

# Women's Asylum News

## Refugee Women's Resource Project

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### Key cases relating to women asylum seekers in the United States

*Lisa Frydman, Managing Attorney at the Center for Gender and Refugee Studies, Hastings College of the Law, San Francisco contributed the following article discussing recent developments for women asylum seekers in America.*

Historically, the United States has posed a number of obstacles to protect women fleeing gender-based harm. The greatest barrier to protection has been the absence of gender as a category in the definition of a refugee under international and domestic law, which has too often led adjudicators to conclude that women who are harmed *because of gender* are not eligible for refugee status.

Despite these challenges, in 1996 the Board of Immigration Appeals<sup>1</sup> (BIA) granted asylum to a woman who feared female genital cutting (FGC), holding that FGC constitutes persecution, and that women harmed because of gender could be granted protection as members of a particular social group. This seminal decision, known as *Matter of Kasinga*,<sup>2</sup> was a watershed in the struggle for U.S. recognition that women who suffer serious violations of their fundamental human rights are eligible for refugee status. However, in the thirteen years since the *Kasinga* decision, the U.S. has wavered in its commitment to protect women seeking refuge from gendered persecution.

Two recent developments indicate a positive policy shift for refugee women and girls under the Obama administration. In April 2009, the United States Department of Homeland Security (DHS) filed

<sup>1</sup> The Board of Immigration Appeals is the highest immigration appeals tribunal in the United States.

<sup>2</sup> *Matter of Kasinga*, 21 I. & N. Dec. 357 (BIA 1996)

a brief in the case of a Mexican asylum seeker known as *L-R-*, arguing that women fleeing domestic violence may qualify for refugee status. Two months later, the BIA ruled in an *unpublished* decision that *S-F-*, a Senegalese woman who fled an impending forced marriage was eligible for asylum. While both developments are encouraging, securing U.S. recognition of gender-based refugee claims requires vigorous advocacy.

This article provides a brief summary and analysis of both developments and explains their significance to U.S. as well as international gender refugee law.

### **Domestic violence cases and the DHS brief in L-R-Matter of R-A-**

The case of Guatemalan asylum seeker Rody Alvarado embodies the ongoing struggle in gendered claims for protection. Ms. Alvarado suffered years of brutal domestic violence, but was refused protection by the police and courts. She was granted asylum by an immigration judge (IJ), but the BIA reversed the decision. The BIA decision in her case - known as *Matter of R-A*<sup>3</sup> - ruled, in part, that Ms. Alvarado was not a member of a cognizable social group and was not persecuted "on account of" her group membership.

Human rights groups were deeply troubled by the decision and launched a broad-based advocacy campaign calling for its reversal. As a result of sustained advocacy, three Attorneys General's (AG) have certified<sup>4</sup> *R-A-* for review, but no decision has been reached. In 2001, then AG Janet Reno vacated the decision and stayed with the case<sup>5</sup> until regulations that had been proposed by the Department of Justice in 2000<sup>6</sup> were finalized. The proposed regulations were generally considered positive for gender-based claims. The preamble expressly states that the regulations are intended to address gender claims, and to remove the obstacles to these claims posed by the BIA's decision in *Matter of R-A-*. To date regulations have not been issued in a final form.

In 2004, immigration authorities filed a brief to then AG Ashcroft, arguing that Ms. Alvarado qualified for and should be granted asylum.<sup>7</sup> The 2004 brief argued that the benchmark for social group cases is the standard articulated in the BIA's landmark social group decision, *Matter of Acosta*,<sup>8</sup> namely, whether group members share an immutable or fundamental characteristic that members cannot or should not be required to change. According to the DHS, "*married women in Guatemala who are unable to leave the relationship*" satisfied the standard, with gender, nationality, and status in the relationship being immutable characteristics. The brief also took the position that the causal link (or nexus) can be established through direct or circumstantial evidence, including evidence of legal and social norms that permit abuse of group members and embolden persecutors to act. However, AG Ashcroft declined to issue a decision, and the case remained unresolved.

In 2008, then AG Mukasey lifted the stay and remanded *R-A-* to the Board, with an order to decide the case based on developments in BIA jurisprudence, rather than wait for final regulations.<sup>9</sup> The BIA, in turn, has remanded *Matter of R-A-* and other domestic violence cases back to the immigration courts for submission of additional evidence and argument in light of the recent decisions.

The BIA decisions of the 2008 order cites to impose the additional requirements of "*social visibility*" and "*particularity*" for refugee claims based on particular social group.<sup>10</sup> Applicants claiming

<sup>3</sup> *Matter of R-A-*, 22 I. & N. Dec. 906 (BIA 1999), *vacated* and remanded (A.G. 2001).

<sup>4</sup> Attorney General (AG) certification of a decision is an unusual procedure that allows an AG to take jurisdiction over and decide an immigration case.

<sup>5</sup> See Order No. 2379-2001, *vacating* 22 I. & N. Dec. 906 (A.G. 2001), available at: [http://cgrs.uchastings.edu/documents/legal/ag\\_ra\\_order.pdf](http://cgrs.uchastings.edu/documents/legal/ag_ra_order.pdf).

<sup>6</sup> 65 Fed. Reg. No. 236 (December 7, 2000) pp. 76588-98.

<sup>7</sup> See "Department of Homeland Security's position on Respondent's eligibility for relief," February 19, 2004, ("DHS 2004 brief") available at: [http://cgrs.uchastings.edu/documents/legal/dhs\\_brief\\_ra.pdf](http://cgrs.uchastings.edu/documents/legal/dhs_brief_ra.pdf).

<sup>8</sup> *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985).

<sup>9</sup> See *Matter of R-A-*, 24 I. & N. Dec. 629 (A.G. 2008).

<sup>10</sup> See *In re C-A-*, 23 I. & N. Dec. 951 (BIA 2006); *In re A-M-E- & J-G-U*, 24 I. & N. Dec. 69 (BIA 2007), *In re S-E-G-*, 24 I. & N. Dec. 579 (BIA 2008).

membership in a particular social group must not only prove that group members share an immutable or fundamental characteristic, but that (1) the group is visible or recognizable in society, and (2) the group is clearly defined or delineated, such that who is a member of the group is readily determinable. These requirements are particularly burdensome, have consistently been used to deny refugee status, and have posed further obstacles in gender-based cases.

The BIA has tried to justify these requirements by saying that they are consistent with the United Nations High Commissioner for Refugees (UNHCR) guidelines on social group claims.<sup>11</sup> However, UNHCR itself has repeatedly stated that this is not correct. UNHCR's guidelines provide *alternative* approaches to social group determinations, suggesting that social group may be established when group members share *either* an immutable/fundamental characteristic *or* a characteristic that results in their being perceived as a group by society, *not both*.

### **DHS Brief in L-R-**

Even after the DHS filed its 2004 brief in *R-A-*, DHS trial attorneys frequently opposed grants of refugee status in domestic violence cases, arguing that applicants in such cases were not members of a particular social group. In fact, this was the case in the DHS's first (2008) brief to the BIA in the case of Mexican asylum seeker *L-R-*, who suffered years of sexual assault and domestic abuse. The DHS argued that Ms. L-R- had failed to establish membership in a cognizable social group. But top officials in DHS changed course shortly after the Obama Administration took power, and filed a brief arguing that in some cases women who have suffered domestic violence may be eligible for refugee protection.

DHS's 2009 brief<sup>12</sup> affirms the position articulated in its 2004 brief that women who have suffered domestic violence may establish eligibility for asylum/withholding of removal based on social group membership, even with the additional requirements of social visibility and particularity. The brief advances two alternate social groups that it argues could meet the immutability, visibility, and particularity requirements, depending on the facts in the record: 1) "*Mexican women in domestic relationships who are unable to leave,*" and 2) "*Mexican women who are viewed as property by virtue of their positions within a domestic relationship.*"<sup>13</sup>

Nexus, according to the brief, may be established through evidence regarding societal acceptance of domestic violence, impunity for domestic violence, and lack of protection for victims of domestic violence. These factors may embolden an abuser and reinforce his belief that abuse of women within a domestic relationship is acceptable.

### **Forced Marriage cases and the BIA decision in S-F-**

Prior to its decision in *S-F-*'s case, the BIA had consistently refused to recognize that forced marriage constitutes persecution.<sup>14</sup> In a 2007 published decision known as *Matter of A-T-*, for example, the BIA rejected the applicant's forced marriage claim because the judges could not "*see how the reluctant acceptance of family tradition over personal preference*" provided a sufficient basis for refugee protection.<sup>15</sup>

<sup>11</sup> UNHCR Guidelines on International Protection: "Membership in a particular social group," within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, U.N. Doc. HCR/GIP/02/02 (May 07, 2002).

<sup>12</sup> The brief is available at: <http://cgrs.uchastings.edu/pdfs/Redacted%20DHS%20brief%20on%20PSG.pdf>.

<sup>13</sup> The DHS brief acknowledges in a footnote that the social group of nuclear family may be applicable in a domestic violence case, where the evidence shows that the victim was targeted on account of family membership. Note that family based social group claims are more appropriate to the child abuse context, where the fact of family membership or a child's status in the family may be the reason for abuse.

<sup>14</sup> The Center for Gender and Refugee Studies (CGRS) provides technical assistance to attorneys working on gender-based cases and tracks progress of these cases. CGRS is aware of at least fifteen BIA denials in forced marriage cases.

<sup>15</sup> The decision is infamous for its holding regarding past FGC claims and was ultimately vacated by AG Mukasey in response to a groundswell of advocacy. See *Matter of A-T-*, 24 I. & N. Dec. 296 (BIA 2007) *vacated and remanded by Matter of A-T-*, 24 I. & N. Dec. 617 (A.G. 2008).

S-F- believes in an egalitarian version of Islam that supports women's rights, including the right to self-determination. Her father, a Senegalese diplomat and traditional Muslim, does not share her vision, and sold S-F- to be the second wife of her fundamentalist Muslim cousin, who was twice her age. When S-F- expressed her opposition to the marriage, her father savagely beat her and informed her that her consent was immaterial. S-F- knew that asking the police for protection would be futile because of her father's prominent status and connections to government officials and because the Senegalese government fails to protect women from forced marriage. Terrified of her father and her future husband, S-F- sought asylum in the U.S.

The IJ denied S-F-'s case, ruling that selling another human being into marriage in violation of her most fundamental human rights, does not constitute persecution. S-F- appealed the decision to the BIA. In June 2009, the BIA reversed the IJ's decision and held that S-F- had a well-founded fear of persecution based on her religious beliefs (a moderate, tolerant version of Islam, as opposed to her father and cousin's traditional, strict practice). The decision cites to a published 2000 BIA decision known as *Matter of S-A-*,<sup>16</sup> which granted asylum to a young Moroccan woman who had suffered extensive abuse at the hands of her father because she refused to conform to his Muslim beliefs and practice, which differed from hers. While not explicitly stating that forced marriage rises to the level of persecution, the S-F- decision implicitly recognizes it does.

### **Domestic impact**

The BIA's decision in S-F-'s case, recognizing forced marriage as persecution, is a noteworthy change from its tendency to deny such claims. Similarly, the DHS brief in L-R-'s case, acknowledging that gender is an immutable characteristic, and that gender-defined social groups can meet the social visibility and particularity requirements – and charting the path - should support domestic violence claims, and gender-based claims more broadly.

While both developments are positive, neither one binds adjudicators, leaving similar claims vulnerable to denial. Furthermore, the U.S.'s imposition of “*social visibility*” and “*particularity*” upon social group claims remains troubling. These requirements undermine the purpose of the 1951 Convention and 1967 Protocol relating to the Status of Refugees, stray from and misconstrue UNHCR's guidance, abandon over twenty years of sound BIA jurisprudence, and result in countless denials of protection in gender-based refugee claims. Legislation and/or regulations are urgently needed to eliminate the requirements of visibility and particularity, as well as other barriers to protection.

### **International implications**

The DHS brief and the BIA decision should positively influence the development of gender refugee jurisprudence in jurisdictions that look to the U.S. for guidance in controversial refugee claims. The DHS brief in L-R- argues that gender plus status in a relationship meet the *Acosta* test, as well as the added requirements of visibility and particularity. This argument should support recognition of gender-based social groups in jurisdictions applying the *Acosta* model. Meanwhile, in the S-F- decision, the U.S. acknowledges the violation of an internationally protected human right (to be free from forced marriage) as persecution under domestic refugee law. Both developments mark a step forward in the international struggle for the recognition of women's rights as human rights deserving of refugee protection.

**Women's Asylum News would like to thank Lisa Frydman for writing this article.**

**If you would like any further information about any of the issues raised in the article or information about the work of the Center for Gender and Refugee Studies, Hastings College of the Law, San Francisco please contact Lisa Frydman directly.**

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<sup>16</sup> *Matter of S-A-*, 22 I & N Dec. 1328 (BIA 2000).

## Sector Update

### UK reports for CEDAW+1 and Beijing+15

The UK Government has recently produced two reports for international bodies, detailing its progress relating to women's equality. Both fail to cover women asylum seekers' issues.

In July 2008 the UK government reported to the UN Committee of CEDAW (Convention on the Elimination of all forms of Discrimination against Women) on the policies and practices it had put in place to eliminate discrimination against women. At that time the Committee asked the UK government to produce a follow up report one year on to show what actions had been taken in the meantime. The UK government has now produced such a report (dated July 2009).

The Refugee Council and Asylum Aid took the opportunity to send the CEDAW Committee a letter detailing their concerns that whilst the UK's report demonstrates the improvements made in relation to women victims of violence such as rape and domestic violence in the criminal justice system, it fails to mention the rights of women asylum seekers who may have experienced similar crimes in their home countries. Both agencies' responses to the government's consultation on an integrated violence against women strategy were also sent to the CEDAW Committee.

The Beijing Declaration and Platform for Action (PfA) is an international declaration of women's rights made by governments all over the world. It aims to promote gender equality and achieve women's empowerment and describes the steps which governments and women's groups should follow to achieve equality for women. There are twelve critical areas including poverty, health, violence against women, armed conflict and human rights. The PfA was agreed in Beijing at the United Nation's Fourth World Conference on Women in September 1995. How well countries are progressing on the actions of the PfA has been discussed at the UN Commission on the Status of Women (CSW) at five yearly intervals since. As it is the fifteenth anniversary of the PfA, progress will be discussed at the CSW in March 2010.

The UK Government has produced a report about the implementation of the PfA. Asylum Aid is again concerned that whilst the UK government's report details progress made in relation to dealing with violence against women in the UK, it fails to mention anything about the rights of women asylum seekers.

- Response by the UK and Northern Ireland to select recommendations of the United Nations CEDAW Committee following the examination of the UK and NI's 5<sup>th</sup> and 6<sup>th</sup> periodic reports on July 10 2008, July 2009  
<http://www2.ohchr.org/english/bodies/cedaw/docs/followup/UKFollowupRep2009.pdf>
- Together We Can End Violence Against Women: Asylum Aid's response, May 2009  
[http://www.asylumaid.org.uk/data/files/publications/104/VAW\\_integrated\\_strategy\\_Asylum\\_Aid\\_response\\_2009.pdf](http://www.asylumaid.org.uk/data/files/publications/104/VAW_integrated_strategy_Asylum_Aid_response_2009.pdf)
- Refugee Council response to violence against women strategy consultation, May 2009  
[http://www.refugeecouncil.org.uk/policy/responses/2009/violence\\_against\\_women.htm](http://www.refugeecouncil.org.uk/policy/responses/2009/violence_against_women.htm)
- Questionnaire to Governments on the implementation of the Beijing Declaration and Platform for Action (1995) and the outcome of the twenty-third special session of the General Assembly (2000) – United Kingdom response, May 2009  
<http://www.unece.org/gender/documents/Beijing+15/UK.pdf>



## UN specialist calls for report to address concerns of women asylum seekers

In her latest report, the outgoing UN Special Rapporteur on Violence Against Women (SRVAW) Yakin Erturk reviews the work and progress of her mandate throughout its 15 years. Her report provides a wide-ranging discourse on how violence against women can be conceptualised and how progress can be made to strengthen the notion of violence against women in human rights terms.

Towards the end of her report, Erturk includes women refugees and asylum seekers in her list of those aspects that she believes need further attention in the future. Mandate holders (ie Erturk and her predecessor Radhika Coomaraswamy) have mostly dealt with the concerns of refugee women in relation to violations that occur once a woman has become a refugee and is in flight or within camps. Mandate holders have addressed individual complaints by women asylum seekers by following these up with governments. However in relation to gender elements in examining asylum claims, Erturk states that *"it would seem important for the mandate to dedicate a thematic report on these concerns for standard setting, providing an analysis of trends, and addressing aspects of gender guidance, fast track asylum determination procedure, internal flight alternative, detention, forced removal and destitution."*

For the full report: '15 years of the United Nations Special Rapporteur On Violence Against Women, Its Causes and Consequences' see:

<http://www2.ohchr.org/english/issues/women/rapporteur/docs/15YearReviewofVAWMandate.pdf>

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## Significant Legal Issues

### Assessing whether an asylum seeker is a lesbian NR (Jamaica) v SSHD 2009 EWCA Civ 856

In Issue 82, WAN reported on an important decision of the Court of Appeal of England and Wales that considered whether it was lawful to expect homosexual asylum seekers to act discretely in their country of origin in order to avoid persecution<sup>17</sup>. In *NR (Jamaica)* the Court considered, amongst other things, the separate but related issue of how a decision maker can and should assess whether an asylum seeker is a lesbian.

The appellant was a Jamaican who had come to the UK as a child. She claimed that she was fleeing Jamaica after she had been raped and was in fear in criminal gangs. At the age of 13 she was convicted of conspiracy to supply heroin and crack cocaine and sentenced to 5 years detention in a young offenders' institution. The appellant began having lesbian relationships in detention and this continued after she was released. She feared deportation to Jamaica because she thought she would be persecuted or subject to human rights abuse because she was a lesbian.

After a number of hearings, the Asylum and Immigration Tribunal dismissed the appeal because it did not believe that the appellant was a lesbian as she claimed. It held that the appellant had experimented with lesbianism whilst in detention, where there was no other possible form of sexual expression and that she had manipulated her current lesbian partner in order to bolster her claim for international protection, and, in fact, that relationship was not genuine.

The Court of Appeal decided that the Tribunal's approach was mistaken. It found that the Tribunal had put too much emphasis on what had been said in reports where it was mentioned that the appellant had had sexual relationships with men. The Tribunal had placed insufficient weight on the fact that the appellant had been in a series of exclusively lesbian sexual relationships over some 4 years. The Court found *"that is on its face cogent evidence that she is a lesbian, or predominantly a*

<sup>17</sup> See WAN Issue 82 article: 'Homosexuality: Being Discreet HJ Iran and HT Cameroon' pg 5-6

*lesbian, by sexual identity. What might have begun as sexual experimentation could have ended with it being her sole or predominant sexual orientation*". That possibility had been ignored by the Tribunal, which was particularly important given the issue it had to consider was the appellant's sexual orientation at the time of the hearing. The Court ordered that the appeal should be reconsidered by a fresh Tribunal.

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## **Country Guidance Case: Trafficked women from China HC & RC (Trafficked women) China CG [2009] UKAIT 00027**

The Tribunal has recently produced new guidance on risk of trafficking of women and girls for prostitution in China. The Appellant was a minor on arrival in the UK. She was from a rural background, had no family, and had become a prostitute by age 14 or 15. She had a young child resulting from her history of sexual exploitation. It was accepted by the Tribunal that she had been a victim of trafficking for prostitution.

Whilst acknowledging that trafficking for prostitution was a serious problem in China, the Tribunal found that overall the risk of trafficking for the purposes of prostitution was low. However, for those women who were found on the particular facts of their case to be at real risk of trafficking, a careful assessment of their individual circumstances on return was needed.

The Tribunal acknowledged that despite positive steps by the Chinese authorities to tackle trafficking, there remained considerable problems with official complicity in trafficking and inadequate provision for rehabilitation of trafficking victims. It further noted that there was a failure to penalise trafficking acts other than for sexual purposes and acts committed against males.

With the proviso that every case must be carefully considered on its own facts, the Tribunal provided the following overall guidance:

- That a woman would not be obliged by the residence permit system ('hukou'), to return to her place of origin. Hence, she may be able to safely relocate to a new area.
- That a woman returning with a child born out of wedlock would not necessarily be perceived as a prostitute.
- That a woman would be unlikely to be fined for having a child without approval or for illegal exit. If she were to be fined, it is likely the fine would be waived if she was without means to pay, particularly if she obtained assistance from the All Chinese Women's Federation, (ACWF) or was willing to provide information to the authorities regarding the Snakeheads.
- That in general, there are work opportunities for women in urban and rural areas. Further, that the Chinese authorities at the local level had an obligation not to allow an individual to fall into destitution. Hence, *'...we do not accept that a returned trafficked woman would face utter destitution and an existence below a bare subsistence level'*.

Following a careful assessment of the particular factual matrix of the Appellant's case, the Tribunal found that: despite her history of trafficking, in light of their general findings above and the appellant's own history, which included some experience of employment outside of sex work, and her commitment to avoiding prostitution in the future, she was not at real risk of falling victim to trafficking on return to China. The appeal was therefore dismissed.

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## International News:

### Afghanistan: Women's rights diminishing

Laws have recently been passed in Afghanistan which allow Shia husbands to deny their wives food and sustenance if they refuse to obey their sexual demands. In addition, the guardianship of children has been passed to male relatives and women have to get permission from their husband's to work. The introduction of this new law comes despite international opposition at the legalisation of rape within marriage. President Karzai's originally appeared to back down under international pressure and promised to review the legislation. This new revised law however diminishes women's rights and contradicts the Afghan Constitution and several international treaties signed by the country.

Islamic law experts and human rights activists claim that although the language may have slightly changed from the original drafted legislation issues around women's rights remain unchanged. For example the law states:

*"Tamkeen is the readiness of the wife to submit to her husband's reasonable sexual enjoyment, and her prohibition from going out of the house, except in extreme circumstances, without her husband's permission. If any of the above provisions are not followed by the wife she is considered disobedient."*

Human Rights Watch (HRW) are calling for the law to be immediately repealed. Brad Adams, HRW's Asia director states: *"The rights of Afghan women are being ripped up by powerful men who are using women as pawns in manoeuvres to gain power....These kinds of barbaric laws were supposed to have been relegated to the past with the overthrow of the Taliban in 2001, yet Karzai has revived them and given them his official stamp of approval."*

For full article see:

<http://www.guardian.co.uk/world/2009/aug/14/afghanistan-womens-rights-rape>

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### Jordan: Tribunals should not be a substitute for addressing 'honour killings'

Human Rights Watch have written directly to the Jordanian Ministry of Justice calling for Jordan to reform the penal code instead of establishing special tribunals to hear 'honour killing' cases.

This response comes after the murder of a 16 year old girl who was killed by her uncle in order to 'cleanse his family's honour'. The girl had been raped by his sons and was pregnant as a result of the rape. Jordanian law cites that the murder of a relative for extramarital sex carries a reduced sentence. Nadya Khalife, women's rights researcher at Human Rights Watch states: *"The current law is nothing less than an endorsement for murdering women and girls...The women of Jordan need protection from these vicious acts enshrined in law, not preferential treatment for their killers"*. The rate of 'honour crimes' in Jordan has remained constant for many years.

Human Rights Watch believe the recent announcement by the Justice Ministry of the introduction of 'special tribunals' to hear specific 'honour killing' cases may have the intention to address 'honour killings' however they are not an adequate solution. Instead Human Rights Watch are calling for the specific Articles within the Penal Code to be repealed. For example Article 340 reduces sentences for killing a relative involved in 'illicit sexual acts'. Article 98 reduces the sentence if the perpetrator commits a crime in a state of 'extreme rage'. Efforts to address these issues and reform the Penal Code in 1999 and 2000 failed due to the Jordanian Lower House of Parliament. Human Rights Watch Khalife states: *"Jordan needs to send a strong message to perpetrators that they can no longer get away with murder...It should start by amending the penal code to reflect the seriousness of these crimes and treat them the same as other killings."*

For full article see:

<http://www.hrw.org/en/news/2009/09/01/jordan-tribunals-no-substitute-reforms-honor-killings>

For a copy of Human Rights Watch letter to Jordan's Minister of Justice see:

<http://www.hrw.org/en/news/2009/08/10/letter-jordans-minister-justice-honor-crimes>



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## Bangladesh: Child Marriage

The UN Children's Fund (UNICEF) reports 64% of all girls in Bangladesh marry before the age of 18 and a third of teenage girls aged between 15-18 are mothers or pregnant. Early marriage and pregnancy comes with many health and birth related risks and complications. The Bangladesh Demographic and Health Survey (BDHS) 2007 (released March 2009) shows the median age for marriage is 16.4, 18 months below the legal minimum age. These statistics reveal how current laws and policies which stipulate the legal age of marriage as 18 for girls (21 for boys) do not result in preventing young girls being married.

Agencies believe parents continue to encourage their daughters to marry young, for fear their dowry price will increase and that they become an economic burden to their families. However, young marriage for girls comes with many negative consequences including many girls drop out of school or attain lower schooling levels, young brides have lower social status in their husbands' families, many girls have limited reproductive control, suffer higher rates of maternal mortality and experience domestic violence.

A conference of Social Workers and women in Dhaka held earlier in the year underlined how 70% of girls in Bangladesh were forced into marriage as a teenager. One of the conference papers concluded: *"The burden breaks the health of young mothers. Many die at delivery, or at least suffer untold health problems. The major casualty is the education of teenage girls. It denies them the awareness they need for taking the decision that affects their life most – marriage."* Rahela Rahmatullah, an anti child marriage activist states: *"In most rural families girls are never consulted on their marriage. The parents and the family seniors choose the groom, fix the date and manage the wedding ceremony. Seeking a girl's consent on marriage is still considered a taboo in most families."*

For full article see:

<http://www.irinnews.org/Report.aspx?ReportId=85516>

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## The Philippines: Addressing human trafficking

There is increasing concern that many women and girls who voluntarily leave their country as labour migrants are subsequently coerced into forced marriage and exploitative conditions. This article highlights the circumstances of one woman who believed she was getting a well-paid job in South Korea, however in reality she was forced to marry an elderly man in order to get an entry visa into the country. The Commission for Filipino's Overseas (CFO) were able to identify this woman as a victim of trafficking and return her. She has since gone to court against her traffickers but all three legal hearings have been postponed or delayed for various reasons. The CFO believe the woman has been approached by her traffickers to settle the case and they are concerned as she *"doesn't have a job and her family is poor. We hope she'll be able to keep up the fight."*

The Philippines has introduced new laws to combat human trafficking however the country's legal system seems unable to address and prevent the vulnerability and exploitation women often unknowingly face overseas.

The Philippines remains a key source, transit and destination country for human trafficking. *'The US State Department Trafficking in Persons'* report (June 2009) states: *"the government's ability to effectively prosecute trafficking crimes is severely limited by an inefficient judicial system and endemic corruption."* Consequently, The Philippines has been downgraded to Tier 2 Watch lists status.

The Office to Monitor and Combat Trafficking in Persons (OMCTP) states: *"Trials often take years to conclude because of a lack of judges and courtrooms, high turnover [of judges], and non-continuous trials, which cause some victims to withdraw their testimony."*

For full article see:

<http://www.irinnews.org/Report.aspx?ReportId=85378>

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## Sierra Leone: Sexual violence defies new laws

The Ministry of Social Welfare, Gender and Children's Affairs (MSWBCA) in Sierra Leone state up to 67% of urban women have experienced domestic violence despite changes in the law. In 2007 Sierra Leone passed laws to reinforce women's rights and clamp down on sexual violence, however implementing the laws are proving difficult for the government and social services. Officials working in the domestic violence sector believe violence against women remains rampant. Eunice Whenzle, who heads the Rainbo Centre, a counselling and treatment clinic for women in Freetown said: *"Most of the time women and girls are abused by people they know...[The perpetrators] are rarely strangers.... We also see cases of incest"*. The Rainbo Centre also reports a rise in the number of teenage girls who are pregnant through rape.

Reasons cited for a lack of implementation of The 2007 Gender Act, which included a bill making violence or sexual abuse against women, including within marriage a criminal act include a lack of lawyers and judges. The Rainbo Centre's annual report cites how there is one magistrate to service 360,000 people in Sierra Leone's Kailahun district in the east. The report states that the magistrate processes eight cases a day and often has to gather his own evidence when police evidence is insufficient. Moreover, Isha Bangura, director of the police's Family Support Unit believes a high number of cases are dismissed before they even get to court especially rape cases. When a woman reports rape she has to provide a medical certificate however this is logistically difficult as there is an average of one doctor for every 18,000 people. Bangura believes the referral systems between the police, health service and the courts are often unclear or not standardised, leaving many women confused. Bangura states The Family Support Unit is *"seriously under-resourced to cope with all the gender-based violence...The basic structures, including equipment to collect accurate data, are insufficient."*

The Ministry of Social Welfare, Gender and Children's Affairs (MSWBCA) also believes many women who experience domestic violence, rape or sexual abuse are often discouraged by their family to report the case. Families often advise women to settle out of court or use 'traditional justice' which usually involves a discussion, a small payment or a ban on future contact.

Women continue to have a low social status in Sierra Leone, with only one in four women able to read and write and consequently many women do not know their rights. More work needs to be focused on changing attitudes if the 2007 Gender Act will be implemented. Whenzle from the Rainbo Centre states: *"the traditional perception in domestic [abuse] cases is that women should accept what is happening to them. We are trying to change that"*. Fatu Kargbo director of MSWBCA calls for the media, traditional leaders, women's activists, human rights groups and NGOs to work together to change attitudes. She states *"Making the Gender Law effective cannot happen overnight...it requires a long-term investment to change culturally-engrained practices."*

For full article see:

<http://www.irinnews.org/Report.aspx?ReportId=85511>

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## Sudan: Women deliberately targeted in attacks

Women and children are being deliberately targeted in community attacks in southern Sudan which is exacerbating an already dire humanitarian situation. Jonathan Whittall, head of Médecins Sans Frontières (MSF) in Southern Sudan said: *"The violent clashes are different to the traditional 'cattle rustling' that normally occurs each year ... Women and children, usually spared in this fighting, are now deliberately targeted and the number of deaths [is] higher than the number of wounded."* Archbishop Daniel Deng Bul Yak of the Episcopal Church said the church no longer viewed the clashes as *"tribal conflicts"*, but rather as *"deliberately*

*organized attack[s] on civilians by those that are against the peace in Southern Sudan".*

MSF have been involved in incidents in Jonglei and Upper Nile States over the last six months and have recorded 1057 people being killed, 259 wounded and more than 60,000 people being displaced. MSF state *"this is new – the intention to attack a village and to kill. The result is a population living in total fear, with significant humanitarian and medical needs."*

For full article see:

<http://www.irinnews.org/Report.aspx?ReportId=86000>

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## UK Courses

### Rights of Women

#### Seminar and Workshop on Sexual Violence

##### **Seminar: Sexual Violence against Women – What's the policy?**

**Kings Cross London, 5<sup>th</sup> October 10am – 1pm**

This seminar aims to increase awareness in the women's sector of sexual and other forms of gender-based violence and of current policy developments. Attendants will benefit from an awareness of violence against women as part of the struggle for women's equality. Through the seminar you can learn how your organisation can become part of the wider debate on violence against women and increase women's equality.

##### **Workshop: Sexual Violence against Women – What's the strategy?**

**Kings Cross, London, 5<sup>th</sup> October 2 - 4.30**

This workshop will focus on how the women's sector is contributing to policy and shaping developments on sexual violence to protect women's rights. Attendants will:

- Learn about the process of influencing policy
- Share your thoughts on what more needs to be done
- Develop your own response or be part of our ongoing work

Both seminar and workshop are free however if you register and do not turn up you will be liable for a £50 fine. Please contact Rights of Women for further information and to book a place:

Tel: 020 7251 6575 or email: [mina@row.org.uk](mailto:mina@row.org.uk)

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### **Women and Girls Network and the Women's Resource Centre Young Women and Violence Seminar**

**London, EC1V, 22<sup>nd</sup> October**

This free seminar will showcase agencies that are working with young women and are at the forefront of best practice in the field. These agencies deal regularly with the issues of sexual exploitation, forced marriage, female genital mutilation, domestic violence and gang violence, along with other forms of abuse.

The speakers include:

- Baljit Banga, Director, Newham Asian Women's Project
- Nicola Weller, Head of Children and Young People's Services, The Nia Project

- Carlene Firmin, Policy Officer, ROTA

The seminar will provide attendants with a deeper awareness and understanding of the issues around young women and violence and a range of useful tools and creative ways to engage in working with young women

To book or for further information please contact: Ellen Storrar at [Ellen@wrc.org.uk](mailto:Ellen@wrc.org.uk) or Tel: 020 7324 3047 or download a booking form from [www.wrc.org.uk/sharingourstrengths](http://www.wrc.org.uk/sharingourstrengths)

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## **New UK Publications:**

### ***Breaking the Wall of Silence -Practitioners' response to trafficked children and young people***

**Jenny J. Pearce, Patricia Hynes and Silvie Bovarnick  
University of Bedfordshire and NSPCC**

This report aims to highlight good practice that can be shared between agencies working in the field of child trafficking. The research includes a literature review, qualitative focus groups and an analysis of 37 case studies including 27 children who had been trafficked into the UK from overseas and 10 children who had been trafficked within the UK.

This research does not intend to examine why children and young people are trafficked but instead to focus on the complexities and problems faced by practitioners who are working with trafficked children. Chapters explore: questions of perception and identification; what practitioners can do to reveal problems of trafficking; the role of mainstream services and specialist services for trafficked children and young people. The report concludes that interventions with trafficked children should be based around the best interest of the child and or young person and should not be framed within concerns of immigration or asylum status. The report also focuses on key recommendations for age assessments, use of interpreters, accommodation, the need for legal guardians and social workers at the point of entry and key recommendations for Local Safeguarding Children Boards (LSCB's). Potential indicators which can help identify whether a child or young person has been trafficked are included as an Annex.

For full report see:

[http://www.nspcc.org.uk/Inform/research/Findings/breaking\\_the\\_wall\\_of\\_silence\\_report\\_wdf66135.pdf](http://www.nspcc.org.uk/Inform/research/Findings/breaking_the_wall_of_silence_report_wdf66135.pdf)

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## **New International Publications:**

### ***Model Law Against Trafficking***

**United Nations Office on Drugs and Crime (UNODC)**

The UNODC had developed a Model Law against Trafficking in Persons. This is in response to the request by the General Assembly to the Secretary General to promote and assist member states to become party to and implement the United Nations Convention against Transnational Organised Crime. The Model Law particularly addresses the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing that Convention. The Model is designed to be adaptable by each state and their legal, cultural, social, economic and geographical conditions. The Model Law includes all the provisions that states are required or recommended to introduce into their domestic legislation by the Protocol.

The Model outlines 38 Articles within ten chapters covering: General provisions; definitions; jurisdiction; criminal provisions; victim and witness protection, assistance and compensation; immigration and return; prevention, training and cooperation and regulatory power.

For full report see:

[http://www.unodc.org/documents/human-trafficking/UNODC\\_Model\\_Law\\_on\\_Trafficking\\_in\\_Persons.pdf](http://www.unodc.org/documents/human-trafficking/UNODC_Model_Law_on_Trafficking_in_Persons.pdf)

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## **Anti-Human Trafficking Manual for Criminal Justice Practitioners United Nations Office on Drugs and Crime (UNOC)**

The *Anti-Human Trafficking Manual for Criminal Justice Practitioners* is published to support criminal justice practitioners in the prevention of human trafficking, the protection of its victims, the prosecution of its culprits and in the international cooperation needed to achieve these goals. This manual is the product of broad based expertise gathered in the course of a series of expert group meetings of judges, prosecutors and law enforcement officers who are practitioners in the field of human trafficking. The manual is accompanied by a series of modules which are intended to reveal the complexities of the subject matter and enable practitioners to apply lessons learned to their own experiences in the field. The modules address each phase of criminal justice response to trafficking in persons, from identification of victims through investigations and prosecutions of traffickers to the protection of victims. Each module is designed to stand alone in meeting the specific needs of the particular phase of criminal justice response it seeks to address.

For the manual and all associated modules see:

<http://www.unodc.org/unodc/en/human-trafficking/anti-human-trafficking-manual.html>

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## ***'Prevalence and associated factors of female genital mutilation among Somali refugees in eastern Ethiopia: a cross-sectional study'***

**BMC Public Health Journal 2009 9:264**

**Getnet Mitike and Wakgari Deressa**

The World Health Organisation (WHO) estimates more than three million girls mainly in Africa, are circumcised each year. In some countries, including Somalia the prevalence rate of girls who have experienced female genital mutilation (FGM) is 98%. This report outlines the different types of FGM procedures that are practiced and highlights specific achievements made in Ethiopia to reduce the numbers of girls circumcised. The Demographic and Health Survey in Ethiopia illustrate a small decline in FGM practices nationally, however eastern parts of the country still have a high prevalence with 85-97% of the female population having experienced FGM.

This research study aimed to explore the extent and associated factors relating to FGM in three Somalia refugee camps in the Somali Regional State in eastern Ethiopia. This report analyses the statistical data produced from the field work conducted in 2004. The research concludes FGM is widespread in the Somali refugee community and there is considerable support for the continuation of the practice.

For full journal article see:

<http://www.biomedcentral.com/content/pdf/1471-2458-9-264.pdf>

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## Charter of rights of women seeking asylum



**Total Endorsements: 158**  
**Google Group Membership: 94**

### Childcare during asylum interviews

When Hazel Williams from the Refugee Council in Yorkshire and Humberside asked her UK Border Agency (UKBA) regional office to provide childcare during asylum interviews for all clients coming to the region who required it, the UKBA official laughed it off as impossible and too costly. Two years later the same official contacted Refugee Council and invited Hazel to join a working group on childcare. Now UKBA is paying for a local charity to provide play sessions at Waterside Court in Leeds so that children can be in a supervised play room while their mum or dad has their asylum interview.

This progress is part of the campaign for childcare during asylum interviews initiated in April 2007 by a group of refugee women stakeholders concerned that women weren't able to disclose their experiences at their asylum interviews if they had to take their children in with them. The campaign now comes under the *Charter of rights of women seeking asylum*.

Following encouragement by the Welsh Consortium for Refugees and Asylum Seekers and their partners, the UKBA office in Cardiff has been providing childcare since September 2007. The UKBA office in Glasgow started providing childcare early in 2009 after persistent lobbying by the Refugee Women's Strategy Group and the Scottish Refugee Council. The Refugee Council is raising the issue in the West Midlands and in London. The Greater Manchester Immigration Aid Unit is following this lead in the North West.

Meanwhile Asylum Aid focused on the consultation on a new UKBA Code of Practice on Keeping Children Safe from Harm. This now states "*UKBA staff must ensure that arrangements are in place so that parents are not required to give an account of personal victimisation or humiliation (in an asylum claim, for instance) if their children are present.*" This is an example of the progress that can be made when a range of individuals and organisations across the UK work in coordinated partnership.

However there is still some way to go. Answering a question at the Immigration Advisory Service conference on 21<sup>st</sup> July, UKBA's Chief Executive, Lin Homer stated that provision of childcare was still a matter of resources. Meanwhile the Code of Practice is to be replaced by statutory guidance under s.57 of the Borders, Citizenship and Immigration Act regarding *Arrangements to safeguard and promote the welfare of children for those exercising UK Border Agency functions*. The draft of these guidelines dilutes the commitment in the Code of Practice by replacing the wording "UK Border Agency staff *must* ensure that arrangements are in place ..." to "*should seek to ensure*". Given that the original commitment might be reduced, there is a continued need for the childcare campaign to continue.

To stay in the loop about this and similar Charter campaigns, join the Charter google group – go to [www.asylumaid.org.uk](http://www.asylumaid.org.uk)

### Donations to Asylum Aid

Asylum Aid provides free legal advice and representation to asylum-seekers and refugees, and campaigns for their rights. We rely on the generosity of individuals to help us continue our work. Your support would be greatly appreciated. A gift of just £5 each month could support our free legal advice line.

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To support Asylum Aid's work, please complete and return this form to: Asylum Aid, Club Union House, 253-254 Upper Street, London, N1 1RY

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