

women's ASYLUM NEWS

Refugee Women's Resource Project - Asylum Aid - Issue 12 July 2001

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RWRP Feedback on Canadian Conference (Part III) In this issue we provide you with more information from the Canadian Conference "Refugee women fleeing Gender-based Persecution" (May 2001). Crucial issues were covered by the workshops providing a full understanding of the conditions and obstacles that women fleeing gender-based persecution have to face (see our May and June editions for more coverage).

▪ **"Persecution" in Convention definition.**

The interpretation of persecution is a key element in the determination of an asylum case and raises two questions: the occurrence of serious harm and the failure of the state to provide protection.

As far as women are concerned, many forms of "serious harm" are unique to them or affect them more than men. Women can be persecuted not only as women (rape, forced abortion or sterilisation, FGM) but also because they are women (repressive dress codes for instance), or both. One speaker illustrated this by giving examples of the various forms of persecution suffered by women in Sierra Leone. For instance, for social reasons (related to poverty), women have to endure early marriage which means they are likely to be faced with early pregnancy too. Young women have also to undergo FGM, a cultural practice that is carried out prior to marriage. In addition to the violations to their body integrity, many women suffer from health related problems. However there are currently no specific laws against FGM in Sierra Leone.

Domestic violence is another long-standing problem towards which there has been a culture of silence, although this is slowly

changing. Yet women have no access to legal advice and protection against DV. On the other hand, it is possible for women who have been victims of rape to take legal action but, because of the social stigma attached to it, cases are underreported or women will drop the charges. Raped children are also ostracised and nobody will marry them.

The interpretation of what constitutes 'persecution', especially as far as gender-based persecution is concerned, varies from one country to another. In Canadian law, the term has been broadly defined in two parts, based on Hathaway's definition of persecution ("the sustained or systematic violation of basic human rights demonstrative of a failure of state protection"):¹ First to be taken into consideration are the types of harm suffered, i.e. social, economic, physical or psychological, and then the accountability of the state, which encompasses toleration and inability to prevent human rights violations or respond to abuses.

In addition, a Canadian court had also recognised in 1984 that serious harm or ill treatment inflicted by private individuals that is condoned or knowingly tolerated by the state also constitutes persecution. This recognition opened the door for many gender-related claims to be recognised. Another crucial element taken into account in such cases is the effectiveness of the legislation in the country of origin (the example given was that of legislation on domestic violence). In the early 1990's forced sterilisation and abortion were also recognised in Canada as grounds for persecution. And so is 'dress code' if women object to it.

¹ J. Hathaway, *The Law of Refugee Status*, Butterworths, 1991, pp104-105.

The main terms in the definition of persecution in Swedish law are '*threat to life or freedom*', '*violation of human rights*', '*harassment*' and '*cumulative discrimination*'. The legal meaning of '*persecution*' was however broadened to include women's experiences with the addition of a new paragraph in the law to take into account specific gender claims. One such claim covered is FGM and a few rape cases were also granted refugee status. Other specific grounds that are recognised for women include sexuality, humanitarian reasons such as medical condition, and lack of state protection.

On the other hand, women fearing other forms of gender-based persecution (than rape and FGM) do not currently get asylum. Domestic violence and fear of honour killing for instance have not yet been accepted as persecution, and the concept of '*social group*' is not recognised. However, in Spring 2001 the Swedish Immigration authorities adopted gender guidelines that are likely to help more women to get asylum.

These presentations on the Canadian and Swedish systems and the discussion that followed highlighted the need to get more recognition for gender-related claims in different countries. A Nigerian woman lawyer stressed that there were many forms of cultural violence against women that had yet to be recognised. Another woman mentioned that whilst Norway acknowledges gender-related persecution, most women get status on humanitarian grounds only.

- As discussed in another workshop (**Convention 'grounds' and gender-related persecution**), the definition and interpretation of the Convention ground of '*particular social group*' is difficult. It was stressed that it is important to adopt a political interpretation of the whole Convention, in which case the gender-related claims will get recognition. For gender related violence such as domestic violence, the '*social group argument*' is not sufficient because it does not cover the reasons why a state failed to protect women

who experienced it. Yet, the lack of state protection for women who experienced abuses as women, and/or because they are women, is very often the result or the consequence of a political decision.

- **The availability of state protection** was the subject of another workshop which looked at the Convention requirement of no state protection in relation to gender-related persecution. States generally consider violations against women as private matters and refuse to take responsibility and/or do not offer adequate protection or response to violations of women's rights. Beyond the legal provision, it is therefore crucial to take into account the capacity of a given state to protect women through the adoption of a number of concrete measures (see also **Legal case p.5**).

Violence against women by non-state agents in the private sphere can also amount to persecution when the state fails to provide adequate protection. Again, the state has a duty to protect systematically and consistently victims beyond the provision of legislation only. For instance, 'women's shelters' which are not run and funded by the state should not be considered as evidence of availability of state protection. Access to state protection may depend on economic and social factors that may prevent women to seek protection. In this case, measures should be taken by the state to reduce the climate where women become victims of violence.

- Domestic violence as a ground for asylum was also discussed in a separate workshop, '**Particular issues relating to domestic violence**'. A judge from the Board of Immigration Appeals in the USA explained that there were two different elements in the definition of a particular social group in relation to domestic violence (in the US): characteristics and causation (or motivation). Domestic violence is not considered a private matter any more (the issue of '*non-state actors*' has become central in such claims) but the judge also stressed that in determining such cases guidance is needed. In addition, she pointed out that in her experience judges

usually pay attention to appropriate supporting evidence and that representatives should not assume that judges have enough knowledge about the situation in other parts of the world. The provision of expert material and testimony is therefore crucial to support such asylum claims in order to help them make fair decisions.

Another speaker talked about domestic violence and the legislation in Mexico. She pointed to the fact that the term '*gender*' is usually missing in the legislation and therefore it makes it difficult for women to seek protection against domestic violence which is not accepted as a ground for divorce in court. Reference to domestic violence in the public policy is also very limited. Such examples demonstrate the need to look not only at the essence of the legislation in place but also the practical implications for women's protection.

▪ **Credibility issues** The discussion aimed to explore how the determination of a claimant's credibility needed to be approached in claims based on gender-related persecution. As judges, the speakers made their presentations from the decision makers' point of view, explaining how they expected the cases to be represented in order to establish a claim. One speaker reviewed and emphasised the importance of four characteristics that judges take into consideration in order to measure the credibility of a case. The characteristics are: '*details*', '*consistency*', '*plausibility*' and '*demeanour*'. Another speaker added that credibility was more important than the essence of the story. In this regard she highlighted the importance of forensic psychological evaluation by experts recognised and accepted by judges, especially in rape claims. In addition, in the USA the concept of '*reasonable explanation*' is recognised in the courts when, for example, there is lack of clarity or discrepancy in the case. '*Reasonable explanation*' can prove the occurrence of the story. To stress its importance, participants were reminded that in Canada, for instance, grounds used for refusing cases on credibility include contradictions, omissions, inconsistency, significant delays in claiming

asylum, lack of corroborative evidence and plausibility.

The complexity of such cases means that quality representation is essential for this type of applications. This should include adequate time in preparation of submission and evidence, as judges will make a decision on a claim on the basis of the evidence provided. Representatives should also be prepared to deal with all issues around the claim that might be raised at the hearing.

▪ The **closing session** provided a summary of recommendations made during the conference but was also dedicated to further comments, recommendations or suggestions. Suggestions included practical issues such as the need to discuss whether as participants to the Conference we should give ourselves a name under which to undertake the proposed follow-up actions; also the need to identify target groups to which we can bring the issues raised during the conference (which will help to keep a focus and a direction for future activities).

RWRP suggested the adoption of an **international chart with minimum standards for the protection of refugee women's rights** (from refugee determination procedures to refugee camp settings) in order to help challenge countries which are infringing these principles and monitor the situation wherever there are refugees and asylum seekers. In the same spirit, another participant proposed to set up a **Refugee Monitoring Project**. Legal experts could also suggest legal challenges and good practice in case law should be disseminated as widely as possible. A lawyer pointed out that members of the legal profession have not fully exhausted the international instruments at their disposal to protect women's rights and much more could be done in this field. The link between persecution and racism and gender and racism has also to be looked at in a meaningful way.

The need to take all issues at international **campaigning** levels was also put forward whilst women's organisations and others could campaign nationally and/or regionally against

foreign policies that 'create' refugee situations, violate women's human rights and/or support regimes that violate such rights. In order to achieve this, better **mechanisms for intensive networking and exchange of information and documentation** were deemed crucial by many. For instance, it was seen essential that organisations dealing with refugees and refugee women should **link with women's organisations** at national, regional and/or international level (in particular by using electronic communication). In this context, it was also suggested several times that a **follow-up conference** should take place **in the South to increase refugee women's participation** and better reporting mechanisms will ensure that refugee women who do not have the opportunity to attend such debates get also their views heard and their experiences shared.

It is expected that the discussions and recommendations be put together in writing and a copy of the report will be sent to all participants in due time.

Female Genital Mutilation & Asylum in the UK: House of Lords probes Minister

On Tuesday 10th July 2001, the Minister of State, Home Office, Lord Rooker was questioned by the House of Lords on the fact that some claims for asylum by women who escaped female genital mutilation (FGM) had been rejected on the ground that they were victims of persecution from individuals, not from the state.

In response to this query and other related questions, Lord Rooker indicated that the United Kingdom was "*quite ready to recognise as refugees those who have been persecuted by non-state agents as well as those persecuted by the state*". The Minister of State also agreed that "*the issue of FGM constitutes torture under the Human Rights Act and Article 3 of the European Convention on Human Rights*" (forced abortions also constitute torture). He did not say however whether he

agreed that the threat of FGM *per se* should be a ground for asylum, as is the case in the United States, Canada and Sweden.

According to the Minister, there are very few cases in the UK based solely on threat of FGM and other factors will have to be looked at. However 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.*"

From the minister's point of view, other elements to take into consideration include the fact that FGM is not necessarily done with the connivance or acceptance of the government. Also, the Minister suggested that a woman could be returned to another part of her country where FGM is not practiced, unless the country is ravaged by civil war, in which case "*it would be extremely unwise and inhuman to return a person to such a country*".

However even if the state does not necessarily endorse the practice or has outlawed it, it remains responsible under international law for failing to take the necessary steps to prevent (and provide legal redress for) abuse and acts of torture or violations of human rights such as FGM. FGM constitutes both serious harm and ill treatment and if the state is unwilling or unable to provide protection, it constitutes '*persecution*' within the meaning of the Refugee Convention. It is therefore not clear why a woman in fear of FGM should not be granted refugee status, or ILR as a refugee, or an equivalent status under the Human Rights Act, instead of ELR (as has been recognized in countries such as the Canada, Sweden and the United States).

When probed further on the risk women would still face even if they move to another part of the country, the Minister said that each claim "*will have to be judged on its individual circumstances and merits*". One of the Lords also suggested that the Home Office country reports should include the fact that a country is not able to provide adequate protection, in order to make this information available to

Home Office staff including entry clearance officers. Lord Rooker said he took the suggestion on board.

Legal Success: Thai Trafficking case

in USA A Thai woman (of Chinese origin) who was trafficked to the USA was granted asylum by the Immigration Court of Chicago, Illinois by a decision given on June 18, 2001. She was initially threatened with a removal order when the immigration authority found by her own admission that she was using a false passport.

The asylum seeker had been approached by a woman in a local disco who promised her great working opportunities in the USA. She agreed to travel to the USA and was accompanied by a middle-woman whom she met on the plane and who told her what to say and do once they arrived to the USA. However, when questioned by the Immigration officials, the woman admitted that she was travelling using non-valid travel documentation and was accompanied by another woman. She was issued with removal proceedings whilst the middle-woman was subsequently apprehended and convicted in Illinois for the offence of alien smuggling.

The respondent denied removability and sought relief in the form of asylum, withholding of removal under section 241(b)(3) (USA law) and withholding removal under the Torture Convention. Amongst other issues, the court found that the respondent had satisfied the test for obtaining asylum based on membership in a particular social group. Based on expert evidence, the court concluded that *'a member of an ethnic group in Thailand, who has been forced into indentured servitude and deprived of the right of citizenship has "common, immutable characteristics" sufficient to comprise a particular social group.'* According to the court, the respondent was clearly a member of the aforementioned social group as a non-Thai ethnic from the northern hills of Thailand who had no right to citizenship and had been trafficked to the USA. The court also established that the respondent had shown

that she would be persecuted on *'account of her membership in that group as 'at a minimum, persecution includes conduct that threatens a person's life or freedom'.*

The respondent testified in court that she feared returning to Thailand for fear of retribution from her traffickers because she had played a major role in bringing one of them to justice. She also stated that she had spoken to her boyfriend who told her that *'people'* came to the shop she had been working in looking for her because she owes her traffickers money. Moreover the woman who had offered her a job in the shop had had demands for money made to her and had gone missing. The court agreed that the respondent's fear was *'genuine and reasonable in light of [her] credible testimony'* and that the only remaining issue was whether she *'will suffer harm that cannot be protected by the government of Thailand.'*

The Court agreed that the *'government [of Thailand] is doing little or nothing to cease the victimization of women and children'*. Two experts also added to the evidence. One wrote: *'there can be no question but that the significant trafficking in women through Don Muang airport in Bangkok enjoys the cooperation and/or complicity of many police and immigration officials in Thailand even though such cooperation and/or complicity is clearly illegal according to Thai law.'* (Keyes affidavit). Another expert² declared that a *'significant number of undocumented and/or unregistered women and girls living in Thailand (...) suffer from policies and practices that makes them vulnerable both to abuses in Thailand and to being trafficked abroad'*. He explained that people who lack Thai citizenship and legal residency status are not allowed to get primary school diplomas, *'thereby preventing them from attending higher education and limiting future employment opportunities.'* In addition, they cannot obtain a passport through legal channels or turn to

² Kinsey Dinan, author of *'Owed Justice: Thai Women Trafficked into Debt Bondage in Japan'*, Human Rights Watch, September 2000.

the police or other officials for protection and/or assistance without risking deportation. The combination of these factors exacerbates women's vulnerability to trafficking when they show an interest in working abroad.

UK News: UK breaks international guidelines by jailing torture victims seeking asylum with no conviction According to the United Nations High Commission for Refugees, Britain is the only country in the European Union to jail asylum seekers who have been victims of torture and yet had not been convicted of any offence. Despite the fact that the Home Office spoke of "*exceptional circumstances*" for such cases that are separated from other prisoners and put under a "*more relaxed regime*", Amnesty International wrote that about 1000 asylum seekers were held in detention in the UK at any given time.³ According to the Medical Foundation (who reported 11 cases between 1st Jan 99 and 23 Jun 2000, some of whom were detained for up to 20 months), the government had "*made a mockery*" of a pledge made in 1998 according to which evidence of torture would "*weigh strongly*" against detaining an asylum seeker (the Home Office admitted it did not know if any torture victims remained in British jails).

New procedure for voucher enquiries As of June 25, 2001 NASS has introduced a new system according to which it will respond to voucher enquiries within 24 hours and allocate four weeks of emergency vouchers per person (£120). This will allow NASS to solve any problem relating to the delivery of vouchers. The new voucher enquiry line is 0845 6000 914.

Despite this new initiative, many refugee agencies and organisations working for refugees and asylum seekers are still calling for the abolition of the voucher scheme, as other issues relating to the use of vouchers, such as poverty, discrimination, racism and humiliation, are not being addressed.

³ AI Report 2001 on the UK's treatment of asylum seekers.

NASS restrictions on Maternity

Entitlements A single one-off maternity payment of £300 is currently granted to a child born of NASS-supported parents. The window for application is between one month before the estimated date of delivery and two weeks after the birth. However RWRP feels that one restriction in the policy is discriminatory and shows a complete lack of sensitivity towards mothers who are asylum seekers: NASS states that '*should a client borrow money in advance of the birth, prior to receiving the payment from NASS, should the baby not live, if the client has not already applied for the payment, no grant will be paid out*'. This means that if a mother had prepared for the birth of her baby, but applied for the grant after the birth of the baby (for one reason or another) – within the two week window – and her baby died during this period, she will not be eligible for a grant (unlike a mother facing the same tragic circumstances but who would have applied prior to the birth). In addition to the grief related to the death of her baby, the mother or family will have to worry about how to reimburse the money borrowed.

All queries for applications about maternity payments must be made in writing (only) to: f.a.o., Erica Chapman, Assessment Section, Voyager House, 30 Wellesley Road, CR9 2AA; or by fax: 020 8633 0213.

UK Projects/Events/Seminars The **Action Resource Development and Information Centre (ARDIC)**, a Birmingham project for refugee women and women asylum seekers, needs help with professional advice on funding and designing a newsletter that would be entirely designed and edited by refugee women for the benefit of the local community. If you have any information on the subjects, please contact Julie or Maz at ardic@supanet.com, or write to Ardic, 48 Cherry Orchard Road, Handsworth Wood, Birmingham B20 2LD.

Erratum In our June Bulletin we publicised the current research work carried out by Interights and CIMEL with the heading:

'Research work on "Honour" Killings'. As one can read from the text, the **research is about 'Crimes of Honour'**, which include but are not restricted to honour killings. Our apologies.

OISC Advisory Panel The Office of the Immigration Services Commissioner (OISC) is inviting expressions of interest from people to join its advisory panel which will review and comment on the OISC's work, and to provide an external perspective on the OISC's plans and performance. Anyone interested in joining the panel should telephone the OISC for an application pack: 020 7211 1517. Expressions of interest should be received by 31st August.

AI's work on Gender and Asylum Aid

Amnesty International has started a consultation process with a number of NGOs and experts working for and with refugee women and women asylum seekers. A seminar was held in mid-July in order to help AI to identify key issues specifically affecting women refugees and asylum seekers, to build links between Amnesty and other organisations and to facilitate co-operation for other organisations among themselves. The aim of this process is to identify any lobby or campaign goals or other needs that Amnesty might be able to assist with whilst working together with other organisations. If you would like to contribute, especially as a woman asylum seeker or refugee, please contact Heather Harvey at AI, 99-119 Rosebery Avenue, London EC1R 4RE or email: Heather.Harvey@amnesty.org.uk

Rights of Women is organising a series of training courses in September including a course on 'Domestic Violence DIY Handbook' and one on 'Human Rights: an introduction to the essentials of the Human Rights Act 1998'. For full details on the courses, costs and registration, please contact Jane Sendall on 020 7251 6575/6.

International News: Woman stoned to death by Iran On July 11, 2001 Maryam Ayoobi, mother of two, was stoned to death by the Islamic Republic of Iran for committing adultery. She had been arrested a year before

and sentenced to death. Despite the launch of a global campaign to condemn the sentence by the International Committee against Stoning (ICAS), the Iranian authorities carried on the killing and continue to torture to death women and men alike by stoning. ICAS members, comprising 150 organisations and individuals, have condemned the killing and calls for those responsible, including the ruling authorities, to be put on trial for crimes against humanity. ICAS can be contacted on (0049) 0177 569 2413, fax: (0049) 0201 248 8510 or by writing to Mina Ahadi, Co-ordinator on minaahadi@aol.com

International Conferences

Amnesty International Women's Action Network and Action Committee on Women's Rights in Iran-Toronto are organising a Conference on **Racism, Cultural Relativism and Women's Rights** in Toronto, Canada on 14 August 2001. For full details please contact Jennifer on (00 1) 416 778 7789 or jenniferfoulds@hotmail.com, or Shiva on (00 1) 416 335 4735 or acwrit@hotmail.com.

Publications

Children's Book Prize for Asylum Story 'The Other Side of Truth' by Beverley Naidoo won the Carnegie Medal awarded annually by 11 children of the Library Association who form the judging panel. The book relates the tale of a Nigerian brother and sister fleeing oppression under General Abacha's dictatorship and seeking asylum in the UK (Published by Penguin, August 2000).

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