

women's ASYLUM NEWS

Refugee Women's Resource Project - Asylum Aid - Issue 8 March 2001

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'Internal Flight': Refugee Women and the Issue of Safety in national and regional contexts

Violations of human rights and gender-based violence in particular increase dramatically during war and armed conflicts. But sexual violence against women (and men) is also high in many countries where women are victims of political repression whether they are politically active or not. In all these circumstances, women are often forced to flee their homes in search for safety for them and their children. As a result, between 75 and 80 per cent of the world's refugee population are estimated to be women and children.

Despite this, many are told by Home Office officials that they could have lived without fear of being persecuted in other parts of their own country unaffected by repression or political or ethnic violence (This is known as the 'internal flight' option). Our own research on Kenyan women's cases revealed that over a quarter of women had been told they should have opted for internal flight. In some cases, women were also advised that they could have fled to '*neighbouring countries*'. If this is considered true, their case for asylum is likely to be rejected.

Why Internal Flight is not an option for women The 'internal flight' suggestion is unreasonable in any case where persecution has taken place. People who suffer persecution but cannot leave their countries for a number of reasons often live in hiding or in constant fear of being identified, attacked or arrested. But there are other difficulties for women in particular.

When this argument is used to justify a negative decision on their case for asylum, it often demonstrates a total disregard for the predicament women would be likely to face if they remained in their own countries under such circumstances.

Women who have to flee their homes and leave their family and the support of a community environment behind will not find such support in another part of the country which rarely provides the level of social support and economic opportunities available in relatively stable countries. Living as single women or single mothers, they might be more vulnerable to sexual attacks and they might also be socially ostracised and marginalised. In addition, in most places, it will be extremely difficult for them to find economic opportunities to look after themselves and their children without putting their safety or their dignity at risk. The great majority of refugee women do not have access to land and property or any other form of assets.

Lack of safety in camps If, as the Home Office also suggests in some cases, women choose to flee to another neighbouring country, their chances of living in a safe environment are slim. For instance, it is widely accepted by refugee agencies that sexual violence occurs during flight from the country of origin and in the country of asylum. Women living in refugee camps are vulnerable to many forms of violence, including domestic violence, rape and sexual enslavement. It is not rare to see violence being exacerbated by the living conditions in camps – where occupational and employment activities for men in particular are often limited. Linda Hitchcox (in *Migrant women*, 1996) reported on the cases of Vietnamese women who lived in constant fear

of criminal gang activities whilst in a detention centre in Hong Kong around 1990. The women who lived in a common dormitory locked the door each night for four months and took turn to stay up on guard before asking for protection. The incidence of sexual violence in camps in South East Asia was such a major problem that it prompted UNHCR to develop general guidelines on the issue. It took almost another ten years before any meaningful measures were taken by refugee agencies and UNHCR staff alike to fully integrate gender safety issues in the design and conception of refugee camps (such as in the camps in Tanzania). In too many cases however such measures are covered by earmarked funding from international donors and therefore dependent on political will.

To this day, refugee women living in camps in the North East and North West of Kenya are still victims of extremely high levels of violence. Not only do they live in a region which was described as a “nerve centre for arms trafficking”, they also suffer gender-based violence such as domestic violence and sexual assaults on a daily basis within and outside the camps’ boundaries. Although some of the violent incidents against women can be avoided with better camp design and planning, other forms are often accepted as cultural or social norms and seen as domestic matters. According to a recent UNHCR report, “*much of the violence experienced by refugees in Kenya is inflicted upon them by members of their own family and community*” (Jeff Crisp, in *Refugee World*, Dec 1999). Human Watch Report reported a similar situation – high levels of violence against women as well as a climate of lawlessness and banditry – when they monitored the situation in the camps in Tanzania. Many of the Burundian women interviewed by the human rights organisation “*bore scars and other physical evidence of beatings by their husbands or partners*” (www.hrw.org/reports/2000/tanzania)

Vulnerability to military attacks and local hostility In areas of great instability, refugees can face an additional threat from the local military or militia who do not distinguish

between refugee population and rebel groups from neighbouring countries. In this situation, refugee women are easily targeted. In October 2000, 435 Liberian refugees were forced to return to Monrovia after they were attacked by Guinean security forces. Many women were raped. A month earlier, refugee women from Liberia, Sierra Leone and Burkina Faso had been beaten and raped by Guinean soldiers after thousands of refugees were rounded up in the capital. They were accused of fuelling a rebellion. As in Tanzania, politicians also accused them of causing economic hardship and instability. In the Great Lakes, 148 Tutsi refugees from the Democratic Republic of Congo were killed in a refugee camp in Rwanda in August 1997. They had fled persecution and violence in their country where Hutu extremists had found sanctuary first in the refugee camps and then in the volcanic area of the North Kivu.

In many cases, refugee populations live in areas with serious pre-existing needs in terms of food security and availability of community services or institutional support. Local resources may become considerably stretched whilst on the other hand, refugees may receive more external aid than the local population. This situation can create a lot of tension and women are particularly vulnerable. The tension is also high when the camps are set up close to the border. An example is given with the camps in Kigoma and Kagera provinces in Western Tanzania. They are currently hosting a refugee population of several hundred thousand. Last year only, incidents of robberies, theft of crops and rapes were reported to be on the increase and resulted in a growing anti-refugee sentiment amongst the locals. In May 1999, a quarter of Burundian refugee women were estimated by Refugee International to have been the victim of severe sexual assault, including rape. Most of these attacks occur when women are carrying out essential daily tasks such as collecting firewood or vegetables or looking for employment in local villages. But other attacks occur in retaliation of incidents that are related to the refugee population. Human Rights Watch reported that in May 1999 about fifty

refugee women had alleged to have been raped by more than a hundred Tanzanian men following the death of a local school teacher.

Abuse by UN forces Even when some forms of international protection are provided, women and children remain at risk. There is a worrying trend of sexual abuse of young girls and boys by peacekeeping forces. Carolyn Nordstrom (Engendering Forced Migration, ed. Doreen Indra, 1999) wrote that “*a significant number [of peacekeepers in Mozambique] abused the rights of girls (and boys)*”. UN soldiers have also been accused of sexual abuses in Bosnia (see also below p.5) and Cambodia where the head of the UN mission, Yasushi Akashi, condoned the abuses by saying that young “*hot-blooded soldiers had a right to drink a few beers and chase after ‘young beautiful things of the opposite sex’*” (quoted by Nordstrom: in Engendering Forced Migration: 70). There has been no prosecution or conviction of UN soldier to date in relation to these abuses.

No legal or other forms of protection From these examples it is clear that as UNHCR put it, “*in the case of women and children abuses and problems can be repeated over and over again (...) even when they reach apparent safety in a neighbouring country*” (www.unhcr.ch/pubs/rm111/rm11108.htm). Wherever they are, the core issue for refugee women and children living in unstable or conflict zones remains that of protection.

Violence against refugee women is very often compounded by a lack of effective physical protection and little or no legal protection, especially as far as gender issues are concerned. In Kenya, refugee women have very few avenues to seek protection outside the male dominated traditional justice system set up in the camps. The regions in which the camps are set up (North East and North West) are notorious for being under-developed and this is particularly true as far as the judicial system is concerned. People have to travel over 100km before they can find any court. In addition, refugee women have to face the

same legal shortcomings as Kenyan women. Law enforcement agents are also generally unhelpful and there have been allegations from human rights groups that the police are involved in violence against refugees. Despite its responsibility under international law, the Kenyan government has not provided the level of protection required. Likewise, in Tanzania refugee women do not have the financial resources to travel to the nearest police station, let alone the court, whilst government resources provided to protect them in the camps remain insufficient. As a result, measures of protection are often introduced by refugee agencies themselves but as mentioned before they are also conditional on external funding.

In the conditions described above, it is difficult to see where refugee women can find protection and live without fear for their lives or their dignity after they have fled their homes. Refugee women, like any woman, should have the right to live free of such fears. If this means that they are compelled to flee to countries such as the UK, their cases should not be rejected without trying to understand this ‘choice’ by adequately examining the risks they could have been confronted with had they chosen the ‘internal’ or ‘regional’ flight option.

Legal Successes for Women Asylum Seekers: Mass Rape ruled as a war crime in the Hague

A substantial legal battle was won for women victims of conflict all over the world when the International War Crimes Tribunal (IWCT) in the Hague gave its judgment in the case of three Bosnian Serbs accused of torture and forcing Muslim women into sexual slavery in 1992 and 1993 in Bosnia Herzegovina. For the first time in history, a tribunal charged sexual slavery as a crime against humanity, a charge which is second in gravity only to genocide. The judge concluded that rape had been used as an “*instrument of terror*” and that Muslim women were abused because of their ethnicity. A European Commission estimated that there had been 20,000 rape victims in

Bosnia, whilst less conservative estimates put the figure as high as 60,000.

The decision is expected to have far-reaching implications in other war crimes trials, such as in East Timor, Kosovo and Rwanda and might constitute a legal opening for “comfort women” used by Japanese soldiers who have so far been denied recognition and compensation by the Japanese government. Protocol II additional to the Geneva Conventions prohibits “*humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault*” and this “*at any time and at any place whatsoever*” (art.4, Fundamental Guarantees). However, until the judgment on 22nd February 2001, systematic rape or sexual enslavement was “*only*” considered as a violation of the customs of war (which was the position taken by the Nuremberg and Tokyo tribunals).

In addition to the IWCT, the International Criminal Tribunal for Rwanda (ICTR) has also made it clear that rape is to be taken seriously as a war crime. In year 2000 Alfred Musema was found guilty of genocide, extermination and one count of rape. However sexual enslavement is now also legally recognised as a crime against humanity which means that perpetrators can be held to account.

Obstacles to prosecution of Sexual Violence in War

In the Hague, as in Arusha (ICTR), Rwanda or Yugoslavia, the prosecution of rape and sexual enslavement perpetrators face some major obstacles:

Victims/survivors of sexual violence were reluctant to come forward to speak about their experiences often for cultural and social reasons but also because they might fear reprisals. It is therefore necessary that such witnesses are protected by a number of measures so as to they are not publicly identified. As recently as in 2000 the United Nations Transitional Administration for East Timor (UNTAET) was under fierce criticism for initially failing to conduct the investigations of crimes of sexual violence in a confidential manner to ensure women's identity were

protected (Human Rights Watch -HRW, The role of the International Community in Women's Rights report, 2001).

It is also imperative that the victims be provided with medical care and counselling as soon as possible. Tribunals should assist in this provision especially as it might also help gathering evidence of sexual violence. HRW reports that the absence of corroborating medical evidence is one of the major difficulties in obtaining convictions for rape and sexual abuse due to the high evidentiary standards required by the tribunal.

In addition, the lack of a comprehensive investigation of war crimes and crimes against humanity including expert documentation and investigation of crimes of sexual violence can undermine the case. The UN team carrying the investigation into sexual violence in East Timor had initially not deemed it necessary to include expert investigators in crimes of sexual violence.

Failure to take into consideration any of these issues means that many women and men who suffered rape and sexual violence will remain reluctant to come forward to speak about their experiences. As a result, a large number of perpetrators will enjoy immunity from prosecution whilst for those brought to justice sentences might not reflect the gravity of the charges.

Bosnian Women's angry at verdict

Despite a combined tariff of 60 years in jail for the three defendants at the Hague tribunal, a group of Muslim women from Sarajevo reacted angrily as they dismissed the sentences as a minimum punishment for the charges. Bosnian women's reaction to the verdict highlights the extent of the crimes perpetrated and the fact that many perpetrators of rape or mass rape (some of the victims were as young as 12) will never be brought to justice.

Such shortcomings include the fact that UN forces, including senior UN officials, were also involved in the rape of Bosnian women (in particular in the 'Kontiki' camp in Vogosca near

Sarajevo, otherwise known as 'Chez Sonja') but none of them is ever likely to face prosecution charges (for more details on this see in particular Jean-Franklin Narodetzki, 'Nuits serbes et brouillards occidentaux', L'esprit Frappeur, Paris, 1999, p.82)

Some argue that UN staff immunity from prosecution is part of a wider agenda: By supporting the Serbs and therefore implicitly their politics of ethnic cleansing (of which the rape and impregnation of Muslim women so as to bear Serbian babies was an element), some Western governments are also liable to face charges for crimes against humanity. Such charges against the UK were dropped by Bosnia in January 1994 after an array of western governments threatened to suspend any form of international aid to the country (Western responsibility in the Bosnian war is widely covered by J-F Narodetzki, see above).

Domestic Violence: Interpretation of grounds for political asylum broadened in US Court of Appeals

On March 21, the US Federal Ninth Circuit Court of Appeals published its decision in Aguirre-Cervantes v. INS. The Court ruled in favour of a 19 year-old Mexican woman against her deportation as she said she would be abused by her father if she were forced to return.

Rosalba Aguirre-Cervantes testified that she had suffered weekly and sometimes daily severe beatings by her father who has also been abusing her mother and six other siblings. Despite serious injuries, her father refused to allow her to seek medical treatment whilst her mother prevented her to go to the police by telling her that her father had the right to treat her as he liked. According to the evidence provided, domestic violence is widely condoned in Mexico. It is also considered as a domestic matter which means that police are reluctant to intervene. Two of the woman's female siblings had gone to the police but to no avail.

Other documentary evidence provided in the case showed that "as of 1997, in all but a few

of Mexico's thirty-two states, it was 'legal for husbands to use 'correction' discipline to handle wives and children'". Shelters for women victims of domestic violence existed in five states only whilst in the capital the only shelter had eight beds.

Rosalba Aguirre-Cervantes had been granted her request for asylum by an Immigration Judge (IJ) who found that her testimony was "*credible and consistent and detailed*". However the Board of Immigration Appeal vacated this decision. The BIA had agreed that the applicant had suffered persecution but concluded that she was not eligible for asylum on the ground of persecution on account of membership in a particular social group. Although it admitted that the applicant was part of a social group ("*Mexican children who are victims of domestic violence*"), it concluded that such group had not "*adequately be shown to be a particular social group for asylum purposes*". The woman petitioned the Court of Appeals for a review of the BIA order and also the withholding of removal which had not been granted by the IJ.

The panel of three judges ruled in her favour when it concluded that "*the petitioner's immediate family, all of whose members lived together and were subjected to abuse by the petitioner's father constitutes a protected particular social group under the asylum statute*". It also concluded that the woman was "*persecuted by her father on account of her membership in that social group, that she has a well-founded fear of future persecution, and that Mexico is unable or unwilling to interfere with that persecution*". For these reasons, the Court ruled that the 19 year-old woman should be allowed to remain in the US and was entitled to withholding of removal. The petition for review was granted and the court remanded the Attorney General to exercise his discretion and determine whether to grant asylum.

The case constitutes a milestone in the effort to expand the right to political asylum for victims of domestic violence in countries where it is ignored, tolerated or even condoned.

The decision follows a proposal by the Immigration and Naturalization Service (INS) in December last year to make it easier for victims of domestic violence to gain asylum (although it is not clear yet how the proposal will be carried forward by the Bush administration). It has also set a legal precedent in the nine western states covered by the Ninth Circuit which is perceived as one of the most liberal Courts of Appeals in the USA. It is expected that the decision will be cited in other asylum seeker's cases in the rest of the country (the decision can be found on www.ca9.uscourts.gov/ [click on 'Opinions']).

Compensation to refugee couple for illegal imprisonment in the UK

Following the decision by the High Court in 1999 which ruled that asylum seekers could not be prosecuted for using false papers (a violation of art.31 of the 1951 Geneva Convention), a married couple from Albania was awarded £80,000 (£40,000 each) for spending 3 months in prison after being convicted of travelling on forged passports. The solicitor in charge of the case, Fiona Lindsley from Birnberg Peirce & Partners (London) is currently dealing with more cases whilst it is believed that the Home Office is facing many compensation claims on the same basis, some worth considerably more due to the severe trauma detainees had to endure. Between 1994 and 1999, it is estimated that between 500 and 1000 cases have been prosecuted on the same ground each year.

Safety for Refugee Women on UK

Public Transport Besides racial harassment and /or attacks, refugee women are also vulnerable to sexual harassment and need to remain vigilant not only with fellow passengers but also transport staff. We were recently informed of two appalling examples of such experiences on public transport. One woman was prevented by a bus driver from getting off the bus (she was the last one on the bus) and was only able to get away from sexual harassment when she threatened to call the police on her mobile phone. Another woman was followed right to her home also by

a bus driver who bullied her to let him in. She was able to call the police and the man was subsequently arrested. But what would have happened if none of them had had the opportunity to use a telephone to call for help? Unsurprisingly, despite the fact that they escaped with no physical harm, both women are left traumatised. Such harassment leads to women fearing to go outside their homes and contributes to their isolation. We would like therefore to urge refugee women to remain vigilant, especially on public transport, and to report any such cases to the police at the soonest opportunity.

UK New Project/Event

A New Project for Refugee Women in Birmingham! The Action Resource Development and Information Centre (ARDIC) will very soon run a new female refugee and asylum seekers' project. For more details contact Julie or Maz at ardic@supanet.com, or write to Ardic, 48 Cherry Orchard Road, Handsworth Wood, Birmingham B20 2LD.

Should immigration controls be abolished?

Following the publication of the book 'Open borders – the case against immigration controls' (Author Teresa Hayter, to be ordered from Pluto Press, 345 Archway Road, London N6 5AA) JCWI and NAAR are organising a debate and a discussion on Wednesday 4 April from 6.00 – 8.00pm at Hong Kong Theatre, D109 Ground Floor, Clemant House, 99 Aldwych (corner of Strand and Aldwych). For more details contact NAAR on 0207 247 9907

International Agenda

UN Commission on the Status of Women The 45th session of the Commission, which took place earlier this month, covered two thematic issues including the issue of Gender and all forms of discrimination (includ. racism). For information see: <http://www.hric.ca/racism.>, <http://www.un.org/womenwatch/daw/csw/45sess.htm>, <http://www.unhchr.ch/html/racism/index.htm>. This work complements the current European Commission's five-year '**Action programme to combat discrimination**' with a focus on: study and analysis of discrimination and

methods of fighting it; capacity-strengthening for organisations fighting discrimination and raising awareness (www.womenlobby.org).

The International Conference on Refugee Women fleeing Gender-Based Persecution, organised by the Canadian Council for Refugees, is taking place in Montreal 4-6 May 2001 and aims to seek recognition of gender-related persecution as a basis for refugee protection. Besides an open debate on the refugee definition and gender-related persecution, over 20 different workshops will cover issues such as trafficking in women, availability of state protection, credibility issues or particular issues relating to domestic violence. For more information on the agenda and practicalities, contact the CCR on 00 1 514 369 8943 or 227 7223/Fax 00 1 514 277 1447; or see <http://www.web.net/~ccr/gendagen.htm>. The CCR is seeking funds to cover the travel costs of refugee women or NGO representatives who should contact directly Afsaneh Hojabri (ahojabri@total.net) for details.

A Conference on "Men and gender equality" organised by the EU Swedish Presidency will look at issues of men's violence against women, including "**sex slavery**". For more on the conference, go to <http://www.eu2001.se>. The European Women's Lobby is also examining two proposals that should be discussed under the Swedish presidency: '**combating trafficking in human beings and the sexual exploitation of children**' (www.womenlobby.org). At the same time, the lobbying group is calling on the European Union and Member States to mainstream gender into all human rights policies and in particular formally request the states to adopt an asylum policy which recognises gender-specific violations of human rights as legitimate causes for granting asylum.

Publications

A new publication by Heaven Crawley, '**Refugees and gender: Law and Process**' is now available for legal practitioners and other advisers who want to get a comprehensive

understanding of the concepts of gender persecution and a gendered framework for the interpretation of the key elements of the 1951 Refugee Convention. The book provides a theoretical overview and detailed information on the implications of gender in asylum law, policy and practice in the UK. It also contains comparative case-law from other countries and a number of sources of information and support on gender-related issues (Published in Association with the Refugee Women's Legal Group, Jordans, London, February 2001, ISBN 0 85308 690 7, £15). To order the publication on-line, see www.jordanpublishing.co.uk.

The much acclaimed '**Gender Guidelines for the Determination of Asylum claims in the UK**' produced by the Refugee Women's Legal Group (July 1998) is now available on their website (www.rwlq.org.uk) which has also recently been updated with additional information relevant to refugee and gender-related issues.

Jennifer Langer's latest book as editor, '**Crossing the Border: Voices of Refugees & Exiled Women**', will also be out very soon. Women writers from 11 countries in Africa, Asia, the Middle East, and Southern and Eastern Europe tell us about their stories and memories. The book, which includes articles on women's lives and women's writing in each of the countries, can be obtained from Five Leaves for a special Pre-Publication Offer at £8.99 post free (usual price £9.99). Five Leaves Publications, PO Box 81 Nottingham NG5 4ER, Britain. Tel: 0115 9693597, fiveleaf01@surfaid.org (www.fiveleaves.co.uk).

A report on Turkey '**Asylum Seekers from Turkey: The dangers they flee**' produced after a joint mission to the country in October 2000 (Navita Atreya, David McDowall and Perihan Özbolat) provides various up-to-date information including the general human rights situation in Turkey, the Kurds in Turkish Society, legal procedures and trials as well as the fate of returned asylum seekers and the issue of relatives at risk of torture. Copies are available from Asylum Aid (see p.8) or on our website, www.asylumaid.org.uk.

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