detention. Barely able to speak or understand English, she misunderstood a prison officer during her intake at Wicomico. Eager to appear cooperative, she answered his questions affirmatively, including when he asked her if she felt suicidal. She misunderstood and thought he asked her if she felt sad. She was then placed on suicide watch in a solitary cell, with no bedding and only a paper gown to wear. She huddled in the cell for five days before a doctor consented to her transfer to a regular cell. During her time in isolation, she struggled to explain that she did not feel suicidal, but no translator was provided to help her communicate. At the time, she was pregnant. She miscarried two weeks after her detention commenced.

A Mandarin-speaking INS officer was posted to the Kern County Lerdo Detention Center, where seven Chinese women, three of whom arrived in the United States on board the *Golden Venture*, were detained. The women had to request his assistance in writing, however. One woman was outraged by her placement in solitary confinement after an altercation with another detainee. A guard

told her to put her complaint in writing, which she could not do because she did not know how to write the name of the guard involved in the incident.

The important role that communication in a detainee's native language can play in helping the person adjust to detention is illustrated by the Aguadilla Service Processing Center. The majority of detainees there are Dominican or Cuban, and thus are able to communicate easily with the predominantly Puerto Rican staff. Detainees reported that the facility staff is respectful and friendly. However, even in Aguadilla, the officer in charge indicated that beyond English, Spanish, and some rudimentary French, the staff are forced to rely on sign language to communicate with speakers of other languages.

The inability to adequately communicate carries repercussions for many of the other issues facing detainees. First, it greatly exacerbates the detainees' fear and confusion about their detention and the legal status of their asylum claims. Second, it results in an inability to communicate medical problems. Third, it leads to unnecessary disciplinary actions due to a detainee's lack of understanding of the facility regulations. Fourth, it inhibits the ability of detainees to access the few services available in the facilities, such as outdoor exercise, because they are unaware of the existence of such services or are unsure about how to request them. Finally, detainees are left with no recourse to raise complaints when abuses occur. This is particularly disturbing for women asylum seekers, many of whom come from cultures where they are taught not to question authority.

“It was very difficult to speak with my lawyer because he only spoke English and I mostly speak only Mandarin. My brother or friend would have to give him messages for me because I didn't have an interpreter.”

Excerpt from interview with a Chinese woman who had been detained in Bakersfield, CA.

The INS, however, frequently downplays the essential role that adequate language assistance can play in addressing the needs of detainees. In a letter to the Women's Commission, the Baltimore District Director indicated, “There has been a proactive effort to recruit additional bilingual and female staff at [Wicomico], but currently there are available personnel from INS and from the institutional staff to meet translation needs. It is also felt that the use of fellow detainees to help translate for emergent reasons is not inappropriate, and has well served all concerned in the past.”³¹

Health Care

“All I remember was my sister screaming after that the officers came at that moment I could not get up all the clothing I had on me was soaked in blood, the sheet where I was laying was filled with blood.... They made me walk for them to go and put chains on my feet and chains on my hands. After that they sat me down in a small van and took me to the hospital with the chains on. When I arrived at the hospital the officer parked the van in an area that was not very close to the hospital door.... The way I was feeling, I was very, very ill and I started not to see well, my stomach when I was walking felt like it was opening, it hurt me so bad.... Everywhere I went in the hospital I'm in chains, in the surgery room chains are on my feet.”

Excerpt from letter from Haitian woman describing the treatment she received during a miscarriage while in detention in the Wicomico County Prison.

The inability of detainees to communicate, combined with the slow or inappropriate response of some facilities to medical complaints, have led to disturbing instances of serious health problems being ignored or mismanaged by both the INS and prison authorities. In other cases, the stress and trauma of prolonged detention have caused individuals to develop physical and mental health problems they had not experienced previously.

In most of the prisons with which it contracts, the INS utilizes the health services provided to the criminal inmates. Often, these services are provided by outside medical service contractors. These services typically do not include bilingual medical staff trained to care for patients from different cultures.

“Once I had a tooth problem. The INS allowed me to visit the dentist twice to solve the problem but my friend had to find the dentist for me and then I had to pay for the treatment with my own money.”

Excerpt from interview with a Chinese woman who had been detained in Bakersfield, CA.

Moreover, while the prisons typically have medical staff on site or on call, sometimes only male staff are available. The lack of female medical staff can potentially undermine the treatment of women detainees, many of whom come from cultures in which it is considered inappropriate to reveal sensitive medical information to male strangers.

One particularly serious instance pertained to a Chinese woman detained in the York County Prison. She was suffering severe complications from an IUD that had been forcibly inserted by Chinese authorities. The IUD was causing an infection and presented

the danger of perforation or internal bleeding. Despite her repeated complaints and multiple requests by her attorney that she be paroled from detention so that she could join her family in New York and seek the necessary medical care, the INS refused to release her, even though INS regulations explicitly allow for the release of detainees suffering medical problems. Meanwhile, the woman, a Wenzhou speaker, was very confused and frightened about her condition, because she was experiencing tremendous difficulty communicating with the local doctors.

Finally, under a federal court order to release her to her family or to provide appropriate medical care,³² the INS hired a New York-based professional for a fee of \$10,000 to interpret during surgery.³³ The detainee’s lawyer, however, reported that the interpreter was unfamiliar with the medical terminology used and returned to New York as soon as the operation was over, despite the court’s order that the interpreter be available through the recovery. The Chinese woman was immediately returned to her prison cell, where she lay bleeding and vomiting.³⁴

In the York County Prison, the Women’s Commission interviewed a woman from the Ivory Coast who was four months pregnant. She reported that she requested medical assistance when she realized that she was pregnant. Her request was ignored by the York prison officials for several days. When she finally was allowed to see a doctor at the York County Hospital, her pregnancy was confirmed and she was prescribed dietary supplements and vitamins. The prison staff, however, confiscated the vitamins as contraband and the prison medical authorities refused to give her replacements. She was refused further medical assistance.

Subsequent to the delegation’s visit, the woman’s husband was deported without her knowledge. She was held in detention until her eighth month of pregnancy, despite the fact that INS regulations explicitly allow for the release of pregnant women.

The Haitian woman who was misdiag-

nosed as suicidal and placed in solitary confinement for her first five days in the Wicomico County Detention Center, was also pregnant at the time. She miscarried two weeks later. Despite her weakened condition, she was shackled on the way to the hospital and during surgery. Subsequent to the surgery she became anemic due to her continued bleeding. The prison guards, however, denied her medical care until she fainted a few days later.

Many women reported physical ailments that they attributed to their prolonged detention. These included chronic stomach problems, such as nausea, heartburn, and diarrhea, as a result of an unfamiliar diet that typically lacks such staples as rice and fresh fruit and vegetables. It also included significant weight loss or gain. The Chinese women who had been incarcerated in the New Orleans Parish Prison for 21 months at the time of the Women's Commission's visit, and who spent their days lying in their bunk beds, complained of dizziness and blurred vision from sensory deprivation. A Chinese woman held in the Bakersfield facility developed high blood pressure and was being given medication to treat it. Women in the Hancock County Justice Facility and Wicomico County Detention Center complained of irregular menstrual cycles.

“At Lehigh County Prison she was placed in isolation for almost three weeks, for what she understood were medical reasons, without ever being told what was wrong with her. She was terrified that she was seriously ill, but was given no information whatsoever by the medical personnel. Ms. Kassindja spent most of her time crying while in isolation, and was so upset during this time that she lost thirty pounds.”

Excerpt taken from Petition for Writ of Habeas Corpus for Petitioner Fauziya Kassindja, submitted by Professor Karen Musalo and student attorneys Layli Miller Bashir, Sidney Lebowitz, and David

Shaffer.

In some cases, the women were prescribed medical treatment, but were confused about the exact nature of the treatment. The same Chinese woman experiencing high blood pressure also reported that she had something “growing in her throat,” but did not know the cause, even though she was also taking medication for that condition. She also indicated that her hands and feet were swollen. After menstruating three times in one month immediately after her detention began, the Guatemalan woman in Wicomico was put on medication, but she was unsure about the cause of the problem and the nature of the drug she was taking.

A 24-year-old Chinese woman held in the Bakersfield facility, who fled China to escape that country's coercive family planning policy, reported that she had been three months pregnant when she was first picked up by the United States Border Patrol. She had been suffering from abdominal and stomach pains for approximately a month prior to being picked up, and said that she was immediately taken to a hospital in San Diego, where she miscarried. The woman expressed confusion about why she had needed an “abortion.” She stated that the translation services provided in the hospital were very poor, and she reported that she frequently dreams about the child she lost.

Virtually all of the women interviewed were exhibiting signs of stress and anxiety. The Chinese women in the Hancock County Justice facility sobbed and shook as they expressed their confusion about why they were being detained. The Chinese women held in the New Orleans Parish Prison appeared to have emotionally shut down, speaking in low monotones, their eyes cast down, quietly wiping their tears away.

The Chinese women were approaching their fourth year of detention when the Women's Commission saw them again in Bakersfield. By that time, they were feeling tremendous pressure as a result of their flight

Yvenie Emmanuel

Yvenie Emmanuel, from Haiti, entered the United States on September 19, 1993. She was living with her husband in Maryland and was two-and-a-half months pregnant when the INS put her behind bars at the Wicomico County Detention Center. She wrote a letter regarding her treatment shortly after she had a miscarriage while in prison. As of April 1, 1997, she remains in prison.

Excerpts from letter:

An officer began questioning me: Where did I come from? If I was married? Did I have children? I answered him.... After that he sent to lock me up in a small freezing room without any clothes, any underwear, any shoes, any toothbrush, any soap, only me locked with a plastic mattress without any sheets for me to lay on the mattress like that, I spent five days in this small room without my ever sleeping because I could never fall asleep. Five days without my ever taking a bath.

After that I saw the officer who made them lock me up and I asked him why they sent me here? He said I am pregnant only the doctor can release me from here. After that I saw another officer passing by, I called him and asked him why did they put me here without clothes, I am naked with a mattress and no sheets and he said to me that that place is a place

where a person could kill themselves. He asked if I said I would kill myself, I told him no because that question I did not hear them ask me and it's a question which never entered my mind, he told me that it is "suicide watch" they put me on so that I don't kill myself....

On Thursday, which was October 2nd, I was standing and my little sister said to me that she saw that my stomach was flat and that is not how it was when I got here and I must write my nurse and tell her. I wrote and they told me they cannot see me.... at ten in the evening I felt my stomach aching I sat down and told my sister that I felt severe pain I am going to lay down. While I was laying down I felt that I had to go to the bathroom to urinate when I got up to go to the bathroom to urinate, it was blood I saw not urine. I called my sister.... All I remembered was my sister screaming after that the officers came at that moment I could not get up all the clothing I had on me was soaked with blood, the sheet where I was laying was filled with blood. It was the clothing that I had on me they removed to block the blood.

After that the officer told me to get up and walk down the stairs. They made me walk for them to go and put chains on my feet and chains

on my hands. After that they sat me in a small van and took me to the hospital with chains on. ... the officer park the van in an area that was not very close to the hospital door. After that he made me get out of the van. The way I was feeling, I was very, very ill and I started not to see well, my stomach ached when I was walking felt like to was opening, it hurt me so bad. The officer told me that I must walk in order for me to enter the hospital. Everywhere I went in the hospital I'm in chains, in the surgery room chains are on my feet.

After all that has happened to me, I spent two weeks without ever seeing a single person appear to tell me anything. They just left us here like people who committed a crime their making us pay for before send us on our way....

A dog has more value than us immigrants who are in this prison.... They would never find me stealing, they would never find me smoking crack cocaine in the streets, I didn't kill anyone. I don't know why they dropped us in this place and forget about us like that. I would like to know: is what is happening to immigrants in America a thing that is just?

from China, their lengthy and arduous trip to the United States, and their subsequent incarceration. According to an expert on the delegation, they exhibited symptoms of Post-Traumatic Stress Disorder, including intense fear and anxiety; helplessness, feelings of ineffectiveness, and social withdrawal; shame; and uncertainty about the future.

Despite their obvious distress, with few exceptions the women are not provided mental health care unless it is arranged by their attorneys. A psychologist posted at the Berks County Prison stated that while the medical staff who perform initial assessments of inmates' health look for signs of depression, "it is hard to know what is going on if someone doesn't speak English." She also seemed unconcerned about the INS detainees, warning that people who are incarcerated are often "manipulative." She believed that the INS detainees "may be depressed, but proportionately, are much less so than the other inmates."³⁵

A chaplain and counselor at the York County Prison stated: "Counselors don't counsel here. They just shuffle papers. There is not much individual counseling."

"After four months in jail she was starting to say she'd withdraw her appeal and agree to deportation because she couldn't bear to remain in detention. She lost a great deal of weight after only four months in jail, was extremely depressed, and looked like a completely different person from when she had arrived in the United States."

Excerpt from interview with Anna Marie Gallagher, attorney and Director of the Legal Action Center.

In fact, at least two of the women interviewed by the Women's Commission were subsequently diagnosed as suffering from severe depression, after their attorneys arranged for psychiatric evaluation. This included the Haitian woman detained in the Dorchester County Prison in Maryland, who

miscarried, and a Somali woman detained in the York County Prison, who had witnessed several family members killed by a rival clan and had herself been tortured for 15 days before she managed to escape Somalia. She was finally granted parole from detention several months after being diagnosed as clinically depressed. She later was granted asylum.

Of further concern is the practice of shackling detainees when they are transported off site from the detention centers to receive outside medical care. This is typically done both when an individual is first detained and receives a comprehensive medical examination and later if she experiences any medical problems that require more than routine treatment. The women universally described feelings of shame about being treated like dangerous criminals.

Hygiene

The women are not allowed to wear their own clothing, and must wear prison-issued uniforms, on which is often emblazoned "INS Detainee." Typically, they are issued two uniforms per week.

In the York County Prison, the women are forced to purchase their underclothing through the prison commissary. They complained that they could only afford one pair of underwear (often not available in the correct sizes), so they had to wash it every night. One woman asked the Women's Commission to please send her underwear because she had no money to purchase her own.

The women in the York facility also indicated that they must purchase soap, toothpaste and other toiletries from the prison commissary. The prison warden, however, indicated that such items would be supplied at no charge if someone could not afford them.

"He sent to lock me up in a small freezing room without any clothes, any underwear, any shoes, any toothbrush, any soap

only me locked with a plastic mattress without any sheets for me to lay on the mattress like that, I spent five days in this small room without my ever sleeping because I could never fall asleep. Five days without my ever taking a bath.”

Haitian woman detained in Dorchester County Prison.

Access to the showers is generally unlimited or available at certain times of the day. However, in the Berks County Prison and the Kern County Lerdo Detention Center, the showers are visible to the guards. In Berks County, a male guard escorted the delegation through the cell pod even though women were using the shower. In Kern County, the women were provided with a screen to block the view of the showers, but the staff, including the male guards, admitted that they occasionally see the women unclothed, which they attributed to the women “not caring” about their privacy.

The women in the Kern County Lerdo Detention Center complained that the cell in which they had been housed for the past several months was infested with insects.

Diet

“Rice just isn’t a big seller with the general population.”

Tom Hogan, Prison Warden, York County Prison, commenting on food service provided to the more than one hundred Chinese detainees in his care.

The diet in all the facilities visited by the Women’s Commission is institutional in nature and often culturally inappropriate. INS regulations merely require contracted facilities to provide food service.³⁶ This lack of detail is also reflected in the standards used in the annual inspection of contract facilities performed by the INS, which simply ask whether facilities meet food service standards for dietary adequacy, medical diets, and sani-

tation. The standards also state that detainees should receive three meals a day, two of which are to be hot.³⁷

Most of the women complained about the food they were served. Descriptions ranged from unappetizing to inedible. Many of the women complained of digestive problems, which they attributed to the unfamiliar nature and poor quality of the food they were served.

“There were no choices. For dinner they almost always served beef, which my body can’t digest so I never ate it. The portions were always very small.”

Excerpt from interview with a Chinese woman who had been detained in Bakersfield, CA.

The Chinese women in the New Orleans Parish Prison were fed the same thing day in and day out. Breakfast was some kind of cereal; lunch was red beans and undercooked rice with sausage, along with potato or pasta once a week; and dinner was a hamburger with lettuce and half an apple or orange. A small carton of milk was provided once a week. The women reported that green vegetables were never served.

While the Women’s Commission was visiting the Chinese women in the Hancock County Justice Facility, they were served dinner in their cell pod. It consisted of fried chicken, french fries, rice, canned peaches, and two cartons of milk. No green vegetables were served.

The women detained in the York County Prison were also not satisfied with the meals they were served. Descriptions ranged from better than the food served in Esmor to inedible. Breakfast typically was scrambled eggs, bread, and milk. Lunch was chicken or beef. Dinner was sometimes pizza, soup, or bread and cheese. One Sri Lankan woman could not eat much of the food, because of cultural dietary restrictions. She reported that she had not received sufficient portions of fruits or vegetables and was eating mostly crackers.

At some facilities, moreover, meals are served at odd times. In the Kern County Lerdo Detention Center, breakfast is often served before dawn and as early as 4:00 a.m. Lunch is at 10:00 a.m., and dinner is at 3:00 or 4:00 p.m. Not surprisingly, the women report that they were often very hungry in the evening. The prison administration justified this schedule by citing “security concerns.”

“In Bakersfield, I didn’t eat breakfast because it was served too early in the morning for me to want to eat.”

Excerpt from interview with a Chinese woman who had been detained in Bakersfield, CA.

Many women reported that they often relied on food purchased at the prison commissaries. Commissary prices are generally comparable to grocery store prices. A woman held in the York County Prison indicated that it was difficult for her to purchase food, as she depended on the money she earned cleaning the prison, and she was paid only \$5.00 a week.

The Chinese women housed in Bakersfield avoided much of the food they were served, which was geared toward a Latino diet. They relied on dried ramen noodles that they purchased from the commissary with money supplied by their families and others outside the prison.

In addition, for several months the women could not drink the water in the Bakersfield facility and were forced to buy bottled water from the commissary. The prison staff had publicly stated that it had fixed the water problem, which was attributed to a high level of hydrogen sulfate.³⁸ The commissary then discontinued offering bottled water. Local citizens reported that there had been some improvement, but the women noticed little difference. When the delegation tasted the water, it was flat and sulfuric.

A Guatemalan woman in the Wicomico County Detention Center stated that the first

three weeks that she was in detention were difficult because she had no money to purchase food from the commissary. She noted, “Those who have money are okay, but those who don’t, suffer.” The Haitian women in the Dorchester County Prison reported that there at least they were served fresh fruit and vegetables, in contrast to the Wicomico facility where they had been held previously.

The women in the Berks County Prison complained about the manner in which their meals were presented. Prepared by criminal inmates, the trays on which they were served were covered in obscene drawings and racial slurs.

In contrast to other districts, the INS Baltimore District staff indicated that they understood the desirability of serving culturally appropriate food. They said that they were working with the prison administrators in Wicomico County to try to meet some of the detainees’ dietary needs.

In the Aguadilla Service Processing Center and the Metropolitan Detention Center, many of the detainees are Cuban or Dominican. They were therefore relatively satisfied with the Latino diet offered them. It was unclear whether this was true for other nationalities, such as the increasing number of Chinese coming through Puerto Rico, although the INS officer in charge indicated that she tries to cater to regional differences and religious restrictions.³⁹

Recreation and Exercise

Detainees in all the facilities reported that they generally spent their days lying in bed or watching English-language television, which many did not understand. Boredom and listlessness were universally reported.

“I cannot do anything here. I watch TV and write letters. The longer I sleep, the shorter the day.”

Comment of Chinese woman, detained three years and eight months, first in New York, then in New

Access to the outdoors is severely limited. In the Kern County Lerdo Detention Center, attorneys and other advocates reported that the Chinese women were initially only allowed outside for one hour a week. As a result of her attorney's intervention, one detainee indicated that she had been allowed to go outside three or four times a week, but generally during non-daylight hours, such as at 6:00 a.m. or 11:00 p.m.

The outdoor exercise area in the Kern County facility is confined to a completely paved area surrounded by cement walls too high to see over, topped by a fence, and covered by a roof through which sunlight barely filters. The women are patted down or strip searched upon reentering the facility. One woman reportedly had only gone out once in her two years in Bakersfield because she was so intimidated by these searches. The cell in which the women had been housed for several months, moreover, received no natural light.

In the York County Prison, detainees housed in minimum security were provided unlimited access to the outdoors during daylight hours. On the other hand, those in maximum security were allowed outside for only 60 to 90 minutes a day.

In the Wicomico County Detention Center, the Guatemalan asylum seeker reported that she had not been outside in her four months in the facility, because no one had explained to her in Spanish the rules dictating such access. This lack of exposure to the outdoors was confirmed by the two Haitian women who had been in Wicomico before they were transferred to the Dorchester County Prison, where they had also not been outdoors.

The women detained in the New Orleans Parish Prison were allowed outdoors on an irregular basis. If the weather permitted, they went out once or twice a week. However, they were often kept indoors for as long as two weeks.

The outdoor exercise area of the parish prison is surrounded by a high fence topped with concertina wire. It is paved and contains no trees or grass. This is also the case in the Hancock County Justice facility, where one woman said: "I know I'll be free the day that I can touch the soil again. I will lie on the ground and cry."

The women are also frequently denied indoor activities to occupy their time. For example, in the New Orleans Parish Prison, the women lay on their bunk beds in their gray, unadorned ce-ment block cells with no entertainment other than English-language television. The INS New Orleans District staff, however, believed that the prison warden went beyond his contractual requirements, citing his provision of Chinese videos to the women as an example. The women said they were only offered such videos for a brief period after they had gone on a hunger strike.

The York County Prison offered only English language reading materials, including in the prison's library. Moreover, women housed in minimum security did not have access to the library. Videos were shown on rainy days, and games and puzzles were available. The detainees had to share a television with the criminal inmates, whom the detainees said harassed them if they wanted to change the channel.

The women in the Berks County Prison had been in medical isolation for approximately a week before the Women's Commission delegation spoke to them, because they had just been transferred into the facility from the York County Prison. No television, radio, or reading materials were available in the quarantine cell.

As with translation assistance, women detainees in the York facility were at a disadvantage because of their gender. The Chinese men from the *Golden Venture* were given craft materials and were actually selling their art work to the outside world. The women were not provided the equivalent.

The Hancock County Justice Facility was markedly more attentive to supplying the



Excerpts from an affidavit filed by Fauziya Kassindja's attorney in a habeas corpus application.

From the airport, I was taken to Esmor Immigration Detention Center (Esmor) in handcuffs and shackles. When I arrived, I was put in a very big room with two toilets, two sinks, and a bench which wrapped around the room. The room was very cold. There were no windows except a small one in the metal door. I was told to take off all of my clothes. This was the first time in my life that I had to undress in front of a complete stranger. I was menstruating so I asked the guard if I could keep on my underwear. The guard said no. I asked if I could throw away my sanitary napkin. The guard appeared angry and told me that she did not have time for me, that she wanted to go home and that, for all she cared, I could eat the napkin. I could see my clothes lying on the floor outside the room through the small window in the door. I was

Fauziya Kassindja

freezing. I was scared. There was nothing I could do. I sat over the toilet and shivered in the cold while I waited for whatever was to happen next.

A male officer stood at the door, looking in through the glass. I was still naked and sitting on the toilet. I was so embarrassed that I put my head on my knees to cover myself up. He brought me two slices of bread and some milk. I was very hungry since I had not eaten since the trip on the airplane. However, after I drank the milk, I felt ill and vomited in the toilet. A female officer then came in and took me to the next room, where she told me to shower. The water was so cold that I jumped out of the shower. The officer said that she would force me to shower if I did not do it on my own. So, I showered in the cold water.

Soon after I arrived at Esmor, I called my cousin who lives in Virginia. He hired an attorney for me. When my attorney came to visit me, the officer chained my right leg to the table. I cried because I felt helpless and completely under someone else's control. I had never tried to escape so I did not understand why I had to be chained to the table. When my attorney

asked the officer why my leg had to be chained, the guard responded that he was just doing his job. When I finished speaking to my attorney, I left the visiting room and walked back to the dormitory. A female officer stopped me on my way back. I was subjected to a strip search. The officer made me take off all of my clothes, squat and cough. This was also very humiliating to me since before I arrived in the U.S., I never would undress before strangers.

On June 18, 1995, male detainees at Esmor rioted and Ms. Kassindja and 11 others were transferred to the Huston County Correctional Facility, New Jersey.

When we arrived at Huston County Correctional Facility on June 18, 1995, an officer said to us, "You stupid people, you want to spoil our country."

In this jail, we were mixed in with tough criminals. The people were always fighting and the guards rarely tried to stop them. I was even too scared to call my lawyer. Most people slept in their cells. One woman, however, slept on her mattress without blankets or sheets next to the phone. She continuously talked to herself. When

other people were talking, she would curse at them because she thought they were talking about her. One time, she beat a woman who was trying to use the phone over the head with a bucket. Finally, that woman was moved into isolation and I got up the courage to use the phone to call my attorney.

Ms. Kassindja was transferred to York County Prison in Pennsylvania for a little over a month, then transferred to Lehigh County Prison in Pennsylvania, where she was imprisoned for almost six months:

I was put in isolation almost as soon as I arrived at Lehigh. I saw a nurse who took my blood, gave me a tuberculosis test and took my weight. The next day, my arm was swollen where the nurse had taken the blood the previous day. The nurse told me that I would have to come back another day to have x-rays taken of my chest. On my way back from the medical room to my cell in isolation, a male officer stopped me and gave me a mask to cover my nose and mouth. He told me that I needed to wear it whenever I spoke with anyone. No one had told me why I was in isolation, or why I needed to wear this mask. When I entered my cell, the officer

shut and locked the door behind me. This was very unusual. The doors to the cells were usually only shut when the men were in the area bringing out the meals. I was told that I could not leave my cell when people were around.

My food was slid under the door. No one would do my laundry which was usually done every three days. I had to wash my clothes in the sink. I was not even permitted to shower while I was in isolation. When I asked an officer to bring me soap and toilet paper, she would make me stand back far away from the door. I felt so terrible because I had no idea what was wrong with me, and what people were afraid of. At one point, I told an officer that I wanted to call my attorney. When the guard opened the door, she announced: "Here comes the sick girl. Go away if you do not want to get the disease." I became very sad, so sad that I no longer felt comfortable using the phone. I felt so desolate, frightened, and alone.

Finally, on August 20, after 18 days alone in isolation, an officer told me to pack my belongings because I was going to join the general population. After all these days in isolation, I looked and felt horrible. I

had lost 30 pounds and my skin was so dark from the dirt because I had not been able to shower the whole time I was in isolation. I hadn't slept much, and I had spent most of my time crying. To this day I have not been told what they thought was wrong with me, or the results of the x-rays, even though during the time I was in isolation I had made a written request for information about what was wrong with me. A doctor I saw after I got out of isolation said they had no record of my x-rays, so he couldn't tell me the results.

Ms. Kassindja was transferred back to York County Prison on January 23, 1996. She was released from York in April 1996 after her story appeared in The New York Times. She was granted political asylum on June 13, 1996 by the Board of Immigration Appeals, which noted that Ms. Kassindja had no criminal record. It questioned her imprisonment and noted that immigration officials "might well wish to review this policy should future cases of this type arise."

women with activities than the other facilities visited. The Chinese women were allowed to knit, do puzzles, draw, and engage in simple crafts. Their artwork decorated the cell pod. They also had English-language reading materials and a television they did not have to share with criminal inmates, from whom they were separately housed. Most of these materials had been donated by local churches, whose members visited the facility once a week.

The benefits of such activities were noticeable. While also tearful and anxious to be released, the women in the Hancock County facility seemed more animated and less depressed than the women in the New Orleans Parish Prison.

Education

Women detainees typically do not receive English as a Second Language (ESL) classes to facilitate their communication and adjustment to the United States. In some cases, this is true even when male detainees are benefiting from such services.

“Ask them to help me and my sister so we can get out. I want to go to school.”

Comment of 19-year-old Haitian woman, detained for five months, first in the Wicomico County Detention Center and then the Dorchester County Prison.

In the Kern County Lerdo Detention Center, the male detainees received instruction from a local adult education group, but the seven women did not. The prison administrator justified this distinction by indicating that there were too few women to merit such services.⁴⁰

Ironically, the INS New Orleans District staff used just the opposite rationale for discontinuing the ESL classes the women received initially in the parish prison. The INS Deputy District Director said that there were too many women in the prison for the

prison to continue offering instruction.⁴¹

English as a Second Language was also not offered in the Wicomico and Dorchester County facilities, although the prison warden in Wicomico County indicated that he planned to start offering such classes soon.⁴² This could be the result of the INS's plans to increase its use of the Wicomico center.⁴³

A volunteer teacher offered ESL classes twice a week in the York County Prison. The detainees, however, were not able to participate in the GED classes offered to the criminal inmates, because of the language barrier.

The Hancock County Justice Facility arranged for members of a local church to teach the Chinese women English. These classes, however, had become a vehicle for proselytizing.

Spiritual Support

“I ask them how long a string is. When they tell me they don't know, I tell them, ‘Well, I don't know either.’ ”

Comment of Bob Breneman, Assistant Chaplain and Counselor, York County Prison, when asked how he responds when women detainees ask about their release.

In the county prisons with which the INS contracts, religious services are generally made available through the chaplains' offices. This means that services for certain denominations are readily available, while services for religious sects not common in the United States are unavailable or have to be arranged. Of particular concern are reports of proselytizing targeted at detainees.

In the York County Prison, Assistant Chaplain Bob Breneman conceded that his office had been unable to arrange visits from representatives of most of the women's religious sects. The Chinese women, for example, had not seen a Buddhist priest, and Mr. Breneman reported that he had difficulty identifying an Islamic temple to assist Muslim detainees. He admitted, “There need to be

more religious services.”

Local advocates in York reported that the head chaplain in the prison had opposed the local community’s efforts to achieve release of the detainees, under the belief that the detainees should be converted to Christianity first. He refused to allow Buddhist priests to visit the Chinese men detainees, and told the men that they should not resist deportation because they must carry Christianity back to China. Reportedly, the chaplain was reprimanded for proselytizing in the prison. He then changed his mind about the desirability of deportation.

In the Hancock County Justice Facility, the Chinese women had been regularly visited by members of local evangelical churches. While the women seemed to appreciate these visits and the church was donating materials for activities to occupy the women’s time, there also was some proselytizing taking place. Many of the materials were religious in nature. The women had adorned their cell pod with pictures of Jesus Christ. They sang “Silent Night” to the delegation, whose visit took place in March, and asked the Women’s Commission to tell Americans to let them out of detention, because they now believed in Christ as well as Buddha.

In the Kern County Lerdo Detention Center, the women had only limited access to Chinese language religious services. Initially, local advocates reported, the prison chaplain refused to allow Chinese-speaking ministers into the facility. Later, a Chinese Baptist minister was allowed to provide a weekly service, but only with the chaplain present. The minister was not allowed to offer individual counseling. When the Women’s Commission delegation requested an interview with the Baptist minister, he responded that the chaplain had forbidden him to talk to the delegation.

In the Berks County Prison, a woman from Ghana had repeatedly requested a Bible since her transfer there more than a week earlier, but had not received one yet. The prison chaplain promised he would deliver one to her immediately.

III. Access to Detention Centers

Visitor Access

“I had to choose between paying our lawyer, sending money to our children in Guatemala, and speaking to my wife.”

Comment of husband of Guatemalan woman detained in the Wicomico County Detention Center after he received a \$400 phone bill for collect calls she made to him from the facility.

Detainees are often virtually cut off from the outside world, including from relatives, friends, and agencies and individuals interested in helping them. Factors that hinder such access include: 1) the remote location of many of the facilities; 2) restrictions on who can visit detainees; 3) limitations on how often and for how long a visit can take place; 4) the slowness of some facilities to find a detainee when a visitor requests to see them; 5) limitations on telephone calls; and 6) the INS’s practice of transferring detainees from facility to facility.

Moreover, detainees are rarely allowed outside the detention centers. Generally, they only travel off the center grounds for medical emergencies that cannot be addressed by the on-site medical staff and to attend their asylum proceedings or, in rare cases, to consult with their attorneys.

Contact with family and friends is critical to alleviating the stress of prolonged detention. It can also make the difference in terms of an asylum seeker enduring detention long enough to pursue her case to completion, which often can take months, or even years. One attorney who represented several detainees in the York County Prison observed, “I would say there is a 100 percent correlation between those who have given up and returned to their homeland because they didn’t have contact with the outside world as opposed to those who are sticking it out

because they receive cards, letters, visitors, assistance from their attorneys, etc.”⁴⁴

The Chinese women in the New Orleans Parish Prison were only taken outside the facility for appearances at their asylum proceedings. Prior to the Women’s Commission’s visit, when the INS transported them to the INS District Office to speak to the delegation, they had not been outside for 17 months.

Moreover, the women were allowed almost no visitors in the prison. Other than some representatives from a local evangelical church and a team of attorneys who had brought litigation against the prison in response to conditions for the prisoner population, very few people other than their attorneys had been allowed to speak with the women. This was largely due to the requirement that a detainee place a potential visitor’s name on a visit request list, thus putting the women in a paradoxical situation; unless they already knew the person, it was impossible for them to know to request to see them.

The York County Prison has the same requirement. As a result, the women there had also received few visitors. The Chinese men, in contrast, were enjoying regular visits from the local community, which had rallied in their support. This was possible because the arrival of the *Golden Venture* had been widely reported in the national and local media, and thus local citizens knew the men were in the prison. The women, on the other hand, had been transferred to the York County Prison after the closing of Esmor and had arrived with little fanfare.

The INS’s practice of transferring detainees from facility to facility is one of the greatest contributing factors to their sense of isolation and fear. The women in the York facility, for example, had been transferred as many as four times.

The Chinese women from the *Golden Venture* were transferred from New York, where their attorneys and many of their relatives were located, to some location they were unable to identify, to the New Orleans Parish

Prison and/or the Hancock County Justice Facility, and finally to the Kern County Lerdo Detention Center in Bakersfield, California. At least in Bakersfield, like their male counterparts in York, the women received visitors from the local community, who again had responded to the well-publicized arrival of the women. At least one of the women, however, had family in New York, whom she was unable to see due to her transfer out of the New York area.

The INS offers little justification for such transfers. Sometimes, it appears to be for logistical reasons as the agency juggles the space available to it. Sometimes, the motivation is budgetary, if cheaper space opens up. In the case of women detained in the Dorchester County Prison, who frequently have been moved there from the Wicomico County Detention Center, 35 miles away, the INS staff said it arranges such transfers to provide the women with a “change of scenery.”⁴⁵

It has also been reported that the INS will move detainees as a punitive measure. The Florida Immigrant Advocacy Center interviewed detainees in the Krome Service Processing Center in Miami who refused to provide sworn statements because they feared the INS would retaliate by transferring them to a county prison.⁴⁶

Even if a family member, friend, or other interested individual wishes to visit a detainee, the restrictions placed on such visits can serve as a strong deterrent. For example, the time limits that are often imposed on visits make it hard to justify traveling the typically great distance to a detention center.

The Wicomico County Detention Center regulations place the same restrictions on visits to INS detainees as those applied to the criminal inmates. Visits from clergy and attorneys of record are not limited, but family members and friends are restricted to two 20-minute visits per week on Tuesdays and Thursdays, and not to occur on the same day. Most disturbing, minors under the age of 18 are not allowed to visit detainees at all, even

if it is their parent they wish to see. Exceptions are only made on Christmas Day and under unusual circumstances, such as medical emergencies. The INS Baltimore Assistant District Director indicated that the restrictions placed on children's visits are of concern to the INS.⁴⁷

The husband of the Guatemalan woman attempted to see his wife twice during her detention in the Wicomico facility. Shortly after the INS apprehended her, he traveled three hours from the Washington metropolitan area to visit her and to deliver some toiletries and personal belongings. The facility staff would not allow her to keep them. He then visited her later when she was giving up hope and considering volunteering for deportation, in order to persuade her to continue pursuing her asylum case. He reported that he was denied entrance into the facility and told to "get lost" or risk deportation himself. The INS denies that this incident took place. After five months of incarceration, the woman abandoned her asylum claim and was deported to Guatemala.

The Haitian women who had originally been held in the Wicomico facility reported that for their first month in detention they were held incommunicado. One woman's husband told her later that the facility staff had told him that she did not want to speak to him.

Also problematic is the splitting of family members into different detention centers. A pregnant woman from the Ivory Coast was placed in a different part of Esmor from her husband and subsequently transferred to a different county prison in Pennsylvania, during which time he was deported without her knowledge. A Cuban detainee in the Aguadilla Service Processing Center was distraught that his wife had been transferred from the Center to the Metropolitan Detention Center. The Service Processing Center staff had not allowed him to call her in the prison, and he was therefore forced to rely on word-of-mouth through his attorney to find out how she was coping. A Chinese

woman from the *Golden Venture* was shipped off to Bay St. Louis, Mississippi, while her husband was detained in York, Pennsylvania. A deportation officer working in the Wicomico County Detention Center asked the Women's Commission delegation to contact a juvenile held in the Berks County Juvenile Center and encourage him to write to his father who was being detained in the Wicomico facility, in order to "calm his father down."

The telephone systems used in the prisons and detention centers also effectively isolate detainees. In most facilities, calls cannot be made into the facility, even to have a message delivered to a detainee. Furthermore, with only limited exceptions, telephone calls out of the facilities must be made collect, and often at very exorbitant rates. For example, a 15-minute call out of the Wicomico County Detention Center cost \$7.50.

In the Metropolitan Detention Center, detainees are required to deposit money and purchase a calling card to make calls. In addition to the financial difficulty this poses to some detainees, advocates reported that it can take two weeks for a phone card to be issued. In the meantime, the detainees lose contact with their families and attorneys.

In the Berks County Prison, the women were very confused and upset about the rules regarding telephone usage. They were told by the prison staff that they could make free phone calls. Later, however, they were informed that they could only make three calls for a total of 15 minutes. Since they were unaware of this restriction, they had unknowingly used up their allotted time.

The Hancock County Justice facility, although far from a major urban center, was more lenient than most of the facilities regarding contact with the outside world. The women had received visitors from the local community as well as the media. They had a pay phone in their cell pod, from which they could make collect calls. The prison also would accept messages for the women, and occasionally would even allow the women to

make direct calls from a phone located in the administrative office.

Attorney Access

“Anyone who has ever spoken with an asylum seeker knows that it is difficult to cover much substantive ground in a five-minute phone call.”

Letter from Rene Van Rooyen, Representative, UN High Commissioner for Refugees/Branch Office for the United States, to Doris Meissner, INS Commissioner, outlining difficulties attorneys experience in representing detained asylum seekers (March 4, 1994).

Attorney access to detention facilities and their detained clients is critical to the ability of asylum seekers to successfully gain asylum. Without in-depth consultation, attorneys are unable to develop asylum cases and prepare their clients for the adjudicatory process. The immigration bar typically considers asylum cases as among the most complex and time-consuming of the various types of immigration problems its members address.

While in principle attorneys have more

access to their clients than do other visitors, most are unable to visit often because of the distant location of the detention centers. The frequent transfer of detainees from facility to facility also severely hampers representation. Often these transfers are to facilities far away and are conducted without notifying the appropriate counsel. Finally, the limits imposed on telephone usage also apply to detainees' calls to and from their attorneys. These factors together sometimes result in detainees literally getting lost in the system, their whereabouts unknown to their attorneys and sometimes even the INS.

Although regulations require the INS to provide detainees with a list of pro bono legal services programs, these lists are frequently inaccurate or out of date. Amnesty International found that of the 14 agencies included on the list distributed in the York County Prison, only one actually serves asylum seekers.⁴⁸ Moreover, in the vast majority of facilities, even if a detainee has identified a service provider, she can only contact him or her by placing collect calls, a tremendous financial burden that deters many agencies from representing detained asylum seekers.⁴⁹

The Women's Commission interviewed many women who had lost contact with their



Chinese women from New Orleans Parish Prison were taken to the INS District Office for an interview with the Women's Commission.

attorneys and were upset and confused about the status of their legal proceedings. The Chinese women in the New Orleans Parish Prison and the Hancock County Justice Facility were represented by attorneys in New York, where the women had first arrived. Attorneys need prior permission to visit their clients

in the parish prison, and one attorney complained that he had been denied access to his client. The women in the Hancock County facility indicated that they had only seen their attorney just prior to their court appearances and then only for one or two hours.

Many of the women detained in the Pennsylvania facilities had been transferred so many times they had lost contact with their lawyers. The attorneys complained that they were not notified about such transfers. The lawyer representing the Chinese woman suffering from complications because of an IUD had tried repeatedly to have his client paroled from detention. Eighteen months later, he told the Women's Commission that his client had been transferred, and the INS District staff were not returning his calls inquiring as to her whereabouts even though her case was still on appeal. This was despite the fact that in the interim Congress had included a provision in IIRIRA specifically allowing for asylum protection to be extended to individuals fleeing coercive family planning, thus significantly strengthening her case. Her transfer and the INS's evasiveness effectively jeopardized her chances of ever winning asylum.

“The location of the jail was so far away that I was only able to visit once within a period of four months. We could really only communicate by mail and by phone, which was very difficult. The jail’s rules regarding phone calls changed all the time. Sometimes I was told I could leave her messages, other times I was told this was not possible and has never been done. My client was only able to make collect calls so it was just luck if she happened to catch me in my office when calling me collect.”

Excerpt from interview with Anna Marie Gallagher, attorney and Director of the Legal Action Center.

The distance from Washington, D.C. and Baltimore, Maryland to the Wicomico and

Dorchester County facilities meant that detainees rarely had contact with their attorneys. Catholic Charities/Baltimore, probably the largest service provider representing detainees in the area, was able to work with the INS to set up a community support network of local volunteers who can visit detainees and assist in screening immigration-related cases and facilitate document processing. While the INS was supportive of this effort, the prison initially resisted it, raising security concerns. Once established, however, the program greatly reduced the processing time for detainee cases. The attorney in charge observed: “This program offers a good model for other districts to follow. It’s compassionate as well as in the interests of the INS to facilitate the processing of detainee cases.”⁵⁰

In the Kern County Lerdo Detention Center and the Metropolitan Detention Center, women were disproportionately impacted in terms of access to their attorneys. The INS San Francisco District will occasionally transport detainees from Bakersfield to San Francisco to consult with their attorneys if a van is transporting detainees there for other reasons.⁵¹ Attorneys representing the women, however, report that this service was discontinued for the women for some time. The INS claimed that there were too few women to merit such transport, even though this service continued for male detainees.

Attorneys representing women in the Metropolitan Detention Center noted that they enjoyed relatively unfettered access to their male clients in the Aguadilla Service Processing Center. The women, however, are almost always transferred to the federal prison, where attorneys must wait a long time before their client is escorted to an interview room to talk to them. This deters attorneys from pursuing face-to-face consultations with their female clients. Furthermore, it is much easier for detainees to place telephone calls in Aguadilla than in the federal prison. The INS staff justified the transfer of the women to a

more restrictive environment on budgetary grounds; they indicated that it is too expensive to maintain a female staff at Aguadilla to care for the few women they detain in the San Juan District.

The importance of adequate counsel to ensuring that asylum cases are appropriately addressed cannot be overemphasized. As one expert has noted,

“1) representation increases the likelihood of success on the merits or, conversely, its absence results in the detention and deportation of those with legitimate claims, including asylum; 2) representation increases release rates and, thus, reduces the costs of unnecessary detention; and 3) detainees receive significantly less representation than others in deportation and exclusion proceedings.”⁵²

Access to Outside Monitoring

“I won’t play games with you. I’ve had my butt burned by groups like yours. You want this, you want that, then you stab us in the back.”

Comment of J.W. Welch, Jr., Warden, Wicomico County Detention Center, when Women’s Commission requested permission to tour the prison.

In most cases, it was difficult for the Women’s Commission to obtain permission to conduct a thorough investigation of the detention facilities. It was often unclear whether the INS Central Office, the INS District Office, the INS staff on site, or the prison staff held the authority to grant access to organizations such as the Women’s Commission. In fact, each of the five delegations was handled differently, depending on which INS district had jurisdiction.

Moreover, different ground rules were established for each delegation. For example, the prison warden for the New Orleans Parish Prison declined to allow the Women’s Commission delegation to visit the women on site, even after the INS Central Office specifically requested that it be provided

access. In contrast, the warden at the Hancock County Justice Facility showed tremendous flexibility. He also arranged a full tour of the facility for the delegation, including allowing it to spend some time in the women’s cell pod while interviewing the detainees.

Likewise, the INS Philadelphia District, the York County Prison staff, and the Berks County Prison staff cooperated fully with the Women’s Commission delegation. The INS contacted the attorneys of record for all the women detained in York and Berks Counties and facilitated the delegation’s tours of the prisons. The delegation also met with the Philadelphia District Director, other district staff, and the prison staff, including the warden of the York County Prison. Both the INS and prison staffs freely answered the delegation’s questions.

The INS Baltimore District staff was willing to facilitate the Women’s Commission delegation to the Wicomico County Detention Center. The prison warden, however, forbade the delegation from viewing any of the facility other than a classroom in which the detainee interviews were conducted, even though the delegation traveled to Salisbury twice with the express understanding that it could tour the women’s section of the facility. The warden did agree to an interview, during which he expressed his mistrust of groups wishing to tour the prison, because in his experience, they were only interested in litigation.

The first time the delegation visited the Wicomico facility, furthermore, it was allowed to interview the detainees privately. The second time, however, INS staff insisted on remaining in the room during the interview.

The Aguadilla Service Processing Center staff on site cleared the Women’s Commission’s visit with the San Juan District Office. The delegation was provided a thorough tour, and the staff answered all questions and even volunteered information. The officer in charge was professional and direct in her responses.

The Metropolitan Detention Center, to which the women are typically transferred, was the reverse. Repeated requests for access, albeit done on short notice, were kicked from office to office and ultimately denied. When the delegation asked to visit a Cuban woman detained there during normal visiting hours, it was informed that the hours were booked for the day. The delegation, however, was able to visit her on that day with little problem, simply by showing up during the visiting hours and requesting to see her.

The Women's Commission several times requested permission to see the Kern County Lerdo Detention Center. The District staff referred the request to the INS Central Office, which failed to respond. When the on-site staff were contacted directly, they were open to a visit as long as the delegation presented specific names of detainees it wished to interview. The day before the delegation was scheduled to travel to Bakersfield, however, the INS District staff intervened and attempted to cancel the visit, citing pending litigation regarding conditions of detention and an e-mail from the Central Office cautioning against such visits. After contact was made with the INS Office of General Counsel in Washington, D.C., the visit was cleared, although the delegation was not allowed to speak to any INS representatives. The staff from the Kern County Sheriff's Office gave a complete tour and answered all questions.

Oversight of Facilities by the INS

“One evening late in May or early June, I was having a conversation with Esmor's facility manager, Willard Stovall. In that conversation he stated that it was Esmor's corporate policy to keep INS in the dark as much as possible about any problems or incidents which occurred with regard to the facility, i.e., ‘if INS doesn't ask for it, don't volunteer or give them anything.’

”

Excerpt from INS internal memorandum, quoted in INS Interim Report on the Esmor Immigration Detention Center, released after detainees in the facility rioted.

The INS exercises very little oversight of detention facilities. There are two junctures in particular at which the INS sacrifices its oversight responsibilities. First, the INS Central Office delegates a tremendous amount of its detention authority to its districts and makes little effort to assess how that authority is exercised. Second, this disconnect is exacerbated when the district offices use local prisons or other types of contract facilities to meet their detention needs; the district offices in turn abrogate their responsibility to guard the well-being of detainees by relinquishing control and oversight to the local authorities.

Without adequate, consistent, and frequent oversight of detention facilities, asylum seekers are left vulnerable to “cycles of abuse and neglect,” as one organization aptly put it.⁵³ The local authorities typically remain ignorant about why INS detainees are being held. Moreover, there is little incentive for them to familiarize themselves with and then address the special needs of asylum seekers. As the warden of the York County Prison pointed out, singling a group out for special services may create unrest in the facility. In addition, such facilities are paid on a per diem basis and held to only minimal standards of care. Presumably, under the current mode of operation, a facility would risk its contract if it charged the INS more to provide enhanced services. The profit incentive is significant; York County is profiting by more than \$4 million a year by housing immigration detainees.⁵⁴

The INS formally monitors facilities only once a year, and these inspections are of questionable merit. According to one former correctional official in the New Orleans Parish Prison, who spoke on condition of anonymity, the Sheriff is aware of any sched-

uled monitoring and makes an extra effort to clean the prison and put on the appearance of compliance to satisfy the INS monitors.

Moreover, the standards against which facilities are evaluated are remarkably lacking in detail and in no case specify any special care to be provided to asylum seekers. INS regulations establish only four criteria for detention facilities to meet: 1) 24-hour supervision; 2) safety and emergency codes; 3) food service; and 4) availability of emergency medical care.⁵⁵

Beyond these regulatory requirements, the INS looks to standards issued by the American Correctional Association (ACA) to evaluate its detention programs. Six of the Service Processing Centers are ACA accredited. Contract facilities run solely to house immigration detainees are supposed to receive accreditation within nine months of opening. Prisons are held to whatever standards they use internally within their own system, which frequently are the ACA standards or something similar.

Regardless, the ACA standards are inappropriate to judge facilities used for the detention of asylum seekers. They are geared toward criminal incarceration and designate many basic requirements, such as outdoor exercise and exposure to natural light, as non-mandatory.⁵⁶

The INS has recently acknowledged the need for greater oversight of its district operations and detention practices. In testimony before the Senate Subcommittee on Immigration, INS Commissioner Doris Meissner noted, “[F]or the last four years, we lacked the capability needed to be certain that our staff implement policies and procedures at a field level and adhere to rules and regulations properly.” She went on to announce the agency’s plan to review field office operations on a two to three year cycle and to conduct a complete review of INS detention centers during FY 1997.⁵⁷ This effort presumably was in response to the embarrassment caused to the agency by two events: the Esmor riot and a widely-criticized effort to misrepresent con-

ditions in the Krome Processing Center in Miami, Florida when a congressional delegation toured the facility in July 1995.⁵⁸

IV. Asylum Proceedings

Implementation of APSO

“I miss my life.”

Comment of 19-year-old Haitian woman, detained first in the Wicomico County Detention Center and then the Dorchester County Prison.

While the Women’s Commission did not focus on the merits of the asylum cases of the women with whom it spoke, it was obvious that many were strong candidates for release under the Asylum Pre-Screening Officer (APSO) program. The Commission interviewed women who had fled their homelands for very compelling reasons, including to escape torture, harassment for political activities, forced marriage, female genital mutilation, and coercive family planning. Several of the women’s cases were founded on gender-based persecution.

Such persecution was later proven true in several cases of women whom the Women’s Commission interviewed. Hawa Abdi Jama, a Somali woman who was beaten and tortured by members of a rival clan before she fled, was later granted asylum. She was detained for

11 months in the York County Prison. Aicha Garba, like Fauziya Kassindja, fled Togo to escape female genital mutilation and forced marriage. She had been in detention, first in the Berks County Prison and later in the York County Prison, for three months before an attorney learned of her situation and offered to represent her. She was paroled two months later. Several of the Chinese women from the *Golden Venture*, who fled forced sterilizations and abortions in China, had been found credible during their APSO interviews but were not released until February 1997, almost four years after their apprehension.⁵⁹

“Later [while already in detention] she had an APSO interview with a female

officer. The officer in charge of the interview denied her release but in her asylum hearing, this same officer admitted that my client’s behavior during the APSO interview was consistent with someone who had been raped.”

Excerpt from interview with Anna Marie Gallagher, attorney and Director of the Legal Action Center.

APSO is fundamentally flawed because it is couched as guidelines rather than legally enforceable policy. District Directors, who ultimately make the decision to release an individual, often share a common mentality in the INS that places “... a higher priority on defending [the agency’s] broad discretion to detain (even when it has been exercised in an indefensible manner) than it has on identifying those detainees who should be released from confinement.”⁶⁰ In the New York District, statistics from 1993 reveal that the District Director rejected at least 25 of the 65 parole recommendations made by INS staff. In the same period, the Harlingen, Texas District Director rejected at least 55 of the 79 positive parole recommendations.⁶¹

In many districts, the Director simply declines to implement APSO. Even though the INS is considering rejuvenating APSO and assigning the initial screening function to asylum officers rather than trial attorneys, admittedly a step in the right direction, chances are some District Directors will still choose to undermine or ignore the program unless they are held accountable for its implementation.

Impact of Detention on Detainees’ Ability to Win Asylum

“When she finally appeared at her exclusion hearing, ... after still further time in detention with other immigration detainees, she related a new story of Kafkaesque dimensions.”

Excerpt from immigration judge decision denying asylum to Nigerian woman who had faced gender-based persecution in her homeland and was detained in a Virginia county prison until the Board of Immigration Appeals granted her appeal.

In addition to the tremendous barrier that detention presents to the ability of attorneys to assist asylum applicants with their claims, as discussed above, detention has other, less obvious repercussions on an applicant's ability to obtain asylum.

Prolonged detention severely erodes the physical, mental, and emotional energy of a detained individual. At best, this inhibits the ability of a detainee to articulate her story during her asylum adjudication. The women in the Pennsylvania facilities, for example, dreaded going to Philadelphia for their asylum hearings. The INS would frequently transfer them to the city in the middle of the night. Even worse, they were often housed for up to three nights before their hearing in a temporary shelter known as "the Roundhouse." The women reported that the conditions in the facility were filthy, and that they were commingled with criminals, were fed only once every 10 hours, were forced to sleep on the floor, and were not told how long they would be there. The INS District Director acknowledged the legitimacy of these complaints, but dismissed them by explaining that the facility would soon be closed. He failed to explain, however, why the INS would use such a facility in the first place.

At worst, prolonged detention convinces a detainee to give up and agree to deportation. The Guatemalan woman in the Wicomico County Detention Center told her husband that she would rather take her chances in Guatemala, where her brother had been murdered by the guerrillas and her husband threatened with the same fate, than continue to endure detention. She was deported after five months in prison.

Perhaps even more insidious was the rationale used by an immigration judge to

deny a Nigerian woman's claim to asylum. He questioned her credibility partly on the basis that she had been in detention. He reasoned that her story of gang rape by the Nigerian military had been embellished after she had contact with other detainees.⁶² His decision was overturned by the Board of Immigration Appeals,⁶³ and the woman was granted asylum.

V. Conclusions and Recommendations

1. It is inhumane to hold asylum seekers in detention. They may very well suffer further trauma if incarcerated. The Asylum Pre-Screening Officer (APSO) program represents a thoughtful attempt to ensure that asylum seekers are not unnecessarily detained and that the INS's limited detention space is not misused.

The Women's Commission offers the following recommendations:

- The INS should rejuvenate APSO. Those individuals found to have a credible fear of persecution should be released promptly. The program should be incorporated into statute or regulation so that it carries the force of law.
- The INS Central Office should exercise strict oversight of the implementation of APSO and hold its districts accountable for low release rates. This includes tracking release rates in all its districts and retaining the authority to intervene in districts in which asylum seekers are being unnecessarily detained.
- The INS should immediately develop alternatives to detention. This includes supervised release and release on bond set at reasonable levels. The INS should also collaborate with voluntary agencies with expertise in assistance to refugees to establish group homes, foster care, and other appropriate housing arrangements to assist in the care of women, children and other populations at risk who lack family ties or other sources of care in the United States.

2. The conditions in which women are detained fail to provide for their physical and social well-being. In some detention centers, services that are provided to male

detainees are withheld from women detainees. This is an unacceptable form of discrimination.

The Women's Commission offers the following recommendations:

- The INS must adopt flexible release policies and provide appropriate facilities and staffing to meet the needs of women.
- The INS must adhere to the spirit of its own gender guidelines and take special care to avoid detaining women who have faced gender-based persecution and may well experience further trauma if incarcerated.
- Women should not be transferred to remote locations or more restrictive settings simply because a more appropriate facility is not staffed to meet their needs. Staffing should be adjusted or the women released.
- Services made available to male detainees must also be provided to women, including translation services, ESL classes, and consultation with attorneys.
- Feminine hygiene products and appropriate medical care, including reproductive health care, should be provided to women detainees. Under no circumstances should denial of basic needs such as feminine hygiene be used as a means to humiliate women.
- Women should not be separated from family members who are also in detention.
- The INS should ensure that generous visitor access policies are in place so that detainees can regularly see their family members who are not in detention. Children should never be prevented from visiting their mothers.
- The INS should track detention data by gender.

3. The INS is overly dependent on correctional facilities to meet its detention needs. These facilities fall woefully short of addressing the needs of detainees. There is no accountability or oversight. There is no evidence that they provide services that merit the exorbitant rates paid by the INS.

The Women's Commission offers the following recommendation:

- The INS should not use prisons to detain asylum seekers.

4. The INS has failed to develop and implement standards of detention that address the needs of asylum seekers in its custody. Standards geared toward the incarceration of criminals are inappropriate for individuals who have not committed crimes.

The Women's Commission offers the following recommendations:

- The INS should invite consultation and input from agencies with expertise in refugee protection in an open process to promulgate detailed standards to govern conditions of detention.
- At a minimum, such standards must address the physical setting used for detention, health care and hygiene, translation assistance, diet, recreation and exercise, access to the outdoors, education, disciplinary and complaint procedures, staffing, visitor access, telephone systems and other modes of communication, and access to legal counsel.
- Verbal and physical harassment, including the use of strip searches and arbitrary disciplinary measures, should be prohibited. The INS should immediately discontinue use of facilities where such practices are employed.
- Standards for conditions of detention should also apply to contract facilities

and be incorporated into any contract the INS enters into with a detention facility. Compliance with such standards should be mandatory and awarding of a contract made conditional on such compliance.

- New facilities should meet standards of detention before being allowed to open.
- INS staff should be assigned the responsibility of ensuring compliance with detention standards and should be trained to assess their implementation. These officers should be located in the INS Central Office and have the authority to require changes in non-complying facilities.
- In no case, however, should improved conditions of detention be used as an excuse to detain asylum seekers.

5. The INS frequently relinquishes its oversight authority to its contract partners. As a result, detainees are often treated the same as the criminal inmates with whom they share space.

The Women's Commission offers the following recommendations:

- The INS must retain and exercise its oversight authority to regulate conditions of detention. This includes frequent and unannounced inspections that evaluate facilities' success in providing appropriate protection and services to detainees.
- The INS should ensure that detainees are distinguished from criminals. Detainees should never be commingled with criminal inmates.
- The shackling of detainees during transport should be stopped immediately.

6. Outside monitors, including agencies with expertise in meeting the needs of refugees, face extraordinary difficulty in obtaining access to detention centers.

Such monitoring can be an important vehicle for assessing conditions of detention and identifying problems confronting detainees.

The Women's Commission offers the following recommendations:

- The INS should include outside experts and agencies in the monitoring of conditions of detention.
- The INS should regularly consult with nongovernmental organizations that serve detainees at the national and local levels to ensure that it is aware of and can quickly address any problems that may arise in detention centers.
- The INS should cooperate with local organizations interested in providing services and support to individuals detained in their communities.
- Contract facilities should not be allowed unfettered discretion to determine who is allowed into a facility.

7. The remote location of many detention centers effectively undermines the ability of asylum seekers to obtain adequate legal representation. This is further exacerbated by the lack of affordable, accessible telephone systems in detention centers and the INS's practice of transferring detainees from facility to facility, often without notifying their counsel. There is a strong correlation between attorney consultation and the success of an applicant's asylum claim.

The Women's Commission offers the following recommendations:

- The INS should support the establishment of legal representation projects at all detention facilities.
- The INS should regularly update lists of pro bono and other attorneys and distribute them to detainees during their orien-

tation to a facility.

- The INS should facilitate regularly scheduled "know your rights" presentations by service providers to detainees and allow the distribution of self-help legal materials.
- The INS should ensure that adequate and affordable telephone services are available and promote the use of other forms of electronic communication in detention centers.
- The INS should require facilities to provide generous visiting hours and adequate private meeting space for attorney consultations.
- The INS should avoid transferring detainees away from their attorneys. Under no circumstances should such transfers occur without prior notification of counsel.

8. Recent legislation fails to safeguard against unnecessary and prolonged detention of asylum seekers. It emphasizes the expedient removal of individuals found not to have a credible fear of persecution without also considering the United States' obligation to treat those with a legitimate fear of return fairly and humanely.

The Women's Commission offers the following recommendations:

- Congress should monitor the impact of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) on the protection of asylum seekers. This includes protection of women fleeing gender-based persecution.
- Congress should consider remedial legislation to correct any systemic failure to protect asylum seekers and treat them compassionately. This includes legislation to address detention conditions and the unnecessary detention of asylum seekers.

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Finally, we thank the dozens of women we interviewed for this report. Some of the women have since been granted political asylum and released, others have been deported. Still others remain in jail.

Endnotes

¹ For individual reports on Women's Commission delegations to INS detention centers, see "A Cry for Help: Chinese Women in INS Detention" (March 1995); "An Uncertain Future, A Cruel Present: Women in INS Detention" (September 1995); "Preliminary Findings of Delegation to Kern County Lerdo Detention Center, Bakersfield, California" (December 1996); "Abandoning Hope" (February 1997).

² Immigration and Nationality Act, sec. 208.

³ See, e.g., "Asylum: Approval Rates for Selected Applicants," General Accounting Office (June 1987); *American Baptist Churches v. Thornburgh*, Civ. No. C-85-3255 RFP (Northern District, California, December 19, 1990) (outlining settlement agreement in which United States government agreed to readjudicate previously denied Guatemalan and Salvadoran asylum applications, conceding that denials had been politically motivated).

⁴ *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, sec. 604.

⁵ *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, sec. 302.

⁶ "Considerations for Asylum Officers Adjudicating Asylum Claims from Women," Immigration and Naturalization Service (May 26, 1995).

⁷ See, e.g., "INS Fact Book," Immigration and Naturalization Service (October 1994) (reporting an asylum approval rate for fiscal years 1992-1994 of approximately 22 percent); "The World Refugee Survey 1996," United States Committee for Refugees (1996) (reporting an asylum approval rate for fiscal year 1995 of 20.1 percent).

⁸ See Don Kerwin, "Detention of Newcomers: Constitutional Standards and New Legislation," Immigration Briefings (November-December 1996).

⁹ Prior to passage of IIRIRA, many organizations concerned with refugee protection pointed out the paradox posed by requiring asylum seekers to have their documents in

order. One commentator explained, “The irony is that the well-foundedness of a person’s fear of persecution at the hands of his government is more likely if he was not able or willing to approach those authorities for permission to leave the country. Persons in fear for their lives do not normally receive travel documents from their persecutors. Yet, [the legislation] implies just the opposite by saying that a properly documented asylum seeker does not need to establish a credible fear before being allowed to apply for asylum.” Bill Frelick, Senior Policy Analyst, United States Committee for Refugees, Testimony before the House Subcommittee on Immigration and Claims (June 29, 1995).

¹⁰ Code of Federal Regulations, sec. 212.5.

¹¹ Memorandum from Commissioner Gene McNary, Immigration and Naturalization Service, “Parole Project for Asylum Seekers at Ports of Entry and in INS Detention” (April 20, 1992).

¹² Margaret H. Taylor, “The 1996 Immigration Act: The Detention Provisions,” Interpreter Releases, p. 209 (February 3, 1997).

¹³ Respondents’ Response Brief, page 6, Yang You Yi v. Reno (Middle District, Pennsylvania, March 15, 1995).

¹⁴ Arthur C. Helton, “The Detention of Asylum Seekers in the United States and Canada,” Asylum Law and Practice in the United States and Canada, Federal Publications (1992).

¹⁵ Margaret H. Taylor, *ibid.*

¹⁶ Stephanie Marks, National Director, Appearance Assistance Project, Vera Institute of Justice, Memorandum Regarding Implications of Vera’s Assistance Program for Asylum Seekers (June 1996).

¹⁷ Paul Virtue, Acting Executive Associate Commissioner, Immigration and Naturalization Service, Testimony before the House Subcommittee on Immigration and Claims (February 11, 1997).

¹⁸ See Interpreter Releases, p. 1317 (October 7, 1996) (analyzing changes to immigration law under IIRIRA).

¹⁹ Letters to Rep. Henry Hyde and Sen. Orrin Hatch, from Doris Meissner, Commissioner, Immigration and Naturalization Service (October 9, 1996).

²⁰ “House Subcommittee Holds Hearing on Alien Smuggling,” Interpreter Releases, p. 898 (July 12, 1993).

²¹ Interim Rule, Federal Register, vol. 62, no. 44, p. 10312 (March 6, 1997).

²² See Matthew Purdy, “In Jail Business, Nashville Leads Crowded Field,” New York Times, p. B4 (January 19, 1996); John Sullivan, “Operator of Immigration Jails Has a History of Troubles,” New York Times, p. A1 (June 20, 1995).

²³ Kattola v. Reno, No. CV 94-4859, KN (United States District Court, Central District, California).

²⁴ Letter to Doris Meissner, Commissioner, Immigration and Naturalization Service, from Rene van Rooyen, Representative, UNHCR Branch Office to the United States (March 4, 1993).

²⁵ Letter to Mary Diaz, Director, Women’s Commission for Refugee Women and Children, from Benedict J. Ferro, Baltimore District Director, Immigration and Naturalization Service (August 20, 1996).

²⁶ Interview with Tom Hogan, Warden, York County Prison.

²⁷ Interview with Sergio Ramos, Attorney.

²⁸ Celia W. Dugger, “Woman’s Plea for Asylum Puts Tribal Ritual on Trial,” New York Times, p. A1 (April 15, 1996).

²⁹ “Coercive Population Control in China,” Hearings before the House Subcommittee on International Operations and Human Rights (May 17, June 22 and 28, and July 19, 1995).

³⁰ Interview with J. Scott Blackman, Philadelphia District Director, Immigration and Naturalization Service.

³¹ Letter to Mary Diaz from Benedict Ferro, *ibid.*

³² -- v. Scott Blackman, Thomas Hogan and Janet Reno, Memorandum of Order, Civ. No. 1:CV-95-1520 (United States District Court, Middle District, Pennsylvania, October 3, 1995).

³³ Interview with J. Scott Blackman, Philadelphia District Director, Immigration and Naturalization Service.

³⁴ Status Report on --'s Surgery on October 20, 1995, Civ. No. 1: CV-95 1520 (United States District Court, Middle District, Pennsylvania).

³⁵ Interview with Lisa Gordon, Psychologist, Berks County Prison.

³⁶ Code of Federal Regulations sec. 235.3(f).

³⁷ "Service Contract Inspection Report," Form G-324a (Rev.6/5/92), Immigration and Naturalization Service.

³⁸ See Letter to Herb Rigdon, Kern County Sheriff's Department, from Richard L. Haberman, Senior Sanitary Engineer, California Department of Health Services (January 27, 1995) (regarding nausea, colitis, and diarrhea experienced by a visitor to the Lerdo Detention Center).

³⁹ Interview with Linda Renz, Officer in Charge, Aguadilla Service Processing Center.

⁴⁰ Interview with Brian Asher, D.O. Sergeant, Kern County Sheriff's Office.

⁴¹ Interview with Lynne M. Underdown, Assistant District Director for Detention and Deportation, New Orleans District, Immigration and Naturalization Service.

⁴² Interview with J.W. Welch, Jr., Prison Warden, Wicomico County Detention Center.

⁴³ Interview with John O'Malley, Assistant District Director for Detention and Deportation, Baltimore District, Immigration and Naturalization Service.

⁴⁴ Interview with Craig Trebilcock, Attorney.

⁴⁵ Interview with John O'Malley, Assistant District Director for Detention and Deportation, Baltimore District, Immigration and Naturalization Service.

⁴⁶ "Krome's Invisible Prisoners: Cycles of Abuse and Neglect," Florida Immigrant Advocacy Center, Inc. (July 1996).

⁴⁷ Interview with John O'Malley, Assistant District Director for Detention and Deportation, Baltimore District, Immigration and Naturalization Service.

⁴⁸ Nicholas J. Rizza, "INS Detention: Impact on Asylum Seekers," Refugee Reports, United

States Committee for Refugees (August 30, 1996).

⁴⁹ See George M. Anderson, "Defending the Immigrant," *America*, p. 17 (June 4, 1994).

⁵⁰ Interview with Mark Horak, SJ, Staff Attorney, Catholic Charities.

⁵¹ The Immigration and Nationality Act places restrictions on government funding for immigration representation, and the INS has traditionally interpreted this to include arranging transport solely for detainees to confer with their lawyers. Immigration and Nationality Act, sec. 242(b)(2).

⁵² Don Kerwin, *ibid.*

⁵³ Florida Immigrant Advocacy Center, *ibid.*

⁵⁴ Joan M. Maruskin, "Voices from Around the Country Call for INS Detention Reform," *Migration World*, vol. 23, no. 4, p. 33 (1995).

⁵⁵ Code of Federal Regulations, sec. 235.3(f).

⁵⁶ For an excellent analysis of the ACA standards in the context of immigration detention, see Kerwin, *ibid.*

⁵⁷ Doris Meissner, Commissioner, Immigration and Naturalization Service, Testimony before the Senate Subcommittee on Immigration (October 2, 1996).

⁵⁸ See Matthew Purdy and Celia W. Dugger, "Legacy of Immigrants' Uprising: New Jail Operator, Little Change," *New York Times*, p. A1 (July 7, 1996).

⁵⁹ "Coercive Population Control in China," p. 66, *ibid.*

⁶⁰ Taylor, *ibid.*

⁶¹ Michele Pistone and Beth Lyon, "Revisiting APSO: Improving the System for Releasing Genuine Asylum Seekers from Detention," *Refugee Reports*, United States Committee for Refugees (August 30, 1996).

⁶² Decision of Judge Cary H. Copeland, *In the Matter of ---*, Executive Office for Immigration Review (October 23, 1995).

⁶³ Board of Immigration Appeals (April 4, 1996).