Women's ASYLUM NEWS

Refugee Women's Resource Project **- Asylum Aid - Issue 24 August 2002**

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Refugee women jailed for having false documents

Women refugees arriving in the UK with false documentation face a new danger – prosecution in the criminal courts and imprisonment.

RWRP has recently assisted criminal solicitors to obtain the release of a young Liberian woman imprisoned in HMP Holloway awaiting trial on criminal charges. Her crime? Attempting to travel to Canada on a false passport to claim asylum. This young woman was seven months pregnant when she arrived in the UK en route to Canada. She attempted to claim asylum at the police station but no action was taken. She was subsequently charged. RWRP were called in to see her at the prison and immediately made an asylum claim on her behalf.

Three bail applications were made during the latter stages of her pregnancy – they all failed because Uxbridge magistrates considered the risk of her absconding was too great. She was finally allowed bail in her absence by Isleworth Crown Court. She was absent because she was in labour giving birth to her first child. She still faces criminal charges.

RWRP's information is that there are several asylum seeking women currently serving criminal sentences in HMP Holloway for using a false instrument i.e. using a false passport and that they were advised by their solicitors to plead guilty.

Further, RWRP has been advised that several asylum seeking women arriving with, or attempting to travel on, false passports, have "*voluntarily departed*".

This re-emergence of the false passport issue raises several important issues:

- Why are claims for asylum not being accepted or facilitated at police stations?
- What are immigration officers and/or the police saying to the women who "voluntarily depart"?
- Why are asylum seekers charged with criminal offences being advised to plead guilty when they have a defence?
- Why are the Crown Prosecution Service (CPS) bringing charges against asylum seekers with false passports when they were given written guidance following the case of ADIMI (Royal Courts of Justice July 1999) on the "true ambit of Article 31" of the Geneva Convention, which should, in practice, protect asylum seekers from such prosecutions?

In ADIMI it was also agreed that the police should be instructed to bring to the attention of the CPS any material which is relevant to any particular case (i.e. an asylum claim); that the Law Society should take steps to ensure that defence solicitors become aware of the position; and Magistrates Courts clerks should be alerted to possible Article 31 implications where a

defendant makes an equivocal plea (i.e. pleads guilty).

RWRP has alerted UNHCR, who were involved in the case of ADIMI, and they have written to the CPS asking why, given the undertakings in ADIMI, these prosecutions have re-commenced.

The CPS are acting on section 31 of the Immigration and Asylum Act 1999, which provides a defence for those who are refugees. Refugee here has the same meaning as that in the 1951 UN Refugee Convention. However, section 31(7) provides: "If the Secretary of State has refused to grant a claim for asylum made by a person who claims he has a defence under subsection (1), that person is taken not to be a refugee unless he shows that he is."

We are worried about this legislation and the way in which, in our experience, it is being implemented.

Firstly, charges are brought and prosecutions pursued before the Secretary of State has determined the individual's asylum claim. This seems contrary to section 31(7), which infers that while a person's claim is outstanding she is to be presumed to be a refugee. Prosecution is, therefore, premature.

Secondly, section 31(7) would support prosecutions after the Secretary of State has refused asylum but before the individual has received a final determination on her asylum appeal. She would have to prove her refugee status before the Magistrates or Crown Court in order to establish her defence. There are specialist Courts set up to decide the complex question of who is a refugee. Magistrates and Crown Court judges do not have the experience or training to make these decisions.

Thirdly, we wonder why a frightened and vulnerable person, fleeing torture in their country, should be subjected to prosecution and possible imprisonment simply because their fear is not for any Refugee Convention reason.

In our view, those seeking protection as refugees or on the basis of Article 3 of the Human Rights Convention should also be protected. No prosecution should be brought prior to the Secretary of State deciding their claims, and any subsequent prosecution should be stayed pending the outcome of any appeal against the Secretary of State's decision.

If the prosecution is to wait until after the final determination of an asylum application (i.e. after exhausting the appeal process) it would clearly only apply to failed asylum seekers. Whether the Secretary of State would think prosecuting failed asylum seekers for using illegal documents, rather than simply returning them, would be a good use of the UK's resources and the UK's already overcrowded prisons is, of course, a decision for him.

Further, in Article 31 there is a requirement that the refugee "presented himself to the authorities in the UK without delay". <u>This clearly requires immigration officers and the police to be alert and disposed to hearing and accepting claims for asylum when they are made</u>. Which is not what happened in the above-mentioned Liberian case and many other cases.

There is some good news in that the Legal Services Commission is advertising in this month's issue of FOCUS for solicitors or the not for profit sector to run a pilot

scheme to provide specialist support by telephone for criminal representatives at police stations on immigration matters. The scheme would work on a rota basis and participants would agree to be available on a 24 hour basis.

This should, to some degree, alleviate the problem of duty solicitors advising asylum seekers to plead guilty to criminal charges to which they have a defence.

We are aware of this problem through HMP Holloway and the prosecutions which are underway at Uxbridge Magistrates Court where the ADIMI case was originally heard. If you have any further examples please contact RWRP, so that we can press the HO on the issue, through Parliamentary questions if necessary.

International case law (USA) or when women's experience of persecution still remains undervalued The outcome of a recent asylum case in court in the USA was a sharp reminder that there is still a long way to go before various forms of gender persecution get internationally recognized as grounds for asylum under the 1951 UN Convention and the 1967 Protocol relating to the Status of Refugees.[1] Despite the adoption of gender guidelines for the determination of asylum claims in several Western countries and a steady growth in the literature on the subject in the last decade, the interpretation of the 1951 Convention in many jurisdictions continue to undervalue women's experiences by refusing to accept that many such experiences amount to persecution.

In July, the US 7th Circuit Court of Appeals refused the petition of a seventy-one year old Iranian woman against the decision of the Board of Immigration Appeals (see *Yadegar-Sargis v INS*).[2] Ms Sargis challenged her deportation, after over ten years in the US, on the grounds that she feared persecution by reason of her Armenian ethnicity and Christian religion. An important aspect of her case was her objection to the Islamic dress code.

The Court considered a number of earlier decisions on various Circuits. Some of these had appeared to require the individual to demonstrate that she would not conform with the dress code and, therefore, be punished. That approach was too narrow.

> "[It] *is unclear to us why the victims must be willing to suffer whatever consequence may be visited on them as a prerequisite to claiming persecution. The law does not impose an absolute requirement that one be willing to suffer martyrdom to be eligible for asylum.*"

Nevertheless, Ms Sargis needed to demonstrate that the requirement was not only discriminatory and objectionable (which the Court were prepared to accept the dress code was), but also "*…that* [it] *affects a deeply held belief*" of hers. Before leaving Iran Ms Sargis had conformed with the dress code and, when questioned about her objections to it, she said:

[1] This recent case also illustrates some of the concerns raised by opponents to the US-Canada 'safe third country' agreement as they pointed out that the interpretation and application of the 1951 Refugee Convention is more restrictive in the USA and that women asylum seekers would be particularly affected.

[2] The case was kindly brought to our attention by Vanessa Melendez, Clinical Assistant Professor of Law of Northwestern University School of Law, Chicago, USA.

"*This is not our Armenian culture, it's not our dress. We don't… we don't dress this kind of things.*"

"*When they want us to wear the same thing that… as the religion wants… wants them to do, it's kind of forcing you to accept their religious…*"

"*Yes it's against my religion. I think that they tried slowly to take… to change us into Islam religion.*"

Since her evidence was that she would comply, because she was afraid, there was no question of persecution arising out of her being punished. In the view of the Court, her evidence did not compel the Board to find that complying with the dress code would be persecutory for Ms Sargis. Essentially, Ms Sargis' answers were insufficient to demonstrate that her objection to the dress code was sufficiently fundamental to her. It mattered not that she would conform out of fear: she had been twice cited by the Iranian police for dress code violations, her niece (who then lived with her) had been spray painted by extremists in public for failing to cover her face, and others had been sprayed with acid.

There are a number of objections to the Court's opinion. Firstly, the Board had held that because Ms Sargis had said she would comply with the dress code:

"[W]*e do not accept that* [her] *actions reflect her opposition to the Islamic law is fundamental to her individual identity or conscience.*"

Yet, this is effectively the approach the Court had said was too narrow. It decides the case solely by reference to whether or not Ms Sargis would comply with the dress code. By upholding the Board's decision because the evidence did not compel a finding that the dress code, of itself, would persecute Ms Sargis, the Court effectively refuses to consider for itself whether, by being made to feel afraid to dress as she would wish, Ms Sargis would be persecuted. Yet it is this question, which the Board never considered.

Secondly, in relying upon Ms Sargis' answers, which might fairly be described as naïve, the Court again adopts a regrettably all too familiar and conservative approach to persecution. It is accepted that the dress code is objectionable. However, Ms Sargis' objections are not sufficiently sophisticated for the Court to accept her objections are fundamental to her. That approach discriminates against the uneducated and inarticulate, whose ability to express themselves in sophisticated terms is inevitably limited. Further, societal discrimination against women means that disproportionately it is women who are denied education and, through other forms of repression, are denied the right to develop powers of expression.

Thirdly, in view of the foregoing criticisms, it is regrettable that no express reference is made to guidelines on gender. It is too often supposed that simply by virtue of being experienced, well-educated and judicial, decision-makers will be gender and culturally sensitive. This does not, however, follow.

The minority opinion, convincingly reasoned by Noonan J, in *Fisher v INS*, an earlier case before the 9th Circuit Court of Appeals which was considered in *Sargis*, shows the dangers of such supposition. The majority (9 judges) there refused a petition of another Iranian woman and in doing so: (1) refused to consider US

Department of State Country Reports; and (2) failed to give any consideration to guidelines on gender adopted by the INS after the determination of the Board (so these could not have been considered at any prior stage).

UK News

Asylum seeker mother with HIV wins battle for Baby Milk An HIV+ asylum seeker who risks passing on the virus to her four months old child through breast feeding won a High Court battle at the end of July for the right to free milk. A judge allowed the legal challenge against a refusal by the Government to provide an Ethiopian woman asylum seeker with milk tokens.

The Home Secretary was ordered by Judge Jowitt to reconsider the case because he had failed to take into account the risks to the child of the mother suckling her daughter and infecting her with HIV. The woman was diagnosed as HIV-positive when she was five months pregnant but her daughter was born without the virus.

Dinah Rose, appearing for the Ethiopian woman, told Mr Justice Jowett that *"as the Secretary of State for Health has decided to maintain a scheme for the provision of free milk to babies living in poverty to safeguard their nutrition and accordingly their health, it is neither rational nor lawful to exclude from that scheme babies whose mothers are asylum seekers".* Child Poverty Action Group said it was *"delighted"* with the ruling, claiming that other mothers in the same predicament should now be able to get the same help.
Source: John Aston, **'**HIV asylum seeker wins battle for baby milk'**,** *The Independent*, 30 July 2002 via www.ncadc.org.uk.

Asylum seekers' rights to work removed On 23 July 2002 Home Office Minister Beverley Hughes announced that the Government was withdrawing the right to work from all asylum seekers. Both those who have newly arrived and those who have been in the country for some time but have not applied for permission to work at the time of the announcement are affected.

International News

Honour killings not 'exceptional' in Egypt Honour crimes are a regular feature in Egyptian newspapers. Although not a daily occurrence, they are frequently reported in newspapers. A national conference on crimes of honour, organised by the Centre for Egyptian Women's Legal Assistance (CEWLA) recently debated the issues. CEWLA have documented all of the crimes of honour reported in the press from 1998 to 2001.

CEWLA, which was set up by two lawyers in 1996 to offer free legal aid to women, concluded that suspicion of '*indecent behaviour*' was the reason given for 79 percent of all crimes of honour in Egypt. Gasser Abdel-Gawad, Director of CEWLA, claims, *"In most crimes of honour, there is no concrete evidence the women are killed just because of rumours or suspicions that they have crossed the line of 'decent' behaviour"*.

Despite this the justice system in Egypt shows sympathy with the perpetrators of such acts. CEWLA is campaigning for the repeal of Article 17 of the Criminal Code, which at present allows judges to give lenient sentences to the perpetrators of honour killings. They argue that as a signatory to the UN Convention on the Elimination of all forms of Discrimination Against Women the State has an obligation

to condemn crimes committed in the name of honour and criminal legislation must be changed. (Source: Women in the Middle East, Bulletin No 4, August 2002).

Five women face death by stoning in Iran and Nigeria The Iranian press has reported that Ms Ashraf, a 30 year-old woman has recently been sentenced to death by stoning. This year three other women, Ms Shahnaz, Ms Ferdows and Ms Sima have also been sentenced to death by stoning, according to Islamic law in Iran. In Nigeria Amina Lawal Kurami appealed against her death sentence on July 8th, for adultery.[3] The Nigerian Islamic Court declared that it would delay carrying out the stoning until July 2004 to allow her to wean her baby.

For details on how to protest against these sentences, contact Azam Kamguian, at the Committee to Defend Women's Rights in the Middle East: cdwrme@yahoo.co.uk or azam_kamguian@yahoo.com; tel: 0044(0) 788 4040 835.

Events/Notices

Raising awareness about Domestic Violence On Saturday 17th August 2002 the 'STOP THE HIDING' festival will be raising awareness about Domestic Violence in the UK. This free festival takes place at Streatham Common from midday until 8pm and will include live music, DJs, a kid's area, comedy, theatre and food & drink. All funds raised will go to domestic violence related projects. For more information telephone: 0207 700 1092, or visit the website at: www.stopthehiding.org

The Traumatic Stress Clinic's Refugee Service will be hosting a **one-day conference on The Mental Health Needs of Refugees** for mental health and social care professionals who work with refugees. It will take place at Regents College, London on 2nd October 2002. Further details available at the TSC's website www.traumaclinic.org.uk which has recently been updated and where you can find a summary of their Refugee Service and their Phased Treatment Model.

An-Nisa Society is also organising a two-day multi-disciplinary conference for mental health professionals, Muslim leaders and community groups and all those who cater for the mental health needs of Muslims. **'Healing the Self-Towards a Faith-Centred Approach to Mental Health for the Muslim Community'** will take place on 1-2 October 2002 at the Tower Conference Centre, College of North West London, Crescent House, 140 Wembley Park Drive, Wembley HA9 8JD.

The Programme includes a series of workshops presented by various speakers and covering issues such as: 'Working with Muslims and drugs misuse'; 'Introduction to Nafsiyat (Islamic counselling & psychotherapy)' and 'Developing culturally sensitive psychotherapy services'. For more details and information about registration and fees please contact: An-Nisa Society on: Tel 020 8902 0100 Fax 020 8902 0133

Over 1,000 Champions for Change Millennium Awards up for grabs The scheme is offering grants of up to £2,000 to help groups establish community projects addressing issues such as the needs of asylum seekers and refugees, homelessness, family relationships, race and culture, mental and physical disability

[3] Amina had a baby after her divorce. See WAN No. 20, April 2002 or www.santegidio.org/en/pdm/news/amina.htm (English)

and health. The London-wide three-year awards scheme is funded by a £2.4 million grant from the Millennium Commission. For further information or an application form please contact the Champions for Change Millennium Awards team on **020 7928 7811 ext 470**.

The **9th International Women's Health Meeting** is taking place in Toronto, Canada from 12th – 16th August 2002. The programme will include panel presentations on a variety of subjects of interest to refugee women and those who work with them. Topics include Refugee and Immigrant women's Health, Trafficking in Women, Sexual and Reproductive Rights and HIV/AIDS. For more information on the Conference go to: www.iwhm-rifs.org

Publications/Resources

Understanding the Decision Making of Asylum Seekers by Vaughan Robinson and Jeremy Seagrott is a report of research commissioned by the Home Office into the reasons why 65 asylum seekers came to the UK to seek asylum.

Also newly available at the HO is a study on '**The Social Networks of Asylum Seekers and the Dissemination of Information about Countries of Asylum**' by Khalid Koser and Charles Pinkerton. This study identifies the mechanisms by which asylum seekers obtain information about potential countries of asylum. Both reports are part of the Home Office Research Series available online at: www.homeoffice.gov.uk/rds/.

Bail for Immigration Detainees (BID) has a new website The site's address is: http://www.biduk.org. The website has information about the organisation, detention in the UK, volunteering for BID, plus news, reports and new publications.

Study reveals high rates of spouse abuse in South Asian marriages in Greater Boston, USA A study published by the Journal of American Medical Women's Association looking into domestic violence against South Asian Women in Greater Boston has found that 40 % of 160 South Asian women surveyed were victims of *"male-perpetrated intimate partner violence".* The study '**Intimate Partner Violence Against South Asian Women in Greater Boston**' was conducted by Dr Anita Raj of Boston University and Dr Jay Silverman of Harvard University and focused on women from Bangladesh, Buthan, India, the Maldives, Nepal, Pakistan and Sri Lanka, the majority of whom were immigrant (87.5%). The study also found that '*their knowledge of available services is limited, and victim-blaming attitudes are not uncommon*'.

According to *Raksha*, an advocacy and Education organisation that works with South Asian women, many abused women are in the US on spousal visas, linked to their husbands work visas. Unless they are willing to prosecute their husbands there are few options open to them.

However two years ago a new type of visa was created for victims of crimes, such as domestic violence and sexual assault (U-visas). Applicants have to prove that they have been subject to abuse and help the authorities prosecute the crime.

For more on Raksha, see www.raksha.org. Source: http://jamwa.amwa-doc.org/vol57/57_2_10.htm and www.womensenews.org/

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