

women's ASYLUM NEWS

Refugee Women's Resource Project - Asylum Aid - Issue 14 Sept 2001

**In this issue: • RWRP wins FGM asylum case • RWRP Domestic Violence Report
• Other UK News, Projects, Events • International News • Publications**

'I did not understand why I should suffer this kind of harm': RWRP wins FGM asylum case

Last month RWRP won its first Female Genital Mutilation (FGM) asylum case when a young Guinean woman was granted refugee status by the Home Office.

The 19 year old woman had fled her country after having suffered persecution for years at the hands of her father who threatened to get her circumcised. The woman said to Asylum Aid that she had always opposed the practice:¹

'Since I was a child, I have been against female circumcision. I did not understand why I should suffer this kind of harm. Though there were other girls in my village who felt the same, women do not have a voice there and everyone is forced to obey their parents and the community.'

I refused to have female circumcision done to me. When I stood up to my father, I was beaten very badly and threatened. No one in the community would protect me from this continuous ill-treatment. In fact I was shunned for rebelling against the practice.'

When the situation became too dangerous, her mother (who did not want her to be subjected to FGM because of her daughter's ill-health) helped her to escape by arranging for an agent to take her abroad. As the young woman highlighted, this was extremely risky, as they did not know if they could trust the agent and where she was going to go. Yet her experience echoes that of hundreds of women

fleeing gender-based persecution who are forced to take 'illegal' routes due to the increasing difficulties for non-Europeans in travelling to 'Fortress Europe' and other western countries even when they are seeking protection.

The case was argued on the basis that the young woman was '*a member of a social group of young women from Muslim families in Guinea who have not undergone FGM and oppose the practice*', in addition to being a member of the Soussou community which practices FGM. The case was therefore '*based on immutable characteristics [the woman] shares with other women in her home country.*'

The case was also based on evidence that the prevalence of FGM in Guinea and the government's failure to prosecute the practice are indisputable. According to the legal representative, Guinea '*is a country where the ritual is overwhelmingly sanctioned by society and particularly the Soussou, President Conde's ethnic group*'. The major justifications for the continuing practice can be categorized as religious, social (female initiation, and control of sexuality) and customary. Among the Soussou in particular FGM is perceived as a ritual that '*helps socialise girls and prepares them to become good wives*'.

The legal representative argued that if the young woman had returned to Guinea, she would have been '*at the mercy of her father, an agent of persecution*'. Fear of future persecution was also deemed reasonable in the light of the young woman having converted to Christianity by becoming a Jehovah's Witness, a religion that does not allow body mutilation.

¹ Interview, September 2001.

Her claim was also based on the fact that she objected to *'society's expectations [and had] chosen to assert her independence and her political and religious belief that FGM was wrong. (...) Returning her to Guinea would guarantee the violation of her body's integrity and the destruction of her identity as a human being'*.

It is not clear on which Convention grounds the young woman was granted asylum since the Home Office did not explain the basis of its decision. However the decision comes only one month after Lord Rooker, the Minister for Immigration, indicated to the House of Lords that the UK was *'quite ready to recognise as refugees those who have been persecuted by non-state agents as well as those persecuted by the state'*. On FGM cases, he added that *'if FGM does not fit within the specific rules of the 1951 convention, and it was proved that it was taking place, we would grant exceptional leave to remain, even if refugee status were not granted.'*

Note: RWRP is deeply grateful for the help of Vanessa Melendez, Assistant Clinical Professor of Law at the Children and Family Justice Centre (Northwestern Law School Bluhm Legal Clinic, Chicago, USA) in researching background information for this case.

RWRP publishes new Domestic Violence Report

RWRP published a report this month which adds significantly to the growing campaign to forefront the issue of domestic violence for women seeking asylum. The report, **'Refugee Women and Domestic Violence: Country Studies'**, written by RWRP staff Helen Smith and Clare Palmer, gives some background information, summarized below, on the arguments for recognising domestic violence as grounds for protection under the Refugee Convention or the Human Rights Act and goes on to look at the situation for women in five of the main countries of origin of asylum seekers

to the UK – Albania, Bosnia & Herzegovina, China, Iran and Pakistan.

The research aims to enable legal practitioners representing women fleeing domestic violence to realistically assess the strength of a claim for protection under either the Refugee Convention or the Human Rights Act, as well as to raise awareness amongst decision-makers and others involved in the asylum process of the significance of domestic violence for refugee women.

Fifteen countries were initially selected, according to criteria including numbers seeking asylum in the UK, origins and experiences of Asylum Aid's female clients, and a geographical, religious and political spread; future editions will include the remaining countries as well as updates to the first edition.

Each country report consists of sections on the political and human rights context, particularly in relation to women, international legal instruments, domestic violence and the law, the reality of seeking protection and the situation of separated or divorced women. Examples of relevant case law are quoted where possible.

Domestic violence: definitions and terminology

There are many definitions of domestic violence. Some recognize only physical abuse, and some may disregard any perpetrator apart from a spouse.

In order to incorporate and acknowledge the diversity of women's experiences in different contexts, and ensure that they may be made relevant to determination procedures in Britain, we used as a working definition the following:

Domestic violence is the physical, emotional, sexual or financial abuse of women or girls perpetrated by partners, ex-partners, relatives, close friends or their agents, self-appointed or

otherwise.² This violence does not have to occur within the family home.

This definition enables a consistent evaluation of each country's legislation i.e. whether there is specific domestic violence legislation, what forms of violence it recognizes, and how any such legislation defines perpetrator: victim relationships.

Women & refugee and asylum law

Successful claims for asylum under the 1951 Convention must show how an asylum seeker fits the Convention definition of a refugee.

It is only recently that the interpretation of what defines a refugee has been recognized as male-oriented. Many forms of persecution that cause women to seek asylum have fallen outside traditional interpretations of what constitute, for example, "*political opinion*" or "*persecution*", and interpretation of the Convention has discriminated against women.

Due partly to the emergence of international human rights Instruments,³ individuals as well as States have increasingly been recognized as perpetrators of human rights violations, and gender-based discrimination can now be measured against international standards.⁴

² In some societies, community members may be self-appointed perpetrators of abuse against women, who take upon themselves the responsibility to maintain the status of women in the perceived "interests" of the community or wider society.

³ See Stamatopoulou, E. (1995) 'Women's Rights and the United Nations' in Peters, J. & Wolper, A. (eds.) *Women's rights, human rights: international feminist perspectives*, New York, Routledge, 36-48. Such standards have been incorporated into legislation such as the European Convention on Human Rights and the African Charter on Human and Peoples' Rights.

⁴ See von Sternberg, M. R. (2000) 'Battered Women and the Criteria for Refugee Status: 'Private' Persecution and the Emerging Law of State Responsibilities', in US Committee for Refugees (USCR) *World Refugee Survey 2000*; at www.refugees.org/who/whomain.htm ; See also Goldberg, P. (1995) 'Where in the World is There Safety for Me? Women Fleeing Gender-Based Persecution' in Peters, J. & Wolper, A. (eds.) *Women's rights, human rights: international feminist perspectives*, New York, Routledge, 345-355

The need to incorporate into the asylum process an understanding of gender-based forms of human rights abuses has led the Refugee Women's Legal Group to advocate gender guidelines for interpreting the 1951 Convention, and the Immigration Appellate Authority to publish similar guidance.⁵

Domestic violence

The arguments that domestic violence might provide sufficient grounds for a woman to gain protection under the 1951 Convention have essentially focused on interpreting her fear of persecution as due to her "*membership of a particular social group or political opinion*".⁶ The difficulties faced in attempting to recognize domestic violence as grounds for refugee status can be seen as rooted both in traditional, dominant perceptions of domestic violence, and in interpretations of the 1951 Convention that have failed to recognize women's experiences of gender-based abuses as valid.

Firstly, domestic violence, where perpetrators are non-State agents and which for the majority of women, takes place within the context of a current or former intimate relationship, is consistently perceived as a private matter, affecting women as individual members of society, rather than as members of a "*particular social group*".

Secondly, that women who seek State or other protection from perpetrators of domestic violence might be seen as expressing a "*political opinion*" does not fit into common perceptions of what is meant by political opinion. However, in the sense that a claimant's objections to the status quo

⁵ Crawley, H. (2001) *Refugees and Gender: Law and Process*, London, Jordan Publishing Ltd; Immigration Appellate Authority (I.A.A.) (2000) *Asylum Gender Guidelines*, London, Immigration Appellate Authority.

⁶ It is necessary to recognize that arguments need not be restricted to these two criteria alone – individual experiences may indicate substantial evidence that the grounds of the abuse were based on her race, religion or nationality. Nevertheless, the criteria of membership of a particular social group or political opinion are most flexible for interpreting cases of domestic violence under the 1951 Convention.

regarding the position of women, including not tolerating domestic violence, may represent a political challenge to dominant views regarding women's status and position within the family, community or wider society, it *is* arguable that this can be seen as a "*political*" opinion.

In order for a woman fleeing her country of residence due to domestic violence to use this as grounds for protection as a refugee, it must be demonstrated both that she has a well-founded fear of being persecuted, and that this fear is for a Convention reason.

A well-founded fear of being persecuted

It is necessary for a claimant to show that her fear is both subjectively present and "objectively" well-founded.

Evidence that could substantiate the "objective" basis of her fear might include police or medical reports, but in many cases she may not be able to provide such documentation simply because the majority of women in abusive relationships find it extremely difficult to approach police or doctors either for support or for such evidence. This is particularly the case where a woman flees her country and claims asylum. The country reports therefore provide evidence on the lack of legal protection available, and difficulties in accessing such protection as may in theory be in place, which can be used in this context.

As domestic violence involves harm from non-state actors, or private individuals, "persecution" is only likely to be proven if the lack of protection afforded by the home state against domestic violence is such as to indicate that that state is unable or unwilling to discharge its duty to establish and operate a system to protect its own nationals against harm. This might reasonably include an absence of legal provisions, failure to investigate reported domestic violence and / or a failure to bring to justice the perpetrators of domestic violence and / or a failure to ensure that the victims of domestic violence can access support and safety, and again, evidence on these issues is included in the country reports.

It is not only or necessarily past persecution that has to be established, but the reasonable likelihood of future persecution. However, the highly personal nature of an abusive relationship often means that the threat of future violence remains with women for the rest of their lives, particularly if there is inadequate protection available. This is not merely subjective fear. Evidence has also shown that the risk of harm not only continues, but may actually increase after a woman has left a violent relationship.⁷

In some domestic violence cases, the nature of the persecution feared may change once she has left the relationship. For example, a divorcee or a woman living alone may be ill treated on a continuum of discrimination, ostracism, or worse. The stigma experienced by women who have been raped may also result in similar experiences.

The fear is for a Convention reason

In most cases, those given are either her membership of a particular social group or her expression of a political opinion.

"Social group"

In considering the argument that women may belong to a particular social group subject to discrimination, it is essential to evaluate the role of the State and how it fails to offer women protection from harm on the basis of their belonging to that group. Case law, albeit limited, provides valuable guidance when arguing this issue, and some examples are cited in the reports.

The 1999 landmark House of Lords ruling on the cases of Shahanna Sadiq Islam and Syeda Khatoon Shah made an important contribution to the understanding and interpretation of the concept of "*membership of a particular social group*".⁸ These two women from Pakistan had both experienced domestic violence and had

⁷ Binney V., Harkell G., Nixon, J. (1998) *Leaving Violent Men*, Bristol, Women's Aid Federation of England

⁸ *Islam v SSHD; R v IAT ex parte Shah* [1999] INLR 144 HL

been forced to leave their family homes. In their cases they were at risk of being accused of adultery and thus criminal proceedings for "sexual immorality". The crucial issue in this case was whether their fear of persecution was due to a Convention reason.

The applicants' claims for asylum were refused, and eventually taken to the House of Lords, where it was held that the 1951 Convention *should* be interpreted to consider women as a particular social group if they lived in a country that discriminated against them due to their being women.

"Political Opinion"

The dominant interpretation of "political opinion" has been one of party political opposition, but its interpretation under refugee law has been broadened "*to accommodate elements of the claimant's persona that cause her to clash with powerful social and cultural elements*".⁹ It is important to recognize that in many social and cultural contexts, as is indicated by this research, women are often so oppressed that a mere expression of opinion by a word or act that challenges the dominant perception of women's roles may be interpreted as political.

This research hopes to provide contextual information that enables this to be assessed for each country.

Internal Flight

If the woman establishes she has a well founded fear of persecution in one area, usually where her home is located, in domestic violence cases, a decision maker is likely to consider whether it is reasonable to expect her to relocate to another part of her home country. We suggest that submissions on behalf of a woman asylum seeker in such a case must take gender and discrimination into account in legal, cultural, social, economic, and practical matters. In addition, women fleeing domestic violence may experience mental health problems, and there is the issue as to whether

any sanctuary in her home country is durable.¹⁰

The European Convention on Human Rights (ECHR) and domestic violence

Where a domestic violence based claim for protection does not succeed under the 1951 Convention, there may be arguments against removal on human rights and / or compassionate grounds.

Research in the UK has shown that women are frequently still at risk (or even greater risk), of serious harm, or even being killed once they have left an abusive relationship.¹¹ Even with the refuge and support services in the UK, which operate under strict confidentiality measures, women are regularly traced by ex-partners. Many countries have considerably fewer and less developed support services, so the likelihood of a woman securing and maintaining her safety may be considerably reduced. The evidence offered in Section 4 of each country report provides some indication as to the adequacy of these services and how women access them.

There are many other grounds which may need to be considered. For example, many women who have experienced domestic violence suffer from significant emotional and mental health problems. To return a woman to the environment she fled might damage her psychologically or impair her recovery. She might also be faced with confiscation of her property or denial of residence rights to her children. Other factors relevant to single women must also be considered. These might include discrimination against women, few opportunities for her to support herself independently, and housing shortages. Such factors may be exacerbated by social and

¹⁰ See also I.A.A. (2000), op. cit.

¹¹ See Binney *et al* (1998) op. cit.; Mirrlees-Black, C. (1999) *Home Office Research Study 191. Domestic Violence: Findings from a new British Crime Survey self-completion questionnaire*, London, Home Office Research, Development and Statistics Directorate; available at:

<http://www.homeoffice.gov.uk/rds/pdfs/hors191.pdf>

⁹ von Sternberg, (2000) op.cit

cultural stigmas against divorced women, single mothers, or women living alone. Section 5 of each country report considers some of these issues.

The full report is available on our website at www.asylumaid.org.uk - click on Refugee Women's Resource Project. Paper copies can also be ordered from RWRP if required.

News, Projects, and Events

Victory for Oakington detainees

On 7th September the High Court ruled that the Government was acting in breach of the 1998 Human Rights Act by detaining four Kurdish asylum seekers at Oakington reception centre in Cambridgeshire. Since Oakington opened last year, human rights and refugee welfare groups have argued that the camp, with its locked gates which prevent asylum seekers from entering and leaving as they please, has been used for unlawful detention. The ruling finally confirmed this, with the judge Mr Justice Collins, stating that this detention was in breach of the four men's human rights to security and liberty: they were not at risk of absconding, nor were they due to be deported, both of which are lawful grounds for detention. Rather, the Court ruled that they had been detained for administrative ease: i.e. whilst their asylum applications were being processed. Three of the men have since been granted refugee status, and they may all receive compensation.

Although this ruling has major implications for the official status of Oakington and how it is used for 'accommodating' asylum seekers in the future, no formal statement has been made in order to prevent a flux of similar cases from being brought against the Home Office. The Government have appealed against the decision, and there will not be any changes to existing practice until the outcome of the appeal in early October.

UNHCR plans overhaul of protection and resettlement programme in Kenya

According to Jesuit Refugee Services, the acting UNHCR representative in Nairobi, Okoth Obbo, presented a reform plan that '*does evoke real hope and a new found credibility that refugees will be protected and resettled with justice and integrity*'. The new procedures and reformation come after years of insecurity in the refugee camps in Kenya where refugees do not enjoy an official status from the Kenyan authorities. UNHCR has also been highly criticised in the last few years for mismanagement and in particular, as far as women are concerned, lack of guarantee of protection. Recently, there have been allegations of rape and stories of corruption implicating a number of UNHCR staff. 📄
Source: see www.jesref.org, dispatches no. 98, August 2001.

UK (& European) tour for Nicaraguan and Dominican men working on Masculinities and Gender violence

The group will visit several UK and European cities to talk about reducing violence against women by challenging deep-rooted masculine attitudes and behaviour. Refuge reports that '*men from the Nicaragua-based Association of Men Against Violence have been engaged in groundbreaking work on [the subjects] since the mid-1990s [and] the methods developed in Nicaragua have recently been tried in the Dominican Republic with impressive results.*' Part of their work is '*to examine how concepts of masculinities tend to promote and legitimise the use of physical and psychological violence.*'

The group will be touring the UK in October when they will visit Liverpool (1st), Ireland (2-3), Scotland (4-7), London (9-10) and Bristol (Oct 12). 📧📞 For more details please contact Refuge on 020 7395 7700 (fax: 020 7395 7721).

RWRP Resource Centre now open

RWRP's resources are now available for use by women asylum seekers who need to find more information in support of their asylum claims. We have a range of books and articles relating to women's experiences and human rights abuses worldwide.

☎ Women who want to come in to the Project to use our resources should telephone Helen or Clare on 020 7377 5123.

NHS Good Practice Guidelines

Angela Burnett and Yohannes Fassil are in the process of writing NHS Good Practice Guidelines for working with refugees and asylum seekers. If your work concerns the health (in its broadest sense) of refugees and asylum seekers, they would like to know if you would be interested in answering a questionnaire concerning their health and the provision of health care. 📧 Please pass on your details on a.c.burnett@qmw.ac.uk, specifying whether you have a clinical role, or an administrative role, with direct contact.

Website news

📧 **New Website 'Development Goals'** www.developmentgoals.org provide up-to-date information and data on poverty, education, gender equality, health issues and others.

Human Rights Network

The British Council has set up a Human Rights Network which is a news, information and networking tool for the global human rights community. This website provides access to information about organisations in the UK and internationally which are working in human rights – including government departments, NGOs, academic and training institutions. It also gives news about activities, programmes, research, events and publications from these organisations, and provides human rights news and information from around the world.

📧 <http://humanrights.britishcouncil.org>
(thanks to National Alliance of Women's Organisations for this information)

Publications

Separated Children in the UK is a new report by Louise Williamson and Wendy Ayotte which provides an overview of the current problems faced by new arrivals (2,734 unaccompanied children applied for asylum in the UK in 2000).

The report, commissioned by the Refugee Council and Save the Children Fund, is based on a series of interviews with local authorities and refugee groups examining how the children were treated. It also looked at the legal representation they had access to and the standard of accommodation provided.

It reveals a lack of co-ordination in the treatment of refugee children that are being dumped in unsuitable accommodation without proper support after having fled '*unimaginably horrific*' situations and witnessed torture or the murder of a family member. This results in the children facing a '*lottery*' in terms of access to services despite the fact that the Home Office said that unaccompanied children were given priority over other asylum seekers. Source: bbc.co.uk ('UK failing child asylum seekers').

📧 The report is available on the following websites: www.refugeecouncil.org.uk or www.scfuk.org.uk.

Legal Action Group have just published ***Support for Asylum-seekers: a guide to legal and welfare rights***. This publication covers recent changes to asylum and immigration law, with details of the asylum procedure. It also includes information on support and benefits entitlements, and access to housing and community care. There is also in depth coverage of the 1998 Human Rights Act, and its implications for asylum seekers. Extracts of relevant legislation are included as appendices.

The book has been written by legal practitioners with experience of working with asylum seekers, costs £30, and is available from Legal Action Group:

☎ 020 7833 7424; fax 020 7837 6094 or e-mail books@lag.org.uk

women's ASYLUM NEWS

Produced by RWRP at Asylum Aid,
28 Commercial Street
London E1 6LS Tel: 020 7377 5123
Fax: 020 7247 7789
Email: info@asylumaid.org.uk
Website: www.asylumaid.org.uk



Lottery money making a difference

The RWRP is funded by the Community Fund, the Joseph Rowntree Charitable Trust, Oxfam, Womankind Worldwide, Servite Sisters Charitable Trust Fund, Avenue Trust and Law Society Trustees. Any views expressed in this publication are those of the authors. Any legal information in this bulletin is intended as a general guide only, and should not be used as a substitute for legal advice. Any contributions from, or references to, external sources, agencies or individuals do not necessarily reflect the views of Asylum Aid nor receive our endorsement.

Asylum Aid provides free advice and legal representation to asylum seekers and refugees, and campaigns for their rights. Registered as a charity no. 328729
Please fill in and send us the form below if you would like to join or make a donation.

MEMBERSHIP FORM

Name: _____
Address: _____
Postcode: _____ Fax: _____
Email: _____

I wish to join **ASYLUM AID** as a:

Standard Member	(£25.00 p.a.)
Unwaged Member	(£10.00 p.a.)
Affiliated Group	(£100.00 p.a.)

I also wish to make a donation of:

£ _____

Please make all cheques payable to **ASYLUM AID**

GIFT AID DECLARATION

From April 2000, Asylum Aid can recover the basic tax paid on any donation and increase the value of your gift by up to a third. If you are a taxpayer and would like to take advantage of this Gift Aid scheme, please tick below.

Please treat all donations made on or after the date of this declaration as Gift Aid donations until I notify you otherwise.

Signature: _____
Date: _____

Remember to notify us if you no longer pay an amount of income tax equivalent to the tax we reclaim on your donations (currently 28p for every £1 you give).

BANKER'S ORDER FORM

Make your money go further by paying by Standing Order. This reduces the bank charges we pay and the amount of time we spend on administration - money and time which should go towards helping refugees.

To: The Manager, _____ Bank
(Address of Bank) _____
Postcode: _____

Please pay **ASYLUM AID** the sum of £ _____ each month / quarter / year (delete as appropriate) until further notice and debit my Account no: _____ Sort Code: _____ starting on (date): _____

Name: _____
Address: _____
Postcode: _____

Signature: _____

[FOR OFFICE USE ONLY] To: National Westminster Bank plc, PO Box 3AW, 104 Tottenham Court Road, London W1A 3AW. Sort Code: 56-00-31, account no. 63401711