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## Turning Asylum Seekers into 'Dangerous Criminals': Experiences of the Criminal Justice System of Those Seeking Sanctuary

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### **Abstract**

Since the events of 9/11 in the US in 2001 and, four years later, the 7/7 London bombings in the UK, warnings of terrorist attacks are high on the public agenda in many western countries. Politicians and tabloid press in the UK have continued to make direct and indirect connections between asylum seekers, terrorism and crime. This has increasingly resulted in harsh policy responses to restrict the movement of 'third-world' nationals, criminalisation of immigration and asylum policy, and making the violation of immigration laws punishable through criminal courts. This paper largely highlights the narratives of five asylum seekers who committed 'crime' by breaching immigration laws and were consequently treated as 'dangerous criminals' by the state authorities. More importantly it shows how these individuals experienced this treatment. The aim of this paper is to give voice to the victims of state abuse, claim space for victim agency, gather victim testimonies, challenge official explanations and in the process confront criminal and racist state practices.

### **Keywords**

Asylum seekers; foreign national criminals; immigration crimes; fraud; Home Office.

### **Introduction**

We face a real terrorist threat in Britain today ... we have absolutely no idea who is coming into or leaving our country. There are a quarter of a million failed asylum seekers living in our country today. No one knows who they are or where they are. To defeat the terrorist threat we need action not talk – action to secure our borders. (British politician and Conservative Party leader 2003-2005, Michael Howard 2005)

For over a decade, politicians and sections of the media have repeatedly argued that the asylum system is prone to abuse and that immigration controls need to be tightened if Britain is to be protected from the threats of terrorism and crime. With warnings of terrorist attacks still high

on the public agenda, media, politicians and right wing groups have often constructed direct and indirect connections between asylum seekers and terrorism. Analysis of news coverage in the British press by the Institute of Public Policy Research (IPPR) revealed a 'growing habit of newspapers to taint all asylum-seekers by linking them with Islamic fundamentalist terrorists' (Greenslade 2005). This report provided details about misleading and inaccurate commentary about asylum seekers (or failed asylum seekers) allegedly involved in terrorist activities. Similarly, a Migrant Observatory Report (2013) stated that coverage of immigration and asylum includes a vocabulary of numbers (with words like thousands and even million) and discourses of security or legality (words like terrorist, suspected, sham). Within these discourses, asylum-seeking men who are citizens of Islamic states are often portrayed as threats, which need to be 'contained' and dealt with as a matter of urgency. Consequently, the Home Office, the UK government department responsible for immigration, counter-terrorism, police and drugs policy (among other matters), has frequently denied refugee status to those fleeing torture and persecution and increasingly deported individuals from countries such as Afghanistan, Iran and Iraq (Fleming, 2003; Corporate Watch 2013b). While their domestic situations may be viewed as intolerable (so much so that they invoke military actions), such individuals have become implicitly associated with the dangerousness of the regimes they flee. Their treatment is consistent with the contemporary political management of risk in which those designated as 'other' are met with suspicion (Malloch and Stanley 2005).

Asylum seekers have now come to constitute a kind of abject class of global migrants, thereby increasingly being cast as the objects of securitised fears and anxieties, possessing either an 'unsavoury agency' (that is, they are identity fraudsters, 'bogus' refugees, 'illegals' and queue jumpers) or a 'dangerous agency' (that is, they are criminals, terrorists, agents of insecurity) (Nyers 2003). Like dangerous offenders, the so-called 'bogus' asylum seekers in the UK are identified as posing a very real threat, and this has rapidly translated into tough policy measures. The UK *Nationality, Immigration and Asylum Act 2002* increased state powers of detention and deportation, and the government's White Paper *Controlling Our Borders* (Home Office 2005) presented (indefinite) detention as an 'aspiration' (Bosworth 2008). Since March 2007, all new asylum applications have been managed by the UK's Home Office through the New Asylum Model (2008) which employs surveillance tactics such as electronic tagging and mandatory reporting, effectively erasing the difference between the status of being a dangerous criminal and being an asylum seeker.

Further, the Dublin Regulation, which is aimed at rapidly determining the EU Member State responsible for processing an asylum claim and is closely linked to the system known as 'Eurodac', compares the fingerprints of asylum seekers and 'illegal' migrants. The use of fingerprinting in the UK (*vis-à-vis* the EU) asylum system is justified on the basis of the assumed inauthenticity of identities and for controlling movement and behaviour, in a way analogous to controlling the bodies of criminals (Griffiths 2012). Since 2013, the law enforcement authorities and EUROPOL – the EU law enforcement agency facilitating the exchange of criminal intelligence between police, customs and security services – can access this database '... to help them fight terrorism and serious crime' (European Parliament 2013). The Dublin Regulation also implemented the 'safe third country' rule, the initial safe country reached by an asylum seeker after leaving country of origin. This permits Member States to expel asylum seekers to countries outside of the EU (such as Turkey and Ukraine), from where people can be forcefully removed to countries where their lives and liberty are in danger (Schuster 2011). It also relieves all but one EU Member State of the duty to examine an asylum claim. The stated purposes are to *deter* the so-called 'asylum shopping': that is, applying for asylum in a particular state after transiting another state (see Moore 2013 for an in-depth analysis of this term). The Member States actively punish those who try to exert some degree of control over where they make their asylum claim by using the Dublin Regulation and the Eurodac system to return them to the initial 'safe' or EU country (Schuster 2011). Where this is not possible, asylum seekers are

subjected to 'fast-track' procedures and their claims are either not given enough consideration or not comprehensively examined, or they are left in limbo or destitute for as long as possible (Schuster 2011). The false *logic of abuse* has become the backbone of the immigration and asylum systems, where vulnerable refugees are viewed as fraudulent and criminals and subjected to harsh punitive treatment.

According to Grewcock (2009), utilising deviance in relation to the state's treatment of refugees and undocumented migrants is both 'apposite and confronting given the deviant character bestowed by the state upon the refugee' (Grewcock 2009: 17). The political and media discourses have repeatedly constructed refugees and undocumented migrants as dangerous outsiders, terrorists and criminals, people who are a threat to national security and identity and therefore deserving of the full counter-mobilisation of state resources, and thus amplifying the cycle of criminalisation, crime and punishment. This conscious and highly organised process claims and seeks a very high level of popular legitimacy, thereby subjecting asylum seekers to exceptional practices such as detention, imprisonment, forceful removals, destitution, and so on. There is no viable international legal mechanism for challenging UK (and/or EU) policies and practices, which are extremely exclusionary at their core and have been subjected to sustained criticism for breaching human rights norms. It could be argued that the UK's treatment of refugees is a form of state crime or, alternatively, border crimes as state crime (also see Pickering 2005; Grewcock 2009).

The UK has consistently introduced exceptional policy measures to 'contain' the so-called immigration-'crime' problem, making two rather separate issues inextricably connected (also see Stumpf 2007). This has also led to a dramatic increase in the use of prisons, and a staggering 111 per cent rise in the numbers of immigrants being held in prison between 1999 and 2009, compared to only 21 per cent for British nationals (Banks 2011). There have been substantial increases in both the number of immigrants (which includes asylum seekers and 'illegal' migrants) receiving immediate custodial sentences and in the number subjected to untried reception into custody (Banks 2011: 184-190). According to Banks, these prison statistics in no way suggest that immigrants commit more crime, and the increases in prison population are due to a combination of factors. These include a (perceived) lack of viable options to custody; restrictive immigration and asylum policy; increase in non-criminal prisoners; and ineffective expulsion/deportation regimes. Similarly, Aliverti (2012b) suggests that, when there is no possibility of expulsion or expulsion within a reasonable time frame – where holding someone in immigration detention can also constitute a legal obstacle – a criminal sanction makes it possible to imprison an individual when immigration law mandates release. In a way, criminal proceeding can 'buy' immigration officials time to prepare the expulsion of individuals while keeping them imprisoned (Aliverti 2012b: 519).

Aliverti further argues that pragmatic reasons tend to weigh heavily on the decision to prosecute and factors that have little to do with the criminal charge of itself are of paramount importance. For instance, nationality appears to be a key consideration in whether to pursue a criminal action. According to her analysis of data collected from the court files, those who are more frequently prosecuted for immigration offences come from countries with which Britain has no bilateral agreement to return (or deport) people without documents. At the magistrates' court, most of those accused of immigration offences claimed to come from China, Somalia, Iran and Sri Lanka. At the crown court, most immigration-related defendants claimed to be Somalis, Iranians, Sri Lankans and Kuwaitis (Aliverti 2012b: 519-520). Most of these countries are also leading asylum applicant-producing countries (see Refugee Council 2013). Aliverti (2012b) draws upon an example given by a senior Home Office official and explains the difference between cases of false documents involving a Brazilian and a Zimbabwean. The outcome for the first case will probably be removal whereas a prosecution will be the most likely result for the second case. Therefore the same offence might be treated differently depending on the country

of origin of the defendant and whether or not s/he is readily removable. While this practice might amount to discrimination and be in breach of Race Relations legislation, it seems to be fairly generalised (Aliverti 2012b: 519). It is important to emphasise that such punitive practices disproportionately target asylum seekers (or individuals from asylum applicant-producing countries), who are fleeing torture, persecution and other threats to life, thereby compounding the emotional impacts of trauma and suffering.

The increase in prison rates is also the result of drawing criminal law structures into the immigration policy arena, and using criminal law to fight immigration breaches (Aliverti 2012a). For instance, the UK *Asylum and Immigration Act 2004* introduced 50 new offences and Section 2 of the Act has made it 'illegal' for anyone to enter the UK without a valid passport. Within a year of its implementation, 230 asylum seekers had been arrested and 134 convicted for failing to produce a passport upon arrival. Similarly, individuals using 'deception' to obtain leave to enter or remain in the UK can be punished by up to two years' imprisonment (Taylor and Muir 2005). The measures have come under severe criticism for criminalising refugees who, under Article 31 of the 1951 Geneva Convention, should not be punished for their 'illegal' entry or presence if they arrive from a country in which their life or freedom is threatened. The inappropriateness of such measures has also been highlighted by Lord Justice Sedley who has recognised how it is extremely dangerous, if not impossible, for refugees to obtain the legal documentation from their home government in order to travel to the UK via safe and legal channels (mentioned in Banks 2011).

Nevertheless, a number of issues have and continue to sustain these underlying assumptions that Britain's prisons are now dominated by foreign criminals, many of whom are 'highly dangerous' and deserve to receive harsh (and rather disproportionate) punishment, followed by swift removal from the country. Examples include the foreign prisoner scandal – when the British Home Secretary Charles Clarke was dismissed following revelations that more than 1000 'non-citizens' had been released from prison over a seven-year period without being considered for deportation (for more details see Kaufman 2013) – and the public spectacle of Islamist preacher Abu Qatada, who was accused of terrorism offences in Jordan and spent significant time in British prison, but could not be deported straightaway because of torture-tainted testimony, which prompted predictable outbursts from the tabloid press and political leaders (see Meyer and Poynting 2012). In November last year, the Home Secretary blamed the European Court of Human Rights based in Strasbourg for the chaos and accused them of repeatedly making it harder for Governments to deport 'dangerous' foreign nationals. On 24 April 2013, a 'furious' Prime Minister David Cameron even considered 'a temporary withdrawal from the European Convention on Human Rights so judges in Strasbourg can't block Abu Qatada's expulsion' (Corporate Watch 2013). It is in this toxic climate that the Home Office has continued to introduce harsh policy measures, and has attempted to silence the critics of its mass deportation programme by associating it with the 'urgent need' to deport foreign national prisoners at times using expensive charter flights to Afghanistan and Pakistan. With regards to this, a recent Corporate Watch report (2013a) has emphasised that the foreign prisoner argument is a smear tactic since over 80 per cent of charter flight removals have not involved foreign prisoners (being mainly directed at failed asylum seekers and so-called 'illegal' migrants). Similarly, Fekete and Webber (2010) have mentioned:

... from dark and swarthy Middle- Eastern terrorists, Albanian rapists ... now dominate European newspapers. In response to such stories, politicians have set targets for the removal of foreign national prisoners and the belief has grown that deportation is a reasonable and proportionate way to guarantee public security against a foreign enemy. (Fekete and Webber 2010: 2)

The transformation of refugee to a bureaucratic category of asylum seeker, from asylum seeker to a problematic and deviant category of 'bogus' and 'illegal' migrant, and then to dangerous foreign criminal, terrorist and foreign enemy has resulted in replacing compassion with punishment and integration with imprisonment, exclusion and expulsion from the state. The voices of asylum seekers and torture survivors are repressed and their harsh (and perhaps illegal and abusive) treatment is justified as appropriate and legitimate methods of security, borders and crime control. For a critical criminology researcher it then becomes pertinent to give voice to the victims of state abuse, to claim space for victim agency, gather victim testimonies, challenge official explanations and in the process confront criminal and racist (rogue) British state practices (see Bhatia 2014; Grewcock 2009; Briskman, Latham and Goddard 2008). Therefore, the aims of this paper are twofold;

1. To show ways in which restrictive asylum policy and practices push certain asylum seekers to breach immigration laws and commit (what have now been constructed as) 'criminal' acts;
2. To examine, how these individuals are treated once caught and, more importantly, to explore how asylum seekers experience this treatment.

In order to address the above aims, this paper draws extensively upon narratives of asylum seekers from Iran and Afghanistan.

### **Notes on research methodology**

Victim resistance, when combined with criminological research, can be crucial in designating particular state activities as criminal and constructing the social audience that rejects them. For instance, Grewcock (2010) questions whether asylum seekers as victims should be the 'object' of 'neutral' research? Should we see them primarily as passive victims of state abuse? He strongly indicates that state crime research should acknowledge, if not emphasise, the potential subjective role played by victims, and there is a complex and dynamic inter-relationship between the researcher and the victim that confronts traditional perceptions of criminological research. Keeping this in mind, the current research<sup>2</sup> examines the impacts of British immigration policies and procedures on asylum seekers and those defined by state authorities as 'illegal' migrants. It draws upon their experiences of living in limbo and shows the ways in which they have used their (limited) agency to resist and overcome the controls. The study narrates their experiences of the British criminal justice and immigration systems, the treatment they have received at the hands of the authorities, the violence and abuse they have endured in prisons and detention centres, and the harsh sanctions imposed by the criminal and immigration courts. Qualitative methodologies were used, including, in-depth interviews with 22 asylum seekers and six specialist practitioners; information was also supplemented through documents and reports. The researcher was embedded as a volunteer support worker with three refugee organisations over a period of eighteen months and was able to research participants and interact with state authorities, thereby gathering a rich qualitative data set. It is difficult to do justice and include narratives of all the participants within a single article: hence this paper includes narratives of resistance of five asylum seekers called (using pseudonym) Ali, Inam, Rizwan, Rafiq and Mustafa. The following section outlines the journey of participants into 'crime' and ways in which they were constructed and treated like 'dangerous criminals'.

### **The making of a 'dangerous criminal'**

The number one risk confronting ... countries ... is the risk terrorists or other dangerous persons will carry a fraudulent identity document and move from one country to another...It is a serious matter for concern. (Interpol Chief Officer Ron Noble, quoted in Millward 2011)

Most participants in this research were rendered destitute, their asylum claims were refused, and some tried to escape the country as opposed to being forcefully removed. The majority of the participants were experiencing underlying mental health issues. Those who tried to flee the UK used informal networks to obtain fake identity documents so as to seek legal entry in another Western country (mostly Canada<sup>3</sup>). In the majority of the cases, the decision to escape the UK was largely due to *on-going* trauma and suffering which never ended even after escaping the home countries. For example, Rizwan, when interviewed, mentioned that he was fleeing torture and persecution. On arrival in the UK he applied for asylum; however, he was not offered accommodation by the Home Office (despite making authorities aware of his mental illness) and his consecutive accommodation applications were refused. He therefore had to resort to living in a homeless shelter with individuals who were addicted to alcohol/drugs and who were also facing psychological issues. The lack of sleep, food, medication, heated day shelter, isolation and stress of the bureaucratic process made him self-harm and attempt suicide on several occasions. It is crucial to note that the prevalence of mental health issues amongst asylum seekers is often caused or exacerbated by the way they are treated by authorities, combined with the lack of provision for treating mental ill-health. After exhausting all appeal rights and due to mental health issues, Rizwan took the necessary steps to leave the country but not as expected by the Home Office. As he explained:

I feel down all the time, it is depressing, no papers, no legal status, always stress, stress, stress. They never believe me, never. I feel that ... I should go to a place where people believe that I am saying truth ... My father sold everything to send me money ... I met one of the gang members. He make some [fake] identity documents for me and charge me £1200 and £600 for tickets ... I left for Paris from Heathrow and from Paris going to Canada. They arrest me at Paris airport. It was bad ... they check my [fake] passport and catch me. They took me to the police station and took my finger prints and then said that I will be deported to England. I told them I cannot go to England because they refuse my asylum claim ... I show them all the papers. They said if you stay here, you will have to go to prison for 2 years for fake documents [mentioned by the French authorities] and then we will decide on your case. Two years in prison for no reasons ... I said [to the French officials] deport me to England. They handcuff me for a very long time. I was handcuffed and deported to England. I was stripped searched in Paris 2 times and 8-10 times in England. I was naked that many times near so many officers. Take off your clothes, jeans, shirt, shoes off and bags over and over again... they said: 'you're danger to the public' - how? ... They took me to the police station ... (Interview with Rizwan)

French authorities completely ignored the reason behind Rizwan's 'escape' from the UK, and the fact that he was left destitute, mistreated, suffered from mental health issues and was *at-risk*. While the French system did not prosecute Rizwan for travelling with fake documents, it nonetheless inflicted punishment by returning him to the Member State where he had experienced unfair treatment and where he will be subjected to further mistreatment (and possibly a criminal prosecution). His case demonstrates the negative consequences of the Dublin Regulation and ways in which it traps asylum seekers between unviable conditions and insufficient protection regimes.

Inam decided to leave the UK for similar reasons to Rizwan; however, he mentioned that, having never committed 'fraud' in his entire life, the very thought of using fake documents was exacerbating his anxiety problems and increasing the frequency of panic attacks. As he stated:

Home Office keep refusing me and I was too scared to go back to Iran. I keep doing suicide, so my friend say that you go away to Canada - you will be safe

there. My uncle sell his land in Iran and he send me money for tickets and passport ... I went to Heathrow airport – I was very nervous and shaking. They see me shaking and ask: 'Why are you nervous (?)' and 'Are you ok (?)' They catch me. I told them to please let me go to Canada, I have a political problem in Iran and Home Office is not letting me stay here ... Please let me go. They say: 'No! You cannot leave the UK!' and they take me [directly] to the prison ... Solicitor ask me whether I pay tax or work – I tell him no. He did not help me at all. 8 months in prison – 8 months! They said I am danger to the public and it is for public [good] to put me in prison. (Interview with Inam)

Describing his own case, Ali mentioned that the Home Office sent him three separate letters using very threatening, aggressive and condescending language. On the day of eviction from Home Office accommodation, he received a final letter that highlighted in bold (and capital letters): **'YOU HAVE NO RIGHT TO REMAIN IN THIS COUNTRY'**, and **'YOU MUST LEAVE THE UNITED KINGDOM'**. This triggered suicide attempts and eventually made him take necessary steps to leave the country with a false British nationality documents.

In all three cases, the participants had a choice of *living* in the UK with fake documents or *leaving* the UK with the help of fake documents, and all three chose to *leave* the country after being treated from their perspective as worse than 'animals'. Ali highlighted that the process of escaping the UK kept reminding him of the events that occurred in Iran leading to his escape, and thereby intensifying and relapsing the traumatic memories. During the interview the researcher questioned him regarding the financial burden and expenses involved in arranging for fake documents:

**Ali:** It was expensive you know, around £2500. My father was afraid that they will send me to Iran and that I will face slow miserable death. He sold my mother's jewellery and some money he had saved for my sister's marriage. It was really hard for him and I just couldn't handle all this ...

**Researcher:** What happened after you got all the documents?

**Ali:** I tried to escape this country. I went to Zurich and my main destination was Canada, Heathrow-Zurich-Canada. I went to Zurich and got caught by the immigration staff. The same day they transferred me to UK. They [UK authorities] took me to the police station. I was crying. I thought that it was the end for me, I just kept crying. They send me back to airport after few hours. I kept crying ... I arrive at the Heathrow and the immigration officers kept me in the room. They gave me a sandwich and I slept on the chairs for few hours. In middle of the night they woke me up; they handcuffed me and took me to the detention centre in a special security van. In the detention centre I had to go through reception, where they ask about your health and whether you need to see a doctor. The three security guys at the reception kept laughing ... when I asked them not to laugh, and told them I am scared ... I also told them that my life is like a dog and crying ... they replied saying that: 'You are now fucked ... you will die here'. They said: 'You will be killed or sent back' and the other said: 'Or both – ha, ha, ha'.

**Researcher:** Who were they?

**Ali:** They were detention centre security staff, two of them were white and one Asian. ... doctor was called as I said 'I was not well'. They asked me: 'how you feeling' and to be honest I really wanted to drain some blood again – I had enough of everything, it was a bit too much for me. I told him that 'I want to do something

to myself. Doctor asked me to surrender whatever I had and asked me to change into detention centre clothes, and also said that I am 'dangerous'. He did not help me or anything, he did not even give me any medication, he just made me change my clothes and put me alone in a cell. I stayed there for a night and morning I was brought to the airport [again]. (Interview with Ali)

It was not made clear to Ali and Rizwan as to why they were taken back to the airport from the detention and police station respectively. Nevertheless, the deliberate suspense created by the police and immigration authorities caused them further distress, as both feared forced removal to Iran, followed by torture and persecution. It was noted that, coincidentally, Ali and Rizwan faced similar treatment at the (EU destination and the UK) airport and both went through a similar bureaucratic process/mental health breakdown prior to committing the 'crime'. From this point onwards they were not only considered as absconding 'bogus' asylum seekers but also as 'dangerous criminals' and this was reflected in the harsh treatment that they were subjected to. Both were treated like individuals who pose 'significant danger' and a 'threat to national security':

They [that is, the police] ask me whether I had mental problems and I said 'yes' ... They ask me whether I tried to kill myself or did harm to myself, and I said 'yes' ... They search me again, cut my nails, take my belt and everything. They handcuffed me and took me out. It was horrible ... They took me outside from a public place [that is, busy terminal] at the airport where so many people were around. Near everyone officers were pulling me – I feel so shy and insulted, it was awful! I hurt my left leg while they were pulling me. People look at you, they stare at you and say look that's a criminal boy. People see you being pulled by 5 officers – it was bad. One officer is pulling me, one on my left, one at the front, one on this side and one right. It was a very busy airport, very noisy and loads of peoples around. When they take you from there, everyone went quite, everyone looking at me – you wish at that time you die and no one can look at you ... I was now in the police van and talking to myself and crying, and that officer hit me ... He said: 'OI SHH' and hit me with his leg. He was a big tall white man and strong. You have not done anything wrong. [Home Office] sent me a letter saying that case refused 'leave this country' and that's what I did. They should be happy ... (Interview with Rizwan)

After a while 4 police men walked towards me, I was not allowed to talk and they said that 'anything you talk will be used against you'; they handcuffed me. I was said 'why are you handcuffing me ... where you taking me?' and they said to the cell. We started walking towards the door during day, and I was like 'OH MY GOD, they will take me near all the public like a criminal'. I felt very, very low and embarrassed. I couldn't even walk ... and he dragged me, he pulled me. I was arrested and pulled through that airport while everyone was looking at my face ... it just felt like a terrorist being caught at the airport ... felt dirty ... like a dog. (Interview with Ali)

The security concerns and detection of false documents have now taken primacy over the obligation to protect asylum seekers. While the link between terrorist suspects, foreign criminals and use of fraudulent identity documents constructed by the Chief Interpol Officer might sound convincing and worthy of tough action, it appears that those often caught possessing fake documents and/or committing 'crimes' were vulnerable asylum seekers who were then by default considered and treated as 'highly dangerous' due to their nationalities and religious affiliation. The Home Office and other security agencies have deliberately designed 'foreign criminal' terminology to conjure up overdramatic, frightening, 'underworld' and

terrorist images (Bhui 2007). This also had a profound effect on the way in which participants were treated within the criminal justice system, as further explained in the next section.

### **'Containing' the 'dangerous' and 'high-risk' foreign 'criminals'**

Participants felt that being an asylum seeker and not possessing British nationality stripped them of all the basic legal rights (which are given to the British nationals who are charged with an offence), and put them in a situation where 'judgement' was passed before the official court trial. It also gave authorities an opportunity to create their own set of practices to deal with the 'foreign bastards' (in Ali's words), as they were prejudged and classified as 'dangerous' at the first point of contact. All participants complained about unnecessary force and/or intimidation by the police (and also immigration officials and private security guards), and being treated like 'high risk' offenders for committing low level 'crimes'. The data analysis indicated that law enforcement authorities were culturally insensitive to non-nationals in custody and subjected them to invasive procedures (often without their consent). Such procedures were conducted more frequently if the individuals were psychologically distressed, which resulted in loss of self-esteem and a spiral of health deterioration. For instance, most Middle Eastern participants considered 'strip-search' procedures equivalent to torture and the worst form of punishment. Despite making authorities aware of how they felt about strip search, individuals were repeatedly asked to strip naked near groups of officers, with this becoming more frequent when they mentioned mental health issues and past suicide attempts. Out of all the participants who were confronted by such procedures, only Ali, Rizwan and Rafiq were able to overcome their feeling of shame and the loss of dignity during the interview, and narrated the emotional scars left by such forceful practices. For instance, Ali mentioned:

In Iran if they make you naked, it is like the worst punishment. It is worse than death penalty ... I was given a punishment worst than a death penalty 5 times. In my country and because of our culture, when you want to torture someone, you kidnap or arrest that person and make that person naked. That's it – he will carry it for rest of his life. I was at the police station and a policeman asked me to get naked, so that he could search me. I told him to 'handcuff me and tie me against the wall for few hours and put me in an empty cell, but please don't make me naked', you know it is awful. He then called other officers and there were 4 of them. They removed my clothes, as I kept saying no again and again. Then they made me sit on that glass chair to check things. It is awful, awful, very awful. I feel as if I am being tortured. It is going to be with me forever, I am never going to forget this! ... (Interview with Ali)

The shock of getting trapped in the criminal justice system and uncertainty about the future, followed by invasive practices and mistreatment, triggered suicidal behaviour in some (otherwise stable) participants.<sup>4</sup> For instance, Rafiq, an asylum seeker from Afghanistan, was charged with 'deception' and processed through the British criminal justice system. He mentioned that during the asylum screening interview the authorities did not offer an interpreter and he therefore struggled to provide in-depth, consistent and correct answers. His first interview lasted around 15 minutes and consisted of a few structured (legal) questions to which he was asked to respond with a 'yes' or 'no'. However, the authorities did not explain the purpose of those questions, nor did they make him aware that failing to provide correct replies constitutes an 'offence' under British law. On the very same day, he was made to give fingerprints and then asked to re-attend the screening interview in two weeks' time. On the second visit, two officers escorted him to a secure room, as mentioned during the research interview:

... I went for the screening interview again and two officers came ... one walking in front of me and one on the side ... they handcuff me ... they told me: 'Don't talk, if you talk it will be used against you in the court' ... they search me ... strip search ... I was shocked! ... I was crying and very down ... sometimes you can't express your feelings in words ... They took me to the police station and told me that I have a right to have a solicitor ... I asked them why am I in police cell ... they said: 'because you had a finger print in France ... they also said: 'you used different name' ... how? I gave finger print in France, but I did not know it was a crime ... the officer in the screening interview never said that it is important not to give fingerprints anywhere else ... never mentioned that giving fingerprint somewhere else is a crime ... I did not use different name ... I sometimes add 'Ullah' after my name and sometimes I don't ... it is not crime ... I was so scared, my heart was beating very fast and I felt that I was about to die ... when police handcuff me, I didn't know what to say, it was completely horrifying for me ... I was treated like a bloody criminal ... they said don't move, they push me in the room, they push me in the van ... they took away my clothes, my money ... that lady [at the police station] was shouting ... she took my DNA from hair, from my mouth ... I just kept thinking what have I done ... they transferred me to another police station at 3 in the morning ... and wake me up at 6 again for the court hearing. (Interview with Rafiq)

In Afghanistan, Rafiq worked for a campaigning organisation which promoted human rights. He co-ordinated with American soldiers and expatriates who were actively supporting his work (and he had documentary evidence supporting his claim). This close association with the Westerners placed him under the Taliban's radar and he was eventually subjected to a brutal (near fatal) assault. However, none of this information was recorded or considered prior to processing him through the criminal justice system. Rafiq's case also demonstrates the ways in which Member States have used Eurodac to track, punish and discipline asylum seekers, without giving enough regards to their health and well-being. The criminal treatment brought a significant trauma relapse and pushed Rafiq into depression:

The judge asked me whether I was guilty of deception ... what is deception I asked ... judge said have you used false name ... I said I am not guilty ... then he said that because I have no place to live and don't know anyone in this country, I will stay in remand, in prison ... they said you will have a hearing in Crown Court ... I was like what is Crown Court? I was crying ... I started thinking about my family, my dead cousin. ... they stabbed us in Afghanistan ... I escape ... I come here ... they put me with murderers, drug dealers ... tears were coming from my eyes ... and they strip search me again ... I just wished to die ... it was better to die in Afghanistan than coming here ... this is disrespect to humans ... you are what? animal? I just kept crying ... they [prison officers] asked me to call Samaritans and that lady kept saying: 'it will be fine baby, it will be fine' [suggesting that Samaritan worker tried to console him] ... as I was close to Crown Court date, I started attempting suicide in cell by suffocating ... but every time I stopped because of pain ... they gave me anti-depressants, because I was crying a lot ... I went to the Court and pleaded guilty so they can send me to Afghanistan, so I can die in my country ... but no ... they [that is, judge] send me back to prison saying that you will have to wait for your sentencing ... (Interview with Rafiq)

Some asylum seekers were charged and held in prison until the court hearing due to a lack of accommodation. However, ironically, in many cases homelessness was one of the key factors behind committing 'crime' and getting caught-up in the criminal justice system. Increasingly, homeless/destitute asylum seekers who show extreme signs of mental health breakdown are

being channelled via the criminal justice system. For instance, Mustafa, an asylum seeker from Iran, was left destitute while his asylum case was being processed. After spending a few weeks on the streets of London, he found an 'illegal' job of distributing 800 leaflets a day, for which he was paid £20 a week. The employer provided him with a space to sleep (which he referred to as a small 'hole with a lid' with no room to sit, stand or even stretch) and he had to perform additional cleaning chores until 2:00am so as to get food and heating. Mustafa spent three months living in the slavery-like conditions and later received a case refusal letter. This prompted a search for a Legal Aid immigration solicitor, who assisted him with the appeals and he re-applied for accommodation. The Home Office offered him a place and arranged for dispersal to Manchester, and later rejected his appeal. According to the documentary evidence, his psychological state deteriorated due to prolonged destitution. During the interview Mustafa mentioned:

They refuse my case again. In 6-7 months they refuse my case twice. The Home Office stop my accommodation and homeless again. Then I did 'fresh application' ... They send me a letter saying 'We have received your papers, your application is in process and we will get back to you as soon as we can'. Then I go to Manchester Refugee Action again and told them that I am homeless and nowhere to go ... They send me to a agent or landlord ... Man, I was so stressed, so depressed; I was in street for such a long time, nowhere to go. I use to beg for food in Manchester ... everything got me depressed and crazy. I went to housing people ... I went there with the judge decision letter. See, the Section 4 accommodation is not perfect. It is a dirty house, which you have to share with other people but I was ok with that ... I went there with my carry bag. I had all my personal stuff like scissors, toothbrush, shaving blade, spoon, kitchen knife, glass, soap, my clothes everything. I was standing in ... office since morning 8-9am ... until 5pm. At 5pm they took me to a place filled with Kurdish guys. But Kurdish people did not let us come in saying that: 'too many people in this house ... no place ... how many people they want to put in this small house'. We went back to the agent's office and they said to me: 'come back on Monday'. Monday? You know what man - I went crazy! I had enough of this life, living on the street, getting refused. I am not a beggar you know. I went crazy! I told them I am going to kill myself and I don't want any accommodation. I put hand inside my bag and removed a standing kitchen knife. It is like a very thin sharp knife, not a big one to cut meat ... just a thin knife yea. I went crazy. I started to slash my hands, my chest, and my stomach. I just wanted to cut open myself and die. Look at this ... See here, here, here, here, here and here [showing various scars]. (Interview with Mustafa)

After Mustafa slashed his upper body and torso with knife, he started to bleed profusely but could not inflict fatal harm due to a blunt knife. The landlord called the police for assistance, and officers took Mustafa to the nearest Accident and Emergency Department for surgical stitches. Mustafa was then transferred to prison without receiving any psychological intervention, and officers did not provide any reasons as to why they had chosen to hold him in prison facilities.

### **The end is the beginning**

Asylum seekers are constructed as 'dangerous' through their very circumstances, and every act (of desperation, resistance and 'crime') renders them as even more 'dangerous'. In other words, a cycle of criminalisation is often triggered in which asylum seekers are forced to commit acts which are increasingly deemed 'criminal', with ever tougher punishments (Webber 2000). Evidently asylum seekers are deliberately trapped and 'contained' through this perfect vicious cycle - one that is created, perpetuated, amplified and maintained by the racist state. Ali, Inam,

Rizwan, Rafiq and Mustafa were all held in prison for lengthy periods; however, not all of them were convicted. For instance, Mustafa spent over eight months in prison without being on remand and throughout this time he remained consistent in his accounts and did not plead guilty to the charges. Moreover, no actual malice was ever proved. Nevertheless, the isolation and treatment in prison made him enter into a bargaining plea. He mentioned:

OK. An asylum seeker in prison yeah ... because you are a fucking asylum seeker no one has anything to do with you, because you have no social rights. I was treated like a piece of shit, like a bloody shit dog. See, people who are from here get help from the probation, they get accommodation ... but you are an asylum seeker and you must rot in prison [indicating that release was delayed, as he did not have a fixed address].

I was 8 months in prison and I did not plead guilty because I haven't done anything. All I have done is hurt myself. After that solicitors came and speak to me. He said that prosecution ... will drop the charges; however, I was asked to plead guilty for threatening people. It is like bargaining you know. I was tired you know. No visitors in prison, no money to buy things, you are lonely and depressed all the fucking time. I asked my solicitor if I say yes to threatening then will they let me out and he said: '90 per cent you are going out'. Three serious charges were dropped only by saying 'yes' I threatened people ... All I did was cause harm to myself ... (Interview with Mustafa)

In Mustafa's case, the possession of a knife was considered as an 'aggravating factor' and, while he had no intention to inflict harm on others (nor was he found guilty of doing so), the very situation, combined with his nationality status, resulted in misrepresenting (and/or misinterpreting) the act of attempted suicide and incriminating him for a public order offence. It can be argued that the growing proportion of asylum seekers being incarcerated is due to their being perceived as 'anti-persons' that need to be dealt with solely through the penal apparatus of the state. The result is a self-fulfilling prophecy of a crime-immigration nexus (Wacquant 2005:41-46).

Ali, Inam, Rizwan, Rafiq and Mustafa served extended time in prison under the immigration powers and all were issued with deportation orders; however none was deported from Britain. On release, Ali, Inam and Rizwan remained destitute and continued to face deteriorating mental health for a considerable length of time (and Mustafa re-offended and was imprisoned three times). All five were eventually granted refugee status during the course of this study. The treatment of asylum seekers within prisons and courts, issues with the administration of fair justice, proportionality in sentencing, impacts of punishment and life post-prison will be the focus of forthcoming articles.

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<sup>2</sup> PhD study was undertaken between 2008 and 2013 at the University of Huddersfield

<sup>3</sup> Asylum seekers either perceived Canadian system to be 'fair' or they had friends and relatives in the country.

<sup>4</sup> In 2012, the Ministry of Justice revealed that there were 70 foreign national prisoner deaths between 2007 and 2010, and 44 were self-inflicted.

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