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# Women's Asylum News

## Women's Project at Asylum Aid

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## **"I feel like as a woman I'm not welcome": A gender analysis of UK asylum law, policy and practice**

*Christel Querton, Legal Policy Officer presents Asylum Aid's latest research report*

Asylum Aid's latest research report is the first comprehensive gender analysis of the asylum system in the UK. It seeks to assess all aspects of claiming asylum in the UK from a gender perspective, including decision-making, the asylum procedure, and reception and detention conditions. As women have constituted one third of all main asylum applicants since 2003, failing to take into account gender issues can have a significant impact on the consideration of women's asylum claims and the treatment of women asylum seekers.

Based on extensive interviews with women asylum seekers and refugees from four cities in the UK, and questionnaires and interviews with legal representatives and asylum advocates, this research combines original qualitative and legal research in a detailed gender analysis of UK asylum law and policy, and tests the Government against its promise to make the asylum system gender-sensitive. The report looks at all UKBA policies and jurisprudence relevant to women asylum seekers and those with gender-related claims for asylum.

Overall, there was a strong sense from the women with whom I spoke that they felt powerless and had no choice but to endure the asylum system until their immigration status was resolved.

Having undertaken the research initially for a European project which aims at comparing the gender-sensitivity of asylum systems in different EU member states, it is clear that the UK somewhat stands

out because of its use of policy guidance. In particular, the UK is one of few EU member states to have adopted gender guidelines for initial decision-makers. From an outsider's point of view, it would thus appear that the UK is at the forefront of efforts to ensure that the rights of all asylum seekers are respected, and that asylum claims are likely to be decided in a fair and efficient manner, irrespective of gender or the reason for claiming asylum. Despite a certain number of policies referring to gender and vulnerable asylum seekers, however, and repeated commitments from Ministers and senior UKBA officials, the UK's record over recent year tells a very different story about how gender issues are handled in the asylum system. This record is examined in the new report.

The UK's slow but certain disengagement from European institutions demonstrates an unwillingness to be bound by any type of legislation that may afford asylum seekers rights that they can directly rely on in the courts. To give but one example, shortly before the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence was adopted, and after more than two years of intense negotiations, the UK suggested including in the list of articles to which signatory States could enter a reservation, article 60(3). This article sets out that:

*Parties shall take the necessary legislative or other measures to develop gender-sensitive reception procedures and support services for asylum-seekers as well as gender guidelines and gender-sensitive asylum procedures, including refugee status determination and application for international protection.*

This amendment was turned down by the other States. Meanwhile, the UK has announced that it needs more time to consider its intention to sign and ratify the Convention due to "difficulties with several articles".<sup>1</sup> Article 60(3) could potentially have a significant impact in terms of ensuring favourable treatment of women asylum seekers in the UK.

The UK's recent record of engagement with the European Union is not much better. The UK has announced its intention not to become bound by all the recast Directives to be adopted under the second phase of the Common European Asylum System. Consequently, the UK will continue to be bound by the initial Directives.<sup>2</sup> The existing instruments have been criticised for establishing minimum standards, whereas the recast instruments (of which the Qualification Directive has already been adopted) make some improvements in taking gender and vulnerability into account in the asylum procedure and the refugee status determination process. The UK's refusal to sign up to these key international and EU law developments may result in UK standards on asylum sliding to the bottom. As other EU member states improve their asylum systems and are held to account on the basis of international and European legal standards, the government's commitments to reduce violence against women and ensure that women asylum seekers are given a fair consideration of their claims and treated with respect and dignity risk being just words, and nothing more.

The UKBA regularly considers operational changes to improve the asylum system. What this research report shows however is that women asylum seekers continue not to receive basic standards of decency and fairness when they claim asylum. Changes to the manner in which an asylum claim is lodged have made it a challenge simply to access the Asylum Screening Unit (ASU) in Croydon. Legal representatives have explained how difficult it is to arrange an appointment at the ASU, and it is only natural to be concerned about how victims of trafficking for example, who do not speak English and are probably severely traumatised, are expected to arrange this by themselves without legal representation. Once an appointment has been arranged, there are concerns about women's ability to travel safely to and around South London, often without financial support, to attend their appointment or arrive early enough to be sure to be seen on the day and not be turned away. This raises the

<sup>1</sup> Home Office, Ending violence against women and girls: Action Plan progress review, 24 November 2011, p. 27.

<sup>2</sup> 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. Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status. Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.

question of whether the UK respects the right to claim asylum and the right of access to the asylum procedure.

Assuming one has passed this hurdle, the environment at the Asylum Screening Unit is not conducive to asylum seekers disclosing personal information due to the lack of privacy and confidentiality. Nyasha from Zimbabwe was placed in a terrible position by the lack of privacy at the Asylum Screening Unit in 2010. She wasn't comfortable speaking in public about her HIV-positive status, and she was deeply distressed at the prospect of doing so in the presence of so many people. The conditions at ASU were so bad that Nyasha asked for paper on which to write down her medical conditions, rather than discuss it in front of strangers.

Many of the women I spoke to reported being asked inappropriate questions during their substantive interviews. For example, Emiola who is a victim of trafficking from Nigeria was asked how many men she had slept with and whether she liked working as a prostitute. Most of the women interviewed explained that interviewing officers asked them the same questions on numerous occasions in what they felt was an attempt to confuse them and "trip them up". Esther from Kenya, who claimed asylum on the basis of domestic violence in 2009, explained how the interviewing officer asked her very specific questions regarding the harm she suffered and how difficult it was for her to remember the last ten years of her life: "you remember oh was it that day or the other day, which day did he hit me or which day did he pull me out of bed, or was it both of them, you know the same day".

The failure to disclose relevant facts or inconsistencies in asylum seekers' testimonies may have a negative impact on the assessment of credibility during the decision-making process. Several of the women interviewed for the research noted the difficulties they had faced in disclosing information that was relevant to their case and how this had impacted negatively on the outcome of their asylum claim. For example, Sibel from Turkey was so terrified of her husband's violence that she didn't dare disclose information about his abuse to officials when she claimed asylum in 2009. She explained that she might have done so if she had trusted someone more – but there was never any opportunity to build up such trust with any of the officials. Swana, who claimed asylum in 2010 because she fears her daughter will be subjected to female genital mutilation, was refused by the UKBA on the basis that her Christian relative would care for her if returned. After her appeal was also dismissed, Swana disclosed much later that this relative had sexually abused her and would thus not protect her daughter and help them relocate. But even once Swana had the courage to talk about her ordeal to her solicitor and had lodged further submissions, the UKBA concluded that it did not amount to new evidence creating a realistic prospect of success.

The difficulty in getting quality legal representation was a serious issue for almost all the women asylum seekers and refugees interviewed for this research. It appeared that many women were advised to attend their substantive interview before coming in for a longer appointment with their representative. Many were dropped by their representative after the UKBA refused their claim and some were even dropped after the substantive interview for reasons such as the lack of documentary evidence and in Grace's case because she had let her interview go ahead without tape recording. There are serious concerns that proposed amendments to the scope of Legal Aid will further affect women asylum seekers' ability to access timely and quality legal representation in an adversarial system where representation is crucial to a fair determination of their asylum claim.

The report also looks at the treatment of women in supported accommodation and the financial support they receive. Privacy and safety were issues of particular concern, in particular the limited number of policies or operating standards that address gender issues. The level of asylum support provided and the manner in which it is allocated fails to ensure a dignified standard of living for women seeking asylum in the UK.

The research also considered the treatment of women asylum seekers in detention. The case of Emiola, who was detained immediately upon arrival at Heathrow airport despite identifying herself as a victim of trafficking and who was held in Yarl's Wood Immigration Removal Centre for one month even after suffering from fainting fits and nose bleeds, stands in stark contrast to the UK Border

Agency's policy not to detain victims of trafficking and those who have been subjected to torture. The report analyses existing operating standards across the detention estate in light of the experiences of women who have been detained and notes the inconsistency in detention conditions and poor safeguards for women's health and well-being. The research also highlights the barriers for women to put their asylum claims forward while in detention.

In addition to looking at women's experiences at all stages of the asylum procedure, the report also sets out existing legislation, jurisprudence, policy and practice that affects the decision making process. This aims to provide all stakeholders in the field, including government, UKBA policy-makers, case owners, legal representatives and asylum advocates with a broad but comprehensive overview of the asylum system from a gender perspective. It is hoped that this will assist stakeholders in improving the examination of asylum claims made by women and by those with gender-related claims, and the treatment of women asylum seekers at all stages of the process. Asylum Aid will certainly continue to represent asylum seekers and campaign for the government and the UKBA to be held accountable in this area.

*The full report and an executive summary will be available on 25 January 2012 on Asylum Aid's website at [www.asylumaid.org.uk](http://www.asylumaid.org.uk).*

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## Legal Issues

### **Asylum seekers' particular circumstances should be taken into account when considering the risk of FGM**

**Ndeye Ndicke Seck v. U.S. Attorney General, in the United States Court of Appeals for the Eleventh Circuit, No. 09-16384, 8 December 2011<sup>3</sup>**

In this case, the Appellant, Ms Seck from Senegal, appealed the decision by the Board of Immigration Appeals (BIA) which affirmed a decision by an immigration judge to refuse her application to withhold removal. Ms Seck claimed that if returned to Senegal she would be at risk of being beaten or killed for attempting to protect her daughter from female genital mutilation (FGM). The Eleventh Circuit granted the petition for review because the BIA failed to give reasoned consideration to the case when it concluded that she could relocate within Senegal to avoid persecution.

Ms Seck came to the US in September 2000 and shortly thereafter gave birth to her daughter. Two months later she returned to Senegal. Although Ms Seck is from an ethnic group which does not perform FGM, the daughter's father is from an ethnic group that performs FGM on young girls beginning around the age of three. In 2002, Ms Seck came home from work to find that her daughter's paternal aunt had taken her daughter without her permission. Ms Seck refused to let her daughter stay with her paternal family because she feared they would subject her to FGM. All her daughter's female cousins had undergone the procedure and her daughter's paternal family had begun to talk about plans to perform FGM. A few months later Ms Seck returned to the United States.

In September 2007, Ms Seck filed an application seeking asylum and withholding removal on the basis that if she was returned to Senegal she would be forced to take her daughter with her, her daughter would be at risk of FGM, and she would herself be at risk of being beaten or killed for trying to prevent this. Ms Seck also explained that her sister's daughter had been taken and forced to undergo FGM without her mother's consent. The immigration judge considering her application accepted Ms Seck's evidence, that her daughter's ethnic group performed FGM and that the practice is still widespread in Senegal despite being illegal. The judge refused her application however, on the basis of the BIA's precedent that there can be no successful asylum claim based on the fear that

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<sup>3</sup> <http://www.ca11.uscourts.gov/opinions/ops/200916384.pdf>.

one's daughter is at risk of FGM. The judge recognised however that Ms Seck's claim went further because she alleged she would be at risk too for protecting her daughter. However, the judge concluded that the rates of FGM in urban areas of Senegal were not sufficiently high for Ms Seck to establish her claim, as they would live in the heavily populated area of Dakar if returned.

Ms Seck appealed the decision of the immigration judge to the BIA. The BIA accepted Ms Seck as a credible applicant but agreed with the immigration judge that Ms Seck had failed to show that internal relocation to another part of the country was not possible to avoid her daughter being subjected to FGM. The BIA also found that the daughter could remain in the US with her father or another guardian. Accordingly, the BIA dismissed Ms Seck's appeal. Ms Seck filed a petition for review of the BIA's decision to the Court of Appeals for the Eleventh Circuit.

The Eleventh Circuit considered whether Ms Seck had met the burden of showing it was more likely than not that she would be persecuted or tortured on return to Senegal. The Court highlighted that, provided Ms Seck was a credible applicant, there would be no need for any corroborative evidence. The Court endorsed the BIA's precedent that an asylum claim based on the fear of FGM for one's daughter could not result in a successful asylum claim for the parent even when the daughter has a right to remain in the US. The Eleventh Circuit considered contradictory jurisprudence from the various Courts of Appeals and went on to conclude that there was no need to consider whether Ms Seck could establish her eligibility for withholding of removal on the basis that her daughter was at risk of FGM and the subsequent psychological harm she might suffer because Ms Seck's claim was also based on a risk of future persecution and physical harm to herself. The Court concluded that the BIA had failed to give a reasoned decision because it ignored substantial evidence in support of Ms Seck's claim. The immigration judge had based his finding on the percentage of women in Senegal who have been subjected to FGM and stated that "five to twenty percent would fall far short of a clear probability of persecution" and the BIA had accepted this approach. The Eleventh Circuit found that the BIA and the immigration judge had failed to consider the personal circumstances of Ms Seck and her daughter, which would place them at greater risk than the general statistics suggest. The fact that the paternal family of Ms Seck's daughter lives in Dakar and they are still in touch with Ms Seck's sister suggests that there is no evidence that the "heavily populated urban area" of Dakar will offer Ms Seck and her daughter protection. Thus Ms Seck and her daughter share specific circumstances which indicate that the risk of FGM for Ms Seck's daughter and the risk of persecution for Ms Seck is much higher than the general rate of FGM amongst Ms Seck's daughter's ethnic group. Thus the BIA failed to consider the unique facts of Ms Seck's case and the evidence that places her daughter at greater risk of FGM if she returns.

The Eleventh Circuit Court of Appeals thus remanded the case to the BIA for it to consider the entire record in evaluating Ms Seck's appeal. The Court did not consider whether Ms Seck, as a mother who opposes the practice of FGM on her daughter, falls within a particular social group. The Court noted that the BIA should consider this specific question on remand if necessary.

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## **It cannot be assumed that all EU Member States ensure the fundamental rights of asylum seekers and guarantee minimum standards under the Dublin Regulation**

***N. S. (C-411/10) v Secretary of State for the Home Department and M. E. and others (C-493/10) v Refugee Applications Commissioner and Minister for Justice*, Equality and Law Reform, Court of Justice of the European Union, Grand Chamber, 21 December 2011<sup>4</sup>**

The main applicant in this case, NS, was an Afghan asylum seeker who had claimed asylum in the UK but whom the UK wanted to transfer to Greece for the examination of his claim under the Dublin

<sup>4</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62010CJ0411:EN:HTML>.



Regulation.<sup>5</sup> The Court of Justice of the European Union (CJEU) considered the interpretation of article 3(2) of the Dublin Regulation which allows Member States to derogate from the criteria laid out in the Regulation setting out the Member State responsible for examining the claim and examine such a claim itself. The CJEU also considered the interpretation of the Charter of Fundamental Rights of the European Union and its application in the UK.

NS had initially entered the European Union through Greece where he was arrested but did not make an asylum application. He was detained in Greece for four days and then released and ordered to leave Greece within 30 days. When he tried to leave Greece he was arrested by the police and expelled to Turkey where he was detained in appalling conditions for two months. He escaped his place of detention and travelled to the UK where he claimed asylum. The UK subsequently made a request to Greece for it to take charge of NS's asylum application. Following Greece's failure to respond to the request within the time frame it was deemed to have accepted responsibility for his claim. The UK notified NS of the decision to transfer him to Greece and certified his claim that transferring him to Greece would be a breach of his human rights as clearly unfounded. The consequence of this certification was that NS was not allowed to appeal the decision to transfer him to Greece whilst he remained in the UK. NS therefore sought judicial review in the High Court of the decision to transfer him to Greece. Permission was granted by the High Court. The High Court dismissed the application but granted leave to appeal to the Court of Appeal. The Court of Appeal deemed that it was necessary for certain questions of EU Law to be resolved by the CJEU before the appeal could be determined.

The Court of Appeal referred the following questions to the CJEU for a preliminary ruling:

- (1) Does article 3(2) of the Dublin Regulation fall within the scope of EU Law?
- (2) If the answer is yes, is the duty to observe fundamental rights discharged when a Member State sends an asylum seeker to another Member State under the Dublin Regulation, regardless of the situation in the receiving Member State? Or are Member States obliged to assess compliance with fundamental rights and Common European Asylum System (CEAS) minimum standards in the receiving Member State?
- (3) More specifically, does the obligation to observe fundamental rights preclude the operation of a conclusive presumption that other Member States will observe asylum seekers' rights under the CEAS legislation?
- (4) Alternatively, is a Member State obliged by EU Law to exercise its power under article 3(2) of the Dublin Regulation if the transfer would expose asylum seekers to a breach of fundamental rights or a risk that CEAS minimum standards will not be guaranteed?
- (5) Is the scope of protection afforded to asylum seekers under the Dublin Regulation and EU Law, in particular the Charter, wider than the protection under Article 3 ECHR?
- (6) Is it compatible with article 47 of the Charter for a provision of national law to treat other Member States as countries from which there will be no onward *refoulement*?
- (7) Are the above questions qualified in any way in the case of the UK under Protocol No 30?

The CJEU responded that article 3(2) of the Dublin Regulation is a discretionary power forming an integral part of CEAS provided for by the Functioning of the European Union Treaty. This discretionary power must be exercised in accordance with other provisions of that Regulation. This power forms part of the mechanism for establishing the Member State responsible for an asylum claim and is thus merely an element of CEAS. Therefore when Member States are exercising their discretion, they are implementing EU Law for the purposes of Article 6 Treaty of the European Union and/or Article 51 of the Charter.

The CJEU also concluded that it is right to assume that when the CEAS was adopted, the treatment of asylum seekers in all EU Member States complied with the requirements of the Charter, the

<sup>5</sup> 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=OJ:L:2003:050:0001:0010:EN:PDF>.

Refugee Convention and the European Convention on Human Rights. But it is not inconceivable either that some Member States may experience major operational problems leading to a substantial risk that asylum seekers transferred under the Dublin Regulation will be treated in a manner incompatible with their fundamental rights. This does not mean however that any infringement of a fundamental right by the receiving Member State will necessarily affect the obligation of the sending Member State to comply with the Dublin Regulation. So, if there are substantial grounds to believe that there are systemic flaws in the asylum procedure and reception conditions in the Member State responsible for examining the asylum claim resulting in inhuman and degrading treatment, the transfer would be incompatible with that provision.

The CJEU referred to the European Court of Human Rights' case of *MSS* and accepted the findings made by that Court that there was no guarantee that MSS' asylum application would be seriously considered by the Greek authorities, and that he would be exposed to conditions of detention and living conditions that amounted to degrading treatment.<sup>6</sup> The CJEU thus concluded that "Member States, including the national courts, may not transfer an asylum seeker to the 'Member State responsible' within the meaning of Regulation No 343/2003 where they cannot be unaware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in that Member State amount to substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter".<sup>7</sup>

If there can be no transfer to the receiving Member State, the sending Member State must continue to consider the criteria under the Dublin Regulation to establish whether another Member State may be responsible for examining the asylum claim. When doing so Member States must be mindful not to take an unreasonable amount of time to decide who is responsible.

There cannot be a conclusive presumption that asylum seekers' fundamental rights will be observed in receiving Member States. The mere ratification of the Refugee Convention is not sufficient to establish a conclusive presumption that Member States observe those conditions so the presumption must be rebuttable. Finally, the CJEU noted that Protocol No 30 does not call into question the application of the Charter in the UK and the UK is thus bound in the same manner as other Member States by the judgment of the CJEU in this case.

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## **Fiancé(e)s of refugees should be granted entry clearance under the Immigration Rules despite refugees not being "settled" in the UK**

### **Aswatte (fiancé(e)s of refugees) Sri Lanka [2011] UKUT 0476 (IAC)<sup>8</sup>**

This case concerns the appeal by the Entry Clearance Officer (ECO) in Sri Lanka against the determination of an immigration judge of the First-tier Tribunal allowing the appeal of Ms Aswatte against the ECO's decision to refuse her application for a Marriage Visitor visa in order to marry her fiancé in the UK. Ms Aswatte's fiancé is a refugee in the UK with limited leave to remain until 2013.

The application for entry clearance was made under Paragraphs 41 and 56D of the Immigration Rules<sup>9</sup> but was refused without an interview<sup>9</sup> because she had stated on the form that she intended to stay permanently in the UK and therefore did not meet the requirement of Paragraph 41(i) which requires that she intends to stay in the UK for no more than six months. Ms Aswatte was unable to

<sup>6</sup> For a summary of this case see Women's Asylum News, Issue 99, February 2011, pp. 4-6, [http://www.asylumaid.org.uk/data/files/publications/154/WAN\\_February2011.pdf](http://www.asylumaid.org.uk/data/files/publications/154/WAN_February2011.pdf).

<sup>7</sup> Para. 94.

<sup>8</sup> [http://www.ait.gov.uk/Public/Upload/j2431/00476\\_ukut\\_iac\\_2011\\_ea\\_srilanka.doc](http://www.ait.gov.uk/Public/Upload/j2431/00476_ukut_iac_2011_ea_srilanka.doc).

<sup>9</sup> <http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part2/>.

benefit from Paragraph 352A of the Immigration Rules<sup>10</sup> because she was not already married to her fiancé before he fled Sri Lanka to seek asylum in the UK.

On appeal before the First-tier Tribunal, the immigration judge allowed Ms Aswatte's appeal because she had shown to the balance of probabilities that the requirements of the Immigration Rules had been met. The immigration judge also concluded that the ECO's decision to refuse entry clearance was in breach of Ms Aswatte's Article 8 rights because the appeal had succeeded under the Immigration Rules.

The ECO applied for permission to appeal to the Upper Tribunal on the basis that the immigration judge had erred in law by allowing the appeal under the Immigration Rules, as Ms Aswatte's fiancé only had limited leave to remain in the UK (as opposed to being settled). In response, Ms Aswatte relied on the right to marry and found a family (Article 12 ECHR) and her right to respect for her family life (Article 8 ECHR), as she accepted that she could not show her intention to enter the UK as a visitor as she wished to remain in the UK with her fiancé indefinitely. The ECO however argued that there was no reason why they could not travel to a third country in order to get married. It was accepted that the immigration judge was allowed to decide the case under Article 8 ECHR, taking into account the guidance in *FH (Post-flight spouses) Iran* which found that spouses of refugees with limited leave were in an unjustifiably worse position than the spouses of other migrants with limited leave in the UK because refugees could not return to their home country to enjoy married life there.<sup>11</sup>

The Upper Tribunal considered the appeal under Paragraph 290 of the Immigration Rules<sup>12</sup> which permit applications for leave to enter the UK as a fiancé(e) or proposed civil partner. The ECO submitted that the immigration judge had erred in law in concluding that, by analogy to a post-flight spouse, Ms Aswatte could fulfil the requirement of Paragraph 290. The ECO argued that there was no proper consideration of the case of *FH* and no explanation as to why this approach should apply to fiancées. Ms Aswatte argued that if a post-flight spouse of a refugee was able to come to the UK to join a refugee, then a fiancé(e) should be treated in the same way. She accepted that the immigration judge had erred in law by finding that she met the requirement of Paragraph 290 because her fiancé is not settled in the UK. By analogy with *FH*, she argued that if she "could show that she could meet the requirements of paragraph 290, then her appeal should be allowed on article 8 grounds and the immigration judge was right to have done so".

The Upper Tribunal concluded that the immigration judge fell into material error of law when the only reason he gave for allowing the appeal under Article 8 ECHR was that the requirements of Paragraph 290 were met, and failing to make any reference at all to *FH*. The Upper Tribunal re-decided the case, accepting that the couple is in a genuine and subsisting long-term relationship, and that each intends to marry and live permanently together and that the couple can maintain and accommodate themselves without recourse to public funds. The Upper Tribunal noted that the observations made in *FH* were relevant for the present appeal and that fiancé(e)s such as those in this case are in a similar situation to post-flight spouses of refugees. It was noted also that each case must be considered on its merits, for example whether the applicant has been in a long and committed relationship in the country of origin with the refugee before they fled to the UK. The Upper Tribunal found that no third country was realistically suggested for them to travel to in order to get married and that in any case no reasonable explanation had been provided for why they should face the "upheaval, uncertainty and expense" involved. On the basis of Article 8 ECHR, therefore, the Upper Tribunal allowed Ms Aswatte's appeal against the ECO's refusal and granted her entry clearance. The Upper Tribunal said that the Secretary of State for the Home Department should give urgent consideration to amending the Immigration Rules as they relate to fiancé(e)s.

<sup>10</sup> <http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part11/>.

<sup>11</sup> For a summary of this case see Women's Asylum News, Issue 95, September 2010, pp. 5-6, [http://www.asylumaid.org.uk/data/files/publications/142/WAN\\_September.pdf](http://www.asylumaid.org.uk/data/files/publications/142/WAN_September.pdf).

<sup>12</sup> [http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part8/fiance\(e\)sandproposedcivilpartne/](http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part8/fiance(e)sandproposedcivilpartne/).



## **S. 55 of the Borders, Citizenship, and Immigration Act 2009 does not apply to children outside the UK but an assessment of the child's welfare should be considered in any case under the Immigration Rules, statutory guidance and Article 8 ECHR**

### **T (s.55 BCIA 2009 – entry clearance) Jamaica [2011] UKUT 00483(IAC)<sup>13</sup>**

This case concerned the entry clearance application by a child, T, in Jamaica to join her mother in the UK under Paragraph 298 of the Immigration Rules.<sup>14</sup>

T had made her first application under the Immigration Rules to join her mother in the UK in 2009. The ECO refused this application on the basis that C, T's mother, had left Jamaica when T was only five years old, that T was supported by her father who she saw regularly and her mother who sent financial support and had visited her in 2002, 2006, 2007 and 2008. The immigration judge dismissed the subsequent appeal because he was not convinced that C had sole responsibility for T or that there were compelling circumstances making exclusion undesirable. The judge also concluded that the refusal did not breach C and T's rights to respect for family life under Article 8 ECHR.

In September 2010, T made another application for entry clearance supported by further information, including details about a medical examination, a complaint made by T of sexual assault and evidence of T's new carer. The application was refused by the ECO again on the basis that the Immigration Rules requirements had not been met and the decision did not interfere with T's Article 8 ECHR rights. The appeal against this decision relied on the fact that the ECO had not considered s. 55 of the Borders, Citizenship, and Immigration Act 2009 duty in respect of T. The Home Office Presenting Officer (HOPO) had conceded that the appeal should be allowed on this ground. The immigration judge thus determined the appeal on a preliminary point without hearing any evidence or making any findings of facts. She allowed the appeal only by remitting it to the ECO for a new decision giving due consideration to s. 55.

Despite the HOPO's concession, the ECO appealed the determination on the basis that the s. 55 duty to consider the welfare of the child did not apply to the ECO as T was outside the UK. The Upper Tribunal granted permission to appeal and directions were issued to the effect that the judge was clearly wrong not to deal with the case herself and that the Upper Tribunal was likely to re-make the decision without any further evidence.

Counsel for T accepted that T was outside the scope of s. 55 because she was outside the UK but argued that statutory guidance issued by the Secretary of State for the Home Department imposed the duty on ECOs in the same way as on immigration officers. The statutory guidance, entitled "Every Child Matter, Change for Children", notes that UKBA staff working overseas must "adhere to the spirit of the duty". The Upper Tribunal in the present case concluded that there was no statutory duty under s. 55 on the ECO as "there is no such duty in respect of children abroad". More specifically, the Tribunal found that the statutory duty to safeguard welfare does not apply overseas and that the statutory guidance does not extend the duty to overseas cases; the reference in the guidance to the "spirit of s. 55" is too vague to create a separate common law duty dictating a particular outcome in this case; and "the spirit of s. 55" would only apply if the ECO had reason to suspect that the child was in need of protection.

The Upper Tribunal also stated that when considering if a decision is in accordance with the law at appeal, the judge must consider whether the SSHD met her duty to act fairly, including the duty to have regard to policies that are material to the decision in question. However, if an immigration decision is flawed because it does not take into account policies outside the Immigration Rules, then

<sup>13</sup> [http://www.ait.gov.uk/Public/Upload/j2434/00483\\_ukut\\_iac\\_2011\\_t\\_jamaica.doc](http://www.ait.gov.uk/Public/Upload/j2434/00483_ukut_iac_2011_t_jamaica.doc).

<sup>14</sup> <http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part8/children/>.

the First-tier and Upper Tribunals do not have power to review the exercise of discretion or a judgment that is required to be made. Except in most unusual circumstances the most that can be done is for the appellate decision to record that the decision-making process is flawed and incomplete and so the application or decision in question remains outstanding and not yet properly determined. As a result the ECO would have to re-make the decision taking into account a particular policy.

In the particular case of an entry clearance from abroad, the need to take into account the welfare needs of the child runs alongside two other legal duties: (i) whether under the Immigration Rules there are compelling reasons why the child should not be excluded from the UK and (ii) whether the decision will breach the child and parent's Article 8 rights. When considering whether T or her mother's family life rights have been breached, primary consideration must be given to T's best interests. These legal duties are duties which can be determined and enforced by the Tribunal. In the present case, the Tribunal concluded that there was no need to declare that a lawful decision remained outstanding and should be made good before the appeal was heard, in large part because "it is difficult to contemplate a scenario where a s.55 duty is material to an immigration decision and indicates a certain outcome but Article 8 does not".

The Upper Tribunal in this case therefore concluded that the immigration judge in the initial appeal had made a material error of law when she decided to allow the appeal to the extent that the ECO should reconsider the decision taking into account s. 55. The Upper Tribunal remitted the case to the First-tier Tribunal to determine the appeal.

The Upper Tribunal set out a number of questions for the First-tier Tribunal to consider, and noted the need to consider the material which raised the possibility of a threat to T's welfare. It also stressed the need to consider the views of the child when considering her best interests (through an interview, for example, if the age of the child permits it).

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## National News

### Spousal visa age lowered

Following an announcement in early November 2011 by Damian Green the UK Minister for Immigration, the minimum age for a spouse visa has been lowered from 21 to 18. This resulted from a Supreme Court ruling in the case of *Quila & Anor, R (on the application of) v Secretary of State for the Home Department* [2011] UKSC 45 (12 October 2011).<sup>15</sup> The Supreme Court found that raising the minimum age for spouse visa to 21 'disproportionately interfered with Article 8 rights of those who were in genuine marriages'. The Government had argued that the raised age limit would potentially protect young people from forced marriages. The new lowered age limit affects those applying for entry clearance, leave to enter, leave to remain or a variation of leave on that basis as a spouse, civil partner, fiancé(e), proposed civil partner, unmarried partner or same-sex partner of a sponsor. The minimum age at which someone may sponsor an application has also been lowered to 18. The Government has issued guidance for those who received negative decisions on spousal visa applications between October 2008 and October 2011 based solely on the fact that their partner was between 18 and 20. The guidance lays out how they may apply for a review of that decision. The UK Government used the November announcement to renew their strong commitment to preventing forced marriage, which the Minister stated, has 'no place in British society'.

To read the full articles, see: <http://www.freemovement.org.uk/2011/11/07/spouse-visa-age-lowered/> and <http://www.freemovement.org.uk/2011/11/09/review-of-spouses-cases-refused-on-age-alone/>.

<sup>15</sup> For a summary of this case see Women's Asylum News, Issue 105, October 2011, pp. 9-10, [http://www.asylumaid.org.uk/data/files/publications/172/WAN\\_October.pdf](http://www.asylumaid.org.uk/data/files/publications/172/WAN_October.pdf).

For more information, see:

<http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2011/november/10-marriage-visa-age>.

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## **Charity accuses UK government of sending asylum seekers back to the Democratic Republic of Congo to be tortured**

Human rights charity Justice First have alleged, based on testimonies collected in the Democratic Republic of Congo, that the UK government has sent back asylum seekers to face imprisonment, violence and torture there. Their report concerns 17 adults and 9 children who were forcibly removed from the UK between 2007 and 2011. All were told by the UK Border Agency that they were in no danger upon their return to the DRC. To return people to countries where they face persecution is a violation of several human rights treaties which the UK has ratified, including the Refugee Convention. The UKBA referred to a ruling by the Court of Appeal in 2008 which stated that failed asylum seekers do not face persecution or ill-treatment in the DRC simply because they tried to claim asylum abroad. Yet Justice First found that the majority of those returned were active in political opposition movements. They spoke to a Congolese immigration officer who said that returnees with "political problems" were at risk of being detained in a detention centre called Tolerance Zero. Interviewees reported terrible conditions in Tolerance Zero, including people "in half agony, beaten and naked", while one mother reports being detained there for three months, separated from her children and later raped. Justice First say the UK government has relied on out-dated and inaccurate Operational Guidance Note and country of origin information report, since they have not been updated since 2008 and 2009 respectively.

To read the full article, see: <http://www.guardian.co.uk/uk/2011/nov/25/refused-asylum-seekers-torture-congo?INTCMP=SRCH>.

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## **International News**

### **Egypt: No investigation into 'virginity test' attacks**

Human Rights Watch (HRW) have called the military investigation into the sexual assault of seven women by military officers, under the veneer of 'virginity tests', a sham. They say nobody has been investigated or prosecuted for the attacks that occurred in March of last year at the Hikestep military prison and one of the women has been subjected to intimidation. Samira Ibrahim, the only one of the women prepared to file a formal accusation of sexual assault against soldiers, says she has received threatening phone calls. Members of the Supreme Council of Armed Forces (SCAF) have repeatedly denied any such tests took place but on May 30<sup>th</sup> an unnamed SCAF general confirmed their occurrence to CNN, the American news organisation. His justification was that the behaviour of these women, sharing tents with male protestors in Tahrir Square, made them 'not like your daughter or mine.' Attempts by Ibrahim's lawyer, Ahmed Hossam, to enquire on the progress of the case once he had filed the initial complaint, have been fobbed off with claims of delays. Military prosecutors generally take up to a fortnight to get to court; the fact that seven months later a trial date has not been set has led HRW to conclude that the prosecutors for this case have no intention of completing a proper investigation or charging any particular officer. Human rights lawyers have therefore taken two complaints on behalf of Ibrahim to Egypt's Council of State, one challenging the decision to conduct the tests, the second challenging the decision to refer the case to a military court, given Ibrahim's civilian status. HRW has called for all cases involving civilians, either as plaintiffs or defendants, to be dealt with by civilian judicial authorities. The military insist that any charges against its officers can only be dealt with by military prosecutors. Court judgments on these complaints are expected before the end of this year.

To read the full article, see: <http://www.hrw.org/news/2011/11/09/egypt-military-virginity-test-investigation-sham?tr=y&auid=9842951>.

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## **EU: Council of the European Union approves recast Qualification Directive**

Following the approval by the European Parliament of the recast Qualification Directive, it has now been approved by the Council of the European Union. In a statement issued by the Council, it described the changes as leading to “better, clearer and more harmonised standards for identifying persons in need of international protection.” It emphasised that the new directive will lead to a closing of the gap in provisions made for those receiving ‘subsidiary protection’ status and those granted ‘refugee’ status, although agreeing that differences will still persist.<sup>16</sup> The UK will not be bound by this Directive but those Member States agreeing to be bound by this directive are required to make the necessary changes to their national laws within two years.

To read the full statement, see:

[http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/jha/126305.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/126305.pdf).

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## **Horn of Africa: Ecological disaster and armed conflict lead to increase in human trafficking**

The Horn of Africa region has seen an alarming increase in the trafficking of women and children, as they flee drought, famine and armed conflict. The International Organisation of Migration says that trafficked children from Rwanda, Tanzania, Ethiopia, Somalia and Uganda are being used as domestic servants, sex slaves and cattle herders across Kenya. Nairobi is a central point around which the trafficking trade, particularly the sex tourism branch of the trade, revolves. Womankind Kenya, an NGO based in Garissa in Kenya's North Eastern Province, estimates that 50 young girls are trafficked or smuggled into Nairobi every week. They are often picked up by drug smugglers carrying *miraa* from Kenya to Somalia and brought back on the return journey. They can be sold as prostitutes to Nairobi brothels, Mombasa massage parlours or transported onwards, out of Kenya.

Government spokespeople claim that Kenya is tackling the problem; the Counter Trafficking in Persons Act was made law in 2010. This legislation, they say, is an effective tool in preventing trafficking. However, other officials are doubtful this will halt the practice, mainly due to the corruption within the security and immigration departments, those charged with implementing the anti-trafficking legislation. Senior figures including police officers, politicians, resettlement officials are accused of forming part of the trafficking networks, providing leaders of trafficking networks with the visas and paperwork that they need to conduct operations in order to make huge financial gains. Unless this corruption is also curbed, it is unlikely the threat of jail terms and large fines will discourage those looking to exploit the dreadful circumstances facing many in the Horn of Africa.

To read the full article, see: <http://www.guardian.co.uk/global-development/2011/nov/02/trafficking-on-rise-horn-africa?INTCMP=SRCH>.

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## **Nigeria: Concerns raised over proposed homophobic laws**

Alarm has been caused by a Nigerian bill which looks to impose severe restrictions on same-sex relationships. Going further than simply prohibiting same-sex marriage, the bill proposes to criminalise

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<sup>16</sup> For more information on the provisions of the recast Qualification Directive, see Women's Asylum News, Issue 106, November 2011, pp. 10-11,

[http://www.asylumaid.org.uk/data/files/publications/173/WAN\\_November.pdf](http://www.asylumaid.org.uk/data/files/publications/173/WAN_November.pdf).

anyone who “witnesses, abet[s] or aids” same-sex relationships or organises with others to support gay rights. The bill may even lead to a situation whereby discussions regarding gay rights will be made illegal. Rights groups’ fears are heightened by the bill’s apparent popularity among senior officials and the national media, suggesting it is likely to become law. This can only deepen the discrimination homosexuals face in a country where the majority of people disapprove. A 2008 survey of 6,000 Nigerians by the organisation Nigeria’s Information for Sexual and Reproductive Rights found that only 1.4% of respondents said they felt ‘tolerant’ towards sexual minorities. The Nigerian newspaper This Day has called the bill ‘crucial to our national development,’ suggesting that it supports the ‘traditional family [unit]’ and will further protect the country from ‘alien’ lifestyles. The implication being that homosexuality is a practice imported from abroad. The National Tourism Director, Olusegun Runsewe, has called same-sex marriage ‘satanic’. It is therefore not surprising that Nigerian homosexuals fear coming out. Damian Ugwu, a rights activist at Social Justice Advocacy Initiative says that gay people he has spoken to are unable to access medical services or receive inadequate treatment because they are afraid to give complete personal information. Those that are honest about their sexuality have been humiliated by medical staff. Ugwu also points out that the bill will put non-gay people at risk too, such as the many young men and women who choose to live together for economic reasons in the big cities. He says the bill puts them in danger of becoming targets of extortion from Nigerian police, already notorious for abusing their power. This bill has been seen to be the way for the government to boost their flagging popularity. Nigerian gay author and campaigner Unoma Azuah has called it an ‘absolute waste of time and resources’ at a time of ‘crippling problems’ in the infrastructure of Nigeria.

To read the full article, see: <http://www.irinnews.org/report.aspx?reportID=94207>.

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## New Publications

### ***Whose morals? Equality now for lesbians, gay men, bisexual and transgender people in Turkey***

**Amnesty International, October 2011**

Amnesty International continues to highlight the terrible treatment that the lesbian, gay, bisexual and transgender (LGBT) community receives in Turkey. This report looks at the daily discrimination experienced by people who are accused of violating traditional sexual and gender norms. This includes the issuing of arbitrary fines to transgender individuals by police officers for simply walking down the street. It includes the perpetration of violence against gay men performing military service by their fellow soldiers, often on the instruction of superior officials. In July 2011, a transgender woman was murdered, the motivation of her killer simply being her transgender identity. While LGBT rights groups work hard in Turkey to support individuals suffering in this way, authorities try to close them down and deny their supporters the freedom to associate. Amnesty criticises the lack of effective policies in Turkey to tackle hate crimes targeted at the LGBT community and calls for urgent changes to legislation to ensure LGBT individuals have the right to protection from discrimination. They frame the re-election of the AKP party, who have made small steps towards improving Turkey’s human rights record in June 2011, as an opportunity to push for equality for all in Turkey. They say there is growing political consensus on the need for fundamental constitutional change. The report asks readers and supporters to write to their respective Foreign Office Ministers to call for international pressure upon Turkey to push Amnesty’s proposed measures through.

To read the full report, see: <http://www.amnesty.org/en/library/info/EUR44/010/2011/en>.

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## ***Concluding observations of the Committee on the Elimination of Discrimination against Women***

### **CEDAW Committee, October 2011**

The Committee have released two reports on Chad and Côte d'Ivoire, as part of their 50<sup>th</sup> session. With regards to Chad the Committee reproached the State party for the long delay in submitting a report and the lack of sex disaggregated data. They began their observations, however, by noting the positive steps towards eliminating discrimination against women that have been taken in Chad. These include legislation prohibiting domestic and sexual violence; legislation designed to actively improve the education of girls; the training of security officials and police officers on sexual and gender-based violence prevention; the recruitment of female police officers and the opening of gender units within refugee camps. They also welcomed Chad's ratification of a number of important international human rights treaties including the Optional Protocols of the Convention on the Rights of the Child and the Protocol to Prevent, Suppress and Punish Trafficking in persons, Especially Women and Children. The Committee acknowledged that due to internal conflicts and crises, Chad continues to face difficulties in implementing the CEDAW Convention.

Nevertheless, there are particular, numerous areas of concern for the Committee in Chad. Firstly, women can suffer as a result of the importance given to customary and religious law, rather than national law, within communities. The Committee is concerned that the 'strong patriarchal character of Chadian society' presents problems for the effective incorporation and implementation of the Convention into national law despite the precedence that the Convention takes. It therefore recommends that traditional and religious leaders be made aware of the ultimate precedence of the Convention and that all legislation in Chad be structured in such a way that it gives women total equality with men. Furthermore, the Committee calls on Chad to ensure that this legislation is properly implemented and respected. The Committee raises strong concerns about the difficulties women face in accessing justice, and that despite legislation being in place, sexual and gender-based violence is so prevalent in the country, particularly the 45% of women who are forced to undergo female genital mutilation (FGM). It calls on the State party to ensure that the appropriate legislation is actually enforced and that perpetrators of such violence are held accountable. Other areas of concern include that trafficking is not yet counted as a criminal offence, the low level of female participation in public life, and the low numbers of girls in secondary education. The Committee is particularly concerned by the high risk of sexual and gender-based violence faced by refugee and internally displaced women and children throughout the country.

Côte d'Ivoire was commended for the timely submission of its report despite the 'fragile situation' still prevailing in the country. The Committee further commended this State party for the positive steps it had made including its willingness to institutionalise gender policies; the implementation of equality policies and procedures including the 2007 Solemn Declaration on Equality of Opportunity, Equity and Gender and the recent ratification of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. The Committee remains concerned however, in a number of key areas. These include the lack of comprehensive legislation preventing violence against women and the prevalence of discriminatory practices in marriage, divorce and inheritance. The Committee remains concerned, despite recent legal reforms, about the lack of access that women have to justice, the government has not taken steps to eradicate harmful traditional practices and stereotypes that discriminate against women, by the absence of a definition of rape within the Criminal Code and despite its criminalisation, the continued practice of FGM. Many of the other concerns regarding Chad are echoed in the observations on Côte d'Ivoire although the Committee were impressed by the introduction of a 30 per cent quota for women in Côte d'Ivoire's Parliament. Again the Committee calls on the government to actually effectively implement the measures it has introduced so that all apparatus of the state infrastructure are acting according to their obligations under the Convention.

To read the full observations and recommendations, see:

Chad: <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-TCD-CO-1-4.pdf>.

Côte d'Ivoire: <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-CIV-CO-1-3.pdf>.

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## ***A Dialogue with Refugee Women in Finland***

**United Nations, October 2011**

This report collects the thoughts and experiences of 28 women who participated in the seventh and final UNHCR Regional Dialogue with Women and Girls in Helsinki, Finland, in May 2011, as part of the commemoration of the 60<sup>th</sup> Anniversary of the 1951 Refugee Convention. Over four days, refugee and asylum-seeking women from 12 communities worked together to identify the key issues affecting them and their communities. This report focuses on their experience of seeking asylum and settling in Finland. Though specific to this context, the issues raised by the women chimed strongly with the findings of other similar dialogues in India, Colombia, Jordan, Uganda, Zambia and Thailand. As well as concerns about education, employment and housing, the women particularly highlighted the problem of domestic violence. The women stated that this had increased in exile, occurring more frequently than before they became refugees. The explanation the women put forward was that changing gender roles and a perceived loss of status for men had created great problems for families. The women also raised concerns about the lack of counselling facilities open to refugee and asylum seeking women, who may have been victims of physical and mental trauma, including sexual violence. In fact, the women all emphasised the importance of all those involved in the asylum process as officials, to understand the potential difficulties, losses and trauma experienced by refugee women at all stages of their journey, from pre-flight to settlement. Nevertheless, they also emphasised their own agency and capability, and only asked to be given the information and resources needed, so that they might begin to help themselves. The report details a number of solutions proposed by the group of women including the training of reception centre health workers on the impacts of sexual and gender-based violence, torture and trauma on asylum-seekers, allowing families in reception centres to cook their own food and to reduce overall the time spent by people in reception centres altogether.

To read the full report, see: <http://www.unhcr.org/refworld/docid/4ec4aa3f2.html>.

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## ***A Long Way to Go: Implementation of the Elimination of Violence Against Women Law in Afghanistan***

**UNAMA/OHCHR, November 2011**

This report examines how the landmark legislation, the Law on the Elimination of Violence Against Women (EVAW), has been implemented in Afghanistan since its introduction onto the statute books in August 2009. It follows on from an earlier 2010 study *Harmful Traditional Practices and Implementation of the Law on Elimination of Violence Against Women in Afghanistan* which found that Government authorities were not implementing the law and that women continued to suffer as a result of this. This new study found that the law is now being used by judicial officials but only in a very small proportion of cases of violence against women. While the Afghanistan Independent Human Rights Commission registered 2,299 cases of violence against women that would be considered crimes under EVAW only a tiny percentage of these cases were taken to court, and only 4% of court judgments were based on the EVAW legislation. Prosecutors filed indictments in only 17 of Afghanistan's 34 provinces, but the majority of these did not go to trial. The Special Violence Against Women Unit in the Attorney General's Office in Kabul has perhaps not surprisingly made the most use of the law, filing almost half of all cases in the country, but again only a very small proportion, around 10%, of these advanced to trial. Despite EVAW criminalising forced self-immolation, UNAMA/OHCHR recorded increases in incidents of self-immolation in southern and south-eastern regions of Afghanistan. They also found that murder cases and other serious crimes against women

were prosecuted under the Penal Code rather than EAW which saw perpetrators acquitted, charges reduced to less serious crimes and female victims accused of “moral crimes”.

The use of traditional and customary dispute resolution forums is still widespread and leads to EAW being ignored. In fact the report found that the majority of cases of violence against women reported to police officials and prosecutors are referred out of the formal judicial system. While sometimes this reflected the wishes of the women making the complaint, there is evidence of the use of undue pressure being exerted on women to withdraw complaints and the prevalence of the use of mediation in serious crimes of violence is a real source of concern, and directly undermines the intentions behind the introduction of EAW. UNAMA/OHCHR remain deeply concerned that the women of Afghanistan have not been made aware of how EAW can help them to seek redress for crimes perpetrated against them. The report calls on the Government to significantly increase the levels of awareness among all genders, in all areas, and at all levels of government. Among other strong recommendations the authors call on the Office of the Attorney General to ensure that all serious crimes against women are prosecuted under EAW.

To read the full report, see:

[http://unama.unmissions.org/Portals/UNAMA/human%20rights/November%2023\\_UNAMA-OHCHR-Joint-Report-on-Implementation-of-EAW-law\\_ENG.pdf](http://unama.unmissions.org/Portals/UNAMA/human%20rights/November%2023_UNAMA-OHCHR-Joint-Report-on-Implementation-of-EAW-law_ENG.pdf).

### ***Prevent. Combat. Protect: Human Trafficking. Joint UN Commentary on the EU Directive – A Human Rights-Based Approach***

**OHCHR, UNHCR, UNICEF, UNODC, UN Women and ILO, November 2011**

This report comments on the European Union Directive on preventing and combating trafficking in human beings and protecting its victims, that was introduced in April 2011. This set minimum standards for EU Member States. The purpose of this report is to provide guidance to the member states on how best to incorporate the Directive into their national legislation. This is important because while the Directive establishes certain goals or objectives, which are binding upon all signatories, each state is given discretion on how they achieve those aims. Member States have been given the deadline of 6 April 2013 for ensuring this Directive has been transposed. This report therefore makes strong recommendations on how this should be done, from a human rights-based perspective. These recommendations include: that human trafficking should be defined, within national legislation, as both a crime and a violation of human rights; that trafficking be regarded as a form of gender-based violence and sex-based discrimination; that legislation should place the rights of the victim at its core; that non-discrimination be respected entirely; to seek the input of victims of trafficking and other groups into the development of any legislation; to establish a national framework for the effective co-operation of all State agencies involved in preventing and tackling trafficking; to effectively train all officials likely to come into contact with victims of trafficking and to ensure that any anti-trafficking measures are gender-sensitive or if relevant respect and protect the rights of children.

To read the full report, see: <http://www.unhcr.org/refworld/docid/4edcbf932.html>.

### ***Sri Lanka: Women's Insecurity In The North And East***

**International Crisis Group, December 2011**

This report focuses on the dangerous situation faced by women of mainly Tamil-speaking north and east Sri Lanka, as a result of the decades-long civil war. They face particular problems due to the almost exclusively male military forces which control the areas. They lack physical and economic security, having no control over their own lives or accessible routes of assistance. The report criticises both the Sri Lankan government and the international community for ignoring the difficulties

experienced by these women. There have been serious accusations of sexual violence made by Tamil women against military officers at the end of the war, many of which have strong supporting evidence. However, the government has continued to block independent investigations of events that occurred during the war. One rape case that has come to court, whereby four soldiers are accused of sexually assaulting women in the northern region of Sri Lanka, has been pending for 18 months. The delay in prosecution is a telling example of the lack of importance placed on enabling women to seek redress in these regions by authorities. The report calls the international response 'muted' and condemns the United Nations, among others, for working with the military structures that are actually exacerbating the problem.

The report makes extensive recommendations regarding the actions of the Sri Lankan government, international partners (including the UK) and the United Nations and its Member States. These include the reduction of the military presence in the regions and devolvement of power back to local governmental structures, halting the informal visits made to women's homes by military officers, enabling humanitarian and civil organisations to better offer assistance by improving their access to the region, encouraging international partners to better evaluate aid projects in light of continued insecurity for women in the area, increasing the strength and frequency of international conversations about this situation in order to draw more attention to it and ensuring all UN staff and staff for UN-funded programmes working in the north and east are adequately trained on the post-war needs and concerns of women in those areas and to engage the expertise of local women's groups.

To read the full report, see: <http://www.crisisgroup.org/en/regions/asia/south-asia/sri-lanka/217-sri-lanka-womens-insecurity-in-the-north-and-east.aspx>.

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## UK Training and Events

### *Using Evidence to Support Traumatized Women Seeking Asylum*

Date and Time: **Tuesday 7<sup>th</sup> February, 1-4pm**

Location: **Near Old Street, London, please contact CSEL for more info**

The Centre for the Study of Emotion and Law is offering free training to Refugee Community Organisations and voluntary organisations. This training deals with how to understand and use psychological evidence about trauma and memory to help women seeking asylum and is for any worker or volunteer who is currently supporting traumatised women seeking asylum in the UK, including:

- Caseworkers
- Legal representatives
- Counsellors / therapists

The half-day training will:

- **Introduce the psychological research** into trauma and memory
- **Explain** how the effects of trauma make it difficult for women to present asylum applications
- **Discuss** how to use this psychological evidence to help women seeking asylum
- **Help you to communicate** with traumatised asylum seekers

These research findings are increasingly widely referred to by legal representatives and medico-legal report writers around the UK, as well as caseworkers, counsellors and others supporting traumatised asylum seekers. The training is funded by Comic Relief.

**Last date for bookings is Tuesday 31 January 2012.**

Please direct enquiries and bookings to Clare Cochrane: [c.cochrane@csel.org.uk](mailto:c.cochrane@csel.org.uk).

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## *Charter of rights of women seeking asylum*



**Endorsements: 285**

**Google group membership: 152**

### **Napo - the trade union and professional association for Probation and Family Court staff**

Women in Napo (WiN) is an informal group of women members which has been organising to promote women's issues within NAPO since 1983.

In our annual general meeting we have a fringe meeting for Women in Napo. This year the meeting heard from Sarah Pailthorpe, a volunteer caseworker with Brighton Voices in Exile. This group is a third sector organisation which supports asylum seekers. Sarah brought Mariam with her, a woman who sought asylum from Africa 10 years ago. The DVD "Every Single Woman" was shown which relates the stories of a number of women seeking asylum in the UK.

Napo recently joined the campaign on the Charter of Rights of Women Seeking Asylum. This campaign strikes a chord with Women in Napo because as a union we challenge injustice, because as women we have solidarity with our sisters, because this vulnerable group live amongst us, and because a number of us will be coming across women seeking asylum in our work. Probation staff are likely to encounter women seeking asylum in their work as Court Duty officers, as seconded staff in prisons and when working one to one with clients who have been ordered by the court to undertake some sort of supervision in the community as their sentence.

Our members will have both male and female asylum seekers on their caseloads. They will have knowledge not only of why such individuals have come into the criminal justice system, but will have an understanding of the impact the prosecution and possible imprisonment will have on partners and families, either in this country or abroad.

It is highly possible that women seeking asylum who have ended up in the criminal justice system will face discrimination. We know that the asylum system discriminates, for example, there remains no right to have a female translator present at interview. When a woman who has experienced sexual violation has to make a case for asylum in the presence of men on more than one occasion in this process, often when in their home countries they would be seen as shameful for 'being in a such a position', you can see how important it is for them to be able to make their case to our authorities in dignity and safety. The women who attended the Women in Napo fringe meeting were horrified to find that women seeking asylum could be treated in an even less favourable way to those women going through the usual criminal justice processes.

WiN has resolved to highlight this campaign amongst the membership by agreeing some long and short term, local and national strategies. These include branch activities, and raising awareness in a number of other ways, such as articles in our newsletter, discussions at our meetings, and information on our website.

For more information on the Charter and the Every Single Woman campaign, please go to [www.asylumaid.org.uk/charter](http://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](mailto:charter@asylumaid.org.uk)

**18 / ISSUE 107 / December 2011-January 2012**



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](http://www.asylumaid.org.uk/pages/give_now.html)  
OR send it to us by post with this form:

Name: .....  
Address: .....  
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Postcode: .....  
Telephone: .....  
Email: .....  
I want to make a one-off gift of £ .....

(please make cheques payable to Asylum Aid) *giftaid it*

**Your Gift Aid declaration**

If you are a UK taxpayer, the value of your donation can increase by at least 25% under the Gift Aid scheme — at no additional cost to you! Please tick the box below to join the Gift Aid scheme.

I confirm that I am a UK taxpayer and that I pay as much income or capital gains tax as Asylum Aid will reclaim in the tax year. Please treat all donations I make or have made to Asylum Aid for the past four years as Gift Aid donations until further notice.

Please notify us if you are no longer eligible to Gift Aid your donations.

We will not sell or swap your personal details with any other organization. We would like to keep you informed about our work, campaigning and membership. If you do not wish to receive any information from Asylum Aid other than relating to your donation, please tick this box.

[www.asylumaid.org.uk](http://www.asylumaid.org.uk)

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Or, I want to make a regular gift to Asylum Aid by setting up a Standing Order

To: The Manager, Bank: .....  
Address: .....  
Postcode: .....  
I wish to make a regular gift of £ .....  
each month/ quarter/ year (please circle) until further notice and debit my bank account:  
Account number: .....  
Sort code: .....  
Starting on (date): .....  
Signature: .....  
Date: .....

(FOR OFFICIAL USE) To: The Cooperative Bank, 80 Cornhill, London EC3V 3NJ. Sort code: 08-02-28, Account number: 65281262

**Please return this form in an envelope to:**  
**Freeport RRJJ-BRGA-ZHAR,**  
**Asylum Aid, Club Union House,**  
**253-254 Upper Street,**  
**London N1 1RU**



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Produced by the Women's Project at Asylum Aid  
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