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Women's Asylum News

Women's Project at Asylum Aid

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Gender-related asylum claims in Europe: A comparative analysis of law, policies and practice in nine EU Members States

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Comparative Analysis

The research report "Gender-related asylum claims in Europe" is a comparative analysis of law, policies and practice in Belgium, France, Hungary, Italy, Malta, Romania, Spain, Sweden and the United Kingdom. The report assesses the decision making in gender-related claims for asylum and considers the gender-sensitivity of the asylum procedures in those nine EU Member States. The report also compares reception conditions and detention conditions for women asylum seekers. The report was written in the context of a project whose purpose was to contribute to the harmonisation of gender-sensitive asylum systems across Europe. The comparative analysis demonstrates the disparities between the nine EU Member States but also highlights areas of good practice to encourage EU Member States to work towards a truly gender-sensitive and harmonised asylum process throughout the EU.

The research is based on 60 interviews with women seeking asylum and refugees in the EU from 27 different countries of origin. In addition, data and information was gathered through 132 questionnaires completed by lawyers, advocates, NGOs, reception centres, UNHCR personnel, national authorities and judges.

Overall, the research has demonstrated that harmonisation of gender sensitive refugee status determination, asylum procedures, reception and detention conditions is far from the reality within the nine EU Member States which have been the subject of this study. Member States have seen progress towards a gender-sensitive interpretation of the provisions of the Refugee Convention in law, jurisprudence and State practice. There is a common understanding that the refugee definition can encompass gender-related asylum claims and that the purpose and object of the Refugee Convention require a gender-inclusive and gender-sensitive approach. However, there are vast and worrying disparities in the way different EU Member States handle gender-related asylum claims. As a result, women are not guaranteed anything close to consistent, gender-sensitive treatment when they seek protection in Europe. Women seeking asylum are too often confronted with legislation and policy that fail to meet acceptable standards, while even gender-sensitive policies are not implemented in practice.

International Protection

The comparative analysis highlighted the different recognition rates between the countries researched. For example, whereas Belgium, France, Hungary, Spain and the United Kingdom grant women seeking asylum refugee status more often than subsidiary protection, in Malta and Sweden, the rate of subsidiary protection granted to women is significantly higher than grants of asylum. In Malta in particular there is an extremely high rate of subsidiary protection status granted to women (64%) compared with only 5% who are granted refugee status. Not all countries covered in this study provide gender-disaggregated statistics nationally at all levels of the asylum procedure despite a clear legal obligation to that effect. This makes the assessment of harmonisation between EU Member States more difficult. However, on the basis of the data gathered, it is evident that female asylum seekers are not equally likely to be recognised as refugees and granted international protection in various EU Member States. This is evidence that the main purpose of the Common European Asylum System, namely to achieve harmonisation so that asylum-seekers have an equal opportunity to be recognised as refugees irrespective of where they claim asylum, has simply not been achieved.

Only half of the countries in this study, Malta, Romania, Sweden and the United Kingdom, have adopted national gender guidelines to provide guidance to decision makers in making good quality decisions at first instance. The adoption of such guidance instruments is encouraged in the report and the case is made for EU wide guidelines to assist in the harmonisation process.

Refugee Status Determination Process

A pregnant Nigerian woman was identified as a victim of trafficking in Spain when she applied for asylum in 2010. Despite a favourable report from UNHCR, the authorities rejected her application because of the inconsistency of the information she provided and the fact that she could not evidence the persecution. She was deported to Nigeria despite the fact that both UNHCR and the NGO Women's Link Worldwide repeatedly raised their concerns of the risks of deporting her.

The manner in which decision makers define gender-based forms of harm was examined in the report and the evidence showed that the practice in each Member State varied significantly in terms of recognising gender-based violence as amounting to persecution engaging the Refugee Convention. France, Malta and Romania for example do not always recognise that the risk of being subjected to female genital mutilation may amount to a well-founded fear of persecution.

The United Nations High Commissioner for Refugees (UNHCR) has recommended that all Convention grounds be interpreted from a gendered perspective. The comparative analysis demonstrated that in all the countries researched, gender-related claims for asylum were considered under the Convention ground of a particular social group. Romania is the only country which has passed legislation explicitly adding gender as an additional ground for asylum. Spain and Sweden specifically refer to gender as an example of what can constitute a particular social group. Particular social groups partly defined by gender have been found to exist in Belgium, France, Italy, Romania,

Spain, Sweden and the United Kingdom. These are examples of good practice although as recommended by UNHCR all Convention grounds should be considered in gender-related asylum claims. Overall there were very few indications of the other Convention grounds of political opinion, religion, race or nationality being interpreted in a gender-sensitive way.

The research demonstrated that the assessment of credibility was often at the core of asylum refusals in all the countries covered in the study. However, in Italy and Malta the burden of proof may be lowered in practice in cases of gender-related violence, trauma, rape or vulnerability. The comparative analysis looks at whether late disclosure of sexual violence has a negative impact on the assessment of credibility and whether the psychological effects of trauma were taken into account on how asylum seekers were able to present their claim.

Issues in relation to the availability of and reliance on gender-relevant country of origin information were explored in the comparative study. In Hungary, Malta, Spain, Sweden and the United Kingdom it was observed that a lack of information on gender-related persecution in a specific country was sometimes relied on to refuse asylum claims. This is done without taking into account the documented difficulties in accessing gender-relevant country of origin information due to under-reporting of such types of violence.

The application of the concept of internal flight alternative was examined in the countries covered by this research and the findings showed a considerable variance in the manner in which it was applied. In Italy for example, the concept has not been transposed into national law and France rarely relies on it to refuse asylum claims. Although Hungary, Sweden and the United Kingdom specifically refer to gender as one of the elements that must be taken into account in the consideration of an internal flight alternative, this is not always done in practice.

Asylum Procedure

Afghan women claiming asylum in Hungary and interviewed for this research claimed that only their husbands were informed about the asylum procedure. This is despite the asylum procedure establishing that married applicants and couples should be informed that they are allowed to ask for separate decisions in their cases and should be provided with written confirmation if they want their cases to be decided together.

The comparative analysis highlighted the variety of provisions in asylum procedures and resulting potential protection gaps for women seeking asylum and asylum seekers with gender-related claims. Belgium is the only country whose first instance decision making body provides a gender-specific brochure to asylum seekers. In most other countries, the provision of essential information to asylum seekers is heavily reliant on non-governmental organisations or UNHCR. All the countries covered by this research, except France, recognise in law or in practice that women or asylum seekers with gender-related claims may warrant specific consideration in the asylum procedure. However, the research showed that these were not always implemented in practice. Specific difficulties were identified; for example the non-gender sensitive definition of “new elements” adopted by first instance decision-making authorities in the assessment of subsequent applications for asylum.

Reception Conditions

A woman who was pregnant when she arrived in France confessed: “Before I arrived in France, I had never experienced what it was like to suffer from hunger [...] In Paris, I was hungry, I cried all the time. Neighbours in my hotel brought me apples”. Further, several women seeking asylum hosted in public emergency accommodation talked about their “relentless seek of a bed”, their fear of other homeless persons accommodated in hotels who “take drugs or whisky”, who are “mad” or “violent”. A woman explained: “people get down naked; they want to have sex with you; but you cannot call the police”.

Belgium is the only country that ensures screening of asylum seekers' special reception needs. However, none of the countries researched ensures systematic screening of victims of gender-based violence. Overall, the research demonstrated appalling reception conditions for many asylum seekers and in particular for vulnerable persons such as women and victims of gender-based violence. Pregnant women and mothers of young children usually live in very poor conditions, being denied access to adequate medical care and material support. Difficulties in accessing psychological support were highlighted in France, Sweden and the United Kingdom. Many women interviewed for this research experienced extreme conditions or violence after arriving in France.

Detention Conditions

An asylum seeker who was trafficked to the United Kingdom to work as a domestic servant claimed asylum in 2009. When she was thrown out by her traffickers, she survived by offering work in exchange for a place to stay. She was raped by someone with whom she was staying and was also forced to engage in prostitution. After escaping she sought help from the police and was subsequently arrested. From the police station, she was transferred to Yarls' Wood Immigration Removal Centre and placed in the detained fast-track.

In France, Italy, Malta, Romania and Spain there are no internal complaint mechanisms in detention centres and victims have no other option but to report to the police. Overall, the research demonstrated that the treatment of women and victims of gender-based violence is generally not adapted to their needs in detention centres. Although policy and administrative instructions identify and address gender issues in some countries, such references are generally limited. As a consequence, detention conditions are not consistent across the European Union and safeguards for women asylum seekers' health and well-being are poor.

Conclusion

Women and those fleeing gender-related persecution are entitled to a fair and dignified asylum process regardless of the EU Member State in which they claim asylum. The main finding of this research is the significant disparities between the nine EU Member States compared in this study despite the Common European Asylum System aiming to achieve harmonisation. This means that asylum seekers with gender-related claims do not have an equal chance of being recognised as refugees irrespective of the EU Member State in which they claim asylum and women asylum seekers will be treated significantly differently according to the country of asylum. Clearly, more concerted efforts should be undertaken to achieve a truly gender-sensitive harmonised international protection regime in the EU. This is why the comparative analysis calls on national governments to make sensible, practical reforms to ensure gender-related asylum claims are handled appropriately, and for European institutions to mainstream gender at every level of asylum policy. Asylum Aid hopes to lead advocacy work in the months ahead to turn these recommendations into a reality.

The full report and executive summary can be accessed here:
http://www.asylumaid.org.uk/pages/campaign_for_gender_guidance_across_europe.html.

Legal Issues

Meaning of “independent evidence” of torture for the purpose of immigration detention

AM, R (on the application of) v Secretary of State for the Home Department [2012] EWCA Civ 521 (26 April 2012)¹

This case involved consideration of what constitutes “independent evidence” of torture for the purposes of Chapter 55, Section 55.10, of the Secretary of State’s Enforcement Instructions and Guidance (her published policy on detention). This provides that where there is “independent evidence” that a person has been tortured detention powers should only be used in “very exceptional circumstances”.

The Appellant, AM, claimed that she had been unlawfully detained between 10 October 2008 and 13 November 2008 when she was released on bail. Although she had been detained since 11 April 2008, AM’s new solicitors had submitted fresh representations including two medical reports from the Helen Bamber Foundation on 9 October 2008. On 4 November 2008, the Secretary of State rejected the fresh representations as constituting a new claim for asylum and wholly discounted the two medical reports on the basis of AM’s previous lack of credibility (as found by an immigration judge). The essential issue before the Court of Appeal was whether the medical reports constituted independent evidence that AM had been tortured for the purposes of the detention policy in EIG 55. The Secretary of State and the High Court in the judicial review concluded that the reports were not “independent” because they were based on AM’s own information. In addition the High Court found that continued detention was justified in the circumstances. More precisely, it said that:

“24. The scarring report provided independent evidence that the claimant bore scars in nine areas, two of which she attributed to childhood injury. Of the remaining seven, the first was adjudged by Ms Kralj to be “highly consistent” with the explanation provided to her by the claimant of how she came by it. But it could have been caused by ‘any superficial burn with a solid instrument.’ The balance of the scars were consistent with having been intentionally inflicted by other people. It is clear, not only from the scarring report but also from the narrative part of Ms Kralj’s assessment report, that she believed the claimant, taking everything she said at face value. She was unaware of the history since the claimant’s arrival in this country including a judicial determination that she was not truthful in her accounts. Whether the scars were or were not the result of torture could only be judged by reference to the claimant’s account of what had occurred. Ms Kralj’s scarring report provided independent evidence that the claimant has the nine scars identified. It was independent evidence that seven of them were consistent with deliberately inflicted injury. But the report did not provide independent evidence that the claimant had been tortured because that depended upon accepting the claimant’s account how they were caused...

27. The letter refusing to defer removal made it plain that the UK Border Agency considered the fresh representations, coming so shortly after the failure of a differently expressed challenge, to be a try-on. By the time the letter of 4 November was written and the decision was taken to maintain detention and oppose bail the Secretary of State’s considered view of the new representations was clear. On any view it was appropriate to maintain detention whilst the representations were being considered. Even if there were any evidential basis upon which the claimant could show that she was either mentally ill or there was independent evidence of torture, paragraph 55.16 of the Instructions and Guidance is not in absolute terms but contemplates detention being maintained in very exceptional circumstances. The immediate background to the receipt of these

¹ <http://www.bailii.org/ew/cases/EWCA/Civ/2012/521.html>.

representations provided ample material to support detention very exceptionally pending a decision to apply for judicial review.”

AM is a national of Angola who was ultimately recognised as a refugee by the First Tier Tribunal in June 2010. In the determination, the Tribunal accepted that AM had been detained on Angola, raped and tortured as claimed and that her scars were the result of violent abuse or torture. AM's fresh representations of October 2008 submitted that the earlier immigration judge had erred in the assessment of credibility and AM's previous failure to describe the treatment she had been subjected to by Angolan soldiers or her scarring was because of the sexual nature of the events.

The scarring report was drafted with regard to the Istanbul Protocol. The Court of Appeal disagreed that Ms Kralj, the author of the reports, had taken everything AM said “at face value” and found that she was reporting as an experienced assessor in such matters, and she was conducting a “health assessment”. The Court of Appeal accepted Ms Kralj's expertise and noted that although she had conducted her assessment without the knowledge of AM's litigation history that litigation had been conducted without the benefit of Ms Kralj's reports. The UKBA, in its letter of 4 November 2008, emphasised the immigration judge's rejection of AM's credibility and stated that:

“Nevertheless despite those adverse findings of credibility your client's case has again been reviewed in light of the medical assessment and scar report. However, it is noted that contrary to your assertion that the new objective evidence supports your client's account, it is noted that the scars referred to in the report are slight and mainly restricted to the legs and there is no clear evidence that the scarring was obviously the result of torture or detention...”

Furthermore in considering your client's failure to recall how many of the scars are caused it is contended that if your client had been detained and tortured as claimed, then the precise circumstances of these events would have been so searing as to have engraved themselves including the date and period of detention upon your client's memory, the fact that your client was unable to recall the exact date and length of her detention coupled with her failure to recall the details of her alleged torture has further damaged her credibility...In the circumstances the medical assessment takes your client's case no further.

...In the circumstances it is considered that the timing and circumstances of these late submissions, when taken together with the serious doubts about your client's credibility are just another attempt in a long series of attempts to frustrate your client's removal to Angola...

The Court of Appeal concluded in this case that Ms Kralj's reports constituted independent evidence that AM had been tortured and that:

On the contrary, as Ms Kralj repeatedly observed, AM was reticent and understated. As the judge himself rightly stated, Ms Kralj “believed the claimant”. That belief, following an expert examination and assessment, also constituted independent evidence of torture. Ms Kralj's belief was her own independent belief, even if it was in part based on AM's account. However, the judge was mistaken to suggest that such belief was merely as a result of “taking everything she said at face value”. A fair reading of her reports plainly went very much further than that. If an independent expert's findings, expert opinion, and honest belief (no one suggested that her belief was other than honest) are to be refused the status of independent evidence because, as must inevitably happen, to some extent the expert starts with an account from her client and patient, then practically all meaning would be taken from the clearly important policy that, in the absence of very exceptional circumstances suggesting otherwise, independent evidence of torture makes the victim unsuitable for detention. That conclusion is a fortiori where the independent expert is applying the internationally recognised Istanbul Protocol designed for the reporting on and assessment of signs of torture. A requirement of “evidence” is not the same as a

requirement of proof, conclusive or otherwise. Whether evidence amounts to proof, on any particular standard (and the burden and standard of proof in asylum cases are not high), is a matter of weight and assessment.

The Court went on to hold there were no exceptional circumstances in favour of maintaining AM's detention despite that independent evidence. The Court found that the Secretary of State had failed to give due regard to the significant change which had occurred with the representations of 9 October 2008 and the medical reports. These had to be considered on their own merits despite any past history of negative credibility assessments. In any event, the Secretary of State had failed to invoke the exception of "very exceptional circumstances" for continued detention. Thus the Court of Appeal concluded unanimously that the Secretary of State was in breach of her policy on detention and AM had been unlawfully detained between 24 October and 13 November 2008.

Chinese Family Planning Scheme and risk of forced sterilisation and abortion

AX (family planning scheme) China CG [2012] UKUT 97 (IAC) (16 April 2012)²

AX, the Appellant in this case, is a married woman with two children in the UK. She also claimed that she had been previously married in China and had two children with her former husband although this was not accepted by the Upper Tribunal. On this basis, the Tribunal examined the risk to AX on return to China as a married woman with two unregistered children.

AX claimed asylum because she feared being subjected upon return to China to persecutory ill-treatment, including forced sterilisation, as a consequence of the "one child policy" enforced in China, a policy which she had breached by having more than one child. There was also a second strand to her claim in that as her marriage in China had broken down and her husband had deserted her she would be at risk as a vulnerable single mother. AX's claim for asylum was refused by the Secretary of State in October 2005. Her appeal was rejected by an immigration judge in January 2006 on the basis that her entire account was a fabrication. At the time of her appeal she presented as a single unmarried mother with one child born in the UK and the Tribunal concluded that she would probably be able to register her child on return and her appeal was dismissed on all grounds. AX made an application for reconsideration and reconsideration was ordered on the basis that the level of questioning by the immigration judge during the hearing was such as to offend against the guidance given by the IAT.³ In February 2007, the Tribunal found that the determination contained an error of law and set aside the determination for reconsideration afresh. The current determination remakes the decision.

The Tribunal considered the following issues in this appeal: (a) Penalties for breaching the Chinese family planning scheme and policies; (b) Risk factors in particular provinces; (c) Internal relocation; and (d) Article 8 ECHR aspects of return to China and/or removal from the United Kingdom. The Tribunal summarised its country guidance as follows:

Chinese family planning scheme

(1) In China, all state obligations and benefits depend on the area where a person holds their 'hukou', the name given to the Chinese household registration system. There are different provisions for those holding an 'urban hukou' or a 'rural hukou': in particular, partly because of the difficulties experienced historically by peasants in China, the family planning scheme is more relaxed for those with a 'rural hukou'.

² http://www.baillii.org/uk/cases/UKUT/IAC/2012/00097_ukut_iac_2012_ax_china_cg.html.

³ In the starred determination MNM (Surendran guidelines for Adjudicators) Kenya [2000] UKIAT 00005.

(2) *It is unhelpful (and a mistranslation of the Chinese term) to describe the Chinese family planning scheme as a 'one-child policy', given the current vast range of exceptions to the 'one couple, one child' principle. Special provision is made for 'double-single' couples, where both are only children supporting their parents and their grandparents. The number of children authorised for a married couple, ('authorised children') depends on the provincial regulations and the individual circumstances of the couple. Additional children are referred as 'unauthorised children'.*

(3) *The Chinese family planning scheme expects childbirth to occur within marriage. It encourages 'late' marriage and 'late' first births. 'Late' marriages are defined as age 25 (male) and 23 (female) and 'late' first births from age 24. A birth permit is not usually required for the first birth, but must be obtained before trying to become pregnant with any further children. The Chinese family planning scheme also originally included a requirement for four-year 'birth spacing'. With the passage of time, province after province has abandoned that requirement. Incorrect birth spacing, where this is still a requirement, results in a financial penalty.*

(4) *Breach of the Chinese family planning scheme is a civil matter, not a criminal matter.*

Single-child families

(5) *Parents who restrict themselves to one child qualify for a "Certificate of Honour for Single-Child Parents" (SCP certificate), which entitles them to a range of enhanced benefits throughout their lives, from priority schooling, free medical treatment, longer maternity, paternity and honeymoon leave, priority access to housing and to retirement homes, and enhanced pension provision.*

Multiple-child families

(6) *Any second child, even if authorised, entails the loss of the family's SCP certificate. Loss of a family's SCP results in loss of privileged access to schools, housing, pensions and free medical and contraceptive treatment. Education and medical treatment remain available but are no longer free.*

(7) *Where an unauthorised child is born, the family will encounter additional penalties. Workplace discipline for parents in employment is likely to include demotion or even loss of employment. In addition, a 'social upbringing charge' is payable (SUC), which is based on income, with a down payment of 50% and three years to pay the balance.*

(8) *There are hundreds of thousands of unauthorised children born every year. Family planning officials are not entitled to refuse to register unauthorised children and there is no real risk of a refusal to register a child. Payment for birth permits, for the registration of children, and the imposition of SUC charges for unauthorised births are a significant source of revenue for local family planning authorities. There is a tension between that profitability, and enforcement of the nationally imposed quota of births for the town, county and province, exceeding which can harm officials' careers.*

(9) *The financial consequences for a family of losing its SCP (for having more than one child) and/or of having SUC imposed (for having unauthorised children) and/or suffering disadvantages in terms of access to education, medical treatment, loss of employment, detriment to future employment etc will not, in general, reach the severity threshold to amount to persecution or serious harm or treatment in breach of Article 3.*

(10) *There are regular national campaigns to bring down the birth rates in provinces and local areas which have exceeded the permitted quota. Over-quota birth rates threaten the employment and future careers of birth control officials in those regions, and where there is a national campaign, can result in large scale unlawful crackdowns by local officials in a small*

number of provinces and areas. In such areas, during such large scale crackdowns, human rights abuses can and do occur, resulting in women, and sometimes men, being forcibly sterilised and pregnant women having their pregnancies forcibly terminated. The last such crackdown took place in spring 2010.

Risk factors

(11) In general, for female returnees, there is no real risk of forcible sterilisation or forcible termination in China. However, if a female returnee who has already had her permitted quota of children is being returned at a time when there is a crackdown in her 'hukou' area, accompanied by unlawful practices such as forced abortion or sterilisation, such a returnee would be at real risk of forcible sterilisation or, if she is pregnant at the time, of forcible termination of an unauthorised pregnancy. Outside of these times, such a female returnee may also be able to show an individual risk, notwithstanding the absence of a general risk, where there is credible evidence that she, or members of her family remaining in China, have been threatened with, or have suffered, serious adverse ill-treatment by reason of her breach of the family planning scheme.

(12) Where a female returnee is at real risk of forcible sterilisation or termination of pregnancy in her 'hukou' area, such risk is of persecution, serious harm and Article 3 ill-treatment. The respondent accepted that such risk would be by reason of a Refugee Convention reason, membership of a particular social group, 'women who gave birth in breach of China's family planning scheme'.

(13) Male returnees do not, in general, face a real risk of forcible sterilisation, whether in their 'hukou' area or elsewhere, given the very low rate of sterilisation of males overall, and the even lower rate of forcible sterilisation.

Internal relocation

(14) Where a real risk exists in the 'hukou' area, it may be possible to avoid the risk by moving to a city. Millions of Chinese internal migrants, male and female, live and work in cities where they do not hold an 'urban hukou'. Internal migrant women are required to stay in touch with their 'hukou' area and either return for tri-monthly pregnancy tests or else send back test results. The country evidence does not indicate a real risk of effective pursuit of internal migrant women leading to forcible family planning actions, sterilisation or termination, taking place in their city of migration. Therefore, internal relocation will, in almost all cases, avert the risk in the hukou area. However, internal relocation may not be safe where there is credible evidence of individual pursuit of the returnee or her family, outside the 'hukou' area. Whether it is unduly harsh to expect an individual returnee and her family to relocate in this way will be a question of fact in each case.

The Tribunal concluded that there is not a real risk to AX or her husband of forcible sterilisation despite the social expectation that families will arrange for one of them to be sterilised after the second child. The Tribunal also noted that AX and her husband would be able to make arrangements to pay the "social upbringing charge" for the birth of their unauthorised second child and although the couple would no longer benefit from free birth control, medical treatment and education for the children this would be available at a price. The appeal was thus dismissed under the Refugee Convention, humanitarian protection and Article 3 ECHR. The Tribunal found however that returning AX alone with her children to China would be a disproportionate breach of her and her children's family life under Article 8 ECHR. AX's husband has a separate application pending before the Secretary of State outside the Immigration Rules and can thus not be removed until these have been considered. The Tribunal noted however that returning AX and her husband with their children would not be a breach of Article 8 ECHR.

Preliminary Reference to Court of Justice of the European Union by Dutch Council of State on lesbian and gay asylum claims⁴

The Dutch Council of State has made a preliminary ruling to the Court of Justice of the European Union under article 267 of the Treaty on the Functioning of the European Union. In summary the questions asked are:

1. Whether homosexual asylum seekers constitute a particular social group within the meaning of article 10(1)(d) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted
2. Which “homosexual activities” fall within the scope of the Directive and if so to what extent (i.e.: private and/or public “activities”). Would acts of persecution in relation to these activities lead to the grant of refugee protection provided all other requirements are met?
3. Can homosexual asylum seekers be expected to be discreet on return to their country of origin in order to avoid persecution?
4. Does the mere criminalisation and threat of imprisonment for homosexual activities, which is discriminatory in nature, as stated in the Penal Code of Senegal, amount to an act of persecution, as defined by the Directive? If the answer is negative, under what circumstances is this satisfied?

National News

Metropolitan police criticised for failures during sex-trafficking investigations

Local London police officers and a specialised Metropolitan police squad have been heavily criticised for their handling of investigations into sex-trafficking in London. A report, *Silence On Violence*, written by London Assembly member Andrew Boff, estimates that they have a success rate of less than 1% in finding trafficking victims during brothel raids. Criticisms surround the use of brothel raids as a strategy for targeting trafficking in the capital. For example, West African girls and women, thought to be among the largest group of victims of trafficking, are often more exploited within the community rather than brothels. The Poppy Project, an NGO working with victims of trafficking, has stated that of 197 Nigerian women they have worked with since 2003, only nine of them were referred to them by police. Boff suggests that these ‘heavy-handed’ tactics are instead ‘driving some of these women further into the shadows’. Sex workers are too scared to approach police for help as a result of these raids. A more intelligence-led approach is called for by the report, which is currently being considered by the mayor of London, Boris Johnson’s office.

For the full article: <http://www.guardian.co.uk/uk/2012/mar/19/met-police-sex-trafficking-investigations-criticised?INTCMP=SRCH>.

⁴ http://www.raadvanstate.nl/uitspraken/zoeken_in_uitspraken/zoekresultaat/?verdict_id=NmVO3LaE2Ac%3D – in Dutch.
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Home Office announce concession for Destitute Victims of Domestic Violence

As of 1 April 2012 the Home Office has announced that victims of domestic violence, who came to the UK or were granted leave to stay in the UK as the spouse or partner of a British Citizen or someone settled in the UK, will be able to apply for public funds whilst they make a claim to stay permanently in the UK under the 'domestic violence rule'. The new Destitution Domestic Violence (DDV) concession replaces the successful pilot Sojourner project which was managed by Eaves Housing for Women. This new policy has been welcomed by the Campaign to Abolish No Recourse to Public Funds, which involves over 27 leading women's and human rights groups. Campaigners have vowed, however, to continue working on behalf of women they say remain vulnerable and without a safety net: women in the UK on other visas; overstayers; overseas domestic workers (who can experience gender based violence or abuse and exploitation by their employers); women who have been trafficked into the country). These women, they say, can feel trapped in abusive relationships, fearing detention or deportation if they try to leave. Concerns remain high over new legislative proposals which would deny these women legal aid, effectively preventing them from applying to stay in the country or appealing against a refusal. The campaign has therefore made several recommendations which include ensuring all Department of Work and Pension staff receive adequate training on the DDV concession, that the application process be made available over the telephone (with interpreter services if necessary) not just online and that all victims of gender-based violence are allowed to apply for public housing and benefits as well as permanent settlement in the UK.

For full details on how to apply for the DDV concession see:

<http://www.ukba.homeoffice.gov.uk/visas-immigration/while-in-uk/domesticviolence/>.

For the full statement from the Campaign to Abolish No Recourse to Public Funds see:

http://www.womensaid.org.uk/domestic-violence-articles.asp?itemid=2278&itemTitle=Support+for+Victims+with+No+Recourse+to+Public+Funds+Pilot+%28NRPf%29+Project§ion=00010001002200450001§ionTitle=Articles%3A+BAMER+issues&dm_i=674,32NL,KIQ6K,9MWL,1.

International News

European Union: New legislation to provide union-wide protection for victims of crime

Women who have suffered from domestic abuse in one EU state will be able to access protection across the EU following proposals for new legislative measures. Under the new laws, part of the European Protection Order (EPO) directive, victims of crime will be issued with paperwork detailing their case which can then be presented to police forces across the EU should they feel at risk or need to seek further protection. Currently, the EPO designates victims of rape, persons with disabilities and victims of human trafficking as "vulnerable" and needing special treatment. Ministers are currently calling for this list to be expanded to include: asylum seekers, and refugees, elderly people and victims of gender-based violence, terrorism, organised crime, violence in close relationships, torture, hate crime, organ trafficking and attempted homicide. Bulgarian liberal MEP Antonyia Parvanova, the rapporteur for women's rights, has been particularly active in highlighting the need to recognise the particular problem of gender-based violence, with women frequently suffering from violence that is hidden or not reported.

For the full article see: <http://euobserver.com/22/116074>.

Indonesia: Gender equality bill blocked under Islamist pressure

A gender equality bill has been withdrawn by the Indonesian parliament following formal objections from six Islamist groups. They contend that some of the contents of the bill conflict with Islamic values, a complaint that is taken very seriously in a country where the majority of citizens follow the Muslim faith. For example the bill encourages equality when dealing with inheritance, rather than the Islamic Sharia law principle which favours men in these matters. Other proposals, to allow women to choose their marriage partners and to legalise same-sex marriage have caused outrage. Finally it has been claimed that the bill's intention to allow women to seek and be given employment of their choice will in fact lead to conflicts within marriages. A spokesperson for one group, Hizbut Tahrir Indonesia (HTI) claimed that this was the reason why divorce rates are high among female teachers, as their independent incomes can encourage feelings of superiority over their husbands. Feminist groups and NGOs, who have backed the bill, have been accused of inflaming public attitudes to attract funds, using data that lacks credibility. The bill was designed to bring Indonesia into line with the United Nations convention on the elimination of all forms of discrimination against women (CEDAW), which Indonesia ratified in 1984. Some commentators believe that it will be passed and that this stalling is temporary but at the moment its future remains uncertain.

For the full article see: <http://www.ipsnews.net/news.asp?idnews=107725>.

Ireland: Coalition formed to protect migrant women from domestic abuse

Nine Irish NGOs have joined forces to form the Coalition on Domestic Violence. The Coalition believes that Ireland should introduce a legal provision to allow non-Irish women to safely and expeditiously remove themselves from situations of domestic abuse. Currently those women who enter Ireland on spousal visas are not able to stay in the country if this relationship ends. As a result, if these women were to suffer from domestic abuse they face a choice between being forced to leave or forced to stay in an abusive household. The Coalition are calling on the Irish government to follow the example of the UK in allowing women who have suffered from domestic abuse to make their own independent claims for leave to remain. Currently, this is only done on a discretionary, case by case basis, by the Minister for Justice and Equality. According to Catherine Cosgrave, Solicitor with the Immigrant Council of Ireland, "these decisions are made without any clear administrative guidelines. Ireland needs a statutory provision for the granting of an independent residency permit to bring the law in line with what is now the recognised international position." The member organisations of the Coalition on Domestic Violence are: Longford Womens' Link, Sonas, the Immigrant Council of Ireland, AkiDwA, the Domestic Violence Advocacy Service, Womens' Aid, and Doras Luimnif.

For the full article see: <http://www.womensaid.ie/newsevents/2012/03/05/reform-of-immigration-rules-needed-to-protect-migr/>.

Liberia: Journalist in hiding after story on female genital mutilation

A female journalist is in hiding after her story on female genital mutilation (FGM) was published in the newspaper Front Page Africa. Published in March to coincide with International Women's Day, the story angered tribeswomen from the Sande tribe, who continue to perform the procedure. Mae Azango has since received threats via phone and email to her office and home. The Sande tribe take a vow of secrecy which they felt was broken by the article, as it included an interview with a woman who had undergone the procedure. Within their society, the punishment for speaking out is death. Currently, Liberia and eight other African nations are the only states with no laws banning the procedure, and ten of Liberia's 16 tribes still practice FGM. Azango has vowed to continue her work and campaigning against FGM.

For the full article see: <http://voxxi.com/liberian-journalist-in-hiding-after-story-on-female-genital-cutting-mujer-voxxiview/>.

Morocco: Protests following suicide of rape victim

There has been widespread outrage in Morocco after 16-year-old Amina Filali was driven to suicide. The young woman was forced to marry a man who had raped her, something which is provided for in the Moroccan penal code. Amina swallowed rat poison when, during the marriage, she was severely beaten. Women's rights activists are now putting increased pressure on the Moroccan government to eradicate article 475, which they say grants impunity to rapists, who use the potency of 'family honour' within Moroccan culture to their advantage. The law is an "embarrassment to Morocco's international image of modernity and democracy", according to President of the Democratic League for Women's Rights (LDDF) Fouzia Assouli. The legal age of marriage in Morocco is 18, unless 'special circumstances' make it necessary to allow younger people to marry. This is what enabled Ms Filali's marriage to take place, although this was only following agreement by her family. It was prosecutors who persuaded Ms Filali's father to look at marriage as a solution when he reported his daughter's rape. Activists now want the judge who oversaw the marriage, and the rapist Amina was forced to marry jailed. An online petition has been set up, as has a Facebook group called "We are all Amina Filali". Protests outside the Moroccan parliament have taken place where hundreds of women held signs claiming 'The law has killed Amina'. Activists continue to call on the justice minister to open an enquiry into Amina's death.

For the full article see: <http://www.bbc.co.uk/news/world-africa-17379721> and <http://www.bbc.co.uk/news/world-africa-17416426>.

Russia: St Petersburg passes anti-gay laws

Despite widespread protest, both within Russia and across the globe, the governor of St Petersburg has signed and passed legislation which prevents any reading, writing, speech or debate on anything "gay". Two Russian men have already been arrested under the law, for holding placards stating that 'Being gay is normal'. They are currently waiting to be sentenced by a district magistrate. The "homosexual propaganda" law includes provisions to fine individuals between 5,000 (£108) and 500,000 roubles if they are found guilty of conducting any activity considered to be 'aimed at propagandising sodomy, lesbianism, bisexuality, and transgenderism among minors.' St Petersburg is the fourth Russian city to pass such laws, following Ryazan, Arkhangelsk and Kostroma but gay activists say that it is actually part of a wider national government campaign to suppress protest and other civil liberties. The global gay rights campaign group All Out has called on people to boycott travel to the city until the laws are repealed. The international community has been particularly appalled because they fear the consequences for those involved in St Petersburg's vibrant gay scene. It is not clear how the law will be applied given its vague definitions, but it is expected that it will provide further justification to authorities for the suppression of Gay Pride parades, already regularly banned in Russia. Senior Russian politicians and members of Russia's Orthodox Catholic Church are calling for the laws to be applied nationally, something which is currently being considered by the Duma.

For the full article see: <http://www.guardian.co.uk/world/2012/mar/12/st-petersburg-bans-homosexual-propaganda> and <http://rt.com/politics/people-face-anti-gay-law-417/>.

New Publications

Report by OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, following her visit to the UK, 7-10 March 2011

Organization for Security and Co-operation in Europe, January 2012

This report follows a visit by the OSCE Special Representative Maria Grazia Giammarinaro to the UK in a first of a series of country visits reports designed to 'establish a direct and constructive dialogue with participating States on anti-trafficking policy'. In it she welcomes the introduction, since her visit, by the UK government of their new anti-trafficking policy in July 2011. In discussing the challenges faced by the UK (and elsewhere) in identifying victims, the Special Representative recommends that a more effective human rights-centred approach is taken when tackling trafficking as a form of organised crime, as this can support victims to come forward. Other recommendations on strengthening the UK's work against trafficking include ensuring that the visas of domestic workers employed by diplomatic households are not tied to particular employers, in order to prevent them from being trafficked into domestic servitude and to protect them from exploitation by employers. The Gangmasters Licensing Authority (GLA) should be able to prosecute the new crime of forced labour and its licensing regime should be extended to construction, domestic work/care, and hospitality sectors, which can be vulnerable to trafficking. Notably, she also recommends that a monitoring mechanism is established to review how well the provision of non-punishment of victims of trafficking for any criminal activities they may be forced to commit is applied.

For the full report see: <http://www.unhcr.org/refworld/pdfid/4f32940a2.pdf>.

Getting support for dependants under Section 95 and Section 4 Support

Asylum Support Appeals Project Factsheet 14, April 2012

The latest factsheet from ASAP defines the meaning of dependants for support purposes in relation to both Section 95 and Section 4 Support. It discusses the relevance of a dependant's immigration status and whether they are considered destitute. It also looks at the difficulties unmarried couples may experience when trying to get support for their partners and what to do if the UKBA refuses to add a dependant to a main applicant's support application.

For a copy of the factsheet or find out more contact Gerry Hickey on gerry@asaproject.org.uk or 020 7729 3056.

Women's rights in Uganda: gaps between policy and practice

International Federation for Human Rights, March 2012

This report focuses on the legislative disparities that still exist in Uganda to ensure women's rights are protected. While there have been positive steps, with the introduction of laws which make female genital mutilation illegal and condemning domestic violence, the necessary infrastructure to ensure that these measures are implemented is still lacking. Furthermore, other legislation designed to better protect women, such as the Marriage and Divorce Bill, and the Sexual Offences Act and reforms to the Succession Act which would enable women to inherit property, have stalled.

In fact, the law designed to regulate marriage and divorce have been pending for 14 years. It is due to finally be decided upon in 2012. It would see a minimum marriage age of 18 years for both men and women, give women the right to choose who to marry and enable them to apply for divorce on the basis of cruelty. The law would formally recognise matrimonial property, provide for equitable distribution of property in case of divorce and would even give certain property rights to those who co-habit. These are all very positive objectives. However the bill will not necessarily go far enough to deal with all the infringements upon women's rights that occur in Uganda. For example, the bill will not apply to Muslim marriages, meaning Ugandan Muslim women will not have the same rights. Polygamy will remain legal and the concept of the 'bride price' is not challenged either by this law. It is clear women across Uganda will still face inequality due to customs which are designed to benefit men.

With regards to the laws which have been passed, the biggest obstacle in allowing Ugandan women to access justice is the cost of the complaints process. As a result, violence against women continues across Uganda. The report points out that strategies to circumnavigate the laws have arisen, with the practice of female genital mutilation (FGM) de-localising across the Kenyan border. The laws against female genital mutilation do not tackle other harmful traditional practices such as forced marriage, abduction of girls and wife sharing.

The report makes a series of recommendations, urging the Ugandan government to urgently introduce pending legislation as well as the necessary regulations, budget, and implementation schemes needed to properly enforce the FGM and Domestic Violence laws.

For the full report see: <http://www.fidh.org/Women-s-rights-in-Uganda-gaps>.

Forced Marriage and Rape of Girls by al-Shabaab

Human Rights Watch, March 2012

As part of their No Place for a Child report, Human Rights Watch (HRW) looks at the treatment of Somali girls and young women by the Islamic militant group al-Shabaab. Girls have been forced into domestic servitude for frontline fighters and those in camps. They have been the frequent victims of rape and sexual assault: in schools, public spaces, and their homes, with little hope of seeing the perpetrators brought to justice. Families fear their girls will be forced into marriage with fighters so much they are fleeing, with many refugees citing this as a reason for their departure.

It is not the case that individual opportunist al-Shabaab fighters are attacking or forcing girls and young women into marriage, rather it is widely adopted strategy across the group. Victims and eyewitnesses have reported to HRW the preaching of marriage with fighters to girls still in school by al-Shabaab members as well as targeted abductions and detention. It is thought to be part of a plan by al-Shabaab to impose an incredibly strict version of Sharia law.

Family members who try to prevent fighters from abducting or assaulting young women have been subjected to violent attacks either from the fighters or from the community. One woman was attacked with a knife for speaking out after the rape of her 17 year old daughter. Her assailants were women who sympathized with al-Shabaab. She was forced to leave her village following death threats.

For the full report see: <http://www.hrw.org/node/105166/section/8>.

'I Had to Run Away': Women and Girls Imprisoned for 'Moral Crimes' in Afghanistan

Human Rights Watch, March 2012

This report reveals the shocking truth of life in Afghanistan for many women. They face rampant discrimination, forced and underage marriage and domestic violence – but these abuses are rarely prosecuted. Rather than supporting them, police officers, judicial and government institutions can turn the tables on them and imprison them for ‘moral crimes’. Running away from your husband is considered to be such a crime and can result in long terms of incarceration. This is despite the fact that it does not appear within the Afghan penal code. Human Rights Watch have estimated that in January 2012 there were approximately 400 women and girls imprisoned in Afghanistan for “moral crimes.” This accounts for half of women (non-juvenile) and almost all female adolescents currently residing in female prisons and juvenile detention centres. While the report focuses on the issue of ‘moral crimes’ it also details the widespread mistreatment and exploitation experienced by women in Afghanistan, despite the major improvements made in rights granted to women since the removal from power of the Taliban in 2001. This includes the introduction in 2009 of a Law on the Elimination of Violence Against Women.

However, as these figures on moral crimes show, women are being penalised for, rather than supported in their attempts to challenge abuse and discrimination. Moreover, many of the women and girls interviewed said their ordeal was not over following the completion of their prison sentence. They said they feared their husbands or family members will kill them for having “shamed” their families when they are eventually released, a fear borne out by the regular occurrence of “honor killings” in Afghanistan. They must instead turn to privately-run shelters, although these can only be found in certain, less conservative, parts of the country and regularly face accusations of being brothels. The report calls on the Afghan government to bring about real reform, through the banning of prosecutions for moral crimes and the proper enforcement of the laws designed to protect women.

For the full report see: <http://www.hrw.org/reports/2012/03/28/i-had-run-away>.

“I’d rather be in prison”: Experiences of Africans in Immigration Removal Centres in the UK

African Health Policy Network, March 2012

This report provides insight into the complexities of detention from the point of view of Africans who are currently or have previously made up a large proportion of those detained in the UK for immigration purposes. Its key findings are:

- 41% of interviewees were experiencing one or more mental illnesses, making mental health a key health concern for detainees. Depression, stress and anxiety were the most common mental health problems reported by all interviewees.
- Mental health support resources are sparse and rarely provided. Five out of seven interviewees with diagnosed mental health conditions stated that they have not been seen by a mental health professional or received counselling during detention. Two interviewees who had been subjected to torture had their claims left uninvestigated and received no referral to specialist support organisations.
- Three of the five interviewees who disclosed being HIV positive experienced interruptions and disruptions in their HIV treatment. Three HIV positive interviewees were subjected to deportation attempts with one man subjected to four deportation attempts.

- Interviewees reported being subjected to violence from escorts, including physical, excessive force and verbal abuse. One woman interviewee reported her shame of being handcuffed in front of her children. Others reported seemingly unwarranted use of handcuffs.

The report calls for an independent inquiry into the effects of detention on the health and wellbeing of those detained, which should particularly consider permitting medical exemption from detention. It demands that indefinite detention come to an end and that standard procedures be brought in to ensure that the health needs of detainees are recognised and supported across all Immigration Removal Centres in the UK. It suggests that external monitoring is essential for ensuring that parity in standards is implemented. Appropriate training should be brought in for staff on medical conditions such as mental health issues and HIV. Finally it calls for guidelines already in force to be properly followed stating that victims of torture should never be detained.

For the full report see: <http://www.ahpn.org/>.

Training and Events

Roundtable debate: How gendered is citizenship?

On 19 April 2012, the Statelessness Programme of Tilburg University brought together selected experts for a roundtable discussion of how gendered citizenship laws are in the 21st century and the impact that this is having on families across the world. The debate also considered what processes have enabled reform in countries that have recently introduced gender equality in the enjoyment of citizenship rights and what more needs to be done to encourage other governments to follow suit.

For a full video coverage of the event see:

http://www.youtube.com/watch?v=P3IWAD_IKxE&list=UUZDaMet_Mi-8VCWXQ0IS5A&index=1&feature=plcp.

PICUM's Annual International Workshop and 2012 PICUM Annual General Assembly

Date and Time: **15 Jun 2012 – 9.00 am – 6.00 pm & 16 Jun 2012 9.00 am - 15:00 pm**

Location: **International Auditorium in Brussels, Belgium**

The Platform for International Cooperation on Undocumented Migrants' (PICUM) Annual International Workshop this year is entitled "*Using Legal Strategies to Enforce Undocumented Migrants Human Rights*". It will explore legal provisions and monitoring mechanisms available at national, regional and international levels for asserting the human rights of undocumented migrants.

If you wish to attend, visit <http://picum.org/en/news/picum-news/33474/> to fill out the online registration form **by Thursday, 7th June 2012**. This event is open to all and there is no registration fee but please note that participants (non-PICUM members) will have to cover their own transport and accommodation costs related to this event.

PICUM Annual General Assembly 2012 will consist of a morning session within the four PICUM working groups (Undocumented Women, Access to Health Care, Undocumented Families and Children and Fair Working Conditions), followed by an afternoon session to discuss key organisational issues and evaluate the work of PICUM.

Charter of rights of women seeking asylum



Charter endorsements: 291

Google group members: 155

British Red Cross conference in Manchester

To mark International Women's Day, the British Red Cross held a conference entitled 'Women and Asylum: Recognising, representing and working together to resolve issues facing women in the asylum system' on the 28th March 2012 at the Martin Harris Centre, University of Manchester. The conference aimed to raise awareness of the barriers to protection faced by women seeking asylum and by women refugees; to recognise the specific challenges faced by women within the asylum system; and to work together with practitioners to develop effective strategies to resolve these issues.

The conference was opened by Tony Lloyd MP, and chaired by Antonia Dunn, British Red Cross SSM for Refugees and Vulnerable Migrants. In the morning, three speakers gave presentations in the plenary session. Nick Scott-Flynn, British Red Cross, gave a concise overview of the issues affecting women refugees and asylum seekers in the UK at the moment, as well as addressing why and how the Red Cross believes we should support them. Debora Singer, Asylum Aid, passionately spoke about the need for a gender-sensitive asylum system, emphasizing the need to respect the rights of women seeking asylum and the consequences that a systematic and systemic failure to do so has had. Ian MacDonald, UKBA, gave an overview of UKBA and spoke about anti-trafficking work.

In the afternoon session, four distinguished representatives held seminars on specific issues facing women in the asylum system. These were: Clare Cochrane from the Centre for the Study of Emotion and Law (Credibility and Seeking Asylum), Nina Held from Freedom from Torture (Rehabilitation after Surviving Torture), Nadia Hussain from Greater Manchester Immigration Aid Unit (Journey of an Asylum Claim), and Anna Musgrave from the Refugee Council with Asli Tedros from WAST Manchester (Surviving Destitution).

137 delegates from 69 voluntary and statutory organizations attended the conference and actively contributed through engagement in seminars, questions to the speaker panel, and enthusiastic networking. The Red Cross was delighted to host such a prominent and diverse range of speakers and seminar facilitators, and hopes the cooperation and collaboration between attendees at the conference will continue to develop and expand.

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:
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