

Women's Asylum News

Women's Project at Asylum Aid

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The Fight against Trafficking: the European Union and the UK Opt Out from the New Trafficking Directive

Women's Asylum News would like to thank Saadiya Chaudary, Legal Project Manager at The AIRE Centre, for writing this article. This article constitutes the second part of Women's Asylum News' focus on trafficking in light of the UK's refusal to opt into the EU draft Directive on preventing and combating trafficking. Last month's issue looked at trafficking in the UK and the National Referral Mechanism, highlighting some of its major flaws.¹

On 29 March 2010, the European Commission put forward a proposal for a Directive on preventing and combating trafficking in human beings and protecting victims. The draft provisions of this Directive indicate that it will set minimum standards for criminal law provisions, including the prosecution of offenders, the rights of victims in criminal proceedings, support for victims of trafficking and the prevention of trafficking. The scope of the Directive is therefore significantly wider than the EU Framework Decision (2002/629/JHA), the EU law instrument that the Directive will replace and which only provides for criminal law provisions.²

¹ Women's Asylum News, October 2010, Issue 96, http://www.asylumaid.org.uk/data/files/publications/143/WAN_October.pdf.

² In addition to EU Framework Decision 2002/629/JHA, the only other EU legislation relating to trafficking which is currently in force is Directive 2004/81/EC. This Directive applies only to third-country national victims of trafficking (i.e. not nationals of

The significance of the Directive also closely reflects changes within the EU legal order following the Lisbon Treaty;³ under the old regime, this kind of legislation would have been passed as a “framework decision”, which provides for virtually no judicial oversight and does not confer directly effective rights on individuals. Directives contain rights that individuals can potentially rely on directly and require Member States to adjust their national laws in order to conform to the minimum standards they contain.

The UK, which, along with Ireland, has the ability to opt out of this kind of legislation, has made a decision to opt out of the Directive on the basis that ‘the UK already complies with much of the draft EU directive’.⁴ (Ireland is not opting out.) However, the opt out provisions provide that once the Directive is adopted the UK authorities may change their mind and agree that the UK will be bound by the instrument. On 24 November 2010, the Council of the European Union announced that agreement had been reached on the text of the Directive and all that remains is the approval of the European Parliament. The UK has indicated that once the Directive is adopted it may consider being bound by it.

In light of the UK’s decision to opt out of the directive, this article looks at the provisions contained in the draft directive and provides a comparative analysis with the policies and practices already in place in the UK.

The Proposed Directive

The proposed Directive sets minimum, EU-wide standards for the protection of victims of human trafficking and for the prevention of the crime of trafficking. It is significant that human trafficking is explicitly prohibited by the EU Charter of Fundamental Rights⁵, which, since the coming into force of the Lisbon Treaty now has equal status with the EU Treaties themselves; the Directive can therefore be seen as giving effect to fundamental rights principles protected at the highest level of the EU legal order.

The UK government carried out an analysis of its compliance with the provisions of the proposed Directive⁶ a result of which is the clear admission that the protection of victims of trafficking in the UK falls short of the protection envisaged by the Directive. If the UK were to participate in the Directive, some legislative changes would, the government admits, be necessary to fill in gaps in UK law. For example, it appears that the UK would have to extend extra-territorial jurisdiction in order to prosecute acts of human trafficking committed overseas where the offender is a British Citizen or has her/his habitual residence in the UK. This is provided for in Article 9(b) (dealing with jurisdiction) of the draft Directive which provides that ‘*Member States shall take the necessary measures to establish its jurisdiction over an offence referred to in Articles 2 and 3 where...(b) the offender is one of its nationals or has his or her habitual residence in its territory;*’.

The UK also falls short of complying with the provisions set out in Article 14 of the draft Directive which deals with the protection of child victims of trafficking in criminal investigations and proceedings. Under Article 14(1) Member States have an obligation to ‘*ensure that in criminal investigations and proceedings, judicial authorities appoint a special representative for the child victim of trafficking...where, by national law, the holders of parental responsibility are precluded from representing the child as a result of a conflict of interest between them and the child victim, or where the child is unaccompanied or separated from the family.*’ This in effect means the appointment of a

EU Member States) and sets out provisions relating to assistance and residence permits for these victims. However the UK Government has opted out of this Directive and its provisions therefore do not apply in the UK.

³ The Lisbon Treaty entered into force on 1 December 2009.

⁴ See <http://www.homeoffice.gov.uk/media-centre/news/trafficking-directive> and Women’s Asylum News, September 2010, Issue 95, p. 10, http://www.asylumaid.org.uk/data/files/publications/142/WAN_September.pdf.

⁵ Article 5(3).

⁶ See <http://www.statewatch.org/news/2010/sep/eu-uk-trafficking-em.pdf>.

special representative in all cases where the victim of trafficking is a child; such an appointment is currently discretionary.

In addition to the above clear examples of gaps in protection in UK law, there are a number of provisions contained in the draft Directive which, if adopted by the UK, would have direct effect in the UK thereby strengthening the protection afforded to victims. As a matter of UK domestic law⁷ and general EU law principles, any provision of an EU Directive has *direct effect* in national law if the provision is clear, precise, and unconditional, and the deadline for implementation has passed. Provisions of Directives must be incorporated into domestic law in any event, but if they have not, or have not been incorporated properly, individuals may rely directly on those provisions before domestic courts. Individuals can also bring actions for damages against the authorities for failing to implement the provisions of a Directive that have direct effect.

Most of the provisions of the draft Directive which deal with victim protection correspond to a grey area in UK law: UK guidance recommends that the authorities should comply with those provisions, but the authorities have discretion as to whether to do so. This has the practical effect of reducing the remedies that victims have at domestic level if they do not enjoy the benefit of these measures (and increasing the cost of pursuing the remedies through the courts). This casual approach to the protection of victims' rights creates potential problems for victims as well as for the authorities who are responsible for securing victims' rights; such a casual approach means that the latter often do not understand what their responsibilities are. The rights involved are contained in Article 10 of the draft Directive (support for victims before, during and after criminal proceedings), particularly the requirement under Article 10(3) providing that '*Member States shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim's willingness to act as a witness*'; Article 11 (legal advice and representation for victims); and Articles 12 and 13 (support and protection for child victims). If the UK were to opt into the Directive, victims of trafficking would be able to rely on domestic legislation implementing the Directive or the Directive's directly effective provisions to secure protection. If the UK were to participate in the Directive, this would mean that trafficking victims in the UK could exercise as a matter of law the rights they enjoy only on a discretionary basis at present. These include certain rights to support and protection found in the Council of Europe Convention on Action against Trafficking in Human Beings. The UK has ratified the Convention, so it is binding as a matter of international law, but has not incorporated the Treaty into domestic law, meaning that victims are finding it difficult to rely on the provisions in UK courts.

The Important Role of the European Convention on Human Rights

There are some provisions contained in the draft Directive which the UK asserts compliance with under national legislation, policies and procedures. For example, Article 3 of the draft Directive provides that '*Member States shall take necessary measures to ensure that the instigation of, aiding, abetting or attempt to commit an offence referred to in Article 2 is punishable*' and Article 4 sets out the penalties for committing such offences. The UK in theory complies with both provisions through the legislation currently in force in the UK in sections 57 – 60 of the Sexual Offences Act 2003 and section 4 of the Asylum and Immigration (Treatment of Claimants) Act 2004. However, this may not actually be the case in practice. Evidence of this can be found in the complaints several victims of human trafficking have recently made to the European Court of Human Rights about the UK authorities' failure to carry out proper investigations and prosecutions of traffickers / exploiters under the European Convention on Human Rights. Article 4 of this Convention states that '*No one shall be held in slavery or servitude...No one shall be required to perform forced or compulsory labour*'. Two such cases have been communicated to the UK government⁸ indicating that the European Court of Human Rights considers that the issues in these cases require further scrutiny.

The UK also asserts compliance with other provisions such as: Article 5 (liability for legal persons); Article 6 (sanctions against legal persons); Article 7 (possibility for prosecutors not to pursue victims

⁷ The European Communities Act 1972.

⁸ *C.N. v the United Kingdom* (Application No. 4239/08) and *Kawogo v the United Kingdom* (Application No. 56921/09).

of trafficking whose offences were the result of having been trafficked); Article 8 (necessary measures to investigate and prosecute trafficking cases); Article 15 (training and measures to discourage demand) and Article 16 (monitoring mechanisms). In a third communicated case against the UK before the European Court of Human Rights,⁹ the applicant has complained about the failure to protect her from her trafficker and his associates, whom she denounced to the police. The complaint is based on the authorities' intention to expel the applicant to Albania, where there is a real risk that the trafficker and his associates, as well as her family, will harm her.¹⁰ These cases suggest that the UK may not be in effective compliance with Articles 3 and / or 8 of the proposed Directive or with Article 4 of the European Convention on Human Rights.

Following the judgment of the European Court of Human Rights in *Rantsev v Cyprus and Russia*¹¹ States now have specific obligations under Article 4 of the European Convention on Human Rights to protect victims, design administrative and legislative frameworks to deter trafficking and investigate instances of trafficking.

The Directive represents, at present, an unfortunate missed opportunity for the UK to comply with its obligations by co-operating with other EU States and accepting and incorporating into domestic law minimum standards which will now be common to the other 26 Member States.

Saadiya Chaudary, Legal Project Manager at The AIRE Centre

The Anti-Trafficking Legal Project (ATLeP) and the AIRE Centre have prepared a briefing on the legal consequences in EU Law of the United Kingdom's decision to opt out of the draft Directive on Preventing and Combating Trafficking in Human beings and Protecting Victims (COM(2010) 95).

It is available here:

http://www.ein.org.uk/resources/ATLeP_AIRE_legal_briefing_Trafficking_Directive_27_Oct_2010.pdf.

Sector Update

Breast-feeding during Screening Interview at the Asylum Screening Unit, Croydon

In the Women's Asylum News of September 2010, the leading article entitled "Lodging a Claim for Asylum under the New procedures: A First-Hand Account" gave an insight into the difficulties and barriers faced by women who wish to make a claim for asylum at the Asylum Screening Unit in Croydon.¹² The article prompted a response from the Asylum Improvement Project (AIP) of the UKBA expressing concern about the way the woman was treated while trying to breastfeed her child. As a result, the AIP has been in touch with the head of the Asylum Screening Unit who has confirmed that the interview should have been paused to allow the child to be fed in the nursing mothers' room. The UKBA has acknowledged that in this case it was clear that the policy was not followed. Asylum Aid has been informed that desk officers will now be instructed to explain to mothers with babies (as part of the interview preamble) that if the child needs to be fed, the interview will be paused so she can use the nursing mothers' room.

If you come across any further examples concerning this policy, please let Asylum Aid know by emailing deboras@asylumaid.org.uk and we will ensure that these cases are relayed to the UKBA.

⁹ *L.R. v the United Kingdom* (Application No. 49113/09).

¹⁰ See http://www.echr.coe.int/NR/rdonlyres/EBEC266A-8EA3-4826-95FE-3B1BB81B5903/0/FICHES_Forced_labour_EN.pdf.

¹¹ *Application No.25965/04, 10 May 2010.*

¹² See Women's Asylum News, Issue 95, September 2010, http://www.asylumaid.org.uk/data/files/publications/142/WAN_September.pdf.

Call to end Violence against Women

Asylum Aid was instrumental in ensuring that when the Home Secretary, Theresa May, announced a new 'strategic narrative' on violence against women on 25th November 2010, this referred to women seeking asylum. The strategy recognises that women may have experienced gender specific violence and states that UKBA is dedicated to being as gender-sensitive as possible throughout the asylum process. This paves the way for the inclusion of women asylum seekers in the detailed action plan to be published by the Home Secretary in March 2011.

Mention of women asylum seekers is on page 15-16 of the strategic narrative which is available at: <http://www.homeoffice.gov.uk/publications/crime/call-end-violence-women-girls/vawg-paper?view=Binary>.

How I became an asylum seeker play in London

Women Asylum Seekers Together Manchester performed their play "How I became an asylum seeker" to a packed house at the Riverside Studios, Hammersmith on Sunday 28th November. Although written by one member of the support group, Lydia Besong, about her life before and on arrival in the UK – persecution, asylum refusal, reporting, detention, destitution - the play tells the story of many women asylum seekers. Women for Refugee Women brought the play to the London stage in the hope that it would raise awareness by allowing the women to tell their experiences directly to the audience. The play and a documentary about how it was made are available on a DVD which can be bought from wastmanchester@yahoo.co.uk.

Legal Issues

Guidance for the prosecution of victims of trafficking for offences committed while under compulsion

LM, MB, DG, Betti Tabot and Yutunde Tijani v. The Queen, [2010] EWCA Crim 2327, Court of Appeal – Criminal Division, 21 October 2010¹³

The Criminal Division of the Court of Appeal has provided guidance to prosecutors on whether they should prosecute potential victims of trafficking who have committed offences under compulsion and the extent to which the police are under an obligation to refer those individuals to specialist agencies such as the UK Human Trafficking Centre (UKHTC) and the National Referral Mechanism (NRM).

The five women in this case claimed that they were or had been victims of trafficking and they had all been prosecuted by the CPS for prostitution or use of false documentation. This case looked at the UK's obligations under the Council of Europe Convention on Action against Trafficking in Human Beings 2005 (the Convention). As pointed out by the Court of Appeal, the Convention has now been ratified by the UK and the UK is fully bound by it. The case looked at two provisions of the Convention in particular: Article 10 which creates a positive duty on the State to provide means by which trained personnel are made available to identify and assist victims and Article 26, the "non-punishment provision", where each State shall provide for the possibility of not imposing penalties on victims for

¹³ <http://www.bailii.org/ew/cases/EWCA/Crim/2010/2327.html>.

their involvement in unlawful activities to the extent that they have been compelled to do so. In relation to Article 26, the Court considered the special guidance to prosecutors issued by the CPS which effectively sets out the issues to consider when deciding whether prosecution is warranted, including whether there is a public interest in the prosecution. The Court clarified that Article 26 is not a blanket immunity against prosecution for victims of trafficking and is not a defence either. Article 26 provides that “careful consideration must be given to whether public policy calls for a prosecution and punishment when the defendant is a trafficked victim and the crime has been committed when he or she was in some manner compelled (in the broad sense) to commit it”. Thus, the application of Article 26 is according to the Court fact-sensitive in every case. The Court limited itself to the following guidance:

- i) If there is evidence on which a common law defence of duress or necessity is likely to succeed, the case will no doubt not be proceeded with on ordinary evidential grounds independent of the convention, but additionally there are likely to be public policy grounds under the convention leading to the same conclusion.
- ii) But cases in which it is not in the public interest to prosecute are not limited to these: see above.
- iii) It may be reasonable to prosecute if the defendant’s assertion that she was trafficked meets the reasonable grounds test, but has been properly considered and rejected by the Crown for good evidential reason. The fact that a person passes the threshold test as a person of whom there are reasonable grounds to believe she has been trafficked is not conclusive that she has. Conversely, it may well be that in other cases that the real possibility of trafficking and a nexus of compulsion (in the broad sense) means that public policy points against prosecution.
- iv) There is normally no reason not to prosecute, even if the defendant has previously been a trafficked victim, if the offence appears to have been committed without any reasonable nexus of compulsion (in the broad sense) occasioned by the trafficking, and hence is outside Article 26.
- v) A more difficult judgment is involved if the victim has been a trafficked victim and retains some nexus with the trafficking, but has committed an offence which arguably calls, in the public interest, for prosecution in court. Some of these may be cases of a cycle of abuse. It is well known that one tool of those in charge of trafficking operations is to turn those who were trafficked and exploited in the past into assistants in the exploitation of others. Such a cycle of abuse is not uncommon in this field, as in other fields, for example that of abuse of children. In such a case, the question which must be actively confronted by the prosecutor is whether or not the offence committed is serious enough, despite any nexus with trafficking, to call for prosecution. That will depend on all the circumstances of the case, and normally no doubt particularly on the gravity of the offence alleged, the degree of continuing compulsion, and the alternatives reasonably available to the defendant. The case of M and others, which we consider below, is an example.

A difficulty with Article 26 in the context of England and Wales is that criminal courts do not decide whether a person ought to be prosecuted or not but are limited to deciding whether an offence has been committed. They can also decide whether the proceedings are fair. The Court accepted in this case that their power to stay proceedings for “abuse” is in place as a safety net to ensure that the obligation under Article 26 “is not wrongly neglected in an individual case to the disadvantage of the defendant”. The Court said this power was similar to the principle of judicial review whereby if the “exercise of judgment has not properly been carried out and would or might well have resulted in a decision not to prosecute, then there will be a breach of the Convention and hence grounds for a stay. Likewise, if a decision has been reached at which no reasonable prosecutor could arrive, there will be grounds for a stay”.

LM, DG & MB (the first three appellants) were convicted of offences of controlling prostitution, for the gain of themselves or another, contrary to s. 53 Sexual Offences Act 2003. Until a late stage of their appearance in the Crown Court, the case against them was that although they had originally been trafficking victims, they had assumed the role of controllers of prostitution by others. In these circumstances, the CPS decided that prosecution was justified. At a later stage in the proceedings, the Crown accepted the women's pleas of guilty on the basis that "there had been no violence, threats or sexual abuse, that they had been trafficked, beaten and coerced into prostitution themselves, and that anything which had amounted to controlling prostitution had been done under pressure". Whereas the application of Article 26 of the Convention was considered at the beginning of the proceedings, this was not done when the basis of the women's pleas of guilty were accepted. At this point, no-one on behalf of the Crown considered whether it was still in the public interest to continue prosecution in the changed circumstances. The Court stated that either the Crown should have offered no evidence or, if it had not, an application for a stay of proceedings on that basis ought to have succeeded on the grounds that any Crown decision to proceed was one which no reasonable prosecutor could make. The women's convictions were therefore quashed.

The Court however, rejected the women's submissions that there was a breach of the Convention in ever prosecuting the women in the first place and that there was a breach of Article 10 because no one on the prosecution side referred any of the women to the UKHTC or the Poppy Project so that they could be assessed as potential victims of trafficking. In the alternative, the women submitted that the prosecution should have advised their solicitors of the availability of those referral agencies. The women argued that those failures themselves rendered the decision to prosecute them unlawful. The Court clarified that a breach of Article 10 of the Convention by itself would not render a prosecution unlawful or amenable to a stay of proceedings on the basis of unfairness but that it was the failure to properly consider the duty in Article 26 which may have this result. The Court said that the duty on the prosecution under Article 10 was met by reminding the solicitors of the availability of referral agencies although that duty may be wider if the potential victim of trafficking is not legally represented.

Tabot, the fourth appellant, had been convicted of an offence of possessing a false identity document. Although at the time of her appearance at the Crown Court, she raised the fact that she had been trafficked there was no consideration of whether the Convention should apply in her case. The Court found that if a trafficked person was making an attempt to escape and was using a false document to escape her traffickers, Article 26 of the Convention would apply. If no-one considered whether her prosecution was in the public interest, and "on those facts it almost inevitably would not", there would be a clear breach of the Convention. However, the Court found that Tabot was not credible and therefore was satisfied that there was not a breach of the Convention in this particular case.

The Court found that Tijani, the fifth appellant, had been entirely free of any exploitation she might have suffered in the past and had been living a wholly independent life when she committed the offences which led to her prosecution. The Court concluded therefore that she had not committed the offences under the necessary nexus of compulsion. As a result, the failure to consider the Convention did not lead to a successful challenge of her conviction. However, she had not been dealt with as someone who had been trafficked in the past during her prosecution and this was unfair. Taking this into consideration, the Court replaced her sentence with one of four months and quashed the recommendation for deportation.

The application of the seven years child concession policy (DP 5/96)

Fauzia Abbassi (and others) v. Secretary of State for the Home Department, [2010] EWHC 2894 (Admin), 12 November 2010¹⁴

¹⁴ <http://www.bailii.org/ew/cases/EWHC/Admin/2010/2894.html>.

The High Court in this case considered the application of the seven years child concession policy (DP 5/96) whereby a family against whom removal directions are considered and whose child has lived continuously in the UK for more than seven years warrants the grant of Indefinite Leave to Remain (ILR). The policy was officially withdrawn on 9 December 2008 on the basis that the original purpose and need for the concession had been overtaken by the Human Rights Act (art. 8 ECHR) and changes to the Immigration Rules (para. 395C).

The claimants in this case were in different situations as Mr Raham and his family had completed seven years in the UK about three months before the withdrawal of the policy and Mrs Abbassi and her family had completed their seven years continuous residence in the UK about nine months after the withdrawal of the policy. The Secretary of State for the Home Department (SSHD) accepted during the course of the proceedings that Ms Adams was entitled to have her case considered under the terms of the policy because she had in fact been the subject of enforcement action with a view to remove her and her family before the withdrawal of the policy.

The grounds raised by the claimants were that (i) it was irrational or unlawful for the SSHD to withdraw the policy in a manner that prevented those families that had built up seven years resident prior to the policy being withdrawn from benefiting from it; (ii) that the SSHD was obliged to consider paragraph 395C of the Immigration Rules when determining an application for leave to remain by a family who has resided for at least seven years in the UK; (iii) that the withdrawn policy should remain a substantial factor in the assessment of cases of this nature so that the only rational response to an application made by a family who would have qualified under the policy is a grant of leave either under paragraph 395C or under article 8 ECHR; and that (iv) the article 8 rights of those families who had built up seven years residence prior to the withdrawal of the policy but were refused after the withdrawal are being dealt with differently from those who were granted leave under the policy amounting to unlawful discrimination under article 14 ECHR.

The Court found that the presumption should be that in cases where families have built up seven years residence while the policy was in effect should be granted ILR except in exceptional cases. The Court said it was also clear that although the policy initially referred to its application in cases of removals, if the SSHD did not order removal, ILR would be granted to the parents and the child when an application for leave to remain was made. The Court also accepted that the policy applied to families irrespective of whether they had been or were the subject of removal proceedings.

As a result, the Court found that Mr Rahman and his family, who had accumulated seven years residence prior to the removal of the policy, were entitled to an "accrued right" as opposed to simply one not to be removed, even if they had not sought to regularise their position while the policy was still in force. The Court specified that it was unfair for the SSHD not to have given at least one month notice that the policy was coming to an end to the group who would have benefited from it. Therefore, the Court concluded that not to afford a family the benefit of the policy when they have accrued the necessary seven years residence prior to the withdrawal of the policy is so obviously unfair as to amount to an abuse of power. Those families however who have not accrued seven years residence prior to the policy being withdrawn will not benefit from this finding. The Court also said that the wording of the transitional arrangements explaining the types of cases likely to continue to benefit from the policy despite its withdrawal is not exhaustive but simply illustrative.

In relation to the application of paragraph 395C of the Immigration Rules, the Court found that it requires the SSHD to "take it into account before making a decision to remove and that decision has not yet been made nor has the process of making that decision been started". Thus, the Court did not consider it unfair or irrational for the SSHD not to consider paragraph 395C until the consideration of removal is commenced. The Court found that it would not be unlawful or irrational not to make a separate decision on 395C (i.e. 395C does not have to be considered in a decision to refuse leave to remain); however it is clear that a decision on 395C must be taken into account before or as part of the removal decision.

The Court did not accept the claimants' submission that as the rationale and purpose behind the policy was covered by paragraph 395C and article 8 ECHR, any application for leave to remain under those provisions by a family who would have qualified under the policy would result in the grant of leave to remain. The Court accepted that "very weighty reasons" would be needed to justify separating a child from a community where s/he has spent most of his life and made reference to the best interests of the child under the UN Convention on the Rights of the Child. However, the Court went on to note that the best interest of the child "are not the paramount consideration and it is premature to say that any decision by the Secretary of State under 395C or on article 8 must necessarily give precedence to the best interests of the children involved in these cases". The Court noted that an assessment under 395C or article 8 is an exercise in discretion and a proportionality assessment.

Therefore Mrs Abbassi's claim was dismissed as the decision by the SSHD to refuse them leave to remain contained a consideration of the impact the removal from the UK would have on the children. The Court ordered the decisions of the SSHD in relation to Mr Rahman and Ms Adams and their respective families to be quashed and be reconsidered by the SSHD under the policy.

International News

Laos: Domestic trafficking goes undetected

While a government report from July 2010 states that over the past decade more than 1,600 trafficking survivors have been returned and reintegrated, the UN has highlighted the fact that the numbers of reported trafficking victims are low because many people are not aware that they are being or have been trafficked. Despite an internationally adopted definition, the line between economic migration and trafficking is blurred, making it very difficult to measure. According to the International Organisation for Migration, efforts to fight domestic trafficking are further compromised by lax law enforcement and a lack of government support. Most trafficking victims in Laos are girls under the age of 18 who are travelling the country in search of work. Because they often have no form of identification they are particularly vulnerable to being trafficked and sexually exploited.

To read full article see: <http://www.irinnews.org/Report.aspx?Reportid=90684>.

United Arab Emirates: Highest court effectively condones spousal abuse

Human Rights Watch has criticized a decision by the UAE's highest court to uphold a man's right to discipline his wife and children as long as the abuse leaves no physical marks. The organisation said the ruling, which cites the UAE penal code, is a violation of women and children's right to liberty, security and equality and urged the government to abolish all discriminatory laws, including those sanctioning domestic violence. The UAE signed CEDAW in 2004 and ratified the Convention on the Rights of the Child (CRC) in 1997. Despite having signed up to these instruments - both stating that member states should take effective measures to protect women and children respectively from all forms of violence, regardless of whether the act is performed in private or public – the ruling by the UAE Federal Supreme Court demonstrates that the State effectively acquiesces in violence against women and children.

To read full article see: <http://www.hrw.org/en/news/2010/10/19/uae-spousal-abuse-never-right?tr=y&auid=7215566>.

Colombia: Women silenced as they speak out for peace

Women activists in Colombia are paying a high price for their involvement in peace building initiatives and speaking out against impunity in a country where armed conflict has been waged between leftist guerrillas, government forces and far-right paramilitary groups in the last 50 years. Over the last year more than 100 women reported that they had been threatened, harassed and persecuted by the paramilitaries, guerrillas and the armed forces in their position as peace activists. The most famous among them, Senator Piedad Córdoba, who successfully led mediation talks with the FARC last year in order to attain the release of 14 hostages, was banned from serving in any public capacity last month. Owing to her involvement with an organisation which maintains open dialogue with FARC and ELN, she was charged with collaborating with the guerrillas. Between 2002 and 2007, the conflict claimed the lives of more than 1,300 women. Another 179 reportedly disappeared and out of every 103 victims of sexual abuse in the context of the conflict, 100 are women and girls. According to Resolution 1325 by the UN Security Council, women and children account for the vast majority of those affected by armed conflict.

To read full article see: <http://ipsnews.net/news.asp?idnews=53228>.

Guinea: Rape victims of September 28 massacre still suffering consequences

Several women who survived the massacre following a pro-democracy rally in Guinea's capital Conakry in September last year are still struggling with the psychological trauma of having been raped and sexually abused by government security forces. According to a Human Rights Watch report, 150-200 people were killed during the pro-democracy rally and dozens of women of all ages were subjected to individual and gang rape, as well as sexual assault with sticks, rifles and other objects. While many women endured such mistreatment for days after the protest or were killed straight away, Djeneba¹⁵ and a few other survivors managed to escape to Senegal's capital Dakar, where they received medical treatment. However, media exposure, haunting memories and the ongoing instability in her home country are making it hard for Djeneba to move on. In view of ethnic hostilities in the run-up to and violent clashes in the aftermath of the elections of June 2010 in Guinea it is therefore important not to forget the victims of the massacre in September 2009.

To read full article see: <http://www.irinnews.org/report.aspx?ReportID=90974>.

For further information see: <http://www.hrw.org/en/news/2009/12/17/guinea-stadium-massacre-rape-likely-crimes-against-humanity>.

Sudan: The Criminal Code needs to be amended to protect victims of rape

Since the escalation of the conflict between the Sudanese government, the Janjaweed militia and non-Arab rebels, women in Darfur have been subjected to increased sexual and gender-based violence. Rape survivors not only have to cope with minimal medical or psycho-social support but also have to contend with a biased judicial system. Under the 1991 Sudanese Criminal Code women who have been raped need four male witnesses who can verify that the act was without consent. If a case is reported and the woman cannot provide the required evidence, she will be charged with adultery and harshly punished (100 lashes if she is not married, death by stoning if she is). A campaign to reform this unjust legislation has been launched by Alliance 149, an organisation arguing that under the 2005 Comprehensive Peace Agreement the country needs to make fundamental changes in order to comply with international human rights standards. However, the alliance also highlights that

¹⁵ Not her real name.

reforming current laws is difficult as the country is not party to CEDAW and does not have a designated official responsible for women's affairs.

To read full article see: <http://ipsnews.net/news.asp?idnews=53294>.

For further information see: <http://www.irinnews.org/Report.aspx?Reportid=90909>.

New Publications

Legal Guides on Domestic violence, immigration law and “no recourse to public funds” and Trafficking, sexual exploitation and the law

Rights of Women

Rights of Women has produced two new, extended, legal guides for women to complement *Seeking Refuge? A handbook for asylum-seeking women*.

These guides set out the legal and financial support options available to women who have been trafficked or who are experiencing domestic violence and have an insecure immigration status. They are available to download free of charge from their website here www.rightsofwomen.org.uk/legal.php and in hard copy by emailing info@row.org.uk.

Afraid and Forgotten: Lawlessness, Rape, and Impunity in Western Côte d'Ivoire

Human Rights Watch, October 2010

This new report by Human Rights Watch documents how the far Western Regions of the country have descended into a state of near-complete lawlessness over the past decade. The disintegration of legal institutions and a failed disarmament process have fuelled rampant criminality in the region, leaving locals subjected to brutal physical and sexual violence. Attacks by the many well-armed criminal gangs usually peak on market days, when women gather in the villages to buy and sell goods, placing them particularly at risk. While hundreds of women and girls have been physically assaulted or raped, fear of repercussions keeps many of the victims from speaking out. Those abuses and assaults reported to the authorities are often met with scant interest and in some cases police officers demand money before initiating the necessary procedures for filing complaints. Despite a ceasefire agreement between the Ivorian government and rebel fighters seven years ago, the country remains divided.

To read the full report see: <http://www.hrw.org/en/reports/2010/10/22/afraid-and-forgotten-0>.

Refugee Women: Twenty Years On

Dale Busher, *Refugee Survey Quarterly (Special Issue: Gender equality and refugee women and girls)*, Vol. 29, Issue 2, 2010

With this article, Dale Busher (Director of Protection at the Women's Refugee Commission, affiliated with the International rescue Committee) gives a brief overview of the evolution of international protection for refugee and asylum-seeking women over the past 20 years. He looks at the first policies

on women refugees, gender guidelines and their implementation and argues that despite considerable progress in general, policy developments have outdone progress in practice by a long way. On the basis of this overview, he outlines current issues on the international agenda to improve the protection of women, such as making the prevention of gender-based violence operational and effectively empowering women economically.

To read the full article see (subscription required): <http://rsq.oxfordjournals.org/content/29/2.toc>.

Reproductive health care for asylum-seeking women – a challenge for health professionals

Elisabeth Kurth, Fabienne N. Jaeger, Elisabeth Zemp, Sibil Tschudin, Alexander Bischoff - *BMC Public Health* 2010, 10:659

This study takes a look at the health care needs of asylum-seeking women and the challenges they present for health care professionals working with them. The researchers interviewed a group of asylum-seeking women and health care professionals working with them at the Women's Clinic of the University Hospital in Basel, Switzerland. The study identifies induced abortion and psycho-social stress due to the experience of forced migration as major reproductive health issues. Problems faced by the health care providers include language difficulties and conflicting duties towards the authorities in charge of the asylum process and their patients.

To read the full report see: <http://www.biomedcentral.com/content/pdf/1471-2458-10-659.pdf>.

A Call to Better Protect Women and Girls: Visibility, Dignity and Livelihoods

UN High Commissioner for Refugees, October 2010

UNHCR has published an update on current approaches and new projects in relation to the protection of women and girls. The document provides an overview of UNHCR's longstanding commitment to women and girls, summarising the main policy instruments, toolkits and best practices in this area.

To read the full document see: <http://www.unhcr.org/refworld/docid/4cd167132.html>.

UK Training and Events

WomenCentre's Women in Exile invites you to the launch of their new service 'Women Together'

The launch is **Friday 14th January from 10.30 – 11.30am** at WomenCentre, 51 Estate Buildings, Railway Street, Huddersfield.

Women Together are a group for refugee women survivors (women affected by rape, sexual violence and torture) who work together in a safe, welcoming and women-only space. They recognise the effect that abuse and violence can have on how we feel and our well being.

Please note this launch is for women only, and is both for women who want to know more about what Women in Exile do and frontline services who may come into contact with women survivors. There will be light refreshments available.

Women Together aims to support refugee women survivors of violence (e.g. sexual violence and torture) using group creative work. It is provisionally running every Friday morning from 9:30 – 11am at 51 Estate Buildings, Railway Street, Huddersfield, HD1 1JY.

For more information and to discuss referrals please contact Rachel Cooling (Thursday and Fridays) or Kate (Fridays only) at 01484 450866 or at rachel.cooling@womencentre.org.uk.

UNHCR and the Institute of Advanced Legal Studies are pleased to inaugurate the following seminar on International Refugee Law to mark the 60th anniversary of UNHCR and the Refugee Convention

“Implications for refugee law of the HJ (Iran) judgment on homosexuality as a ground for international protection”

Tuesday 18 January 2011, 5.30pm, Admission Free – All Welcome

Professor Satvinder Juss, King’s College London; Barrister, 3 Hare Court

Venue: Institute of Advanced Legal Studies, 17 Russell Square, London WC1B 5DR

If you wish to attend any of the above please RSVP to IALS.Events@sas.ac.uk

Do you need accurate information on the housing entitlements of migrants, refugees and other new arrivals in England?

Find the answers at www.housing-rights.info.

This new Chartered Institute of Housing (CIH) website has up-to-date information on the legal entitlements for all types of migrant – whether they apply as homeless, want accommodation through the waiting list or letting scheme, or apply for housing benefit.

The new site gives guidance which covers the full details of different entitlements for different kinds of immigration status, for example:

- People from all parts of Europe (such as the A8 countries and Bulgaria and Romania)
- People who are employed, self-employed or jobseeking
- Family members, divorced or separated spouses, children, students and special cases such as people suffering domestic violence
- **Refugees and their family members who have entered the UK through different schemes.**

The website includes a section on housing for those who suffer from domestic violence.

The site is split into two sections: one for new arrivals themselves, and a section with more detailed guidance for practitioners and those giving advice.

For further information or to comment on the site, contact john.perry@cih.org.

Charter of rights of women seeking asylum



Endorsements: 213

Google group membership: 127

Regional Charter launched for Yorkshire & Humberside

On Tuesday 23rd November *Why Refugee Women?* was launched - a women's charter which sets out minimum standards for working with refugee women in the Yorkshire & Humber region. Inspired by the Women's Asylum Charter, this charter calls on organisations in the region to commit themselves to promoting gender equality, human rights and social justice in the region. Over 70 people attended the launch, at which Debora Singer of Asylum Aid was guest speaker.

Why Refugee Women highlights some specific needs of refugee women, why services should understand these needs, and recommends minimum standards for working with refugee women. It has been developed by a partnership of organisations working with refugee women in the Yorkshire and Humber region including the Refugee Council, Northern Refugee Centre, WomenCentre and Oxfam. They call on other regions to follow their example and also draw up minimum standards for working with refugee women.

More information about *Why Refugee Women* can be found at <http://www.whyrefugeewomen.org.uk/>, or by contacting marco_barnsley@hotmail.com

Postcard Campaign launched in Glasgow

Govan and Craigton Integration Network, the latest organisation to endorse the *Women's Asylum Charter*, launched a postcard campaign for the rights of women seeking asylum on Friday 26th November in Glasgow. Guest speakers at the event included Christina McKelvie MSP, Glasgow MSP Anne McLaughlin, & Karibu African Women's Organisation.

This campaign calls for women asylum seekers to receive the rights which are set out in the *Charter*. Postcards are being sent to the Rt. Hon Theresa May to ask her to include women asylum seekers in her new strategy to end violence against women.

The Govan and Craigton Integration Network brings together people from the settled and new migrant communities. The postcards were made by asylum seekers, refugees and volunteers at the drop-in centres run by Govan & Craigton Integration Network. During the making of the cards a start was made on raising awareness of some of the reasons women claim asylum.

For copies of the postcards or more information about the work of the Network, please contact Alex Bowie Email: alex.qcin@gmail.com

For more information on the Charter and the Every Single Woman campaign, please go to www.asylumaid.org.uk/charter

If your organisation would like to endorse the Charter, please send an email simply stating the name of your organisation to charter@asylumaid.org.uk

She was detained without charge

Nobody believed her story and no-one spoke up for her

Her family and friends didn't know where she was

Afraid...isolated...

She had no idea what would happen to her next

And that was after she sought asylum in the UK

Our asylum system is now so tough that, all too often, this is how people seeking help are treated. And that can't be right.

We believe the system should be fair and just and that every asylum seeker should have legal help to make their case - only then can we say in good conscience 'let the law take its course'.

Asylum Aid is an independent, national charity that secures protection for people seeking refuge in the UK from persecution in their home countries.

We provide expert legal representation to asylum seekers and campaign for a fair and just asylum system. Founded in 1990, we have since helped 30,000 people to get a fair hearing. In 2009 85% of our clients were granted leave to stay in the UK when decisions were made on their claims for protection.

Please support us

Your donation will safeguard our independence and enable us to stand up for fair asylum rights without fear or favour.

You can make a donation via our website:
www.asylumaid.org.uk/pages/give_now.html
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www.asylumaid.org.uk

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Please return this form in an envelope to:
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253-254 Upper Street,
London N1 1RU



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