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Women's Project at Asylum Aid

IN THIS ISSUE

Leading Article: New research by Rights of Women expresses serious concerns about how the UK Border Agency responds to violence against women	p. 1-5
Sector Update	p. 5-7
Legal Issues	p. 7-12
International News	p. 12-13
New Publications	p. 13-15
UK Training and Events	p. 15-17
Volunteering Opportunities	p. 17
Charter Update	p. 18

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New research by Rights of Women expresses serious concerns about how the UK Border Agency responds to violence against women

Women's Asylum News would like to thank Cate Briddick, Senior Legal Officer at Rights of Women for writing the lead article.

Does the UK meet its international obligations in relation to violence against women? Are there particular areas of concern in relation to violence against women in the UK? The elimination of all forms of violence against women is essential to secure women's equality. Yet we know that 3 million women in the UK continue to experience domestic violence, sexual violence, forced marriage, trafficking and other forms of violence each year. **Measuring up? UK compliance with international commitments on violence against women in England and Wales** provides an assessment of how current law and policy related to violence against women in England and Wales measure up to UK commitments under international law. It uses as a framework for analysis the Beijing Platform for Action (BPfA), a global policy document which identifies violence against women as one of twelve critical areas of concern, which must be addressed to ensure women's equality and empowerment. When the UK signed the Beijing Declaration and committed to implementing the BPfA in 1995, it confirmed that women's rights are human rights and that the elimination of violence against women is critical in order to secure women's empowerment and advancement in society. Although the BPfA is

not legally binding on the UK, it is a powerful and persuasive tool against which to benchmark UK progress in addressing violence against women.

Whilst the actions required of States under the BPfA to eliminate and effectively respond to violence against women are very broad and cover a wide range of activities, **Measuring up?** focuses upon developments in law and legal policy because these are Rights of Women's areas of expertise. It was researched and written between February 2009 and May 2010 and addresses law and policy developed and implemented under the previous Labour Government. **Measuring Up?** presents a review of achievements made by the former Government – and gaps remaining to be filled. We believe that it is a call to action to the new Coalition Government.

In this article I will set out some of our findings in relation to asylum-seeking women and trafficked women; however, the report looks a number of areas of law, including that which deals with female genital mutilation, forced marriage, domestic and sexual violence and sexual exploitation.

Asylum-seeking and refugee women

Rights of Women believes that women who have an insecure immigration status face multiple forms of discrimination that places them at greater risk of experiencing violence and which may prevent them from accessing life-saving services. For example, a literature review carried out by the Refugee Council which analysed the vulnerabilities of refugee women to sexual violence, found that they were vulnerable to different types of violence at all stages in of the “refugee cycle”¹:

Phase	Type of Violence
During conflict Prior to flight	Abuse by persons in power; sexual bartering of women; sexual assault, rape, abduction by armed members of parties in conflict, including security forces; mass rape and forced pregnancies.
During flight	Sexual attack by bandits, border guards, pirates; capture for trafficking by smugglers, slave traders.
In the country of asylum	Sexual attack, coercion, extortion by persons in authority; sexual abuse of separated children in foster care; domestic violence; sexual assault when in transit facilities, collecting wood, water, etc.; sex for survival/forced prostitution; sexual exploitation of persons seeking legal status in asylum country or access to assistance and resources, resumption of harmful traditional practices.
During repatriation	Sexual abuse of women and children who have been separated from their families; sexual abuse by persons in power; sexual attacks, rape by bandits, border guards, forced/coerced repatriation.
During reintegration	Sexual abuse against returnees as a form of retribution; sexual extortion in order to regularise legal status, exclusion from decision-making processes; denial of or obstructed access to resources, right to individual documentation and right to recover/own property.

Source: *Vulnerable Women's Project, Refugee Council, Feb 2009*

The BPfA also recognises the particular vulnerabilities of women with an insecure immigration status which states:

“Some groups of women, such as...refugee women, women migrants, including women migrant workers.... destitute women, women in institutions.... are also particularly vulnerable to violence”.²

¹ “Refugee and Asylum Seeking Women Affected by Rape or Sexual Violence” The Vulnerable Women's Project, Refugee Council, February 2009, page 15.

² Paragraph 116.

In researching **Measuring Up?** we identified just **two**³ policies that are relevant to asylum-seeking women in the UK:

- **Asylum Policy Instruction: Gender Issues in the Asylum Claim** (the Gender Guidelines);⁴ and,
- **Policy Bulletin 70 'Domestic Violence'**.⁵

The Gender Guidelines gives decision-makers in the UK Border Agency (the UKBA) instructions on the additional considerations that they should have in mind when considering gender-based asylum claims. It also stresses the importance of gender-sensitive procedures such as providing female interviewers and interpreters. The BPfA encourages “the dissemination and implementation of the *UNHCR Guidelines on the Protection of Refugee Women* and the *UNHCR Guidelines on the Prevention of and Response to Sexual Violence against Refugees*”.⁶ **Measuring Up?** expressed our concern that UKBA’s Gender Guidelines do not go as far as those produced by the UNHCR and our hope that as the Gender Guidelines are revised, they are implemented in full.

The UKBA has a domestic violence policy, **Policy Bulletin 70 'Domestic Violence'**, which should be followed by all those who are responsible for administering asylum support. While Policy Bulletin 70 offers some protection to asylum-seeking women who are experiencing domestic violence its limitations, both in scope and application are a cause for concern. In our research for **Measuring Up?** we became aware of numerous cases where the policy was either not known about by decision-makers in the UKBA, or was simply not followed. This is a cause for concern. Furthermore, we consider that by dealing with domestic violence in isolation, rather than addressing all forms of violence against women, the policy is insufficient as it means that no guidance exists to deal with other prevalent forms of violence in the UK, such as harassment.

In our review of the financial support options for asylum-seeking women in **Measuring Up?** we expressed deep concern at the policies and laws that exclude women from accessing welfare benefits and certain community care services. We highlighted the position of women who are refused asylum but who are unable to return to their country of origin and the barriers they face accessing support. We also compared the laws and policies that make refused asylum-seekers destitute and limit their access to health care with the UK’s international obligations and concluded:

“Although the maintenance of immigration control is a legitimate aim, a difference in treatment of women with an insecure immigration status will be unlawful unless it can be objectively justified and is reasonably proportionate.

Under international law, States must pay special attention to the particular disadvantage and vulnerability that women with an insecure immigration status face when weighing up the proportionality of restricting any of their human rights, such as the right to health and housing.”⁷

³ It is interesting to compare these with the following non-exhaustive list of policies that relate to how violence against women should be responded to in the criminal justice system. National policies include: Tackling Violence Action Plan 2008-11; The Code of Practice for Victims of Crime; Cross-government action plan on sexual violence and abuse 2007; Home Office National Domestic Violence Delivery Plan (annually since 2005); and, Multi-agency Guidelines: Handling Cases of Forced Marriage June 2009. Crown Prosecution Service (CPS) and Police policies include: Violence Against Women Strategy and Violence Against Women Crimes Reports; Achieving Best Evidence in Criminal Proceeding – Guidance for vulnerable or intimidated witnesses 2007; Policy for Prosecuting Cases of Rape 2009; CPS Policy for Prosecuting Cases of Domestic Violence; Honour Based Violence and Forced Marriage 2010; Joint CPS and ACPO Protocol on Handling Rape Cases ; Guidance on Investigating Serious Sexual Offences 2010 (forthcoming); Guidance on Investigating Domestic Abuse 2008; and, Honour Based Violence Strategy 2008

⁴Asylum Policy Instruction, *Gender Issues in the Asylum Claim*, www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/genderissueintheasylum.pdf?view=Binary

⁵ Policy Bulletin 70 Domestic Violence, www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumsupportbulletins/accesstosupport/

⁶ Strategic Objective D.1, paragraph 128 of the BPfA

⁷ Rights of Women, *Measuring up? UK compliance with international commitments on violence against women in England and Wales*, page 125.

Consequently in **Measuring Up?** we call on the Government to:

- Withdraw its reservation to the **Convention on the Elimination of Discrimination Against Women** (CEDAW) which purports to restrict the rights enshrined in CEDAW as they relate to women with an insecure immigration status.⁸
- Ratify Protocol 12 of the ECHR⁹ which creates a 'freestanding' non-discrimination provision. We believe that this is important because many of the areas in which women with an insecure immigration status are treated less favourably than British women or women who are settled here (for example, in terms of access to community care services) do not explicitly fall under rights that are protected by the **European Convention on Human Rights**.
- Ensure that asylum seeking women are guaranteed a comparable standard of treatment to women in similar situations who are British or settled here as set out in Asylum Aid's Charter of Asylum Seeking Women.¹⁰

Trafficked women

The BPfA has made a number of specific recommendations in relation to sexual exploitation in Strategic Objective D.3: which requires Governments to:

- (a) Consider the ratification and enforcement of international conventions on trafficking in persons and on slavery;
- (b) Take appropriate measures to address the root factors, including external factors, that encourage trafficking in women and girls for prostitution and other forms of commercialized sex, forced marriages and forced labour in order to eliminate trafficking in women, including by strengthening existing legislation with a view to providing better protection of the rights of women and girls and to punishing the perpetrators, through both criminal and civil measures;
- (c) Step up cooperation and concerted action by all relevant law enforcement authorities and institutions with a view to dismantling national, regional and international networks in trafficking;
- (d) Allocate resources to provide comprehensive programmes designed to heal and rehabilitate into society victims of trafficking including through job training, legal assistance and confidential health care and take measures to cooperate with non-governmental organizations to provide for the social, medical and psychological care of the victims of trafficking;
- (e) Develop educational and training programmes and policies and consider enacting legislation aimed at preventing sex tourism and trafficking, giving special emphasis to the protection of young women and children.¹¹

The UK has now ratified the **Council of Europe's Convention on Action against Trafficking in Human Beings** which means that the UK has now met its obligations under paragraph 130(a) of the BPfA to ratify and enforce relevant international law on trafficking and slavery. **Measuring Up?** therefore welcomes ratification and the developments that have followed it, such as the creation of a National Referral Mechanism (NRM) to identify and protect victims of trafficking.

However, **Measuring Up?** identifies serious problems with the way that the NRM operates in practice, and in particular, with the use of the UKBA in cases that raise immigration issues. **Measuring Up?** identified policies that have resulted in the development of a 'two tier' NRM, where women whose cases are decided by the UKBA receive less favourable decisions than those whose cases do not raise immigration issues.

⁸ Strategic Objective D.1, paragraphs 124(f) of the BPfA calls on States to fully implement CEDAW and the UK has recently removed a similar reservation to the UN Convention on the Rights of the Child.

⁹ Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

¹⁰ <http://www.asylumaid.org.uk/pages/charterbackground.html>.

¹¹ Paragraph 130 of the BPfA.

Conclusions

Of all public authorities addressed in **Measuring Up?** including the police and Crown Prosecution Service, Rights of Women has greatest concern about the policies and practices of the UKBA. **Measuring up?** concludes that:

“It is our view that the UKBA has not adopted a gender sensitive approach in its responses to women at risk of or experiencing violence. UKBA policies do not adequately meet the needs of asylum-seeking women, women with an insecure immigration status experiencing violence, women who have been trafficked or women who are at risk of forced marriage. The BPfA requires States to address the needs of the most disadvantaged women. Rather than adhere to this requirement, the UKBA’s focus on immigration control and lack of consideration for the gender specific needs of women with an insecure immigration status places women at increased risk of violence. This is an unacceptable situation.”¹²

We hope that **Measuring Up?** provides a detailed analysis of where and how the UK is failing to meet its obligations under international law and that it will therefore be a useful for those who campaign on violence against women issues. **Measuring up? UK compliance with international commitments on violence against women in England and Wales** can be downloaded free of charge from www.rightsofwomen.org.uk.

Cate Briddick, Senior Legal Officer
Rights of Women

Sector Update

The Testimony Project: Speaking out about asylum

This text was reproduced from the Testimony Project website at <http://www.testimonyproject.org/testimonyprojectuk/>

In my own words

“In my own words” is a new initiative from The Testimony Project providing a platform for women refugees and those who support them to speak out about issues close to their heart. Over the coming weeks and months the project will be giving voice to women in detention, campaigners, writers, and women who are enduring the long wait for the government to decide their fate.

Helen Bamber - “The story must be told”

Helen Bamber, 85, has dedicated her life to telling the stories of victims of torture. For over six decades - from her work with the holocaust survivors in the concentration camp of Bergen Belsen to her role as Director of the Helen Bamber Foundation¹³ - she has been driven by a belief in the fundamental importance of testimony. This is her voice.

Why do you do the work that you do?

I've been doing this work for over 60 years. I do it because it brings about change. It's difficult to 'recover' from torture and immense cruelty, but the work I do at HBF can allow somebody eventually

¹² Measuring up? UK compliance with international commitments on violence against women in England and Wales, page 137.

¹³ www.helenbamber.org.

to live a meaningful life. I also want to change attitudes – those of decision makers, the government, even the public. But that's another story.

What do you feel is the most pressing issue for asylum seekers in the UK?

The greatest difficulty asylum seekers face is that they are not wanted. People often look for someone to blame and asylum seekers are a convenient target. I've lived a long time. I remember the 1930s. It's painful to see history repeating itself.

What change would you most like to see under this government?

Compassion, I would like to see compassion. I noted the words of our present prime minister with great care. He said, 'we will care for the sick, we will care for the vulnerable, and we will care for the poor: these are my people.' Well, I want to see that care. I want to see those words put into action.

What is the one piece of advice you would give an asylum seeker?

Keep strong, find the right people to take advice from and don't lose sight of who you really are.

Why does story-telling matter?

It is important for the individual to be heard. That's the lesson I learnt in Belsen. People were so afraid they were going to die. They were so afraid that what happened to them would never be told. Our job was to tell that story.

What do you regard as your greatest achievement?

It sounds rather odd to say this, but I think I'm a collector of good people. I can't do this work alone, I need good colleagues who believe in this work, who will fight the fights with me when it seems we'll never win.

What is the greatest challenge you face in your work?

The hardest thing is getting people to listen, understand and change – the people who don't understand and don't want to know. For them, change is hard.

Who or what has been the greatest inspiration in your life?

What inspires me is the human spirit. I was standing in a street in Kosovo and I saw a woman shaking a rug out of the window. Except there was no window. When she saw me, this woman looked at me and then waved. I stood there – I don't know why it always makes me cry – in this street of total devastation, and she looked out of this non-window and just waved. We waved and laughed. It was a moment of something, of connection – human connection – and it was incredible. There were no words. These moments inspire me – when there is total devastation and humanity speaks.

What do you want to be remembered for?

I'm an ordinary person but I've witnessed a lot. I want to be remembered for bearing witness and for not being a bystander.

What is your motto?

My personal motto is to keep trying to understand, keep an open mind and keep learning. My general motto is 'the story must be told'.

Call to Action: Stories need to be told: If you have a story which you want to tell, or you know someone whose story should be told, please get in touch with The Testimony Project at info@testimonyproject.org or call the project on 07989 540 704.

Legal Issues

Adultery charges and internal relocation in Pakistan:

***KA and Others (domestic violence – risk on return) Pakistan* CG [2010] UKUT 216 (IAC) – Upper Tribunal, Immigration and Asylum Chamber**

KA is a woman from Pakistan who claimed asylum in August 2006 because she fears persecution if returned to Pakistan from her abusive husband, detained on false charges of adultery and attempted murder charges, ill-treated in detention and losing custody of her child (para.1). On appeal, further to the refusal by the UK Border Agency to grant her asylum, the Immigration Judge (IJ) accepted that at the time she left Pakistan she had a well-founded fear of persecution on account of being a member of the particular social group of women charged with committing adultery and that she would have been at risk of imprisonment. However, the IJ concluded that at the time of the hearing (February 2008) there was no longer any risk due to the introduction of The Protection of Women (Criminal law Amendment) Act 2006 (PWA) as this would provide her with effective protection against her husband and that she was not at risk of honour killing because she lived in Lahore and came from a relatively wealthy family. The IJ also concluded that she could obtain shelter in a state run *Darul Aman* (house of peace) (para. 2).

The Tribunal, on reconsideration, heard extensive oral and written evidence from three experts and considered extensive background evidence on the criminal justice system, violence against women, child custody and assistance to women in Pakistan.

The Tribunal found that although prison conditions may be poor they did not in general amount to ill-treatment contrary to Article 3 ECHR for detainees of either sex (para. 208). The changes brought in by the PWA meant that police were prohibited from effecting an arrest without the permission of the courts in cases of adultery, investigation in such allegations were to be conducted by an officer at the level of superintendent of police and made significant changes to bail provisions (para. 209). The Tribunal concluded that honour killings were not as prevalent or entrenched as KA argued. It was further noted that such killings are predominantly confined to areas in Pakistan where the *Jirga* systems are still the norm such as in the North West Frontier Province, or in rural areas of Pakistan and that recent legislative reforms have had an important impact on the protection of women (para. 212). In relation to child custody, the Tribunal distinguished the case of *EM (Lebanon)* before the UK House of Lords¹⁴ on the basis that the situation was significantly different in Pakistan where although the law continues to favour the father, in practice courts seek to adopt a pragmatic approach having regard to the best interests of the child (para. 213).

The Tribunal noted that current Country Guidance on domestic violence in Pakistan did not require any major modifications (para. 221) and that in this context it was necessary to acknowledge the differences in Pakistan in the way in which family, tribal and cultural pattern of living affect the position of women in society (para. 222). The Tribunal also said that on the basis of all the evidence considered, it was unlikely that women facing charges relating to adultery would be turned away from

¹⁴ *EM (Lebanon) v. Secretary of State for the Home Department* [2008] UKHL 64 (22 October 2008), <http://www.bailii.org/uk/cases/UKHL/2008/64.html>.

government or private women's shelters (para. 227). In terms of internal relocation, the Tribunal considered that women with their own financial means or with access to financial help from family members or friends or who are well-educated are more likely to secure residential accommodation (para. 239).

Applying their findings to the facts of the case, the Tribunal found that KA would not be protected by the PWA because she would still face charges under s.10 of the *Zina* Ordinance as s.8 of the PWA makes clear that its provisions are not retrospective (para. 253). The Tribunal also concluded that KA was not at risk of being detained and that her husband was not interested in seeking custody of her daughters (para. 258). The Tribunal said there was no risk of honour killing because the dispute arose in Lahore between two families of professional status (para. 259). It was concluded however, that KA's encounter with the Pakistan criminal justice system coupled with the husband's likely threats and intimidation amounted to persecution (para. 260) and that there would not be effective protection from the police in her home area (para. 261). Although it was accepted the husband's accusation of adultery were false but that the trial would go ahead in Pakistan, the Tribunal found that the police in Pakistan would be unable to produce the forensic evidence necessary for the courts to charge KA with adultery (para. 262). There was therefore no risk she would be unfairly prosecuted for adultery. Finally, although accepting that KA had a well-founded fear of persecution in her home area, the Tribunal said she could internally relocate within Pakistan. More specifically, the Tribunal found that it was unlikely her husband and his family would be able to track her down because shelters/refuges kept their location confidential and because Pakistan is a very large country with a significant population. The Tribunal also found internal relocation would be reasonable because the shelters/refuges were unlikely to refuse to assist KA and that although she may face "some degree of hardship" due to her limited education, no history of employment and two young children, she and her children have no health problems and she would still be able to receive legal and financial assistance from her family (paras. 264-268).

KA's appeal was therefore dismissed.

To read full judgment see:

http://www.bailii.org/uk/cases/UKUT/IAC/2010/00216_ukut_iac_2010_ka_others_pakistan_cg.html.

Breach of Article 3 ECHR on return to Afghanistan for separated woman without male support:

***N. v. Sweden*, (Application no. 23505/09) 20 July 2010 – European Court of Human Rights**

The European Court of Human Rights, based in Strasbourg, unanimously found that returning N to Afghanistan would be in breach of Article 3 of the European Convention on Human Rights (ECHR). The Court examined the situation of women in Afghanistan and the conditions on return for a single woman separated from her husband and without support from her family.

N had initially been a dependent on her husband's claim for asylum in Sweden based on his fear of persecution in Afghanistan due to his political involvement with the Communist Party. Her husband's claim for asylum was refused in March 2005. N then appealed the decision and claimed that she was now increasingly at risk as a single woman. She claimed that by separating from her husband she had brought dishonour to her and her husband's families. Her own family had disowned her and she feared reprisals from her husband's family for breaking Afghan traditions. Her appeal was rejected and at appeal before the District Court she also added that she had lost the support of her family because she had separated from her husband and started an extra-marital relationship with another man in Sweden which would be considered adultery and was punishable by death or a long-sentence of imprisonment in Afghanistan.

The European Court of Human Rights considered country of origin information from the UNHCR Eligibility Guidelines on Afghanistan, the US State Department Human Rights Report on Afghanistan, the UKBA COIS Report on Afghanistan and a Human Rights Watch report on women's rights in Afghanistan. The Court said that conditions in Afghanistan on their own were not such that there would be a violation of Article 3 ECHR if the applicant was returned there but that an assessment of her personal circumstances should be considered. The Court noted that "women are at particular risk of ill-treatment in Afghanistan if perceived as not conforming to the gender roles ascribed to them by society, tradition and even the legal system". Women who have actually or are perceived to have transgressed social behaviour are at risk of domestic violence, or other forms of punishment such as isolation, stigmatisation or honour crimes. Simply by living in Sweden since 2003, the Court said N may be perceived as not conforming to ascribed gender roles. By separating from her husband, she had acted against social mores and may be forced to continue living with him if returned to Afghanistan. Furthermore, N's attempt to formally divorce her husband had been refused by the District Court because she was not legally resident in Sweden and her husband had expressed opposition to her wish to divorce. The Court referred to a specific piece of legislation, the Shiite Personal Status Act of April 2009, which requires women to obey their husbands' sexual demands and not to leave home without permission. Other reports considered by the Court showed that about 80% of women in Afghanistan were victims of domestic violence which was committed with impunity as the authorities did not prosecute husbands as they view violence against women as legitimate. Single women without male support lack the means of survival due to amongst other things limitations to freedom of movement and are doomed to social exclusion as they would find it almost impossible to develop a personal or professional life.

N's application was therefore allowed.

To read the full judgment see:

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=N%20%7C%20Sweden&sessionid=58006306&skin=hudoc-en>.

EC Reception Directive covers asylum seekers with further submissions:

***R (on the application of ZO (Somalia) and others) v. Secretary of State for the Home Department* [2010] UKSC 36, 28 July 2010 – UK Supreme Court**

In the case of ZO (Somalia), the Secretary of State for the Home Department (SSHD) argued that when asylum seekers make a fresh claim for asylum they are not entitled to work as provided for in Article 11 of the EC Reception Directive.¹⁵ The Supreme Court unanimously dismissed the appeal by the SSHD.

After her claim for asylum and subsequent appeals failed, ZO made a fresh claim for asylum after a Country Guidance case on lone Ashraf women in Somalia was determined in 2005.¹⁶ To this date no decision has been taken by the UKBA whether the application amounts to a fresh claim for asylum and if it does whether the application is allowed or refused. In June 2007, ZO applied for permission to work. In August 2007, the SSHD refused to grant ZO permission to work. ZO then brought judicial review proceedings against the decision. MM, a Burmese asylum seeker, was refused asylum by the SSHD and had become appeal-rights exhausted by March 2005. In May 2005, he submitted further representations and the SSHD has yet to decide whether the submissions amount to a fresh claim for

¹⁵ Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:031:0018:0025:EN:PDF>.

¹⁶ *NM and others (Lone Women - Ashraf) (Somalia)* CG [2005] UKIAT 00076, 31 March 2005.

asylum and if so, to consider the merit of his case. In October 2007, MM applied for judicial review of the SSHD's decision to refuse to grant him permission to work.

In the UK, once an applicant's further submissions have been accepted as a fresh claim, s/he enjoys the same rights of appeal as those whose initial claim for asylum has been refused, including the right to work (para. 18). However, decisions whether the further submissions amount to a fresh claim are taken at the same time as whether or not refuse the fresh claim. Therefore, provisions on reception conditions for subsequent applicants would never be of any benefit or use to this group of asylum seekers (para. 19).

ZO and MM's applications for judicial review were refused by the High Court but their subsequent appeals were allowed by the Court of Appeal. The SSHD argued, as appellants before the Supreme Court, that the EC Reception Directive only applied to those who were "received" by EU member states for the first time as asylum seekers and that the directive therefore did not apply to those who had submitted fresh claims for asylum.

The Supreme Court unanimously ruled that the minimum standards of the directive apply to second and subsequent applications for asylum (para. 31). The Supreme Court was of the opinion that the definition of the terms "application for asylum" and "applicant or asylum seeker" in Article 2 of the EC Reception Directive includes subsequent applications for asylum (para. 30). This was because it was accepted that subsequent applications for asylum were covered by the EC Procedures Directive¹⁷ which contained a common definition of the terms (para. 25). If the Supreme Court was to accept the SSHD's argument it would imply giving a different meaning to the same definition within the two directives (para. 30). This was further demonstrated by looking at the legislative history of the two directives (para. 29-30). The proposal for the EC Reception Directive also showed that it was always intended that an application should not be regarded as having been subject to a final decision until all possible remedies had been examined and determined, including subsequent applications providing new evidence not previously considered (para. 30).

As the EC Reception Directive provides minimum standards for the reception of asylum seekers to ensure them a dignified living, it was said that it would not make sense to deny those minimum standards to subsequent applicants (para. 31). Lord Kerr referred particularly to the articles relating to family unity, standard of living and necessary health care. He stated that:

The Directive seeks to set minimum standards for the reception of asylum seekers that will normally suffice to ensure them a dignified standard of living. It would be, in my view, anomalous and untoward that an applicant who makes a subsequent application after his first application has been finally disposed of should be denied access to standards that are no more than the minimum to permit him to live with some measure of dignity (para. 31).

Another argument raised by the SSHD was that there was a risk of abuse of the system if anyone making subsequent applications could benefit from the provisions in the EC Reception Directive (para. 43). The Supreme Court responded that the problem of unfounded applications should not be dealt with by withholding the benefits of the directive to subsequent applicants but by ensuring that applications without merits were identified and disposed of promptly and by ensuring that genuine claimants were not deprived of the minimum conditions provided for the EC Reception Directive. More precisely, Lord Kerr stated that the problem of dealing with unmeritorious applications:

Is not to be achieved by disapplying the Reception Directive to all repeat applications whether or not they have merit. The problem of undeserving cases should be counteracted by identifying and disposing promptly of those which have no merit and ensuring that those applicants who are genuine are not deprived of the minimum conditions that the Directive provides for (para. 49).

¹⁷ Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF>.
10 / ISSUE 94 / August 2010

Lord Kerr stated that administrative problems and delays in the asylum determination procedure should not be used as a justification to limit the scope of the EC Reception Directive (para. 44).

Finally, the Supreme Court considered that a referral for a preliminary ruling to the Court of Justice of the European Union was not necessary, particularly in light of the legislative history of both the EC Reception Directive and the EC Procedures Directive (para. 51).

In effect, this judgment by the Supreme Court means that any asylum seeker that has submitted a fresh claim for asylum is entitled to the benefits contained in the EC Reception Directive.

To read the full judgment see: http://www.supremecourt.gov.uk/decided-cases/docs/UKSC_2009_0151_Judgment.pdf.

Gender as an immutable characteristic for the definition of a Particular Social Group:

***Perdomo v. Holder*, No. 06-71652, United States Court of Appeals, Ninth Circuit, 12 July 2010**

Lesly Yajayra Perdomo, a woman from Guatemala, appealed her refusal by the Board of Immigration Appeal (BIA) to grant her asylum in the United States. Perdomo claimed asylum because she feared persecution as a young woman in Guatemala. She said that women were murdered with impunity at a high rate in Guatemala. The Immigration Judge refused her claim on the basis that young women in Guatemala were not a cognizable social group. The BIA had refused her appeal because it said “all women in Guatemala” was too big a group and “a mere demographic division of the population rather than a particular social group”. The Ninth Circuit Court of Appeals has now granted Perdomo permission to continue the proceedings because the BIA’s decision was inconsistent with its own and the Ninth Circuit Court of Appeals’ previous case law.

Perdomo argued that her fear of persecution is on account of her membership of a particular social group of women between the ages of fourteen and forty in Guatemala. A particular social group is not defined in the Immigration and Nationality Act (INA) in the USA. The BIA has interpreted the term to mean a group who “shares a common, immutable characteristic” that “members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences” (*Matter of Acosta*). The BIA also found that the group must have a “social visibility” to enable it to be a particular social group within the meaning of the INA. The BIA has not yet determined whether gender by itself could be a sufficient component to define a particular social group. In the case of *Kasinga*, the BIA found that women from a particular tribe who oppose Female Genital Mutilation (FGM) constituted a particular social group and were entitled to protection.

The Ninth Circuit Court of Appeals has previously found that a particular social group consisted of “one united by a voluntary association, including a former association, or by an innate characteristic that is so fundamental to the identities or consciences of its members that members either cannot or should not be required to change it”. The Ninth Circuit thereby found that “gay men with female sexual identities in Mexico” constituted a particular social group. In the case of *Mohammed v. Gonzales*, the Ninth Circuit recognized that gender is an “innate characteristic” that is “fundamental to [one’s] identity”. In *Mohammed*, the Court also referred to the US Citizenship and Immigration Services’ Gender Guidelines which provides Asylum Officers with guidance on women’s claims for asylum and which state that gender is an immutable characteristic that can qualify under the ground of a particular social group. In that case, the court also referred to the UNHCR’s guidelines on international protection which state that “women may constitute a particular social group under certain

circumstances based on the common characteristic of sex, whether or not they associate with one another based on that shared characteristic". The case of *Mohammed* clearly recognized that women could form a particular social group.

The case of *Perdomo* was therefore remanded by the Ninth Circuit Court of Appeals for the BIA to determine whether Perdomo is a member of a particular social group and whether she has a well-founded fear of persecution in Guatemala on account of her membership of such a group.

To read the opinion of the Circuit Judge see:

<http://www.ca9.uscourts.gov/datastore/opinions/2010/07/12/06-71652.pdf>.

International News

Afghanistan: Women's rights in danger

The continued insecurity in Afghanistan has had a major impact on the freedom and rights of women. Girls' schools are closing, women in employment are threatened, women's human rights activists are attacked and families increasingly require that their daughters stay at home. There are serious concerns that reconciliation discussions between the government and the Taliban will result in further erosion of their rights. Women are worried they will be excluded from the negotiations with insurgent groups and that the Taliban's return will drive up bride prices resulting in increasing forced marriage of younger women. The President, Hamid Karzai, said nothing about how women's rights might be protected in current negotiations at an international conference on the future of the country in Kabul which took place in July 2010.

To read the full article see: http://www.peacewomen.org/news_article.php?id=1430&type=news.

Afghanistan: Increasing suicide attempts by women

The Former Deputy Health Minister of Afghanistan, Faizullah Kaka, recently published a study showing that increasing numbers of women between the ages of 15 to 40 were attempting to commit suicide. The data is based on Health Ministry records and hospital reports and suggests that 2,300 women in Afghanistan attempt suicide annually. The predominant reasons given were mental illness, domestic violence and/or socio-economic difficulties. Kakar also said that factors such as social disorder, loss of loved ones, displacement, food insecurity, poverty, illiteracy, drug addiction and lack of access to healthcare services increased the risk of suicide attempts.

To read the full article see: <http://www.irinnews.org/report.aspx?ReportID=90083>.

Ghana: More than one in ten maternal deaths due to unsafe abortions

The US-based Guttmacher Institute has produced research that shows more than one in ten death of women in Ghana are due to unsafe abortions. Health authorities say that lack of knowledge of abortion laws and inadequate facilities are partially to blame. Many women and healthcare providers themselves are not aware that since 1985 abortion is legal for women who have been raped, in cases of incest, or where the pregnancy will cause the mother physical or mental harm. The Ghana Health Service said it should be careful in advertising services for which it lacked capacity and had therefore not undertaken any nation-wide campaign to raise awareness of the law. The Institute's research also showed that there was an unmet demand for contraception.

To read the report see: <http://www.gutmacher.org/pubs/IB-Abortion-in-Ghana.pdf>.

To read the full article see: <http://www.irinnews.org/report.aspx?ReportID=89951>.

Kenya: Sexual violence and lack of police protection in slums

As Judy Wanjiku, 26, experienced, there is a high risk of women being attacked and raped while going to the toilets in the slums of Nairobi. Judy was also beaten up by her attackers after the initial attempt to rape her failed to ensure she would not report the assault to the police. In any case, she did not think that the police could be there to protect her all the time. Her experience is just one example of many such attacks, as highlighted by a recent Amnesty International report on the threats of sexual violence faced by women in informal settlements. These constant threats and the absence of police protection in the slums of Nairobi mean many women are too scared to use the communal toilets or bathroom facilities. It is essential that the government ensures that slum landlords provide adequate and safe sanitation facilities. Planning laws and regulations exist in Kenya but are not enforced in the slums.

To read the full article see: <http://www.irinnews.org/report.aspx?ReportID=89774>.

To read the report see: <http://www.amnesty.org/en/library/asset/AFR32/002/2010/en/12a9d334-0b62-40e1-ae4a-e5333752d68c/afr320022010en.pdf>.

Yemen: Little progress on preventing trafficking

The US State Department (USSD) has found in a recent Trafficking in Person report that Yemen does not do enough to protect victims of trafficking. On the contrary, the government has made limited progress towards protecting victims and has generally failed to identify traffickers. There is no mechanism to refer victims of trafficking either. The USSD noted that some progress had been made on child labour trafficking but no efforts were directed at sex trafficking of adults and children. The executive director of the National Organization for Defending Rights and Freedoms said that trafficking and difficulties in addressing the problem was due to poverty and weak legislation.

To read the report see: <http://www.unhcr.org/refworld/type.ANNUALREPORT,,,4c1883b625,0.html>.

To read the full article see: <http://www.irinnews.org/report.aspx?ReportID=90064>.

New Publications

Veiled Pain: A Research in the Netherlands into the Psychological, Social and Relational Effects of Female Genital Mutilation

Erick Vloeberghs¹⁸, Jeroen Knipscheer¹⁹, Anke Van Der Kwaak²⁰, Zahra Naleie²¹ & Maria Van Den Muijsenbergh²² - Research conducted between January and July 2009.

¹⁸ Erick Vloeberghs MSc, Pharos, Knowledge and advisory centre on refugees and migrants' health.

¹⁹ Jeroen Knipscheer PhD., Foundation Centrum45.

The study considers the psychological, social and relational consequences of Female Genital Mutilation (FGM) among a sample of 66 women aged 18 - 60, who have migrated from Somalia, Sudan, Eritrea, Ethiopia or Sierra Leone to live in the Netherlands.

According to the data sets one in six of the respondents may suffer from PTSD while one-third reported symptoms related to depression or anxiety. The interviews show that talking about FGM is still difficult for a great number of women. Chronic pain appears to be related to memory. During childbirth or when suffering from medical or mental problems some respondents still feel reluctant to attend a caretaker. Difficulties with speaking Dutch and unwillingness to talk to non-family members about private matters are holding them back. Previous bad experiences with health workers are equally important in many cases. Being looked at in an invasive manner (medical gaze) provokes a lot of shame but medical professionals who, in a careful way, show confidence and are sensitive are able to provide help. Migration to the Netherlands has led to a major shift in how FGM is regarded. The stream of information by the media as well as awareness campaigns has made women more knowledgeable about the consequences of FGM.

In general the research shows that psychological problems were found but on a modest scale. On the other hand, some serious problems were identified among a relatively small though significant number of respondents.

To read the summary of the research in English:

http://www.pharos.nl/uploads/site_1/English/Veiled_Pain-summary.pdf.

To order the publication (in Dutch only) contact: Erick A.J. Vloeberghs at e.vloeberghs@pharos.nl.

Comments on the UKBA's Operational Guidance Notes

Still Human Still Here, July 2010

The Still Human Still Here campaign has published guides for legal practitioners on country of origin information (COI) with reference to the UKBA Operational Guidance Notes (OGNs). The countries examined are Afghanistan, DRC, Iran, Iraq, Israel, Gaza and the West Bank, Jamaica, Somalia, Sri Lanka and Zimbabwe. COI is provided on most categories in the OGNs, including lesbians and victims of domestic violence in Jamaica and adulterers, lesbians and women in Iran.

They are being published, along with the COI referred to within it, to help legal practitioners representing asylum seekers. The documents should not be submitted to the UKBA, the Tribunal or in proceedings.

To access the guides see: <http://stillhumanstillhere.wordpress.com/resources/>.

Forced Marriage and Asylum: Making Invisible Harm Visible

Kim Thuy Seelinger, 2010

²⁰ Anke van der Kwaak MA, Royal Tropical Institute.

²¹ Zahra Naleie MA, Federation Somali Associations Netherlands.

²² Maria van den Muijsenbergh G.P. PhD., Pharos, Knowledge and advisory centre on refugees and migrants' health.

In this article, Kim Thuy Seelinger, from the Centre for Gender and Refugee Studies (CGRS) at the University of California depicts forced marriage as a form of persecution in the context of international human rights law. The paper analyses the few published cases on the matter in the USA and also considers unpublished cases that can be found in the CGRS database website. She analyses the approach adopted by adjudicators and demonstrates the range of misunderstandings and legal misconceptions on the issue. She highlights the protection gap for women who seek asylum on the basis of forced marriage in the USA.

To read the full article see: http://works.bepress.com/kim_thuy_seelinger/1/.

For more information on the SGRS see: <http://cgrs.uchastings.edu/>.

“Am Only Saying it Now”: Experiences of Women Seeking Asylum in Ireland

AkiDwA, March 2010

The average wait for an asylum, protection or leave to remain claim to be processed in Ireland is a minimum of two years, with some women waiting five years or more, during which time they and their families live in direct provision, having been dispersed to regional accommodation centres. In 2009, AkiDwA's director spoke to 121 women seeking asylum about their experiences of Ireland's reception and asylum system. The report contains those views and experiences and provides recommendations for immediate implementation. One of the key recommendation states that “gender guidelines in asylum and reception processes should be introduced and implemented. Gender guidelines in asylum processes should be introduced into pending immigration legislation in Ireland”.

To read the full report see: <http://www.akidwa.ie/AmOnlySayingItNowAkiDwA.pdf>.

Gender-related Claims for Asylum

**Committee on Migration, Refugees and Population, Council of Europe
Doc. 12350, 26 July 2010**

The Committee on Migration, Refugees and Population in the Parliamentary Assembly of the Council of Europe published a report on gender-related claims for asylum that recognises the specific consideration that must be taken into account in such claims. The report contains a draft Resolution for adoption by the Parliamentary Assembly and a draft Recommendation for adoption by the Committee of Ministers of the Council of Europe.

To read the full report see:

<http://assembly.coe.int/Mainf.asp?link=/Documents/WorkingDocs/Doc10/EDOC12350.htm>.

UK Training and Events

**Whose movement is it anyway?
Survivors' role in ending violence against women and girls**

Against Violence & Abuse (AVA) Conference 5 November 2010

The violence against women and girls movement was instigated and led by survivors, determined that others should not suffer as they did. With the increasing focus on professionalisation of the VAWG sector, survivors have become much less visible in their own movement.

This conference aims to reverse this trend. Showcasing over a dozen inspiring examples of survivor led initiatives, it aims to challenge the stigma and shame of being a victim and demonstrate the creative and innovative ways that women respond to and resist VAWG.

As well as hearing from inspirational examples, as a delegate you will be able to:

- Gather ideas on how your service can deliver more for less
- Generate new creative ideas for service delivery
- Understand how your agency fits into the Big Society
- Learn about new ways of including survivors in your work
- Network with practitioners from across the VAWG spectrum.

Where

CBI Conference Centre
103 New Oxford Street
London WC1A 1DU

Price

£119/£129 vol/stat when booking before the 3 September
£139/£159 vol/stat thereafter

To book your place or for more information go to the AVA website www.avaproject.org.uk.

Women Seeking Sanctuary Advocacy Group Wales: Fortnightly women's group (Cardiff)

This fortnightly meeting brings women together to make connections, share experiences and make friends. WSSAG Wales meets every fortnight on Saturdays from 1pm - 3pm at Adamsdown Resource Centre, 10G Moira Terrace, Adamsdown, Cardiff CF24 0EJ.

Meetings are open to all women and are free. Children are welcome.

For more information on the Women Seeking Sanctuary Advocacy Group Wales see:
<http://wssagwales.wordpress.com/>.

Women's Therapy Centre taster sessions

Women's Therapy Centre provides information and taster sessions on mental health and psychotherapy to refugee organisations. It is a free service, in a place of your choice. If you are interested to arrange a session for your clients (women only) or staff please contact Seda Sengun at s.sengun@womenstherapycentre.co.uk or on 020 7263 7860.

New Approaches in Preventing Human Trafficking: Integrating the European Knowledge

Tuesday 16th and Wednesday 17th November 2010

The Silken Hotel, Brussels

With the recent announcement of the latest EU proposals to fight human trafficking, this major two-day International Symposium offers a timely opportunity for local, regional and national authorities to gather comparative knowledge, discuss the latest challenges and share examples of cross-border best practices.

In order to encourage greater political will, facilitate policy discussion and explore comprehensive and integrated solutions to fighting the 'hidden' crime of human trafficking, the Centre for Parliamentary Studies is proud to host this annual Symposium and welcomes the participation of all key partners, responsible authorities and stakeholders.

For further details, please download the event brochure (http://publicpolicyexchange.co.uk/docs/AK16-PPE2_flyer.pdf) or the registration form (<http://publicpolicyexchange.co.uk/docs/PPE-Reg-Intl-2day.pdf>).

For more information see: <http://publicpolicyexchange.co.uk/events/AK16-PPE2.php>.

Volunteering Opportunities

Asylum Aid is currently recruiting for two volunteers:

- Women's Asylum News volunteer
- Women's Charter volunteer



Asylum Aid expects that each volunteer will commit 1 day per week for a minimum of 6 months based in our office in Highbury.

To view the role descriptions see <http://www.asylumaid.org.uk/pages/vacancies.html>.

Deadline for applications is Friday 3 September 2010.

Interviews will be held on Thursday 16 September 2010.

Charter of rights of women seeking asylum



Endorsements: 211

Google group membership: 121

Refusing to be silenced

A number of Charter endorsers are mentioned in an article by Lauren Wroe and Hannah Berry in the August/September issue of Red Pepper. Extracts are reproduced below.

'As women asylum seekers, we have always been made to feel worthless, forgotten and isolated. Together as Women Asylum Seekers Together (WAST Manchester) we have had the courage to speak out. We refuse to be silenced.'

.....

Women are also coming together to find new ways of challenging asylum policy and of surviving together in an environment that is often hostile and unpredictable. Lydia Besong wrote the play *How I Became an Asylum Seeker*. She recalls: 'When I joined WAST the women there supported me to write this play. We wanted to raise awareness and to offer something back. We wanted to challenge the mentality that asylum seekers are here to take, take, take. We are not empty vessels, we are intelligent women and we have a lot to offer.'

.....

Similarly Women for Refugee Women produced their play *Motherland*, telling the stories of women and children detained in Yarl's Wood....Recently *Motherland* was performed in Bedford, close to the detention centre. Natasha Walter says: 'We wanted to bring the play to a local audience. There were MPs present and local activists, as well as the management from Yarl's Wood and Serco, although they refuse to engage in discussions. The overwhelming response from the local people was: 'Not in our name.'

.....

In Scotland, members of the Refugee Women's Strategy Group have a direct role in policy making, ensuring that the Scottish Refugee Policy Forum has a gender perspective and that women are properly represented.

.....

The *Charter of Rights of Women Seeking Asylum* has the backing of more than 200 organisations and has led to the appointment of a gender champion in UKBA's senior management team.

.....

From grass-roots political work and mutual aid through to national lobbying networks, women are coming together to challenge the entirety of the immigration system and the specific ways in which women are disenfranchised. This is a powerful combination that allows women to provide each other with the resources, strength and voice to speak out and be heard.

The full article will be available at www.redpepper.org.uk.

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

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

She was detained without charge

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

Her family and friends didn't know where she was

Afraid...isolated...

She had no idea what would happen to her next

And that was after she sought asylum in the UK

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

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

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

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

Please support us

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

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

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www.asylumaid.org.uk

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



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