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IN THIS ISSUE

Leading Article: UNHCR and the drafting of the Council of Europe Convention on preventing and combating violence against women	p. 1-4
Legal Issues	p. 4-9
International News	p. 9-11
New Publications	p. 12
UK Training and Events	p. 13
Charter Update	p. 14

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UNHCR and the drafting of the Council of Europe Convention on preventing and combating violence against women

Fadela Novak-Irons, UNHCR Bureau for Europe, Policy Officer,¹ writes about the draft Convention and the significance it may have for asylum seeking women if adopted.

In 2009, the Council of Europe (CoE) Ad Hoc Committee on Preventing and Combating Violence against Women and Domestic Violence (CAHVIO) embarked on the challenge of drafting a Convention on preventing and combating violence against women and domestic violence.

The purpose of the Convention is to set legally binding standards for all forms of violence against women, and therefore bridge some of the existing gaps in terms of human rights protection. The holistic approach adopted for this Convention seeks to improve the criminal law responses, including restraining and barring orders, enhance the role of law enforcement agencies in responding to calls for assistance, set state obligations to offer adequate support and protection to all victims of violence against women, address the need to step up activities in the area of education, training of professionals and general awareness raising, and address the issues specifically faced by migrant and asylum seeking women.

The Terms of Reference of CAHVIO required the Committee to take into account existing relevant regional and universal standards in the fields of human rights, gender equality, criminal law and

¹ The views expressed herein are those of the author and do not represent the position of the United Nations or UNHCR.

judicial cooperation, including case-law from the European Court of Human Rights.² Of relevance to the work of CAHVIO on gender-based violence and asylum are also two PACE Resolutions, the Resolution on gender-related claims for asylum,³ which provides recommendations to ensure that asylum procedures⁴ and the decision process⁵ are sufficiently sensitive to gender-related claims; and the Resolution on Improving the quality and consistency of asylum decisions,⁶ which calls upon Council of Europe member states to ensure that the assessment of evidence is gender- and child-sensitive,⁷ and that training is provided to all those involved in the asylum process including on gender and age sensitivity.⁸

UNHCR engaged with CAHVIO from the early stages in the context of its supervisory responsibility, which is set out under its Statute as well as in Article 35 of the 1951 Convention relating to the Status of Refugees (1951 Convention). Its Statute confers responsibility on UNHCR, among other things, for supervising international conventions for the protection of refugees.⁹ Mirroring these responsibilities, States have the obligation to cooperate with UNHCR. Given how essential appropriate asylum procedures are to States' compliance with their obligations under the 1951 Convention, UNHCR had, in the context of CAHVIO, the responsibility and authority to pronounce itself on the provisions contained in the draft Convention and the safeguards they contain regarding gender-based violence and asylum claims, and *non-refoulement* i.e. ensuring that nobody is sent back to persecution.

UNHCR first issued general comments to CAHVIO in April 2009,¹⁰ and later general recommendations on the draft Convention in March 2010, in which it argued among other things for a chapter on international protection separate from the section on migration, the recognition of gender-based violence as a form of serious harm leading to the grant of subsidiary/complementary protection, a gender-sensitive interpretation of the five Convention grounds, and the inclusion of a clause on *non-refoulement*.

In the light of discussions in CAHVIO, UNHCR felt that more detailed comments on the two draft articles relating to gender based violence and asylum may be useful to guide the CAHVIO members. UNHCR therefore issued Comments on then Articles 48 and 48 bis of the Draft Convention (now draft Articles 60 and 61) in November 2010,¹¹ and called upon the member states to adopt the text of the draft Convention as it was. The Comments refer extensively to existing legislation in the European Union and the CoE, jurisprudence, UNHCR Guidelines,¹² and UNHCR ExCom Conclusions.

² CAHVIO, Case Law of the European Court of Human Rights on Violence against Women, Document prepared by Christine Chinkin, London School of Economics and Political Science, 4 May 2009, CAHVIO (2009) 10, available at: http://www.coe.int/t/dghl/standardsetting/violence/CAHVIO_2009_10%20Case%20law%20of%20the%20European%20Court%20of%20Human%20Rights.pdf.

³ CoE PACE, Resolution 1765 (2010), Gender related claims for asylum, *adopted by the Assembly* on 8 October 2010, available at: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta10/ERES1765.htm>.

⁴ *Idem*, para 9.1 – 9.8.

⁵ *Idem*, para 10.1 – 10.9.

⁶ CoE PACE, Resolution 1695 (2009), Improving the quality and consistency of asylum decisions in the Council of Europe member states, adopted by the Standing Committee, acting on behalf of the Assembly, on 20 November 2009, available at: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta09/ERES1695.htm>.

⁷ *Idem*, para. 8.2.1.

⁸ *Idem*, para. 8.5.1.

⁹ *Idem*, paragraph 8(a): UNHCR fulfils its mandate *inter alia* by, “[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto.”

¹⁰ UNHCR Comments to the First Meeting of the Ad Hoc Committee on preventing and combating violence against women and domestic violence, 6-8 April 2009, available at: <http://www.coe.int/t/dghl/standardsetting/violence/UNHCR%20comments%20to%20CAHVIO%20090430.pdf>.

¹¹ UNHCR, Comments on Articles 48 and 48 bis of the Draft Council of Europe Convention on preventing and combating violence against women and domestic violence, November 2010, available at: <http://www.unhcr.org/4cf4fb2d9.html>.

¹² UNHCR, Guidelines on International Protection: Gender-related persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, 7 May 2002, available at: <http://www.unhcr.org/publ/PUBL/3d58ddef4.pdf>.

- UNHCR, Guidelines on International Protection No. 2: “Membership of 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, 7 May 2002, available at: <http://www.unhcr.org/refworld/docid/3d36f23f4.html>.

In its November 2010 Comments, UNHCR argued that gender-based violence may amount to persecution within the meaning of Article 1A(2) of the 1951 Convention. Where it did not satisfy the criteria for protection under Article 1A(2) of the Convention, it could nonetheless constitute a form of serious harm giving rise to a need for complementary/subsidiary protection. UNHCR has long advocated for the importance of interpreting the refugee definition with an awareness that gender can influence or dictate the type of persecution or harm suffered, as well as the reasons for this treatment. UNHCR has also supported a gender-sensitive interpretation to be given to each of the five 1951 Convention grounds. In that context, UNHCR has pointed out that gender-based violence may not solely or automatically fall within the ground of “membership of a particular social group”, but may amount to persecution linked to other Convention grounds, thus requiring scrutiny of whether one of these other grounds might apply.

UNHCR then provided guidance on what would be expected from states under the provision relating to the development of gender-sensitive reception conditions and support services for asylum-seekers as well as gender guidelines and gender-sensitive asylum procedures. The Comments highlighted on the one hand, the gaps in state practice, as shown by the recent UNHCR study on the implementation of the Asylum Procedures Directive carried out in 12 European Union Member States,¹³ and on the other hand, UNHCR’s observations through its work with refugees across Europe regarding asylum-seeking women’s specific protection concerns and worries. In particular, single women often feel exposed to attempts of exploitation in different ways. At the reception centres, some women complain about being sexually harassed by single men and feel unable to address this. Other women raise concerns that local men are aware that they are financially vulnerable and would target them outside the centre to solicit sexual favours. The draft provision in the Convention would go a certain way to address these concerns.

Finally, the Comments provided explanations on the relevance of the cornerstone principle of *non-refoulement* to the issue, and the applicability of the protection granted under Article 3 of the European Convention on Human Rights (ECHR), which is absolute and unconditional in scope.

The draft Convention has now been submitted to the Parliamentary Assembly for opinion. This non-binding opinion will be taken into account by the Council of Ministers at the time of adopting the Convention at its 11 May 2011 session, under the Turkish Presidency. Subsequently, the Convention will be open for signature and ratification by member states of the CoE, and will enter into force following the ratification and accession of five state parties. The Convention will then have to be enacted into national legislation for persons to be able to avail themselves of the rights afforded by the Convention, in particular in those member states where international treaties do not have direct effect at national level. In some states, however, even in the absence of specific national legislation or procedures for applying the Convention’s provisions, it may be possible for people to invoke its principles before national courts or other bodies.

If adopted,

- the Convention will re-affirm well established international and regional standards, and will clearly articulate their relevance to gender-based violence as it pertains to asylum claims and asylum reception condition and procedures.

- UNHCR, Guidelines on International Protection: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked, 7 April 2006, available at: <http://www.unhcr.org/443b626b2.html>.

- UNHCR, Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity, 21 November 2008, available at: <http://www.unhcr.org/refworld/pdfid/48abd5660.pdf>.

- UNHCR, Guidance Note on Refugee Claims relating to Female Genital Mutilation, May 2009: available at: <http://www.unhcr.org/refworld/docid/4a0c28492.html>.

¹³ UNHCR, Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice. Key Findings and Recommendations, March 2010: <http://www.unhcr.org/4ba9d99d9.html>, and UNHCR, Key Gender Related Findings and Recommendations, March 2010: <http://www.unhcr.org/4be01d0a9.html>.

- the Convention will allow more consistency among member states in dealing with gender-based asylum claims, and promote compliance with state obligations under the 1951 Convention and the CEDAW provisions relating to access to justice and equality before the law.¹⁴
- the Convention will also contribute to bridging a gap in the way the often complex gender-based asylum claims made by women are handled and examined.

The two draft articles on asylum in this Convention would provide the legal grounds to safeguard asylum-seeking women from the violence they are seeking protection against, and would ensure the protection of these women in reception centres, to avoid their re-victimization. Without them, the good intentions to protect *all* women from violence, irrespective of status, may prove insufficient.

Women's Asylum News would like to thank Fadela Novak-Irons for writing this article.

Legal Issues

Returns to Greece under the Dublin II Regulation breach article 3 ECHR

Case of M.S.S. v. Belgium and Greece, (Application no. 30696/09), European Court of Human Rights, 21 January 2011¹⁵

MSS is from Afghanistan. He left Kabul in 2008 and entered the European Union through Greece. He then travelled to Belgium by transiting through France. He had not claimed asylum in Greece but applied when he arrived in Belgium in February 2009. A Eurodac search established that he had entered the EU through Greece, where he had been arrested and fingerprinted. In accordance with the Dublin II Regulation¹⁶ which sets out the EU member state responsible for examining asylum seekers' claims, Belgium made a request for Greece to take charge of the asylum application. The Greek authorities failed to respond within the two month period stipulated by the Regulation and Belgium therefore considered that Greece had tacitly agreed to take charge of MSS' asylum application. Although in April 2009, UNHCR had sent a letter to the Belgian Minister for Migration and Asylum Policy recommending the suspension of transfers to Greece, Belgium issued an order for MSS to leave the country on the basis that Belgium was not responsible for examining his application, that Greece was responsible for doing so, and that there were no reasons to suspect that Greece would fail to consider its obligations under the Refugee Convention.

On the day he was due to be transferred to Greece, MSS' counsel submitted an urgent request to the Aliens Appeals Board that the order to leave the country be set aside, based on the risk of arbitrary detention in Greece in appalling conditions, including a risk of ill-treatment contrary to Article 3 of the European Convention on Human Rights (ECHR). The grounds also included the deficiencies in the Greek asylum procedure, the lack of effective access to judicial proceedings and MSS' fear of being sent back to Afghanistan without his claim for international protection being examined at all. The application was refused because MSS' counsel failed to attend the hearing but MSS refused to board the aircraft. The Greek authorities then sent the standard document to Belgium confirming that it was their responsibility to examine his asylum claim. After his departure was scheduled, MSS' current lawyer lodged a second request to set aside the order for him to leave the territory, relying on the risks he would face in Afghanistan and the risks he would face in Greece because of the very low chance of his claim being examined properly and the appalling conditions of detention and reception

¹⁴ UNGA, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Article 15, at: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.

¹⁵ <http://www.bailii.org/eu/cases/ECHR/2011/108.html>.

¹⁶ Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003R0343:EN:HTML>.

of asylum seekers in Greece. In September 2009, the Aliens Appeals Board rejected the request on procedural grounds.

In the meantime, MSS had made an application to the European Court of Human Rights (ECtHR) for a Rule 39 Interim Measure against Belgium arguing that he had fled Afghanistan after a murder attempt by the Taliban because he had worked as an interpreter for the international air force troops stationed in Kabul. The ECtHR refused the request for interim measures and Belgium transferred him to Greece the next day. On arrival he was immediately detained in crowded conditions but was released a few days later with a "pink card" for asylum seekers. Having no means of subsistence he went to live in a park with other Afghan asylum seekers. The ECtHR however had directed Greece to inform the Court of the progress of MSS' application for asylum.

The ECtHR in its judgment considered extensive documentation describing the conditions of detention and reception of asylum seekers and the asylum procedure in Greece. The reports showed evidence of a systematic practice of detaining asylum seekers for periods of a few days to a few months following their arrival, whether they had arrived in Greece for the first time or had been transferred back under the Dublin II Regulation. Detainees are not provided with reasons for their detention. The reports documented poor detention conditions, recording complaints of insults including racist insults by staff and the use of physical violence by guards. The reports also demonstrated numerous obstacles to accessing the asylum procedure itself. On the whole, asylum seekers are either not informed of the possibility of claiming asylum, of getting a lawyer or assistance from non-governmental organisations, or of time limits and deadlines in the procedure. After being released asylum seekers are given three days in which to claim asylum but this proves almost impossible in practice because of the very high number of people waiting and because the office for lodging applications is only open one day a week. The reports also found that there was insufficient provision of interpreters and therefore interviews were held in a language that the applicants did not understand. Access to courts is also hampered in a variety of ways. The excessive length of proceedings was also denounced; the average duration of an appeal to the *Conseil d'Etat* was five and a half years. The procedure and quality of decision-making was also questioned; the extremely low recognition rate raised concerns over the lack of training, qualifications and/or competence of the police officers who make decisions. In 2010, out of 202 first instance decisions, 201 were negative. Real concerns were raised as well about the risk of *refoulement* because an appeal does not have automatic suspensive effect.

The ECtHR recognised the considerable difficulties that member states at the border of the European Union currently face "in coping with the increasing influx of migrants and asylum seekers". The Court also noted that "the situation is exacerbated by the transfers of asylum seekers by other Member States in application of the Dublin [II] Regulation".

The Court unanimously found a violation of article 3 ECHR in relation to MSS' conditions of detention in Greece. Detention in such conditions amounted to "degrading treatment" in contravention of Article 3 ECHR taking into account the fact that the applicants were asylum seekers and noting that in the case of MSS he "was particularly vulnerable because of everything he had been through during his migration and the traumatic experiences he was likely to have endured previously".

MSS also claimed that his living conditions in Greece gave rise to a breach of Article 3 ECHR by the Greek authorities. He had lived in a park in the middle of Athens for many months, spending his days looking for food with no access to sanitary facilities. He had lived in permanent fear of being attacked or robbed. He argued that his resulting situation of vulnerability and material and psychological deprivation amounted to a breach of article 3 ECHR. The Greek government argued that if the Court found in favour of MSS this would be contrary to the provisions of the Convention which did not guarantee the right to accommodation or political asylum, and that this would risk countless applications from homeless people and place an undue positive obligation on states in terms of welfare policy. UNHCR submitted that "an adult male asylum seeker had virtually no chance at all of being offered a place in a reception centre". The Court confirmed that article 3 ECHR does not oblige states to provide everyone within their jurisdiction with a home nor does it entail any general obligation to give refugees financial assistance to enable them to maintain a certain standard of living.

However, the Court pointed out that what was at stake in this case was different in the sense that Greece had passed national legislation transposing the EU Directive on minimum standards for the reception of asylum seekers¹⁷ and that Greece is therefore bound to abide by its own legislation. The Court considered that the data available on the scarcity of places in reception centres considerably reduced the weight of the Greek government's argument that MSS' situation was the result of his own inaction. On this ground the Court concluded by 16 votes to one that MSS "has been the victim of humiliating treatment showing a lack of respect for his dignity and that this situation has, without doubt, aroused in him feelings of fear, anguish or inferiority capable of inducing desperation. It considers that such living conditions, combined with the prolonged uncertainty in which he has remained and the total lack of any prospects of his situation improving, have attained the level of severity required to fall within the scope of Article 3 of the Convention".

The Court also found that Greece was in violation of MSS' right to an effective remedy (article 13 ECHR) in conjunction with article 3 ECHR due to the deficiencies of the Greek authorities' examination of MSS' asylum claim and the risk he faced of being returned directly or indirectly to Afghanistan without any serious examination of his claim and without having access to an effective remedy.

MSS also brought the case against the Belgian state on the basis that the government was aware of the deficiencies in the Greek asylum procedure and had failed to assess the risk MSS faced if returned to Greece. MSS argued that the Belgian authorities were aware that it was unlikely that his claim would be seriously considered by the Greek authorities and that he was therefore at risk of being returned to Afghanistan in breach of Article 3 ECHR. The Court found that when states apply the Dublin II Regulation, they must ensure that the country which takes charge of the asylum application "affords sufficient guarantees to avoid an asylum seeker being removed, directly or indirectly, to his country of origin without any evaluation of the risks he faces from the standpoint of Article 3 of the Convention". The Court concluded that at the time of his transfer to Greece, the Belgian authorities knew or ought to have known that he had no guarantees that his claim for asylum would be properly examined by the Greek authorities. Therefore, the Court concluded by sixteen votes to one that Belgium was in breach of article 3 ECHR when it transferred MSS to Greece due to the risks linked to the deficiencies in the asylum procedure in Greece.

MSS also argued that by transferring him to Greece under the Dublin II Regulation, Belgium was in breach of article 3 ECHR in relation to the conditions of detention and living conditions for asylum seekers in Greece. The Court re-iterated past case law that the return of an asylum seeker may engage the responsibility of that state under the Convention if there are substantial grounds for believing that the person concerned would face ill-treatment contrary to article 3 ECHR. Based on its conclusion on the application against Greece that the detention and living conditions in Greece were such as to amount to a breach of article 3 ECHR, the Court concluded by fifteen votes to two that Belgium was therefore in breach as well for returning MSS to such conditions. Finally, the Court unanimously found a breach of the right to an effective remedy taken in conjunction with article 3 ECHR because without its decision having suspensive effect, the Belgian Aliens Appeals Board could not have offered MSS sufficient redress and because there was a lack of any prospect of obtaining adequate redress.

¹⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:031:0018:0025:EN:PDF>.

Referral to the Court of Justice of the European Union regarding the interpretation of sexual orientation in the EU Qualification Directive

Kashayar Khavand v. Federal Republic of Germany, Reference for a preliminary ruling from the Oberverwaltungsgericht für das Land Nordrhein-Westfalen (Germany)- (Case C-563/10), 1 December 2010¹⁸

The German Administrative Court has made a reference for a preliminary ruling to the Court of Justice of the European Union on the interpretation of Article 10(1)(d) of the EU Qualification Directive.¹⁹ The article refers to the grounds established in the Refugee Convention and reads as follows:

1. Member States shall take the following elements into account when assessing the reasons for persecution: [...]

(d) a group shall be considered to form a particular social group where in particular:

members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society;

depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation.

Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States: Gender related aspects might be considered, without by themselves alone creating a presumption for the applicability of this Article;

The questions asked by the German Administrative Court relate to the interpretation of the article in cases of asylum claims where there is a fear of persecution based on homosexuality. The Court asked whether homosexuality is considered a “sexual orientation” within the meaning of the second sentence of the article and whether it can be an adequate reason for the persecution. The Court asked further questions if the answer to the first one was in the affirmative: (i) “to what extent is homosexual activity protected?” (ii) “Can a homosexual person be told to live with his or her sexual orientation in his or her home country in secret and not allow it to become known to others?” and (iii) “are specific prohibitions for the protection of public order and morals relevant when interpreting and applying Article 10(1)(d) of Directive 2004/83/EC or should homosexual activity be protected in the same way as for heterosexual people?”.

Some of these questions have already been answered by UK Courts. It is accepted that gay and lesbian individuals can be members of a particular social group in certain countries. For example, courts and tribunals in the UK have found that gay men in Jamaica,²⁰ “practising homosexuals in Afghanistan”,²¹ and gay men in Iran and Cameroon²² constituted members of a particular social group. More generally, the Supreme Court has held that:

¹⁸ http://curia.europa.eu/juris/cgi-bin/gettext.pl?where=&lang=en&num=79889878C19100563&doc=T&ouvert=T&seance=DDP_COMM#1.

¹⁹ Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>.

²⁰ DW (Homosexual Men – Persecution – Sufficiency of Protection) Jamaica CG [2005] UKAIT 00168.

²¹ AJ (Risk to Homosexuals) Afghanistan CG [2009] UKAIT 00001.

²² HJ (Iran) v Secretary of State for the Home Department (Rev 1) [2010] UKSC 31 (07 July 2010).

To a large extent the meaning of the definition in article 1A(2) is common ground. It treats membership of a particular social group as being in pari materia with the other Convention reasons for persecution: Fornah v Secretary of State for the Home Department [2006] UKHL 46, [2007] 1 AC 412, para 20, per Lord Bingham of Cornhill. There is no doubt that gay men and women may be considered to be a particular social group for this purpose: Islam v Secretary of State for the Home Department; R v Immigration Appeal Tribunal, Ex p Shah [1999] 2 AC 629, 643-644, per Lord Steyn. As Lord Rodger points out in para 42, regulation 6(1)(e) of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 (SI 2006/2525) recognises as clearly as can be that a group based on a common characteristic of sexual orientation may be included in a particular social group that is in need of international protection.

The group is defined by the immutable characteristic of its members' sexual orientation or sexuality. This is a characteristic that may be revealed, to a greater or lesser degree, by the way the members of this group behave. In that sense, because it manifests itself in behaviour, it is less immediately visible than a person's race. But, unlike a person's religion or political opinion, it is incapable of being changed. To pretend that it does not exist, or that the behaviour by which it manifests itself can be suppressed, is to deny the members of this group their fundamental right to be what they are.²³

In the same case, the Supreme Court also held that asylum seekers who fear persecution on the basis of their sexual orientation cannot be expected to return to their country of origin and live discreetly to avoid persecution. It is therefore clear that in the domestic context, the answer to the second question is *no*, where the consequence of a failure to do so would be persecution.

The approach of the CJEU to the questions referred by the German Administrative Court will be important. It is to be hoped that the CJEU's judgment will not water down the recent gains made in the UK. In the best case scenario it will provide an inclusive and harmonised interpretation of the Convention ground of membership of a particular social group for gay and lesbian asylum seekers in the EU.

Domestic violence may include psychological harm says Supreme Court

***Yemshaw v. London Borough of Hounslow [2011] UKSC 3 (26 January 2011)*²⁴**

The Appellant in this case was a married woman with two young children who had left her matrimonial home with her children. She left because she was scared that if she confronted her husband he would hit her. He used to shout in front of the children; he did not treat her "like a human", and did not give her money for housekeeping. She was afraid that he would take the children from her. She applied to the local authority for housing assistance. The housing officers decided that she was not automatically homeless under the domestic violence provisions of the Housing Act 1996 warranting the grant of alternative accommodation, because her husband had never actually hit her or threatened to do so and because they considered that "the probability of domestic violence is low".

The Supreme Court departed from the Court of Appeal's approach in this case and in the case of *Danesh*²⁵ where it was held that "physical violence is the natural meaning of the word violence". Baroness Hale said that this is not the *only* natural meaning of the word. She looked at the development of the term "domestic violence" in its use by the Home Office, the Association of Chief Police Officers, the Crown Prosecution Service, the Ministry of Justice and the UK Border Agency.

²³ Ibid, para. 10-11.

²⁴ <http://www.bailii.org/uk/cases/UKSC/2011/3.html>.

²⁵ Royal Borough of Kensington & Chelsea v Danesh [2006] EWCA Civ 1404 (05 October 2006), <http://www.bailii.org/ew/cases/EWCA/Civ/2006/1404.html>.

She also examined whether the factual circumstances to which it applies had developed and changed over the years since Parliament enacted the legislation. Adopting a comment of Lord Clyde in the case of *Fitzpatrick*,²⁶ she observed that it is a “relatively rare category of cases where Parliament intended the language to be fixed at the time when the original Act was passed”. The essential question considered by the Lords was whether “an updated meaning is consistent with the statutory purpose”, in this case ensuring that a person is not obliged to remain in a home where she, her children or other members of the household are at risk of harm.

The Supreme Court has clarified the meaning of domestic violence in the context of access to housing. The Court ruled unanimously that domestic violence as defined under section 177(1) of the Housing Act 1996 includes “physical violence, threatening or intimidating behaviour and any other form of abuse which, directly or indirectly, may give rise to the risk of harm”. Baroness Hale adopted this definition on the basis that “the general understanding of the harm which intimate partners or other family members may do to one another has moved on”. The Court noted that this was consistent with the Court of Appeal’s decision in *AN (Pakistan)* which concluded that the meaning of domestic violence for the purpose of Paragraph 289A of the Immigration Rules, allowing for the grant of Indefinite Leave to Remain to spouses of sponsors who are settled in the UK but where the relationship has permanently broken down due to domestic violence, was not limited to physical violence although “it must reach some minimum level of seriousness, which will depend upon context and particular circumstances”.

Baroness Hale concluded that the case should be remitted to the local housing authority to be decided again because the housing officers adopted too narrow a view of domestic violence in this case. The test she clarified was not subjective but always the view of the “objective outsider but applied to the particular facts, circumstances and personalities of the people involved”.

International News

Argentina: New trend sees an increasing number of women burnt alive

Burnt to death at the age of 24, Fátima Catán is one of the most recent victims of a new type of gender-related violence spreading across the country. Her death was one of 260 gender-related murders documented by the organization La Casa del Encuentro in 2010 in its annual report on misogynist violence, which saw an increase of 12.5 per cent from 2009. In the majority of cases, the perpetrators were current or former partners of the victims who committed the murders after courts had issued restraining orders against them. The Supreme Court’s office for domestic violence and the Public Defender’s Office have acknowledged the scale of the problem as well as the issue of gender discrimination in court verdicts. However, real changes are yet to be made as public bodies are still struggling to enforce a law passed in March 2009 to prevent, punish and eradicate violence against women due to lack of funding.

To see full article see: <http://ipsnews.net/news.asp?idnews=54177>.

India: Child marriages persist despite efforts to stop the practice

Despite the existence of a legal minimum age for marriage, it is still socially acceptable for underage girls to get married to men twice their age. According to UNICEF, 40 per cent of child marriages in the world take place in India, and many of the girls end up in abusive relationships. Not only do these

²⁶ *Fitzpatrick v. Sterling Housing Association Ltd* [1999] UKHL 42; [1999] 4 All ER 705; [1999] 3 WLR 1113 (28th October, 1999), <http://www.bailii.org/uk/cases/UKHL/1999/42.html>.

early marriages dash the aspirations of the children, but also severely compromise their health as a consequence of having borne children before being physically and psychologically mature resulting in a high rate of maternal and infant mortality. Child brides are also more vulnerable to physical or sexual abuse by their husbands. Research has shown that the continuing practice of child marriage is linked to deeply rooted traditional norms stressing female subservience as well economic factors. Efforts by human rights activists and public authorities to bring about social change and understanding of the risks related to child marriage are being made but will require a long time to take effect.

To read full article see: <http://ipsnews.net/news.asp?idnews=52510>.

Iran: Authorities continue crackdown on human rights activists

By handing out heavy jail sentences for Nasrin Sotoudeh, Shiva Naza Ahari and other human rights activists, the Iranian government continues its systematic crackdown on political dissidents. The International Campaign for Human Rights has reported an increase in arrests of women's rights activists and journalists on political grounds.

Sotoudeh, a prominent human rights lawyer, was arrested in September 2010 on charges of 'propaganda against the state' and 'collusion with the aim of acting against national security'. After being held in solitary confinement for long periods of time, denied access to her family and lawyers and carrying out two hunger strikes she has now been sentenced to 11 years in jail and a 20-year ban on practising law and travelling abroad. Similarly, the outspoken women's rights activist Shiva Naza Ahari was sentenced to 4 years in prison and 74 lashes by an appeals court for 'gathering and colluding against national security', a vague charge which has been increasingly used to convict political prisoners in recent years. Various human rights organisations such as Amnesty International and Frontline have expressed their concern over the safety of human rights defenders in Iran.

To read full article see: <http://www.guardian.co.uk/world/2011/jan/10/iran-jails-human-rights-lawyer>.
For further information visit: <http://www.iranhumanrights.org/2010/01/arrests-womens-activists/>.

Occupied Palestinian Territories: GBV remains widespread with little recourse for victims

According to information gathered by the Palestinian Authority (PA) the number of reported sexual assault and attempted murder cases of women increased dramatically between 2006 and 2009. While the data prompted the launch of a national campaign against gender-based violence, most Palestinian women would rather not report the crimes in order to avoid likely repercussions such as divorce, social stigma or losing custody of their children. Part of the campaign is to amend the Palestinian penal code, which includes laws that are unjust to women. Critics, however, have voiced their concern that the amendments do not sufficiently relate to domestic violence cases and will be difficult to enforce due to the lack of cooperation between the Justice Ministry in Ramallah and Gaza. Local NGOs are trying to fill the void by providing support networks but the lack of stability and resources in the region prevent them from embarking on a full-scale campaign for women's rights.

To read full article see: <http://www.irinnews.org/report.aspx?ReportID=91755>.

Russia: Domestic violence kills a woman every hour

According to a report released by the Russian women's support group ANNA, up to 14,000 women are killed every year as a result of domestic violence, while 650,000 women are regularly beaten by their husbands or other relatives. Anna Pisklaklova, the president of the organisation, says that these numbers mean that every 63 minutes a woman dies due to domestic violence. Pisklaklova explains that the widespread use of violence against women is rooted in the patriarchal nature of Russian society and holds public authorities partially responsible due to their lack of action on the issue. There is only one 35-bed shelter in Moscow.

To read full article see: <http://www.france24.com/en/20101213-domestic-violence-kills-one-russian-woman-hour-report>.

South Africa: 'Corrective rape' should be punishable

In early 2009, the widespread use of 'corrective rape' in South Africa, whereby men rape lesbian women in order to 'cure' them from their sexual orientation, generated an international outcry among human rights organisations. Two years on, cases of corrective rape have been on the rise and not much has changed. More than 10 lesbians are raped or gang raped every week in Cape Town alone, over 500 women report being subjected to 'corrective rape' every year, and over the past ten years 31 lesbians have been killed on account of their sexuality. In order to end the impunity of perpetrators of corrective rape, the non-governmental organization Luleki Sizwe has now issued a call to South Africa's Minister for Justice to declare the practice a hate crime, punishable by law. In spite of the country's commitment to LGBT rights, the government has so far failed to act on the issue. Perpetrators are being let out on low bail and court cases take years before being concluded.

To read full article and sign the petition see: http://www.change.org/petitions/view/south_africa_declare_corrective_rape_a_hate-crime.

Syria: Legal impunity for perpetrators of gender-based violence

Iman Wanassous lived in a violent marriage for two decades and, when she finally got divorced, had to relinquish all her rights. Many Syrian women in situations similar to Iman's not only have to face the regular domestic abuse, but also social inequality and legal discrimination. Even though the Syrian government signed the Convention for the Elimination of all forms of Discrimination Against Women (CEDAW) almost a decade ago with some reservations and has recently been promoting women's political participation and equal access to education, women are still far away from enjoying equal rights to men. For instance, under the Personal Status Law – which allows various religious groups to implement their own regulations for marriage, divorce and custody – it is extremely difficult for women to file a divorce, even if they live in abusive relationships. In addition to this, the Penal Code will always ensure a certain level of impunity for the perpetrators. For example, a man who has raped an adult woman can be exempt from punishment if she agrees to marry him. Similarly disproportionate consequences are the norm in cases of honour crimes with some men even escaping punishment when they have killed a female relative on suspicion of having committed adultery. Various organisations and media publications advocating the rights of women are slowly working towards greater equality but struggle with the abundance of intertwined issues which need to be tackled.

To read full article see: <http://ipsnews.net/news.asp?idnews=53832>.

New Publications

Criminalising Identities: Rights Abuses in Cameroon Based on Sexual Orientation and Gender Identity

Human Rights Watch, November 2010

In a joint report Human Rights Watch, Alternatives-Cameroun, l'Association pour la Défense des Droits des Homosexuels and the International Gay and Lesbian Human Rights Commission have drawn attention to the increasingly aggressive discrimination and criminalisation of Cameroonians perceived to be lesbian, gay, bisexual or transgender (LGBT). Based on 45 interviews with victims, the 62-page long report documents abuses by the police and describes how the Cameroonian government and media are creating a homophobic atmosphere that encourages shunning and abuse within the community.

To read the full report see: <http://www.iglhrc.org/binary-data/ATTACHMENT/file/000/000/448-1.pdf>.

Aftershocks: Women speak out against sexual violence in Haiti's camps

Amnesty International, January 2011

After having already lost their loved ones, homes and livelihoods through the earthquake in January 2010, women and girls living in the makeshift camps in Haiti are now also facing the additional trauma and risk of being subjected to rape and sexual violence, as outlined in this new report by Amnesty International. Drawing on the experiences of more than 50 survivors of sexual violence, the report highlights the lack of security and policing in and around the camps, leaving women and girls vulnerable to the groups of armed men roaming the camps at night. The report points out that the issue has so far been neglected in the efforts to handle the wider humanitarian crisis and emphasises the importance of including women in the process.

To read the full report see: <http://www.amnesty.org/en/library/asset/AMR36/001/2011/en/57237fad-f97b-45ce-8fdb-68cb457a304c/amr360012011en.pdf>.

Local Safeguarding Children Board Trafficking Toolkit and Guidance

London Local Safeguarding Children Board

The London Local Safeguarding Children Board (LSCB) has launched the final version of the LSCB Trafficking Toolkit and Guidance. Some people may have already used the Toolkit while it was being piloted but it is now formally launched for Local Authorities and other safeguarding professionals (including police) in London and across the UK. It includes amongst other things the identification matrix and instruction for National Referral Mechanism (NRM) referrals. Any lawyer dealing with a child they believe to be trafficked are advised to ask the Local Authority whether they are using the Toolkit and following the multi-agency guidance, particularly for an NRM referral.

The Toolkit and Guidance are available here: <http://www.londonscb.gov.uk/trafficking/>.

UK Training and Events

Introduction to Counselling and Supporting Refugee Women

This free accredited course has been designed for refugee women who wish to develop understanding of principles and practice in counselling. No prior knowledge of counselling is required.

Candidates who successfully complete this course will be eligible for access to the Diploma in Counselling and Supporting Refugee Women.

Dates are all Thursdays: **May 12th, 19th, 26th and June 2nd, 9th, 16th and 23rd.**

For more information regarding the course see: http://www.wgn.org.uk/images/docs/intro_crw.pdf.

Download an application form from here:

http://www.wgn.org.uk/index.php?option=com_content&view=article&id=95&Itemid=73.

Please return **two hard copies** of your application form **by 4th March 2011** to:

Gona Saed
Refugee Women's Project Development Worker
Women and Girls Network
P.O.Box 13095
London W14 0FE

For enquires/further information please email Gona on gona@wgn.org.uk.

Refugee Council Conference 2011

The Refugee Council conference 2011 will be held in London on Wednesday 23rd March 2011.

The conference will be held at the Day Centre in Brixton, 240/250 Ferndale Road
London SW9 8BB, 11.00 - 15.30.

The morning session (11.00 - 13.00) will include presentations by Refugee Community Organisations and NGOs from across the country running successful and innovative projects which are making a difference to the lives of refugees. They will then break for a networking lunch.

The afternoon session (14.00 - 15.30) will focus on looking ahead at the challenges facing our sector, how we can work together to protect refugees and will include a keynote speech from Roland Schilling, UNHCR Representative in London, a panel discussion and Q & A session.

For more information, including the programme and the booking form see:

<http://www.refugeecouncil.org.uk/eventsandtraining/conferences/conference2011/>.

Charter of rights of women seeking asylum



Endorsements: 216

Google group membership: 128

“Coping with Destitution”

Oxfam is an endorser of the Charter of Rights of Women Seeking Asylum.

Oxfam's recently published report *“Coping with Destitution”* looks at the survival and livelihood strategies used by thousands of refused asylum seekers living in the UK. The research identifies the following strategies which may place women at particular risk and provides related case studies. The report finds that the effect of gender in determining survival strategy is not straightforward.

Social networking, building up contacts with other asylum seekers and support organisations is important, but can be hard for women from cultures where it is customary for women to stay at home as they may lack the necessary social skills, or be traumatised by their past experiences.

Transactional relationships with family or friends: Karima, who has been staying with friends and sleeping on the floor, feels insecure and worries about being unable to contribute to the households taking care of her, so she is looking for a “good man” to have a baby with, hoping this will provide a way to escape her current situation.

Transactional relationships with local people: Some women resort to the exchange of goods or money in exchange for sex. Magda survives through her relationships with three different men, one of whom is her landlord, but she lives in constant fear of these men finding out about each other and losing her support.

Exploitative relationships: Tahiya lives with her older sister in almost total isolation. Her sister paid for Tahiya's travel to the UK, Tahiya is now expected to do all the housework and childcare. Tahiya is unhappy as she has no money and her sister has no wish to change this situation.

Other women feel they have little choice but to engage in commercial sex work, which enables them to earn sufficient money to support any dependants, but there are risks associated with this work, including psychological trauma, possible health risks, and a risk of gender-based violence and exploitation.

The full report can be found on the Oxfam website,
http://www.oxfam.org.uk/resources/policy/right_heard/coping-with-destitution-survival-strategies-uk.html

For more information on the Charter and the Every Single Woman campaign, please go to www.asylumaid.org.uk/charter

If your organisation would like to endorse the charter, please send an email simply stating the name of your organisation to charter@asylumaid.org.uk

She was detained without charge

Nobody believed her story and no-one spoke up for her

Her family and friends didn't know where she was

Afraid...isolated...

She had no idea what would happen to her next

And that was after she sought asylum in the UK

Our asylum system is now so tough that, all too often, this is how people seeking help are treated. And that can't be right.

We believe the system should be fair and just and that every asylum seeker should have legal help to make their case - only then can we say in good conscience 'let the law take its course'.

Asylum Aid is an independent, national charity that secures protection for people seeking refuge in the UK from persecution in their home countries.

We provide expert legal representation to asylum seekers and campaign for a fair and just asylum system. Founded in 1990, we have since helped 30,000 people to get a fair hearing. In 2009 85% of our clients were granted leave to stay in the UK when decisions were made on their claims for protection.

Please support us

Your donation will safeguard our independence and enable us to stand up for fair asylum rights without fear or favour.

You can make a donation via our website:
www.asylumaid.org.uk/pages/give_now.html
OR send it to us by post with this form:

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www.asylumaid.org.uk

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Please return this form in an envelope to:
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London N1 1RU



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