



# Innocents in Jail:

## INS Moves Refugee Women from Krome to Turner Guilford Knight Correctional Center, Miami

JUNE 2001

Follow-up Report to  
Behind Locked Doors: Abuse of Refugee Women at the Krome Detention Center

## Mission Statement

The Women's Commission for Refugee Women and Children seeks to improve the lives of refugee women, children, and adolescents through a vigorous program of public education and advocacy and by acting as a technical resource. Founded in 1989 under the auspices of the International Rescue Committee, the Women's Commission is the first organization in the United States dedicated solely to speaking out on behalf of women and children uprooted by armed conflict or persecution.

The mandate of the Women's Commission 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 1995, the Women's Commission initiated a project to assess the treatment of women asylum seekers in the United States. This evaluation considers the physical conditions in which women are detained; their access to counsel and the U.S. asylum system; and their physical, mental and social well-being. In 1997, the Women's Commission expanded the Detention and Asylum Project to address the critical protection needs of children asylum seekers who make their way to the United States. This includes assessing the treatment that children receive in detention, as well as their ability to access the U.S. asylum system.

In the course of its Detention and Asylum Project, the Women's Commission has interviewed dozens of women and children asylum seekers, the government officials charged with their care, and the legal and social service providers who assist them. It has also visited more than 30 detention centers across the country. This report is one in a series of reports on specific facilities; it focuses on the situation of women detained in the Turner Guilford Knight Correctional Center in Miami, Florida. The Women's Commission visited the facility twice, in February and June 2001.

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We also wish to acknowledge the work of the INS staff, TGK staff, and members of the Miami-Dade County Commission who have also publicly expressed their concern about the treatment of INS detainees.

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## Executive Summary

The handling of women detainees by the Miami District of the Immigration and Naturalization Service (INS) exemplifies the lack of centralization, planning, and sound public policy that characterizes the United States detention system, especially as it affects asylum seekers. In 2000, the Women's Commission for Refugee Women and Children (Women's Commission) conducted two site visits to Miami, Florida to assess the treatment that women were receiving in the Krome Service Processing Center, a large INS detention center in which dozens of women were detained on any given day, including those seeking asylum. This assessment, published in the report *Behind Closed Doors: Abuse of Refugee Women at the Krome Detention Center* (October 2000), documented widespread sexual, physical, emotional, and verbal abuse of women by Krome officers. Following the transfer of women asylum seekers from Krome to the Turner Guilford Knight Correctional Center (TGK) in December 2000, the Women's Commission twice assessed conditions at TGK, in February and June 2001.

The allegations of sexual abuse at Krome continue to be the subject of investigation by four agencies of the Department of Justice: the Office of the Inspector General, the Office of Public Integrity, the U.S. Attorneys Office, and the Federal Bureau of Investigation. It is uncertain, however, that this investigation will result in meaningful actions against the officers involved. One officer was indicted on four charges of sexual assault, but plea bargained down to just two misdemeanor charges. Several officers have been removed from Krome pending the completion of the investigation, but have been reassigned to administrative posts at the district's downtown Miami office. Other officers implicated in the abuse remain on duty at Krome. Meanwhile, some of the victims and witnesses of the sexual abuse have been deported to their home countries.

After its own internal investigation and pressure from the Miami community, local service providers, the Women's Commission, and other national immigrant and refugee advocacy organizations to release the women or place them in an appropriate alternative to detention, the INS did agree to remove women from the Krome center. However, the agency failed to identify an appropriate alternative to detention. The Miami District instead reversed a local policy under which it generally avoided holding asylum seekers in local prisons, a policy that had been in place for two years and which represented a significant improvement over both past practices in the Miami District and current policies in many other INS districts. It transferred the women to TGK, a Miami-Dade County jail designed for the pre-trial detention of criminal offenders.

The Women's Commission found TGK to be totally inadequate for the housing of asylum seekers, who typically represent the majority of women detainees in the custody of the Miami District. This report will show that the facility is incapable of providing the protection and services that women seeking refugee protection require.

Women interviewed by the Women's Commission consistently expressed their distress over being held at TGK, treatment which they perceive as punitive. Translation services are not readily available, adding to the women's confusion. Medical care is shockingly inadequate; the medical clinic in the facility seems unable to address the women's health needs. The facility itself acknowledges that the food is unappetizing; the women describe it as inedible. Family members who arrive in the United States together are being separated and held at different

facilities. Ironically, the women also reported incidents of sexual harassment and molestation by male trustees in TKG shortly after their transfer from Krome, calling into question again the safety of the women.

Moreover, incarcerating the women at TKG has seriously interfered with their access to legal assistance and thus jeopardized their ability to successfully pursue their asylum claims. Legal services programs have struggled to provide information and representation to the women. Already stretching their resources in order to reach women in TKG, these programs have also repeatedly encountered procedural barriers inhibiting access to the facility. Further exacerbating the situation is the fact that at least four groups of women have been transferred hundreds of miles away to the York County Prison in Pennsylvania due to a lack of bed space at TKG. These transfers further isolate the women from service providers who can assist them with their asylum cases.

The Women's Commission found that the women in INS custody have paid the price for abuses inflicted by INS officers and other officials at the Krome Service Processing Center. Furthermore, the women are now receiving harsher treatment than men in the custody of the INS Miami District, raising serious equal protection concerns.

The failure of the INS to develop an appropriate alternative to detention for the women, especially those seeking asylum who have committed no crime, is disturbing. INS headquarters in Washington, DC has repeatedly stated its commitment to exploring such alternatives for asylum seekers and in fact has tested models that have demonstrated considerable success. It is unfortunate that to date the agency has failed to address the special problems exhibited in the Miami District and to pursue a solution that recognizes the unique needs of women detainees and offers them the protection they deserve.

## Detention Problems in the Miami INS District

The INS Miami District generally detains asylum seekers until they have established a credible fear of persecution, a determination that is made by an INS asylum officer usually within a few days to a few weeks of the individual's arrival in the United States. Once the asylum seeker's claim has been found credible, she typically is paroled pending her proceedings, a practice that represents an improvement over many other INS districts. However, high-level officials in the Miami District themselves have stated that they favor release of asylum seekers at that point, primarily due to a lack of available detention bed space.<sup>1</sup> Moreover, some asylum seekers who are not screened for credible fear because of the vagaries of U.S. law may remain in detention for months.

Furthermore, the INS Miami District has a history of problems in its detention program. The core of its program has been the Krome Service Processing Center, one of the oldest and largest of the INS Service Processing Centers. Since its opening, the Krome Service Processing Center has been the subject of tremendous controversy. For years, the legal service community, detainees and their families, and even some facility staff have complained about the poor living conditions in the facility. Problems have included tremendous overcrowding, prolonged detention, unsafe and unsanitary living conditions, arbitrary disciplinary procedures, inadequate medical care, and barriers to legal representation.<sup>2</sup> Krome has in fact been the subject of federal investigations of alleged abuses going as far back as 1986.<sup>3</sup>

Most recently, allegations of widespread sexual abuse against women detainees at the hands of approximately 15 INS officers and one Public Health Service official surfaced in May 2000.<sup>4</sup> In September 2000, the Women's Commission took testimony from women who reported multiple incidents of sexual molestation and harassment. Women reported that the officers preyed on their vulnerability and uncertain immigration status to force them into sexual activities. Officers would make false promises that the women would be released from detention if they cooperated.

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<sup>1</sup> Interview with Edward Stubbs, Krome Service Processing Center, March 2000.

<sup>2</sup> See Cheryl Little and Joan Friedland, "Krome's Invisible Prisoners: Cycles of Abuse and Neglect," Florida Immigrant Advocacy Center (July 1996); Cheryl Little, and Joan Friedland, "Cries for Help: Medical Care at Krome Service Processing Center and in Florida's County Jails," Florida Immigrant Advocacy Center (December 1999); see also Cheryl Little and Joan Friedland, "Florida's County Jails: INS's Secret Detention World," Florida Immigrant Advocacy Center (November 1997).

<sup>3</sup> See Andres Viglucci, "Krome Detainee Accuses Guards of Assault," The Miami Herald, p. 2B (February 24, 1996) (reporting that a Nigerian detainee was beaten by INS guards at Krome and then transferred to a county prison in retaliation for speaking out about abuses); Tom Dubocq, "Guard at Krome Admits to Beating," The Miami Herald, p. 1B (January 5, 1996) (reporting indictment of INS guard for beating a Haitian detainee in Krome in 1993).

<sup>4</sup> See Andres Viglucci, "Sexual Misdeeds Reported at Krome," The Miami Herald, p. 1B (May 27, 2000); Yves Colon, "For Transsexual at Krome, Life Became a Nightmare," The Miami Herald, p. 1A (September 7, 2000); Jody A Benjamin, "Krome Detainee Says She Was Promised Freedom in Exchange for Sex," The Fort Lauderdale Sun-Sentinel, p. 1B (August 3, 2000); Jody A. Benjamin, "Guard: Krome Center Has Ignored Complaints," The Fort Lauderdale Sun-Sentinel, p. 1B (August 27, 2000).

Conversely, they were told that they would be transferred to a county prison, deported, or even killed if they failed to cooperate or dared to complain.<sup>5</sup>

In addition to the seriousness of the crimes involved, these allegations are disturbing for several other reasons. First, such allegations are not new. In fact, the Federal Bureau of Investigation had launched an investigation into similar reports of abuses as far back as 1990, but no disciplinary or legal actions were taken.<sup>6</sup> In 1998, a woman detainee complained of sexual harassment by an INS officer who was guarding her while she was detained in a local hotel. Again, no action was taken.<sup>7</sup> Some of the guards implicated in the most recent scandal had already been the subject of investigation for sexual abuse in these prior inquiries.

Serious questions have been raised as to whether the current investigation will also fail to result in appropriate criminal prosecution or disciplinary action against those officers shown to be involved. Several of the witnesses and victims have been deported.<sup>8</sup> Disturbingly, the one officer indicted thus far on charges of rape was allowed to plea bargain those charges down to just two misdemeanors.<sup>9</sup> Other officers remain on duty at Krome.

Second, the most recent round of abuses followed a concerted and very public effort by the INS to clean up conditions and mistreatment at the Krome center. In 1995, Krome received national exposure when it was discovered that high-level INS officials both in Washington, DC and Miami had attempted to cover up true living conditions in the facility in order to deceive a congressional delegation.<sup>10</sup> In the wake of that scandal, the INS hired new management for Krome with the explicit mandate to improve operations at the facility. Despite some cosmetic improvements, however, the new management team failed in its effort to professionalize operation of the facility. The new officer-in-charge and his deputy in fact quit their posts after the allegations of sexual misconduct surfaced last year.<sup>11</sup>

A third concern—and the focus of this report—is the INS’s failure in light of the abuses occurring at Krome to take adequate steps to ensure the safety of women in the custody of the Miami District. After the allegations of abuses at Krome surfaced, the Women’s Commission, the Florida Immigrant Advocacy Center (FIAC), and other refugee and immigrant rights

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<sup>5</sup> “Behind Locked Doors: Abuse of Refugee Women at the Krome Detention Center,” Women’s Commission for Refugee Women and Children (October 2000) (reporting findings of investigation on conditions of detention for women held at Krome).

<sup>6</sup> Yves Colon, “Federal Inquiries Targeting Krome,” *The Miami Herald*, p. 1A (August 17, 2000); Yves Colon, “INS Frees 3 Krome Detainees for Safety,” *The Miami Herald*, p. 1A (August 26, 2000).

<sup>7</sup> Statement of Ms. X, Florida Immigrant Advocacy Center (1998); See also Mark Dow, “Our Daily Ordeal is Going Unnoticed: Cries for Help from Krome,” *Haiti Progres* (August 1998).

<sup>8</sup> See Jody A. Benjamin, “Krome Accusers Could be Deported,” *The Fort Lauderdale Sun-Sentinel* (June 12, 2001).

<sup>9</sup> Alfonso Chardy, “INS Officer Avoids Rape Charge,” *The Miami Herald*, p. 3B (May 10, 2001); David Cazares, “Krome Guard Gets Plea Deal on Sex Charges,” *The Fort Lauderdale Sun-Sentinel* (May 10, 2001).

<sup>10</sup> See Carol Rosenberg, “INS Officials to be Grilled on Cover-Up of Krome Crowding,” *The Miami Herald*, p. 3A (September 12, 1996); Carol Rosenberg, “INS Discipline Under Review in Alleged Cover-up,” *The Miami Herald*, p. 2B (August 6, 1996); Carol Rosenberg, “Justice Department Report Details INS Deception at Krome,” *The Miami Herald*, p. 1A (June 29, 1996); Eric Schmitt, “Immigration Aides Deceived Lawmakers, Inquiry Finds,” *The New York Times*, p. A14 (June 21, 1996); Andres Viglucci, “INS Accused of Deceiving Fact-Finders, Investigator: Krome Hid Overcrowding,” *The Miami Herald*, p. 1A (June 21, 1996).

<sup>11</sup> Andres Viglucci, “Top Official at Krome Steps Down,” *The Miami Herald*, p. 1B (July 7, 2000).

organizations urged the INS to release or seek an appropriate alternative to detention for women housed at Krome. These agencies also expressly discouraged transferring the women to criminal facilities. The INS did remove the women from the immediate dangers they were facing in Krome. However, rather than establishing a humane alternative, the agency moved the women to a local Miami-Dade County jail, the Turner Guilford Knight Correctional Center.

## Allegations of Abuses at Krome Continue

While the INS responded to complaints of sexual abuse from women detained at the Krome Service Processing Center by moving the women to TGK, it continues to utilize Krome for the detention of men.

In March 2001, a Haitian man detained at Krome accused an INS computer technician of making sexual advances toward him.<sup>12</sup> The detainee reported that the officer falsely promised that he would help him obtain release from detention. He then approached the detainee several times and pressured him to engage in oral sex. Eventually, the detainee allowed the officer to fondle him.

The young man reported the incidents to medical employees working in the Public Health Service clinic at Krome. He then suffered a nervous breakdown and was taken to the Jackson Memorial Hospital Rape Trauma Center. He was handcuffed and shackled on the way. After being transferred to the Palmetto Hospital psychiatric unit, the young man reported that he was interviewed briefly by two Department of Justice officials.

Approximately two weeks later, the young man was transferred back to Krome. He withdrew his appeal, stating in a signed declaration, "I just wanted to get out of this nightmare."<sup>13</sup> The young man has since been deported.<sup>14</sup> The INS asserted that it had found no basis for the man's complaints.<sup>15</sup>

Allegations of sexual abuse of males are also not new at Krome. In 1996, a former Krome officer reported that an older detainee had forced a 16-year-old Colombian boy to have oral sex with him. The boy was commingled with adult detainees. He subsequently tried to commit suicide, and was then transferred to a facility in central Florida.<sup>16</sup>

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<sup>12</sup> See Alfonso Chardy, "Haitian Held at Krome Claims He was Fondled by Employee," *The Miami Herald* (April 4, 2001).

<sup>13</sup> Declaration of E-P- to Florida Immigrant Advocacy Center (March 30, 2001).

<sup>14</sup> Ana Valdes "Haitian Alleging Abuse Deported," *The Miami Herald*, p. 1B (June 11, 2001); see Letter to Boris N. Wijkstrom, Florida Immigrant Advocacy Center, from Wesley J. Lee, INS Officer-in-Charge, Krome Service Processing Center (May 30, 2001) (denying a stay of removal to Haitian male).

<sup>15</sup> Ana Valdes "Haitian Alleging Abuse Deported," *The Miami Herald*, p. 1B (June 11, 2001); see Letter to Boris N. Wijkstrom, Florida Immigrant Advocacy Center, from Wesley J. Lee, INS Officer-in-Charge, Krome Service Processing Center (May 30, 2001) (denying a stay of removal to Haitian male).

<sup>16</sup> Mabell Dieppa, "INS Agent Denounces Abuses at Krome," *El Nuevo Herald* (December 15, 1996).

# Conditions of Detention at Turner Guilford Knight

## Introduction

In December 2000, six months after allegations of sexual abuses at Krome surfaced, the INS announced that it would relocate female detainees to TGK, a Miami-Dade County jail, located near Miami International Airport.<sup>17</sup> The agency justified this transfer by stating its intent “to ensure those detainees the most safe, secure, and humane detention conditions possible.”<sup>18</sup> It entered into a contract with the facility, under which it pays the county almost \$83 per day, per detainee.<sup>19</sup> Former Attorney General Janet Reno supported the decision.<sup>20</sup>

In a letter, asylum seekers described the transfer as follows:

*On December 14, we were transferred from Krome and that is where our worst nightmare began. We were taken out of our bedrooms [at Krome] with handcuffs and some people even had a nervous breakdown. But that did not matter ... We prayed to them to take us out [of TGK] and once again our petition was denied ... We only pray to God that someone will feel sorry for us and make justice prevail ... We don't know if it would have been better to die in our countries or be going through this horrible nightmare.*<sup>21</sup>

The decision to transfer women to the TGK facility was made with little or no community input. Attorneys who worked with Krome detainees only learned of the decision from local media outlets.<sup>22</sup>

In the months prior to the announcement, advocates had encouraged the INS to develop appropriate alternatives to detention for women in the Miami District, including parole whenever feasible. In fact, the Women's Commission, FIAC, and others had expressly discouraged the use of county jails to house women.<sup>23</sup> The agencies based this recommendation in part on the fact

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<sup>17</sup> See “Detain Women in a Secure Residential Setting, Not in Jail for Criminals,” The Miami Herald, Editorial (December 18, 2000); Alfonso Chardy, “Activists Protest Krome Decision,” The Miami Herald (December 13, 2000); Fredric N. Tulsy, “Detained Immigrants Who Allege Sex Abuse are Transferred to Jail,” San Jose Mercury News (December 12, 2000).

<sup>18</sup> Press Statement by Robert A. Wallis, Florida District Director, Immigration and Naturalization Service (December 12, 2000).

<sup>19</sup> Letter from John Bulger, Immigration and Naturalization Service, to Barbara Carey-Shuler, Miami-Dade County Board of County Commissioners (May 30, 2001).

<sup>20</sup> Letter from Attorney General Janet Reno to Cheryl Little, Florida Immigrant Advocacy Center (January 19, 2001).

<sup>21</sup> Letter from Y-H- (December 14, 2000) (translated from Spanish).

<sup>22</sup> Interview with FIAC staff, December 2000.

<sup>23</sup> See, e.g., letter from Cheryl Little and Joan Friedland to Attorney General Janet Reno (June 29, 2000) (recommending release of women from Krome pending investigation and observing that transfer of women to county jails or out-of-state detention centers is not an appropriate option); see also letter from Cheryl Little, Executive Director, Florida Immigrant Advocacy Center and Mary Diaz, Executive Director, Women's Commission for Refugee Women and Children to Attorney General Janet Reno (December 19, 2000); letter from Alisha Horowitz, Lutheran Immigration and Refugee Service to Anthony S. Tangaman, Immigration and Naturalization Service (January 16, 2001). In addition, the Women's Commission and FIAC met with INS Commissioner Doris

that alternatives to detention have been tested in other INS districts and demonstrated considerable success. (See appendix.)

The INS, however, claimed in its press statement, “We have been in contact with our Krome Stakeholders—those in the community who have a vested interest in Krome—and we have listened to their concerns...we are responding to those concerns and we will continue to do so.”<sup>24</sup> In its announcement, the INS described TGK as:

- 1) offering the best possible conditions for detained women;
- 2) a modern, full service facility, conveniently located near the airport and close to the groups and attorneys providing outside support to female detainees;
- 3) providing detainees with increased privacy;
- 4) providing detainees with separate “rooms”;
- 5) allowing the women to have family visits every other day;
- 6) allowing attorney access on a 24-hour/seven days-a-week basis;
- 7) having access to modern medical facilities around the clock; and
- 8) permitting access to telephones, recreational activities, a law library, and educational programs.<sup>25</sup>

Most of these claims have since proven to be inaccurate. TGK has consistently failed to accommodate the legal, health, linguistic, and cultural needs of women in INS custody.

Moreover, serious questions have been raised about TGK’s ability to comply with the recently issued INS detention standards, a requirement under its contract with the INS.<sup>26</sup> (See appendix.) In February 2001, the TGK warden, in fact, resisted the suggestion that services should be provided to accommodate the special needs of INS-detained women, including asylum seekers. He stated: “We’ve bent over backwards. We’ve cleaned and we’ve painted, but I can’t treat the INS detainees any differently. I’ll have problems, and remember, I have 1,200 inmates in here.”<sup>27</sup>

At a meeting sponsored by the Miami-Dade County Commission, the head of the county Department of Corrections indicated that the agency is “rapidly trying to comply with the INS standards.”<sup>28</sup> However, the contract required full compliance by March 1, 2001, a date already passed. She also qualified her statement by observing, “We are attempting to deal with the issues advocates have raised within the framework of a jail.”<sup>29</sup>

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Meissner in September 2000 to discuss the treatment of women at Krome, during which the agencies discouraged the transfer of women to county prisons and recommended their release.

<sup>24</sup> Press Statement by Robert A. Wallis, Florida District Director, Immigration and Naturalization Service (December 12, 2000).

<sup>25</sup> Id.

<sup>26</sup> Id.

<sup>27</sup> See Minutes from Krome Stakeholders Meeting, Immigration and Naturalization Service (December 12, 2000).

<sup>28</sup> Meeting of Miami-Dade County Commission (June 1, 2001).

<sup>29</sup> Id. See also memorandum from Florida Immigrant Advocacy Center to Chris Nugent, American Bar Association (June 2001).

The acting Deputy District Director and the Chief of Staff of the INS Miami District defended the transfer of women to TGK at the same meeting. They insisted that they were unable to utilize alternatives to detention under U.S. immigration law, disregarding the fact that INS headquarters in Washington, DC has already tested such alternatives and continues to express its commitment to further exploring such initiatives, including in Miami.<sup>30</sup>

The INS representatives concluded: “We’ve got to detain these women. Even if you offer us a bright, shiny facility, we won’t use it.” They also promised to look into alternatives to detention used in other INS districts and to resume their dialogue with the county in 30 days, but warned that they may end up moving the women out of Miami entirely to prisons in other states.<sup>31</sup>

## Physical Setting

TGK is a five-minute drive from Miami International Airport. It houses approximately 1,200 criminal inmates of various security classifications.

INS-detained women are housed in two cell pods. Each cell pod consists of a common dayroom with two tiers of cells attached to it. There are generally two detainees housed in each cell, despite the INS press statement released prior to the women’s transfer promising privacy for detainees.<sup>32</sup> Moreover, while the INS had described the cells as “rooms,” they are in fact typical of prisons, offering only a bed, a desk, sometimes a vanity, a sink, a toilet exposed to public view, and a narrow, barred window.

One cell pod currently holds 64 women asylum seekers. During the Women’s Commission’s visits to TGK, women seeking asylum from Haiti, Colombia, China, Ethiopia, Ecuador, Bulgaria, India, Burma, and other countries were housed in the facility. The second pod houses approximately 40 women, most of whom are subject to deportation from the United States due to prior criminal convictions.

In contrast to many prisons, almost all of the women’s daily activities occur within the cell pod. This includes attorney visits, meals, laundry, and recreation. Minimal outdoor access is provided on a balcony attached to the cell pod. The balcony is approximately half the size of a basketball court and consists of a cement area surrounded by high walls and a mesh ceiling. The only glimpse of the outdoors is through the ceiling where the sky is visible. Women can access the balcony during daylight hours.

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<sup>30</sup> See Minutes from Krome Stakeholders Meeting, Immigration and Naturalization Service (December 12, 2000).

<sup>31</sup> See also letter from John Bulger, Immigration and Naturalization Service, to Barbara Carey-Shuler, Miami-Dade County Board of County Commission (May 30, 2001) (stating “If we must move from your facility, we will have no other alternative but to house our female detainees in a county facility distant from Miami, or even out of state”).

<sup>32</sup> Press Statement by Robert A. Wallis, Florida District Director, Immigration and Naturalization Service (December 12, 2000).

The prison was designed to consolidate inmate activities in the cell pods to cut down on frequent and costly movements of inmates inside the prison.<sup>33</sup> However, this environment is claustrophobic and isolating.

## Treatment of Detainees by INS and Prison Staff

Despite the INS's assertion that women would be offered the best possible conditions in TGK, INS detainees are treated much the same as the criminal population for which the facility was designed. In an anonymous letter, the women themselves described their situation:

*We are women, mothers, daughters, fiancées. We are human beings. What is happening to us is not fit for any living being on this planet. We are living beneath the most basic human standards without being criminals, alcoholics, or drug addicts and without having any vice that could damage society. We came to the United States to find a better life, freedom, and to work because we all have the drive to succeed ... We, however, find ourselves incarcerated under the worst of conditions.*<sup>34</sup>

INS detainees, including asylum seekers, wear prison uniforms. They are subject to frequent head counts and periodic lock-downs.

The women are stripped of their personal belongings, including wedding rings, watches, rosaries, and at times even family pictures. A Colombian asylum seeker described how painful it was to have a picture of her son, her rosary, and her scapular taken from her.<sup>35</sup>

The head of the county Department of Corrections stated that INS detainees are now allowed to display family photos on the desks located in their cells.<sup>36</sup> However, when the Women's Commission inquired about this change of policy during its interviews with detainees, the women said that they were unaware of any policy change and still were not allowed to display any family pictures.

Some women also reported that when they arrived at the airport they had in their possession written contact information for family members in the United States. However, these documents were taken away from them once they were incarcerated. Without such information, the women were unable to contact their family members to inform them of their location and the fact that they were in INS custody.

The women are also subject to strip searches. These occur when they first arrive at TGK, as well as when they are removed from the facility to go to Krome for their court hearings. A Haitian woman reported: "I hated the strip search. I had to open my legs and squat. I found it very

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<sup>33</sup> "Turner Guilford Knight Correctional Center: Overview," Turner Guilford Knight Correctional Center (December 2000).

<sup>34</sup> Letter from Anonymous Female Asylum Seekers at TGK, Florida Immigrant Advocacy Center (April 2001) (translated from Spanish).

<sup>35</sup> Women's Commission interview, February 2001.

<sup>36</sup> Meeting of Miami-Dade County Commission (June 1, 2001).

embarrassing.”<sup>37</sup> A Mexican woman complained, “The strip search felt like a physical attack against my personal intimacy.” She reported that she was strip searched in front of four TKG officers.<sup>38</sup>

The head of the Department of Corrections defended the use of strip searches by saying: “It’s a jail, so we have to strip search. Perhaps it’s not appropriate for these women, but we have to follow the rules.”<sup>39</sup>

The women are always handcuffed when transported. The handcuffs are attached to a chain around their waists. A Haitian asylum seeker observed: “This treatment is very humiliating. Frankly, I would return to Haiti if I didn’t know that there are political problems there.”<sup>40</sup>

A Mexican woman reported that she was put in solitary confinement for seven days after she filed a complaint about the denial of detainees’ rights. She reported that four officers dragged her to a cell by grabbing her under the arms while she was watching television in the common area. She concluded, “There is an abuse of authority here.”<sup>41</sup>

Three of the nine Haitian women interviewed by the Women’s Commission in February 2001 reported that they had not received any form of orientation when they arrived at TKG. A Haitian asylum seeker reported that she had been in the facility for fifteen days and had yet to be informed about why she was imprisoned and the status of her asylum case.

An Indian woman was visibly terrified. She could not speak English. Although she had been in detention for six or seven days, she had only spoken to someone in her native language of Gujarati twice, once after her apprehension at the Miami Airport when she was provided a live interpreter and once while at TKG when a telephonic interpreter encouraged her to eat. No one had explained to her why she was in prison. She was completely unfamiliar with the concept of asylum, although she fortunately had told the interpreter at the airport that she was afraid to return to India, thus preventing her immediate deportation. The INS had provided her with several immigration forms, including an explanation of the credible fear process, but they were all in English and she could not understand them. The INS had also provided her with a list of legal service providers, but again the list was in English and she did not understand it.

Several minutes into the Women’s Commission and FIAC’s interview with the woman, during which she failed to respond to any questions, an interpreter was finally able to persuade her to share some of her story. She revealed that her family had sent her to the United States after her husband was murdered by three men. She had no family or friends in the United States and only \$61 to her name. She told the delegation, “I came to save my life.”<sup>42</sup>

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<sup>37</sup> Women’s Commission interview, February 2001.

<sup>38</sup> Women’s Commission interview, June 2001.

<sup>39</sup> Meeting of Miami-Dade County Commission (June 1, 2001).

<sup>40</sup> Women’s Commission interview, February 2001.

<sup>41</sup> Women’s Commission interview, June 2001.

<sup>42</sup> Women’s Commission interview, June 2001.

The INS has posted a female deportation officer to the TGK facility “to assist with issues unique to INS and to provide for enhanced case management.”<sup>43</sup> The day-to-day supervision of the INS detainees, however, is delegated to prison staff. An INS official described the relationship by explaining: “The INS is in charge of immigration issues only. TGK does everything else. It’s really very simple.”<sup>44</sup> However, this statement disregards the fact that the women remain in INS custody, therefore making the agency responsible for the women’s care and treatment.

This division of responsibilities also seemed to frustrate some TGK officers. An officer who escorted the Women’s Commission to the women’s cell pod complained: “We can’t communicate with these women. Can you imagine what it’s like when they speak Creole or Chinese? But the immigration officer never comes out of her office to help. She should be talking to the detainees.”<sup>45</sup>

The Women’s Commission confirmed that the interaction between the INS officer and detained asylum seekers appears minimal. In February, the INS officer told the Women’s Commission that the women must fill out a request form and then typically wait one to two days before they can speak with her. In contrast, the INS officer reports that she holds weekly sessions with detained women with prior criminal convictions. Her justification for the difference in treatment was that “the asylum cases are easy.”<sup>46</sup>

Moreover, several women reported that when they inquired about their cases, the INS officer repeatedly stated that she knew nothing about their case status. This conflicts with the INS’s assertion that the deportation officer would be available full time at TGK to advise detainees about their cases.

Many other women asylum seekers were completely uninformed about the fact that they could even request to meet with an INS officer. When the Women’s Commission pointed out the INS officer to the detainees, they professed that they did not know her or what her role was.

The women reported that the attitudes and behavior of the TGK officers are mixed. They described some officers as being “like family.” Other guards, however, are harsher in their treatment of the women. The Haitian women, for example, reported that an officer told them that they would be placed in lock-down if they complained about their treatment. A Colombian woman concurred: “Some of the guards treat us well. But another guard told us to shut up or we would be locked down.”<sup>47</sup>

The women also complained that they are woken up multiple times during the night for head counts. They complained that the guards bang on the walls every hour as they patrol the cell pod and shine flashlights in the women’s faces as they are trying to sleep.

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<sup>43</sup> Press Statement by Robert A. Wallis, Florida District Director, Immigration and Naturalization Service (December 12, 2000).

<sup>44</sup> See Minutes from Krome Stakeholders Meeting, Immigration and Naturalization Service (December 12, 2000).

<sup>45</sup> Women’s Commission interview, June 2001.

<sup>46</sup> Women’s Commission interview, February 2001.

<sup>47</sup> Women’s Commission interview, February 2001.

Women detained by the INS who were subject to deportation for past crimes also reported that they had been sexually harassed at TGK. These alleged incidents were troubling in part due to their similarity to the sexual harassment that provoked the women's transfer from Krome to TGK in the first place. In one case, a woman alleged that a male trustee molested her. In two other cases, male trustees allegedly flashed the women. An investigation is being carried out by the prison into these incidents. The women have often been placed in lock-down when a male is in their cell pod.<sup>48</sup>

A detainee also alleged that one of the Krome officers against whom she had lodged complaints of sexual abuse had contacted her by telephone while she was in TGK. She reported that he told her that he knew that she was involved in the investigation and asked her what she had been saying about him. The detainee feared retaliation.

A Colombian asylum seeker concluded, "They aren't beating us, but the way they do things here is destroying us mentally."<sup>49</sup>

## Separation From Other Family Members in Detention

The INS frequently separates family members into different detention centers after their arrival. This is especially true for children under age 18 who arrive with adult relatives, and wives who arrive with their husbands.

The Women's Commission interviewed two asylum seekers at TGK who were extremely worried about their family members. A young Roma woman from Bulgaria had traveled to the United States with her 16-year-old brother. The INS separated them at the airport. She did not know where her brother was being held. She also said that she did not know whom to ask about his whereabouts. No one in the facility spoke her language, and she spoke only minimal English. The woman did not have an attorney and reported that an INS officer at the airport had told her that she did not have the right to a lawyer.<sup>50</sup>

The siblings' parents live in Baltimore, Maryland. Their father has already been granted asylum. However, the young woman could not even call her parents to inform them of their whereabouts, because their telephone number was in her luggage which the INS had taken away from her. The woman concluded: "I cry all the time. I fear for my safety."<sup>51</sup> (The Women's Commission later verified that her brother was detained at the Boystown shelter, an INS contract facility used to house minors in the custody of the INS Miami District.)

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<sup>48</sup> Letter from Cheryl Little, Joan Friedland, and Rebecca Sharpless, Florida Immigrant Advocacy Center, to William Cleary, Immigration and Naturalization Service (January 9, 2001); see "They are Still Punished for INS's Inability to Protect Them," *The Miami Herald*, editorial, p. 8B (January 19, 2001).

<sup>49</sup> Women's Commission interview, February 2001.

<sup>50</sup> Women's Commission interview, February 2001.

<sup>51</sup> Women's Commission interview, February 2001.

A Colombian woman reported that she had been separated from her adult daughter. She remained in TKG, while her daughter was transferred to the York County Prison in Pennsylvania.<sup>52</sup>

The women reported that they had seen mothers separated from their infants.

## Translation Assistance

TKG claims that they normally attempt to assign officers who speak Spanish and Creole to INS detainees' units. However, even women who spoke Spanish and Creole complained that translation services were not readily available. Often, officers who speak only English supervise the units. One Haitian wrote in Creole in a letter detailing the concerns of Haitian detainees about TKG: "I am writing one more little thing. I need an interpreter who speaks Creole so we can tell them our needs so the interpreter will be able to give our messages."<sup>53</sup>

Moreover, many other women of diverse linguistic backgrounds are detained at TKG without access to any on-site translation services. These include women from Ethiopia, Bulgaria, Burma, India, and China. They must rely on each other to translate or request telephonic translation.

In the non-asylum seekers' unit, language barriers are less problematic as many detainees speak English and may assist in translating questions other detainees have for officers. However, in the asylum seekers' unit, there are typically few detainees who speak English. This causes significant difficulties for the detainees to even understand simple commands such as where they are allowed to be and what procedures for food, medical care, and hygiene must be followed. This often leads to unnecessary confrontation between officers and detainees. The officers often view the detainees' behavior as rude or insubordinate when in reality language barriers create the tension.

The lack of written materials in the women's native languages compounds this problem. Orientation materials that are provided to some detainees when they first arrive at TKG are available only in English, Spanish, and Creole. Moreover, many detainees report that they were never provided orientation materials at all, in any language. This exacerbates the women's misunderstandings about the facility rules, which in turn may result in unnecessary disciplinary actions against the women when they violate a facility rule.

A Haitian woman began to cry when she explained that she relied primarily on hand gestures to communicate. She also explained that she had no idea how to file a grievance about her treatment, because no one had explained the procedures to her in Creole.<sup>54</sup>

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<sup>52</sup> Women's Commission interview, February 2001.

<sup>53</sup> "Complaints of the Haitian Women Detainees at TKG," Florida Immigrant Advocacy Center (December 15, 2000).

<sup>54</sup> Women's Commission interview, February 2001.

## Transfers to Other Facilities

At least four groups of women asylum seekers have been transferred without notice from TGK to the York County Prison in Pennsylvania.<sup>55</sup> The INS indicated that these transfers were necessary because the number of women in the custody of the District had exceeded bed capacity at TGK. The agency indicated that, if possible, it transfers only women who have not yet had their credible fear interviews and who do not have attorneys who have filed a notice of appearance on their behalf.

However, these transfers undermined the women's access to legal services that might otherwise have been provided by FIAC. Many of the women also have family members who live in South Florida with whom they will no longer have ready contact.

The experience of a Colombian woman illustrates the devastating impact these transfers have on the women. The woman was separated from her husband, who was detained in the Krome Service Processing Center. Three days after her detention began, she was transferred to the York County Prison along with approximately 30 other women. INS officers refused to tell her where she was being taken. She wrote: "We were taken up in an airplane, handcuffed, looked at as if we were criminals. The only thing I came to this country for was protection. I have no criminal record."<sup>56</sup>

The woman's husband, meanwhile, was released from Krome and traveled to Pennsylvania to bring his wife her documents which the INS told her would be required for her parole. His request to visit her was refused. However, he was able to submit the requested documentation. His wife was told that she would be released in two days. Instead, the woman was transferred back to Miami. Her husband was waiting to visit her, but the INS refused to allow her to speak with him to inform him of her upcoming transfer. As she was being loaded onto a van for transport to the airport, she saw her husband in the prison parking lot and began to cry. The driver allowed her to speak to him from the van.

The woman arrived back at TGK at 2:30 a.m. Her husband was stranded in Pennsylvania because he did not have enough money to return to Miami. He also missed his own court date as a result.<sup>57</sup>

Such transfers may also have very serious repercussions for the outcome of the transferred women's cases, the jurisdiction for which is moved to the INS Philadelphia District. The Philadelphia District has a less generous parole policy than the Miami District, potentially resulting in lengthier detention for the women. In at least one case, a Colombian woman who had been transferred was still awaiting release after three months.<sup>58</sup> Moreover, access to legal services is limited as the legal service community willing to offer *pro bono* services in the

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<sup>55</sup> The Women's Commission has documented conditions in the York County Prison in two reports. See "Forgotten Prisoners: A Follow-Up Report on Refugee Women Incarcerated in York County, Pennsylvania" (July 1998); "An Uncertain Future, A Cruel Present: Women in INS Detention" (September 1995).

<sup>56</sup> Letter from F-G- (undated).

<sup>57</sup> Statement of F-G- (March 30, 2001).

<sup>58</sup> Letter from F-G- (undated).

Philadelphia District is already strapped trying to offer services to the hundreds of INS detainees held in county prisons in the region.

The transfers have also created tremendous confusion for the women who remain in TGK. In February, women interviewed by the Women's Commission expressed fear that the other women had been transferred as punishment for having participated in know-your-rights presentations with FIAC. A FIAC paralegal reported that one Haitian woman refused to sign forms provided to her regarding her case as she feared that it would result in her transfer.

One woman explained: "We are very worried. Four groups are gone now to Pennsylvania. We don't know why. The INS doesn't explain anything. We thought that maybe they lost our files and that's why we're still here."<sup>59</sup>

When the Women's Commission returned to TGK in June, it appeared that the women's fear of transfer was not without justification. The women in both the asylum seekers' cell pod and the non-asylum seekers' cell pod reported that TGK and INS officers had threatened them with transfer to prisons in other states, such as Louisiana, Pennsylvania, or California. The women reported that they were told that if they did not stop complaining about TGK, they would be transferred to prisons where they would be commingled with criminal inmates.

An asylum seeker reported that a TGK officer had told her, "Every time you talk to FIAC, it shows up in the newspaper."<sup>60</sup> Another asylum seeker reported that a TGK officer said: "You keep complaining, so you're going to be transferred to a federal prison. Then you'll know what it's like to be with real criminals. You don't understand that you get the golden treatment here. Your next prison will be the worst place of all."<sup>61</sup>

Not surprisingly, the women were terrified that these threats would someday become reality. A woman from Mexico said: "I fear retaliation. They lack respect and basic morality. They are targeting women."<sup>62</sup>

## Health Care

TGK has a medical clinic on site, for which services the INS reimburses the facility. The clinic is staffed primarily by registered nurses, licensed practical nurses, and nurse practitioners. It provides 24-hour care.

Despite the INS's characterization of the clinic as providing modern medical facilities around the clock, numerous concerns have been raised about the ability of the clinic to meet the additional demands placed on it as a result of the increase in population due to the addition of INS detainees to its case load. A clinic administrator, however, said the clinic was able to keep pace with the population increase, unless one of its staff was out sick. She also noted that it can use the

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<sup>59</sup> Women's Commission interview, February 2001.

<sup>60</sup> Women's Commission interview, June 2001.

<sup>61</sup> Women's Commission interview, June 2001.

<sup>62</sup> Women's Commission interview, June 2001.

services of local hospitals when needed. However, the clinic must get pre-approval from the INS to utilize such outside services.

The women detainees reported several incidents in which their requests for medical care had gone unheeded or medications had been delayed or not administered at all. One woman suffered from epilepsy. The failure of the clinic to provide her with her prescribed medication resulted in her suffering several seizures. During the seizures, other women housed in the same cell pod were locked in their cells for more than an hour as a security measure. The Women's Commission witnessed one of these incidences during its February visit to the facility. A TGK officer later told the delegation that the lock-down lasted for more than an hour while medical staff treated the woman.

During the Women's Commission's June visit, a Canadian woman who is detained due to a prior criminal conviction expressed concern about the health of an older Haitian woman housed in the same cell pod. She brought the woman to meet the delegation. The woman, who was in her mid-50s, was visibly ill. She complained that she had been experiencing double vision, extreme thirst, weakness, and fatigue for several days. She had requested multiple times over a period of several days to go to the health clinic, but as of yet had not been brought to see a doctor.

The FIAC attorney who accompanied the Women's Commission urged the TGK officer on duty to notify a doctor immediately. While the delegation was on site, the woman was escorted to the clinic. FIAC was later informed that the woman had been diagnosed with diabetes. She was transferred to a hospital that night.

The lack of in-person translation services for INS-detained women who need medical care is also of concern. The clinic indicated that it relies on telephonic translation services for both medical and mental health care. The use of such services may deter women from reporting sensitive medical information.

A Colombian woman had experienced gastrointestinal problems. She had seen a doctor three times while at TGK but had difficulty explaining her symptoms in detail because she was unfamiliar with the English medical terms and the doctor did not speak Spanish. No translation was provided, even telephonically. On her third visit to the doctor, he asked a detainee who was incarcerated due to a prior criminal conviction to translate, an obvious violation of confidentiality. The doctor then asked about her symptoms in front of several other people, including officers and other detainees. The woman also was suffering from hormonal imbalances for which she used to take medication prior to her detention. She said that she did not share that information with the doctor, because he had never provided her with an opportunity to do so.

Moreover, the first time that the woman spoke with the doctor, she reported that he advised her to wait until she was deported, as then she could get medical help in Colombia. During her third visit, she reported that he told her: "You should be happy. I understand that you are about to be deported."<sup>63</sup>

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<sup>63</sup> Women's Commission interview, June 2001.

Another woman had a tooth extracted; however, her pain medication was not administered until five hours later, during which time she was in great pain. The clinic attributed the delay to a change in staff shifts.<sup>64</sup>

Other women complained that the clinic was taking blood samples without any explanation as to why. The women were taken from their cells to the clinic for such tests at around 3:00 a.m.

Several of the women expressed concern about the effect that imprisonment was having on their mental health. However, a supervisory INS officer was dismissive of the need for mental health care. She indicated that such visits may not be necessary as the women may be released before such services can be scheduled, given the need to arrange translation services. She asked, “Do you want the women released faster or delayed to get counseling?”<sup>65</sup> The clinic administrator, however, indicated that such visits can be scheduled the same day as requested.

## Hygiene

At the time of the Women’s Commission visit in June, the women in both cell pods complained that they were lacking basic toiletries, which formerly had been provided by the INS. Such items included soap, shampoo, deodorant, toothbrushes, toothpaste, and combs. The women reported that they had gone for several weeks without toothpaste, deodorant, or shampoo, for example.

They also reported that sanitary napkins were sometimes not available. At times, this occurred when clean underwear was also not available. One asylum seeker reported that a woman who was menstruating was forced to go without any protection at all.

The lack of hygiene products appeared to be the result of confusion between the INS and the prison. TGK officers reported that it was the responsibility of the INS to provide toiletries. On the other hand, the women reported that when they asked the INS officer on site for toothpaste and other products she responded: “It’s in the contract. TGK is supposed to provide these things. You should tell the TGK officer.”<sup>66</sup> When women raised their concerns about women being forced to go without sanitary napkins, they reported that the INS officer responded: “So they stay the way they are. What do you want me to do? When will you understand that you have to ask the TGK officers?”<sup>67</sup> The detainee then concluded: “But I can’t even communicate with the guards. They usually don’t speak Spanish.”<sup>68</sup>

The women housed in the non-asylum seeker pod also reported that the TGK officers had told them that if they had more than \$2 in their account, they would have to buy such products as deodorant and toothpaste through the commissary. The women reported that the commissary, meanwhile, was very unreliable and often failed to deliver ordered goods.

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<sup>64</sup> Minutes from Krome Stakeholders Meeting, Immigration and Naturalization Service (December 12, 2000).

<sup>65</sup> Id.

<sup>66</sup> Women’s Commission interview, June 2001.

<sup>67</sup> Id.

<sup>68</sup> Id.

## Diet

While the INS Acting Officer in Charge at Krome compared the meals at TGK to those served in the restaurant chain Appleby's,<sup>69</sup> the women universally complained about the quality of food they were served. Even the TGK warden conceded that the food needed improvement. Many of the women, meanwhile, described it as inedible. A Haitian woman reported that sometimes the detainees simply throw the food away and either eat just bread or go completely without eating.<sup>70</sup>

Lunch was served while the Women's Commission was on-site in February. It consisted of a rotten pear, potato salad, white bread, and luncheon meat and cheese. During a prior visit, a FIAC attorney had witnessed the women being served moldy jam.<sup>71</sup> A Colombian woman and a Mexican woman reported that the meat is sometimes slimy and the bread hard.

The Indian woman whom the Women's Commission interviewed in June adhered to a vegetarian diet for religious reasons. In TGK, she was fed rice or bread and boiled vegetables. It appeared that her diet was deficient in protein. The lunch she was served while the Women's Commission was on-site included a bag of dry corn flakes, four slices of white bread, and an apple and orange. The woman was extremely thin and appeared malnourished.

In a letter to FIAC, a group of asylum seekers wrote: "Breakfast is at 5:00 a.m. ... Lunch consists of two slices of bread, two slices of cheese, two slices of ham or bologna and nothing else, and a glass of something you may call 'juice.' There you have it. We have complained but the answer is always the same: 'We can't change it, because there is a contract.'"<sup>72</sup>

The women have access to a commissary, but complained that the prices are inflated. Some of the detainees, particularly the asylum seekers, do not have money to purchase extra food items. They often have no relatives to send them money and have had difficulty accessing their luggage, often located at Krome. Due to language difficulties, detainees have trouble filling out complicated computer "scan-tron" commissary request forms. Regardless, the food items available for purchase are typically junk food with little or no nutritional value.

## Education, Recreation, and Exercise

The women have access to the outdoors on a balcony attached to their cell pod. This area is available to them during daylight hours, an improvement over many other prisons with which the INS contracts which limit outdoor access to an hour or so a day. However, the area is completely walled and fenced, providing a view of the sky but no trees or other vegetation.

The INS had told advocates that the facility would provide English, GED, and baking classes to women detainees. At the time of the Women's Commission's visit to TGK in February, none of these activities was being offered. There was a sign on the library wall announcing English

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<sup>69</sup> Id.

<sup>70</sup> Id.

<sup>71</sup> Interview with FIAC, February 2001.

<sup>72</sup> Letter obtained April 2001. Available upon request.

classes, but the INS officer seemed unaware of what it was referring to. GED classes were available to the regular inmate population but not to INS detainees. When asked about baking classes, the TKG warden replied, “That would be impossible, due to fire hazards.”<sup>73</sup>

At the time of the Women’s Commission’s visit in June, GED classes, basketball, checkers, chess, and other board games were being provided to INS detainees in the non-asylum seekers’ cell pod but not the asylum seekers’ pod. The asylum seekers had only television and volleyball.

The women generally reported that they spent their days sleeping, eating, and watching television. Reading materials are available only in English and Spanish. FIAC was told that any donated reading materials must come from a publisher or a bookstore due to the prison’s concerns about contraband. When asked about the lack of activities, one detainee observed: “If you keep people busy, they’ll be happier. It’s empty promises.”<sup>74</sup>

## Spiritual Support

The women reported that they receive visits from representatives of the Catholic and Adventist faiths on Tuesdays and Sundays. They reported that one representative, however, told them that he would not return because it was too difficult to obtain access to the prison. Another representative spoke English only.

Furthermore, there is no room available for visits from the clergy. Instead, such visits must take place in the one tiny attorney-client visitation room or the common day room.

The women had asked for bibles in languages other than English, especially in French and Chinese. They reported that the INS officer responded, “Because of the transfer, we’ve had to make adjustments, and there is nothing I can do.”<sup>75</sup>

## Access to Legal Services

FIAC, the largest immigration legal services program in Miami, represents a significant number of asylum seekers in INS detention in the Miami area. It has established an office on-site at the Krome Service Processing Center through which it prepares asylum seekers for their “credible fear” interviews and screens them for possible representation in their asylum cases. The credible fear interview is a critical threshold inquiry into an asylum seeker’s case which she must pass in order to pursue a full adjudication of her claim. FIAC typically orients and prepares 90 credible fear seekers per month. From January 1, 2001 to May 30, 2001 FIAC had prepared approximately 475 asylum seekers.<sup>76</sup>

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<sup>73</sup> Minutes from Krome Stakeholders Meeting, Immigration and Naturalization Service (December 12, 2000).

<sup>74</sup> Women’s Commission interview, June 2001.

<sup>75</sup> Id.

<sup>76</sup> Interview with FIAC staff, May 2001.

The women's access to legal services has clearly suffered as a result of their relocation to TGK.<sup>77</sup> The INS cited around-the-clock attorney access as one of the positive attributes of TGK when it announced the transfer of the women. However, this characterization failed to acknowledge the limited resources that FIAC and other charitable programs are able to extend to serve new facilities. It also did not foresee the difficulties such programs have encountered in trying to gain regular access to the facility.

When the women were first relocated to TGK, FIAC was concerned that it would be unable to continue its daily programs at Krome while at the same time meet the needs of the women at TGK. It has, however, managed to stretch its resources to conduct regular visits to the women.

FIAC offers know-your-rights presentations to the women twice weekly. However, these sessions often contain as many as 60 women detainees at one time, often in three languages. Moreover, a TGK officer remains in the cell pod during the presentation, which may have a deterrent effect on the willingness of women to raise questions or concerns.<sup>78</sup> While the Women's Commission was present at one of these sessions, the officer chatted on the telephone in the background, interfering with the ability of the women to hear the presentation.

One-on-one visits must take place in the attorney-client visitation rooms, of which there is only one per cell pod. The rooms also serve as space for religious visits and other purposes, thus further limiting their availability. Moreover, they are inadequately sound-proofed, jeopardizing the confidentiality of attorney consultations.

At the time that this report was prepared, the prison had even eliminated the one attorney-client visitation room for attorney visits in the non-asylum seekers' pod. It instead placed a telephone in the room programmed to accept calling cards. While allowing detainees to make phone calls via calling cards rather than collect calls is a positive step forward, it should not have been taken at the expense of attorney-client visits. At present, attorneys must visit with their clients in the library which does not have the basic accommodations for attorney-client visitation, such as a table. Moreover, it is extremely difficult for attorneys to conduct legal business in the library because it is not sound-insulated and all detainee conversations taking place in the adjacent "attorney-visitation" room can be overheard in the library. The asylum seekers' pod had not yet been set up for calling cards. It was therefore unclear whether the asylum seekers would also lose access to a dedicated attorney-client visitation room.

In addition, FIAC has encountered numerous difficulties entering the facility.<sup>79</sup> For example, the facility will not allow FIAC attorneys to talk to women unless they have received prior permission from the facility control desk on the first floor. In order to speak with a woman who approaches the attorney while they are upstairs in the attorney-client visitation room, the attorney must return downstairs to be cleared once again to meet with the woman. This is a time-consuming process that takes up to two-and-a-half hours.

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<sup>77</sup> See Letter from Cheryl Little, Joan Friedland, and Rebecca Sharpless, Florida Immigrant Advocacy Center, to William Cleary, Immigration and Naturalization Service (January 9, 2001) (noting that attorneys have had numerous problems gaining access to TGK detainees).

<sup>78</sup> Interview with FIAC staff, May 2001.

<sup>79</sup> See Alfonso Chardy, "Jailed INS Detainees Cut Off, Advocates Say," *The Miami Herald* (December 26, 2000).

Shortly after the women were transferred to TGK, a FIAC attorney was expelled from the facility when she responded to a group of detainees who asked to speak with her. The INS officer on-site defended this requirement by stating that it was necessary to protect the women from attorneys who may be soliciting clients. She indicated that the attorney must file an INS form “G-28,” which serves as a notice of appearance. However, FIAC does not charge fees to asylum seekers and regularly confers with such individuals detained at Krome without filing G-28s.<sup>80</sup> Such forms are also not generally required in other detention centers and prisons used by the INS.

The TGK warden promised to address this situation and allow guards posted in the women’s cell pod to call downstairs and receive clearance for subsequent visits rather than requiring the attorney to return downstairs. However, this change in policy was only implemented sporadically subsequent to the Women’s Commission’s visit to the prison in February. In fact, when the Women’s Commission returned to TGK in June, it encountered this requirement. A detainee who was not on the list provided to TGK approached the Women’s Commission and FIAC representatives to ask a question. The TGK officer who subsequently escorted the delegation downstairs to exit the facility scolded the delegation for talking with women not on the list of detainees with whom it had requested to visit, even though FIAC is representing them. When the delegation explained that the TGK warden had told FIAC that he would permit such contact, the officer responded that she had not been so informed and that she was required to comply with the existing system.

When a FIAC attorney spoke to the INS officer about the difficulties they were encountering, she responded: “You do have access to the detainees. It might not be the access you want, and it might make your job more difficult, but you still have access.”<sup>81</sup>

FIAC also expressed concern about the effect that housing the women at TGK was having on their ability to prepare for their credible fear interviews. At the time of the Women’s Commission’s first trip to TGK, the women were only able to meet with FIAC staff the day of their interview, as the INS did not transport them to Krome until then. Such limited lead time may leave the women inadequately prepared for their interviews, especially if they are presenting complicated claims such as those based on gender persecution.

Moreover, in order to be transported to Krome for such interviews, the women were awakened at around 3:30 a.m. They then were often forced to wait in a van in the parking lot at Krome until their interviews, a process that took up to eight hours.

At the time of the second Women’s Commission’s visit to TGK, this situation had deteriorated even further. The INS had discontinued taking the women to Krome at all, due to a lack of staff to transport the women. As a result, asylum officers had to resort to telephonic interviews with asylum seekers.<sup>82</sup>

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<sup>80</sup> See Letter from Cheryl Little, Florida Immigrant Advocacy Center, to Captain M. Fernandez, TGK Facility (December 19, 2000); Letter from Cheryl Little, Joan Friedland, and Rebecca Sharpless, Florida Immigrant Advocacy Center, to William Cleary, Immigration and Naturalization Service (January 9, 2001).

<sup>81</sup> Interview with FIAC staff, December 2000.

<sup>82</sup> Interview with FIAC staff, May 2001.

The lack of face-to-face contact for such interviews can be devastating. Telephonic interviews, during which the asylum seeker cannot see either the translator or the asylum officer, can be intimidating. Moreover, the asylum officer is unable to assess non-verbal cues and body language when the interview is conducted telephonically. Such cues can be particularly crucial in women's cases, given the cultural barriers with which such women may have to grapple when speaking with strangers.<sup>83</sup>

Many of the women interviewed by the Women's Commission expressed tremendous confusion about the status of their asylum cases. A Burmese woman had been in detention for three months, but had yet to receive a credible fear interview before an asylum officer.<sup>84</sup> It appeared that she had not been placed in expedited removal because of legal technicalities created by her use of a false passport from Japan, a visa waiver country. Such countries are exempt from expedited removal. However, the woman herself was unaware of this and was very upset that other detainees had received interviews, thus triggering their eventual release when they were found to have a credible fear of persecution, while she languished in detention. The failure of the INS to provide her with a credible fear interview, which would trigger consideration of parole from detention, was particularly perplexing because she in fact also had a Burmese passport in her possession.

The woman was also unrepresented by counsel. She reported that she did not know how to find a lawyer, because she had never received an orientation and no one in the facility spoke her language. She said: "I can't sleep, I can't eat. Nobody is helping me. Nobody knows my country. They think I'm Chinese." She was also concerned that she had not been able to speak with her parents who remained in Burma. She said that they did not know that she was in prison, only that she was in the United States. She concluded, "If I had known how awful it is, I would never have come here."<sup>85</sup>

Other women reported that INS officers at the airport had discouraged them from contacting lawyers. An Ethiopian woman said: "The INS at the airport told me not to worry about getting a lawyer. He told me 'we are the officials in this process.'" Her eyes filled with tears as she concluded: "Jail is no good. We didn't know about this country. I cry."<sup>86</sup>

Furthermore, the INS is required to provide detainees with a list of *pro bono* legal service providers. This list is prepared and maintained by the Executive Office for Immigration Review (EOIR), a sister agency to the INS that is also part of the Department of Justice. However, the list provided by the Miami District is inaccurate. Of the eight service providers listed, only one—FIAC—actually provides representation to detainees. FIAC indicated that it has complained about the list for five years, but to date, EOIR has failed to revise it.

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<sup>83</sup> See Memorandum from Phyllis Coven, INS Office of International Affairs "Considerations for Asylum Officers Adjudicating Asylum Claims from Women," (May 25, 1995) (discussing demeanor issues in context of gender persecution claims).

<sup>84</sup> Women's Commission interview, February 2001.

<sup>85</sup> Women's Commission interview, February 2001.

<sup>86</sup> Women's Commission interview, February 2001.

Also of concern is the lack of an adequate law library. In both cell pods, the law library is located in a small room attached to the attorney-client visitation room. The INS indicated that it had brought in immigration-related law materials. However, the collection appeared minimal and incomplete during the Women's Commission's visits to TGK. Immigration law materials are also available on CD-ROM, but it is doubtful that the women, especially the asylum seekers who often come from less developed countries, would know how to access such programs. Moreover, the CD-ROM appeared to be missing. Four computers are available for detainee use, although sometimes they are not working. The law library is generally unorganized and disorderly. Updated inserts are not matched with the accompanying publication and it does not appear that any staff is responsible for the maintenance of the library. In any case, some of the women are unaware that the library even exists.

## Telephone Access

Four telephones are located in each cell pod. At the time of the Women's Commission's visit to TGK in February, detainees were unable to use calling cards to contact family members or others. The telephones also were not programmed for toll-free calls to local legal service providers.

The women were instead forced to make collect calls.<sup>87</sup> These calls are very expensive, for example, costing one woman's family in California \$15 for a five-minute call. Some of the women reported that even collect calls to their families are blocked. They are therefore dependent on the families of other detainees to contact their family members on their behalf. A Colombian woman reported, "Even on Christmas Eve, we couldn't call anyone."<sup>88</sup>

The women could not make international calls at all. Several women reported that their families were therefore unaware of the fact that they were in detention. A Colombian woman said, "This isolates me from my family, but INS and TGK are doing nothing about it."<sup>89</sup>

When the Women's Commission returned to TGK in June, the telephone systems had improved somewhat. In the pod housing asylum seekers, detainees reported that they could make toll free calls to legal service providers, but they still were unable to make calling card calls. Collect calls continued to be very expensive. One woman reported: "I can't keep calling my husband and children in California. It's too expensive. My husband told me to slow down on calls, because he can't afford it. Last month, I made approximately 10 calls of 15 minutes each. The phone bill was \$600."<sup>90</sup> The women still could not make international calls. The head of the county Department of Corrections indicated that the telephone carrier currently serving TGK cannot program the telephones to allow international collect calls. The facility was therefore in the process of changing vendors.

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<sup>87</sup> See Letter from Cheryl Little, Joan Friedland, and Rebecca Sharpless, Florida Immigrant Advocacy Center, to William Cleary, Immigration and Naturalization Service (January 9, 2001) (noting that detainees can only make collect calls to family members and friends and that many of their families and friends do not have phones that accept collect calls).

<sup>88</sup> Women's Commission interview, February 2001.

<sup>89</sup> Women's Commission interview, June 2001.

<sup>90</sup> Women's Commission interview, June 2001.

The telephones in the non-asylum seeker pod had been programmed for toll-free calls to legal service providers, but such calls would only last for a few minutes before the caller was cut off. The women in that pod were also now able to make calling card calls, including international calls. However, the phone that was programmed for such usage was located in the attorney-client visitation room. Since women use the phone almost continuously, attorneys have been forced to meet with their clients in the law library room, thus sacrificing privacy and competing for usage of the room with women wishing to use the law materials.

The rules regarding the ability of attorneys to leave telephone messages for their clients varied, despite INS standards requiring such arrangements. On one occasion, when a FIAC paralegal asked to leave messages for detained women, a TGK officer replied: "This is a jail. Per our policy, TGK does not take messages."<sup>91</sup> A corporal reinforced this position and hung up on the paralegal when she challenged the policy, citing the INS standard.<sup>92</sup>

When the Women's Commission tested the phones in February, it received a recording informing the caller that she had improperly dialed. A call to the Office of the Inspector General, which detainees are supposed to be able to call to file complaints about their treatment, resulted in a busy signal.

Also of concern is the fact that many of the women who do not speak English have difficulties understanding how to use the phones at all. In the asylum seekers' cell pod, directions are posted only in English, Spanish, and Creole. Even those instructions are confusing. Women who speak other languages, moreover, are dependent on other asylum seekers to show them how to use the phones. The women reported that neither the TGK officers nor the INS officer had explained the telephone system to them.

Women also complained that mail services were unreliable and at times unavailable. They complained that they often could not purchase postage stamps and therefore could not send correspondence to family members. They also have had difficulty sending legal mail, and instead have to wait for their attorneys to visit.

Receiving mail has also been problematic. A detainee who was scheduled for a hearing before an immigration judge on January 11, 2001 did not receive the hearing notice until January 19, 2001, even though the notice was served on an immigration officer on December 28, 2000. The woman was therefore surprised and unprepared for her hearing.<sup>93</sup>

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<sup>91</sup> Interview with FIAC staff, May 2001.

<sup>92</sup> Interview with FIAC staff, May 2001.

<sup>93</sup> See Letter from Cheryl Little, Florida Immigrant Advocacy Center to Kimberly Boulia, Immigration and Naturalization Service (January 23, 2001) (hearing notice attached).

## Press and Visitor Access

Women are allowed non-contact visits every other day with family members, as the INS indicated in its announcement of the transfer to TKG.<sup>94</sup> However, they are allowed only one contact visit a month.

The TKG warden indicated that the facility hopes to increase the availability of contact visits, but that it would be difficult due to staffing constraints. He also observed, “The other inmates will complain if we do increase the privileges of INS detainees.”<sup>95</sup>

During non-contact visits, plexi-glass dividers separate the women from their family members. The women complained that it is hard to communicate due to the dividers, and it is humiliating. A Haitian woman observed: “I felt sad when my family visited. It was very depressing for me.”<sup>96</sup> She also said that it was very difficult to hear and that visits are extremely brief. One woman’s relative had to wait two hours for a 10-minute visit.

Another woman did not want her family to visit her because of the effect it would have on her children to see her in jail. She said: “I don’t want my children to see me in this environment. No thank you.”<sup>97</sup> She had been in detention for 10 months awaiting appeal of her case.

The media has also encountered problems accessing TKG. At the time of the Women’s Commission’s visit in February, the District said that the press would have to obtain permission to visit detainees through the TKG administration. The warden of TKG indicated that normally the media is allowed to speak to an inmate if the inmate’s attorney agrees to the interview. In the case of INS detainees, however, he said that he would defer to the INS.

Lawyers meanwhile reported that detainees had been denied permission to speak to reporters.<sup>98</sup> They were informed by INS District staff that Florida law forbids such interviews, which proved not true.<sup>99</sup>

Subsequent to the Women’s Commission’s visit in February, the media was allowed to interview the women detainees on several occasions. The non-asylum seekers reported that after they spoke with the media, TKG officers accused them of whining and complaining, and thinking that they were better than the criminal inmates.<sup>100</sup> After a detainee requested in writing to speak with a particular journalist, a TKG officer responded, “What makes you think he wants to talk with you?”

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<sup>94</sup> Press Statement by Robert A. Wallis, Florida District Director, Immigration and Naturalization Service (December 12, 2000).

<sup>95</sup> Meeting with TKG warden, February 2001.

<sup>96</sup> Women’s Commission interview, February 2001.

<sup>97</sup> Women’s Commission interview, June 2001.

<sup>98</sup> Interview with FIAC staff, February 2001.

<sup>99</sup> Letter from Cheryl Little, Florida Immigrant Advocacy Center to Kimberly Boulia, Immigration and Naturalization Service (January 23, 2001).

<sup>100</sup> Interview with FIAC staff, March 2001.

Later, additional limitations were placed on press access. An INS officer and a TGK officer have insisted on being present whenever a reporter wishes to interview detainees. Interviews have therefore been canceled.<sup>101</sup>

The women also feared speaking with the Women's Commission during its visits. They believed that the attorney-client visitation room was bugged. They thought that if they complained about their treatment that they would be placed in solitary confinement. This belief was based on the treatment received by a woman after she had gotten into an argument with another detainee. She was placed in lock-down for 17 days after the incident.<sup>102</sup>

## Women in Custody of Miami District Receive Fewer Services than Men

The transfer to TGK has resulted in women in the custody of the INS Miami District receiving fewer services than men who remain in the Krome Service Processing Center, raising serious equal protection concerns. Women, for example, now have less ready access to legal services than do men. This discrepancy is due to the barriers to access legal service providers have faced at TGK and the fact that FIAC has an on-site office at Krome.

The family visitation policies at Krome are also much more generous. Men are allowed two contact visits per week, whereas the women in TGK have only one per month. Krome detainees are also allowed to make calling card calls, including internationally. They are also allowed to keep personal belongings and family mementos, such as photographs, with them.

While the INS was correct to remove women from the dangers they faced at Krome, it is disturbing that they lost other critical services in order to avoid sexual abuse. It is particularly disturbing in light of the failure of the Department of Justice to date to adequately pursue criminal or disciplinary actions against the officers responsible for those abuses.

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<sup>101</sup> Interview with FIAC staff, May 2001.

<sup>102</sup> Women's Commission interview, February 2001.

## Conclusions and Recommendations

**The INS has failed to address human rights abuses occurring against women held in the custody of its Miami District. As a result of the sexual misconduct of INS officers stationed at the Krome Service Processing Center, women asylum seekers have been further victimized by being incarcerated in the Turner Guilford Knight Correctional Center. The decision to place the women in a county jail is even less defensible given the fact that alternatives to detention have been proven to work.**

*The Women's Commission offers the following recommendations:*

- The INS Miami District should continue its policy favoring release of asylum seekers who have established a credible fear of persecution.
- The INS must immediately implement alternatives to detention other than TGK or other county prisons and INS detention centers, for women asylum seekers in the Miami District who have yet to establish a credible fear.
- For those women who cannot be released, the INS should work with social service agencies to develop a supervised release program or shelter care facility.

**Transfer of women out of the INS Miami District to other facilities across the United States is not an acceptable solution to the problems in Krome and TGK. Such transfers inhibit the women's access to legal services and may isolate them from family members in the Miami area.**

*The Women's Commission offers the following recommendation:*

- Transfers to facilities such as the York County Prison in Pennsylvania should be halted immediately.

**The Department of Justice has failed to address the allegations of sexual abuse at Krome with due diligence. Only one officer has been convicted and he was allowed to plea bargain the charges to a meaningless level. Other officers have had no action taken against them to date. Meanwhile, some of the victims of and witnesses to the sexual abuse have been deported.**

*The Women's Commission offers the following recommendations:*

- The Department of Justice must devote adequate resources to the investigation to ensure prompt and full prosecution of those officers involved.
- If there are officers against whom criminal charges are not possible, appropriate disciplinary actions should be taken.

**It is inhumane and unnecessary to detain asylum seekers who have demonstrated a credible fear of persecution. Moreover, the INS is overly reliant on county prisons for its detention space. Such facilities have repeatedly failed to provide the care and assistance asylum seekers require pending their asylum proceedings.**

*The Women's Commission offers the following recommendations:*

- The INS should discontinue detention of asylum seekers in criminal facilities.
- The INS should immediately mandate generous and consistent parole of asylum seekers from detention through regulations.
- The INS should expeditiously develop alternatives to detention nationwide, such as supervised release and shelter care under the auspices of social service agencies with expertise in meeting the needs of refugees.

**Male detainees in the custody of the Miami District are now offered more services than women. The transfer of women to TGK has resulted in numerous problems, including inadequate medical care and limited legal services. This is an unacceptable form of discrimination.**

*The Women's Commission offers the following recommendation:*

- Services that are available to male detainees must be made available to women detainees on an equal basis.

**Family members who arrive in the United States together are often separated in detention. This causes families tremendous trauma, as they are often not even informed of their relatives' location.**

*The Women's Commission offers the following recommendations:*

- Family members should never be separated while in detention.
- Families should be released from detention whenever possible.
- Appropriate shelter care should be opened to house families, which allows for normal family interaction.

**While problems in the Miami District have been chronic and widespread, other INS districts have also failed to meet the needs of asylum seekers, frequently detaining them unnecessarily and subjecting them to poor living conditions. These problems are**

**attributable to the INS's failure to centralize and monitor its detention program. Too much of the INS's detention authority is delegated to its district offices.**

*The Women's Commission offers the following recommendations:*

- INS headquarters must retain management of and vigorously exercise oversight over detention centers.
- INS should incorporate its newly developed detention standards, which are currently non-binding, into regulation to ensure their implementation.
- Authority to parole asylum seekers should be shifted to an objective decision-making body, such as the INS asylum corps or the Executive Office for Immigration Review.
- At a minimum, the INS must implement its recently issued interim regulation clarifying that high-level INS officials have the authority to override district decisions denying parole to asylum seekers.
- INS must facilitate full access for attorneys and legal service providers to provide representation to detained asylum seekers.

**INS detention has grown too quickly for the agency to exercise adequate control and oversight. While the agency has often interpreted its detention authority under U.S. immigration and asylum law in the harshest manner possible, Congress shares responsibility for a detention policy that is overly broad and inhumane. Detention also represents an extraordinary expense to U.S. taxpayers.**

*The Women's Commission offers the following recommendations:*

- Congress must redress the detention provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and restore a state of rationality and respect for human rights to U.S. detention policy.
- Congress must statutorily mandate a parole policy for asylum seekers to ensure that U.S. detention policy complies with international law and demonstrates a basic sense of compassion toward individuals forced to flee their homelands to escape war and human rights abuses.
- Congress must shift the authority to make parole decisions away from the INS districts to an objective decision-making body, such as the INS asylum corps and the Department of Justice Executive Office for Immigration Review.
- Congress must mandate the development of regulations to address conditions of detention.

# Appendix I

## U.S. Asylum Law and Policy

The asylum laws and policies of the United States are the cornerstone of the nation's commitment to refugee protection. Through the Refugee Act of 1980 (Refugee Act),<sup>103</sup> the United States incorporated into its domestic law international standards for refugee protection as defined in the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol (Refugee Convention).<sup>104</sup> Under both the Refugee Convention and the Refugee Act, a refugee is defined as a person who has left her homeland because she has a well-founded fear of persecution on account of race, religion, nationality, political opinion, or membership in a particular social group.

Each year, thousands of individuals arrive in the United States in search of protection from armed conflict and human rights abuses. In its 2001 World Refugee Survey, the U.S. Committee for Refugees reports that in 2000 there were approximately 385,000 pending asylum applications, about 40,000 of which represented new applications.<sup>105</sup> The majority of asylum seekers file for asylum directly with the Immigration and Naturalization Service (INS) through the "affirmative asylum" system. An applicant is eligible to file affirmatively if she is not currently in removal proceedings and has not been previously ordered removed from the United States. Those who file affirmatively are interviewed by INS asylum officers, who are authorized to grant asylum. If the asylum officer finds insufficient evidence to merit a grant and the applicant is not enjoying any other form of immigration status, the case is then referred to an immigration judge who will consider the asylum application in the context of a removal hearing. Affirmative asylum applicants are not generally subject to detention, which would have an obvious deterrent effect on people presenting themselves to the INS.

Asylum seekers who are apprehended by the INS at U.S. ports of entry are generally subject to a different set of procedures known as "expedited removal." Congress enacted expedited removal as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), legislation that in part targets the removal of individuals who lack the required documentation to enter the United States.<sup>106</sup> Under expedited removal, such cases are subject to a cursory screening by an INS inspector at the port of entry during a process known as "secondary inspection." If the individual fails to request asylum or to express a fear of return to her homeland, she can be immediately deported with no further consideration of her eligibility for asylum or other relief from removal.

If the individual expresses a fear of return, she is transferred from the airport to a detention center, where her claim is subject to another fast-track screening procedure to determine whether her fear of return to the homeland is credible. If an INS asylum officer, or an immigration judge

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<sup>103</sup> Immigration and Nationality Act, sec. 208.

<sup>104</sup> 1951 United Nations Convention Relating to the Status of Refugees, opened for signature July 28, 1951, 19 U.S.T. 6577, 189 U.N.T.S. 150; 1967 United Nations Protocol Relating to the Status of Refugees, opened for signature January 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 (1967).

<sup>105</sup> U.S. Committee for Refugees, World Refugee Survey 2001, p. 292.

<sup>106</sup> Illegal Immigration Reform and Immigrant Responsibility Act of 1996, sec. 235(b)(1)(A).

upon review of a denial, finds her fear credible, the applicant is placed in regular removal proceedings in which her asylum claim will be considered as a defense to deportation. During this time, the asylum seeker may continue to be held in detention for a few days to several years, depending on whether the INS exercises its authority to parole the individual from detention pending the outcome of her proceedings.<sup>107</sup>

## U.S. Detention Policy

The detention of individuals apprehended by the INS has dramatically increased since passage of IIRIRA, in which Congress embraced detention as an immigration enforcement tool. The daily detention population has almost tripled from approximately 7,000 individuals in 1996 to 20,000 currently.<sup>108</sup> This growth will mostly likely continue, as the new Administration has projected that it will reach 24,000 in fiscal year 2002.<sup>109</sup> The INS itself has described immigration detention as the fastest growing prison program in the United States today.

### *Asylum Seekers Caught Up in the Detention System*

The INS has estimated that asylum seekers comprise approximately five percent of the population detained by INS on any given day.<sup>110</sup> The agency has also estimated that women constitute approximately seven percent and children three percent of this population. Unfortunately, the exact numbers are difficult to ascertain as INS data gathering is notoriously poor. The agency has in fact failed to comply with a statutory provision requiring it to report such data to the Senate and House Judiciary Committees starting on October 1, 1999 and every year thereafter.<sup>111</sup>

IIRIRA mandates the detention of asylum seekers who have arrived without the appropriate documentation to enter the United States until they have established a credible fear of persecution under expedited removal, a process that typically takes anywhere from a few days to a few weeks. For those who establish a credible fear, however, parole from detention should be available. The INS itself has stated in field directives to its district offices that its policy should normally be to release asylum seekers once they have met that threshold requirement.<sup>112</sup>

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<sup>107</sup> For an overview of U.S. asylum law, please see Regina Germain, "AILA's Asylum Primer, 2<sup>nd</sup> Edition," American Immigration Lawyers Association (2000).

<sup>108</sup> "The Needless Detention of Immigrants in the United States," Catholic Legal Immigration Network, Inc., p. 2 (August 2000).

<sup>109</sup> Alfonso Chardy, "INS Detainees Surge in the U.S.," The Miami Herald (September 12, 2000).

<sup>110</sup> This percentage is an estimate. Legal service providers have questioned whether the percentage is actually higher.

<sup>111</sup> See FY 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Public Law 105-277), sec. 903-904.

<sup>112</sup> Memorandum from Office of INS Deputy Commissioner, "Implementation of Expedited Removal" (March 31, 1997) (stating that once an alien has established a credible fear of persecution, release may be considered under normal parole criteria); Memorandum from INS Executive Associate Commissioner for Field Operations, "Expedited Removal: Additional Policy Guidance," (December 30, 1997) (stating that parole is a viable option for aliens who have met the credible fear standard); Memorandum from INS Executive Associate Commissioner for Field Operations, "Detention Guidelines," (October 9, 1998) (stating that it is INS policy to favor release of aliens who have been found to have a credible fear of persecution).

However, despite these instructions from INS headquarters, many INS districts continue to imprison asylum seekers for prolonged periods, in some cases even for years, while their asylum claims are pending.<sup>113</sup> The disparity between the stated national policy and implementation at the local level is attributable to the fact that tremendous discretion to release asylum seekers has been delegated to INS district directors.<sup>114</sup> Belying the soundness of these decisions is the fact that many such asylum seekers are ultimately successful in their asylum claims. Sadly, they may have endured years of unnecessary incarceration in the meantime.

Moreover, asylum seekers are detained in harsh conditions in prisons or prison-like detention centers. The INS utilizes four types of facilities to house adults in its custody:

- Service Processing Centers, which are owned and operated by the INS;
- Contract facilities, which are designed to house only immigration detainees but are subcontracted out by the INS to private correctional companies which assume the day-to-day responsibility for the care of detainees;
- County and local jails designed to house criminal inmates, but from which the INS rents bed space for detainees as needed; and
- Federal prisons operated by the U.S. Department of Justice Bureau of Prisons.<sup>115</sup>

### *Alternatives to Detention Do Exist*

Recent experiences with alternatives to detention for asylum seekers who have been found to have a credible fear of persecution have demonstrated considerable success and shown that the incarceration of asylum seekers in secure facilities is unnecessary. For example, the INS contracted with the Vera Institute of Justice to test the viability of a supervised release program for asylum seekers in the New York INS District. This project proved that supervised release met the INS's goal of tracking the whereabouts of asylum seekers and ensuring their appearance at their asylum proceedings as well as the humanitarian goal of allowing asylum seekers to live as normal a life as possible while their proceedings are pending. The findings of the Vera Institute clearly indicated that supervised release of asylum seekers is a viable option; 93 percent of the

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<sup>113</sup> See Dan Malone, "More than 800 Detained Indefinitely by INS," *The Dallas Morning News* (April 1, 2001) (reporting that of the 851 indefinitely detained individuals in INS custody, defined as those in detention for more than three years, 361 are asylum seekers).

<sup>114</sup> The INS recently released an interim regulation clarifying that high-level officials within the INS, including the Commissioner, the Deputy Commissioner, the Executive Associate Commissioner, and regional directors, have the authority to grant parole as well. It remains to be seen whether this clarification of authority will result in greater consistency in parole decisions across districts. "Clarification of Parole Authority," *Federal Register*, pp. 82254-82256 (December 28, 2000); see Eleanor Acer and Gene Guerrero, "Asylum Parole Procedures Need More Reform," *Detention Watch Network News*, p. 16 (Lutheran Immigration and Refugee Service, Spring 2001).

<sup>115</sup> "Questions and Answers Regarding INS Detention Facilities," Office of Field Operations, Immigration and Naturalization Service (October 2, 1998).

asylum seekers who participated appeared for their hearings. It also found that placing an asylum seeker in supervised release as opposed to detention saves almost \$4,000 per case.<sup>116</sup>

A second effort undertaken by the INS also demonstrated that asylum seekers need not be incarcerated to ensure their appearance in immigration court. In 1999, the INS transferred a group of Chinese asylum seekers from Guam to a county prison in Ullin, Illinois after they had been determined to have a credible fear of persecution. These asylum seekers had originally been apprehended on the high seas after the Coast Guard intercepted the boats operated by smugglers who were attempting to bring the Chinese to U.S. territory. After four months in jail in rural Illinois, the INS negotiated with local service providers, under the auspices of the Lutheran Immigration and Refugee Service and the Detention Watch Network, to release the asylum seekers to local shelters, the location of which would remain secret to protect the asylum seekers from the smugglers to whom they owed debts. Twenty-two Chinese were released into the care of the shelters; all but one of them appeared for their hearings and remained in the program.<sup>117</sup>

Finally, INS districts have also tested local alternatives to detention in cooperation with charitable organizations. In New Orleans, for example, Catholic Charities has housed more than 30 formerly detained asylum seekers in non-secure shelter facilities. None of the asylum seekers who have participated in the program have absconded. Moreover, housing asylum seekers in the shelter costs the INS one-sixth the daily average cost of detaining individuals in local prisons. One INS official in New Orleans called it “a great program.”<sup>118</sup>

These pilot projects clearly demonstrate that alternatives to detention are both humane and cost-effective. They also meet the INS’s concern that asylum seekers appear for their proceedings. Moreover, asylum seekers who are not detained are much more likely to obtain counsel, a service critical to ensuring due process in an adversarial court proceeding. Represented asylum seekers are four to six times more likely to win their asylum cases and eight times more likely to appear for their proceedings.<sup>119</sup>

### *INS Issues Detention Standards*

Largely in response to pressure from the immigrant and refugee advocacy community, the INS issued 37 standards addressing conditions of detention in November 2000.<sup>120</sup> The standards establish guidelines on such key issues as visitation policies, telephone access, law libraries, disciplinary policies, recreation, religious practices, and legal access.

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<sup>116</sup> “Testing Community Supervision for the INS: An Evaluation of the Appearance Assistance Program,” Vera Institute of Justice (June 7, 2000), p. ii.

<sup>117</sup> Esther Ebrahimian, “The Ullin 22: Shelters and Legal Service Providers Offer Viable Alternatives to Detention,” Detention Watch Network News, Lutheran Immigration and Refugee Services (August/September 2000).

<sup>118</sup> Joan Treadway, “Program Helps Immigrants Find Jobs and Shelter,” The Times-Picayune (January 22, 2001).

<sup>119</sup> Memorandum from Andrew Schoenholtz, “Asylum Representation,” Georgetown University Institute for the Study of Migration (September 12, 2000).

<sup>120</sup> “The INS Detention Standards” (March 2001) (available from Immigration Pro Bono Development and Bar Activation Project, American Bar Association, Washington, DC); see Llewelyn G. Pritchard, “INS Detention Standards Bring New Hope for Detainees,” Detention Watch Network News, p. 4 (Lutheran Immigration and Refugee Service, Spring 2001).

The standards offer a useful benchmark against which detention centers can be evaluated. However, they are fundamentally flawed in several ways. First, they are non-binding, as they are not incorporated in statute or regulation. Second, they are largely based on the standards of the American Correctional Association, which are geared toward criminal facilities and inmates. Thus, the standards fail to adequately consider the unique needs of asylum seekers. Third, implementation of the standards will be self-monitored by the INS and largely by District staff themselves. Finally, to date the standards do not apply to the vast majority of the county and local jails used by the INS, in which more than half of INS detainees are actually housed. The INS plans to extend the coverage of the standards to such facilities by 2003, starting first with any newly contracted prisons (such as TKG) and the prisons housing the largest number of INS detainees.

## Women Often Flee Abuses Particular to Their Gender

Women are often subject to the same types of human rights abuses as are men. Such abuses include political persecution, religious persecution, and ethnic persecution. They are also subject to torture. In addition, however, women are increasingly the targets of abuse based on their gender. Such abuses include rape, forced marriages, female genital mutilation, sexual slavery, forced abortions, honor killings, and forced prostitution.

Neither the 1951 Convention Relating to the Status of Refugees nor the 1980 Refugee Protection Act explicitly include gender as one of the grounds for refugee protection. However, the primary international organization mandated to protect refugees, the United Nations High Commissioner for Refugees (UNHCR), noted in a Conclusion of its Executive Committee its appreciation of "...special efforts by States to incorporate gender perspectives into asylum policies, regulations, and practices."<sup>121</sup> UNHCR encouraged "...States, UNHCR and other concerned actors to promote wider acceptance, and inclusion in their protection criteria of the notion that persecution may be gender-related or effected through sexual violence...."<sup>122</sup>

The United States has traditionally been regarded as a vanguard in the protection of women and girls fleeing gender-based violence and persecution. In 1995, the INS issued "Gender Guidelines," which lay out procedural, evidentiary, and legal considerations for asylum adjudicators when addressing gender persecution claims.<sup>123</sup> By issuing the Gender Guidelines, the United States became only the second country in the world to do so (Canada was the first).

Since adoption of the Gender Guidelines, U.S. jurisprudence has slowly evolved to extend protection to victims of gender persecution. In 1997, the Board of Immigration Appeals (BIA),

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<sup>121</sup> Executive Committee Conclusion No. 87, UN High Commissioner for Refugees (Executive Committee, 50<sup>th</sup> Session, 1999); see also "UNHCR Policy on Gender-Related Persecution," Department of International Protection, UN High Commissioner for Refugees (November 24, 1999).

<sup>122</sup> Id.

<sup>123</sup> Memorandum from Phyllis Coven, Immigration and Naturalization Service, "Considerations for Asylum Officers Adjudicating Claims from Women," (May 25, 1995); see also Deborah Anker, Nancy Kelly and John Willshire-Carrera, "The BIA's New Asylum Jurisprudence and Its Relevance for Women's Claims," 73 Interpreter Releases 1173 (September 9, 1996).

the highest administrative appellate body within U.S. immigration law, issued a landmark decision granting asylum to Fauziya Kasinga, a young Togolese woman who had escaped female genital mutilation. This decision clearly defined standards for the consideration of women's claims, particularly when the harm inflicted was at the hands of a non-state actor and on the basis of her social group.<sup>124</sup> *In re Kasinga* was hailed as a watershed decision and widely supported by asylum and refugee experts.

Unfortunately, the BIA confused its analysis of gender persecution claims two years later in a case known as *R-A-*. In that case, a Guatemalan woman fled her homeland to escape severe domestic violence at the hands of her husband. She sought protection from the Guatemalan authorities on several occasions, but was ignored or turned away after being told that it was a private matter between her and her husband. The BIA overturned the immigration judge's decision to grant her asylum, finding that domestic violence, while unfortunate, is not the type of abuse generally meriting protection under U.S. asylum law.<sup>125</sup>

The *R-A-* case generated tremendous public outcry from both asylum and domestic violence experts. After a sustained advocacy campaign, Attorney General Janet Reno vacated and remanded the *R-A-* decision back to the BIA on her last day in public office. The order instructed the BIA to reconsider the case once the INS finalized new regulations that offer guidance on the interpretation of social group and other key asylum issues pertaining to gender claims.<sup>126</sup> Most recently, the Ninth Circuit Court of Appeals weighed in and overturned another BIA denial involving domestic violence inflicted on a 19-year-old Mexican girl.<sup>127</sup>

At the time of this report, the INS had not yet issued the final regulations addressing these key issues and the BIA had not reconsidered its decision in *R-A-*. Therefore, the application of U.S. law to gender-based asylum claims is still in question.

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<sup>124</sup> *In re Kasinga*, Interim Decision 3278 (BIA 1996).

<sup>125</sup> In the Matter of *R-A-*, Interim Decision 3403 (BIA 1999); see also Karen Musalo, "Matter of *R-A-*: An Analysis of the Decision and Its implications," 76 Interpreter Releases 1177 (August 5, 1999).

<sup>126</sup> Office of the Attorney General, Order No. 2379-2001 (January 19, 2001).

<sup>127</sup> *Aguirre-Cervantes v. INS*, 2001 Westlaw 274698 (9<sup>th</sup> Circuit Court of Appeals) (March 2001).

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