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Forced Marriage and Refugee Status

Catherine Dauvergne and Jenni Millbank¹

INTRODUCTION

The issue of forced marriage has received considerable attention in Europe since the mid 1990s. In our study we analysed 120 refugee decisions involving a claim of forced marriage as persecution from 1994-2008 from the courts and tribunals of United Kingdom, Canada and Australia. Of the total pool a mere 11 cases were from the UK. Given the prominence of UK domestic initiatives on forced marriage the very low number of UK cases is extraordinary, even taking into account the low release rate of tribunal decisions. Those cases demonstrated a deep and on-going resistance to forced marriage as the basis for refugee claims in the UK in comparison with Canada and Australia.

FORCED MARRIAGE AND HUMAN RIGHTS

The choice of whether, and whom, to marry is so intimately connected to self determination that it has been acknowledged in several key international instruments as a fundamental human right. In addition, forced marriage has been explicitly acknowledged as a gender-related form of persecution in a number of national and international refugee law documents including the original 2000 United

¹ Canada Research Chair in Migration Law, UBC, Canada and Professor of Law, UTS, Australia. This research was supported by a grant from the Australian Research Council.

Kingdom Tribunal gender guidelines² as well as the revised (and greatly truncated) UK Border Agency gender guidelines.³ While the 2002 UNHCR gender guidelines refer only in passing to forced marriage as a form of persecution,⁴ the 2008 UNHCR guidance note on sexual orientation identifies the issue as one of importance and deals with it in some detail.⁵ Yet these standards were rarely utilised in analysis of whether those forced to marry form a 'particular social group' under the Refugee Convention or whether forced marriage constitutes a form of persecution.

In 2008, after almost 10 years of debate and consultation the Forced Marriage (Civil Protection) Act came into effect. The centrepiece of the Act is the 'forced marriage protection order' designed to protect a person at risk of forced marriage, or who has already been forced to marry. 'Force' is defined to include threats or other psychological means, and a court may make a protection order on the application of the person in need of protection, a relevant (and statutorily defined) third party, any other person, or on its own initiative and may have effect in foreign territory.⁶ In short, the legislation creates a flexible tool, broadly modelled on earlier legislative approaches to domestic violence protection orders. The Act strenuously reinforces a pro-active role for the courts in confronting and potentially averting forced marriage. The Forced Marriage Unit (FMU) has broad roles in education, support, and 'awareness raising', as well as in 'rescuing' victims of forced marriage.

Given the pace and diversity of engagement in forced marriage issues in the United Kingdom, we anticipated that decision makers would have an increasingly well informed understanding of forced marriage as a gendered human rights abuse. Yet we found the refugee cases, in particular those decided by English courts and tribunals, were utterly at odds with these domestic developments.

Key Points in the UK cases

It was striking that, even after *Shah and Islam*⁷ UK cases through the early to mid 2000s continued to hold that there was **no particular social group** for women fleeing forced marriage. On two occasions where first instance Adjudicators did find a social group in the course of making a positive decision, the government appealed the decision and contradicted its own gender guidelines by specifically arguing that findings of a social group were an error of law.⁸ In 2005 the Immigration Appeals Tribunal held that fleeing both forced marriage *and* female genital mutilation (FGM) engaged neither the political nor religious grounds of the Convention and that 'Nothing we have heard persuades [us] that the appellant can bring herself within a [social] group'.⁹ In that case the Tribunal appeared to consider that the forced marriage was entirely a familial dispute with no wider social relevance. The UK approach was in stark contrast to Canada, where no claim by a female applicant in our pool was rejected on the basis that she lacked a Convention ground.

In 2005, after an exhaustive review of the case law on particular social group and gender, the UK Immigration Appeal Tribunal noted 'from experience that such cases often appear to become bogged down in pedantic, and often unnecessary, argument as to definition of the particular social group' and took the unusual step of itself formulating the group ('Young Iranian Women who refuse to enter into arranged marriages'), holding that this group was defined by its non-conformity rather than the persecutory outcome which followed, and thus presented an acceptable basis for the particular social

² Immigration Appellate Authority (UK), 'Gender Asylum Guidelines' (2000) at [1.13 [2A.24] and [2A.25]. These guidelines drew heavily upon a model developed in 1998 by the NGO Refugee Women's Legal Group. When the Tribunal was abolished and reconstituted in 2005 the new Tribunal determined that it was not bound by its predecessor's guidelines.

³ UK Home Office, Asylum Policy Instructions, 'Gender Issues in the Asylum Claim' (2004, revised version 2010), topic 2.2 (iii), 4 and topic 11, 13-14.

⁴ UNHCR, 'Guidelines on International Protection: Gender-Related Persecution within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees', HCR/GIP/02/01 (2002) at [36], (viii).

⁵ UNHCR, 'Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity' (2008) at [13], see also [27] and [28].

⁶ Forced Marriage (Civil Protection) Act 2007 (UK), s 63B.

⁷ *R v IAT & SSHD ex parte Shah; Islam v IAT* ('*Shah and Islam*') [1999] 2 AC 629.

⁸ See *YK (PSG-Women) Turkey CG* [2002] UKIAT 05491 in which the Tribunal granted an appeal, overturning the finding that 'women in Turkey' comprised a social group. See also *RG (Ethiopia) v SSHD* [2006] EWCA Civ 339.

⁹ See eg *JM (Kenya)* [2005] UKIAT 00050 (at [35]).

group.¹⁰ Thus *resistance* or *opposition* to the persecution rather than the *experience* of the persecution is centred as the requisite basis of group membership. Ironically, this represents a belated acceptance of the position first put by UNHCR in 1985,¹¹ and restated over and over since then in various gender guidelines, that the basis of many women's claim to a particular social group will be their non-conformity with prevailing social mores.

Although an unwanted marriage constituted a significant part of the harm feared by women, and was often articulated as the main basis of the claim, it was infrequently characterised as **persecution** in the decisions. Indeed in a 2008 UK decision, issued after the new Forced Marriage Act was introduced to much public fanfare, the Asylum and Immigration Tribunal, hearing an appeal on a point of law from an adjudicator, held that, 'It is unnecessary to determine whether a forced marriage is, in all cases, itself persecutory treatment.'¹²

Forced marriage was *in itself* found to be a form of persecution in only 14 decisions of the entire pool, of which only one case, *NS*, was from the UK. In *NS*, the Tribunal considered both that the applicant ought not be forced into the specific marriage with which she had been threatened and that she ought not be generally compelled to marry in order to gain the protection of a man.¹³ The Tribunal further considered that the applicant's two young daughters would also be at risk of forced marriage. It is noteworthy that one of the sitting members in *NS* was Vice President Catriona Jarvis, one of the authors of the original 2000 UK Tribunal Gender Guidelines (which have since been abandoned).

CONCLUSION

On the basis of our analysis of available refugee case law, we suggest that if many, perhaps most, of those individuals rescued abroad by the FMU were instead to make asylum claims of the United Kingdom on the basis of forced marriage, they would be refused. A striking illustration is the case of Humayra Abedin, a Bangladeshi national who was rescued from a forced marriage through the combined efforts of the FMU and a Bangladeshi women's organisation (Ain O Salish Kendra). Although neither a British nor dual national, Humayra had been living in Britain for six years, first as a student and then as a trainee NHS doctor when her family tricked her into returning to Bangladesh in August 2008 in order to coerce her into a marriage she had previously rejected. The High Court issued a protection order on her behalf of and Humayra was ultimately brought before a court in Bangladesh which then placed her in the protection of police and British consular officers who assisted her to return to England two days later.¹⁴ Yet if Humayra had made a refugee claim in the UK it is extremely unlikely that she would have succeeded. Firstly, Humayra would have struggled within the UK jurisprudence both to articulate a particular social group and to argue that forced marriage itself constituted persecution. While she did suffer months of forced imprisonment, 'manhandling' and involuntary psychiatric medication prior to the marriage, her account of the actual marriage ceremony was that she entered into it under 'emotional duress' rather than as a response to specific threats of violence. Moreover Humayra was not young, rural, poorly educated or financially dependent upon her parents. The absence of such factors was commonly held to vitiate a claim to forced marriage or the inability to access state protection.

While refugee law is viewed as part of the system of human rights law, in the area of forced marriage it clearly fails.

Women's Asylum News would like to thank Jenni Millbank and Catherine Dauvergne for writing this article. This article is based on a longer piece by Catherine Dauvergne & Jenni Millbank, entitled

¹⁰ *TB (Iran)* [2005] UKIAT 00065 at [57].

¹¹ UNHCR Ex-Com, 36th Session, No 39 (1985).

¹² *FB (Sierra Leone)* [2008] UKAIT 00090 at [54].

¹³ *NS (Social Group) Afghanistan CG* [2004] UKIAT 00328.

¹⁴ See eg P. Walker, 'NHS Doctor saved from Forced Marriage Gets Court Safeguards' *The Guardian* 19 December 2008; 'Statement from Humayra Abedin' *The Guardian* 19 December 2009.

"Forced Marriage as Harm in Domestic and International Law" in *The Modern Law Review*, 73(1), (2010).

Legal Issues

Court of Justice of the European Union reference on sexual orientation and interpretation of Article 10(1)(d) QD withdrawn

Oberverwaltungsgericht Nordrhein-Westfalen, 15 February 2011, 13 A 1013/09.A

The German Administrative Court withdrew its reference¹⁵ to the Court of Justice of the European Union (CJEU) for a preliminary ruling after the German Federal Office granted the applicant refugee status on the basis that his name had been made public by the CJEU.

To read the decision (in German) see:

http://www.justiz.nrw.de/nrwe/ovgs/ovg_nrw/j2011/13_A_1013_09_Abeschluss20110215.html.

New Country Guidance case on Zimbabwe

EM and Others (Returnees) Zimbabwe CG [2011] UKUT 98 (IAC)¹⁶

This new Country Guidance case on Zimbabwe replaces the previous CG case of RN.¹⁷ The Tribunal reconsidered the previous finding that there is a "reasonable degree of likelihood that a person who has no ZANU-PF connections will be at risk on return to his or her home area by reason of a perception of disloyalty or an inability to demonstrate loyalty".

Counsel for the Appellants argued that the starting point when reviewing existing Country Guidance should be the existing Country Guidance case, in particular where the parties agree that the CG case was valid at the time of its determination but that in light of new evidence of changed circumstances it should now be revised. The Tribunal accepted this point on the basis of Practice Direction 12 of February 2010 and also added that where the CG cases favour the Appellants it will in practice be for the respondents to adduce "sufficient material to satisfy" the Tribunal that the position has changed. The Tribunal adopted the test "that where a previous assessment has resulted in the conclusion that the population generally or certain sections of it may be at risk, any assessment that the material circumstances have changed would need to demonstrate that such changes are well established evidentially and durable".

Looking at all the evidence submitted, the Tribunal concluded that it was "plain that (except in the case of certain rural areas) there has been a material change in the risk of persecution or serious ill-treatment in Zimbabwe, compared with the position as analysed by the Tribunal in RN" and considered that there is no generalised real risk for failed asylum seekers from the UK irrespective of their political profile. Overall, the situation shows a general improvement, according to the Tribunal.

¹⁵ For more information about the reference see Women Asylum News, Issue 99, February 2011, p. 7, http://www.asylumaid.org.uk/data/files/publications/154/WAN_February2011.pdf.

¹⁶ http://www.bailii.org/uk/cases/UKUT/IAC/2011/00098_ukut_iac_2011_em_ors_zimbabwe_cg.html.

¹⁷ RN (Returnees) Zimbabwe CG [2008] UKAIT 00083 (19 November 2008), <http://www.bailii.org/uk/cases/UKIAT/2008/00083.html>.

A significant source of the country of origin information (COI) considered during the hearing was the report of the Fact-Finding Mission to Zimbabwe, Harare 9 – 17 August 2010 produced by the Country of Origin Information Service of UKBA. It was reported that the COI Service had stated that FFM's did not seek to find "the truth"; that FFM's would be more appropriately defined as "information gathering mission[s]" and that "the information contained in them did not purport to be objective fact but the views of the individuals concerned". In relation to the information provided by the seven voluntary returnees to Zimbabwe interviewed for the FFM report and identified by the International Organisation for Migration (IOM), the Tribunal said that the IOM's involvement was not of any particular significance, and did not accept the argument that the sample was unrepresentative. The Tribunal also reiterated that Operational Guidance Notes (OGNs) should not be regarded by decision-makers as having the status of evidence.

Considering the situation in Zimbabwe until the end of January 2011, the Upper Tribunal found that there was significantly less politically motivated violence in Zimbabwe compared to when the issue was examined in RN. The panel considered the number of politically motivated incidents of violence and the diminishing number of roadblocks. The Tribunal concluded that there was not as such a risk of persecution for failed asylum seekers on return to Zimbabwe who have no significant MDC profile. However, whether a particular applicant is at risk will very much depend on where that person is returned.

The situation is different however for persons without ZANU-PF connections who return to rural areas of Zimbabwe, other than Matabeleland North and Matabeleland South, after having spent a significant amount of time in the UK. Such person may find it difficult to demonstrate loyalty to ZANU-PF with a risk of serious harm if this cannot be shown. The Tribunal further limited this finding by noting that the situation may not be uniform across all rural areas of Zimbabwe and that ZANU-PF power structures and means of coercion in a particular village must be assessed. Returnees to Matabeleland North and Matabeleland South are highly unlikely to be at risk even if the person is a MDC member or supporter although it may be possible that the person's specific village is unusually under the control of a ZANU-PF chief or the like. The Tribunal found that returnees to Harare will in general face no particular difficulties in low-density and medium-density areas. In high-density areas, only those with significant MDC profiles may face "significant problems". Returnees, including those with a significant MDC profile, will not in general suffer the adverse attention of ZANU-PF in Bulawayo.

The claimant's home for the purpose of internal relocation is to be determined as a matter of fact and the place a person considers his/her rural homeland may not be relevant. Those who have a well-founded fear of persecution in major urban areas such as Harare are unlikely to have a viable relocation alternative in the rural area in the Eastern provinces. Internal relocation to Matabeleland, including Bulawayo, may not be possible due to discrimination on account of a claimant's Shona ethnicity. The Tribunal considered that relocation from the rural areas to Harare or Bulawayo (except for Shona returnees) may be more viable depending on the socio-economic circumstances in which a returnee is likely to find him or herself in and subsequently whether it would be unduly harsh or unreasonable to relocate.

The Tribunal found that teachers were still in an enhanced risk category on return to Zimbabwe and that each case must be assessed on its individual merits.

On the particular facts of the fourth Appellant's case, JG, the Tribunal stated that in the absence of countervailing factors, residence in the UK for more than 7 years where the children are well-integrated into the educational system means that the regularisation of the status of mother and children should be favoured for the welfare of the child. More specifically, the Tribunal stated that "even where neither the children nor any parent has the status of a British citizen, the welfare of the children is a primary consideration in administrative action affecting their future and accordingly the balance of competing interests under Article 8 must reflect this factor as a consideration of the first order, albeit not the only one (see LD (Article 8 – best interests of child) Zimbabwe [2010] UKUT 278

(IAC)¹⁸ and ZH (Tanzania) [2011] UKSC 4”.¹⁹ The Tribunal explicitly stated that in the absence of a policy to the contrary, it remained legitimate for immigration judges to “give some regard” to the seven years residence policy for children under 18.

The findings all relate to the position after the point of return. Country guidance on risk at the point of return continues to be set out in HS,²⁰ to be read in conjunction with SM and Others²¹ and AA.²²

National News

No recourse to public funds – Government Announcement

On publishing the Violence Against Women Action Plan on International Women’s Day, the Home Secretary announced progress in relation to the issue of no recourse to public funds, which has been the subject of persistent campaigning, spearheaded by Southall Black Sisters and Amnesty International.

The Immigration Rules make provision for spouses (including registered civil partners, same-sex partners and unmarried partners) of British citizens and persons settled here who have been subjected to domestic violence during the probationary period to apply for indefinite leave to remain. Until recently spouses in this situation have had no recourse to public funds.

Support for some spouses in this position has been provided since November 2009 by the Sojourner Project. An agreement has now been reached between the Home Office and Department for Work and Pensions that will enable those who are eligible to apply under the domestic violence provisions to have a limited period of access to income-related benefits. The intended implementation date is April 2012 and funding for the Sojourner Project will continue in the interim (with an increase from 40 to 50 days support per eligible applicant).

See: <http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2011/march/27-dv-support>,
<http://www.homeoffice.gov.uk/publications/crime/vawg-newsletters/vawg-mar-2011?view=Binary>.

Proposed Statement of Changes for Domestic Violence Settlement Applications

This Statement of Changes laid before Parliament seeks to amend the current rules relating to applications made under paragraph 289A of the Immigration Rules which provide that victims of domestic violence who are present in the UK on the basis of their marriage or partnership with a person settled and present in the UK can apply for Indefinite Leave to Remain. The change would make the application conditional on a requirement to be free of unspent convictions.

¹⁸ http://www.bailii.org/uk/cases/UKUT/IAC/2010/00278_ukut_iac_2010_ld_zimbabwe.html.

¹⁹ <http://www.bailii.org/uk/cases/UKSC/2011/4.html>.

²⁰ HS (returning asylum seekers) Zimbabwe CG [2007] UKAIT 00094,
<http://www.bailii.org/uk/cases/UKIAT/2007/00094.html>.

²¹ SM, TM, MH (MDC - Internal flight - Risk categories) Zimbabwe CG [2005] UKIAT 00100 (11 May 2005),
<http://www.bailii.org/uk/cases/UKIAT/2005/00100.html>.

²² AA (Risk for involuntary returnees) Zimbabwe CG [2006] UKAIT 00061,
<http://www.bailii.org/uk/cases/UKIAT/2006/00061.html>.

This proposed amendment may result in victims of domestic violence remaining in abusive relationship where they fear any unspent convictions may result in a refusal by the UK Border Agency to grant them leave to remain in the UK in their own right.

The Statement of Changes is subject to the negative resolution procedure whereby the proposed amendments will become law unless MPs oppose it within 40 days.

For the Statement of Changes in Immigration Rules see: <http://www.official-documents.gov.uk/document/hc1011/hc09/0908/0908.pdf>.

For more information about the domestic violence rule and the potential impact of the proposed changes see ILPA's briefing: <http://www.ilpa.org.uk/>.

To access the UKBA's response to ILPA see: <http://womensgrid.freecharity.org.uk/wp-content/uploads/2011/04/Reply-from-Damian-Green.pdf>.

The Poppy Project loses Government funding for Victims of Trafficking

The Anti-Trafficking Legal Project (ATLeP)²³ was deeply concerned to learn that the Poppy Project, the UK's most experienced support service for victims of sex trafficking, is to lose its Government funding after 8 years. This is not simply a loss of funding; it is the removal of vital skilled, trusted and experienced workers aiding victims of crime in the UK.

During this time, the Poppy Project has become an internationally recognised centre of excellence in supporting women who have been trafficked into sexual exploitation and domestic servitude, providing safe accommodation and highly specialist support to help women escape the control of their traffickers, provide intelligence to the Police and access the services they need in their recovery and reintegration.

A spokesperson from ATLeP said:

The remarkable success Poppy Project service users have had in seeing their traffickers prosecuted, securing compensation awards against them and in gaining recognition by the courts of their need for international protection is testament to the skilled and specialist support developed within the service. The dissipation and loss of this expertise would have a devastating impact on the protection of victims of crime.

As services risk being withdrawn at 3 months' notice, ATLeP is also concerned about the impact this may have on traumatised and vulnerable women supported by the Poppy Project.

In response, Asylum Aid published the following press release:

Government decision on the Poppy Project is deeply worrying

The Ministry of Justice announced that the Poppy Project, which has provided advice and support to victims of human trafficking for the last eight years, would no longer be contracted for this work. The contract has been awarded instead to the Salvation Army.

²³ ATLeP is a network of solicitors, barristers and specialist practitioners who advise, represent and support victims of trafficking and other vulnerable people. The network was set up to share expertise and exchange and help develop good practice within the legal sector in working with vulnerable clients.

Debora Singer, Policy and Research Manager at Asylum Aid, said:

“Asylum Aid provides expert legal advice to people seeking asylum in the UK, and we know first-hand the harrowing experiences suffered by victims of trafficking. These women are among the most vulnerable in the UK, and it is imperative that they receive expert support and advice as they try to find safety, recover, and rebuild their lives.

“We are very concerned that the Government has decided to remove the contract for providing this support from the Poppy Project. The Poppy Project has developed highly-specialised skills while working with victims of trafficking over many years. By contrast, the new Government contract awards this crucial work to an organisation with far less experience who will be subcontracting the work to other, as yet unknown providers, to unknown minimum standards.

“Poppy have used their technical expertise to help identify the risks facing many victims of trafficking who seek asylum. Asylum Aid has long campaigned to highlight the Government’s poor record on making accurate decisions for women seeking asylum, and the loss of this expertise will further undermine the quality of decisions being made for one of the most vulnerable groups of asylum seekers.

“The Government has promised to invest in protecting women from violence and abuse, but this decision reduces the likelihood that extremely vulnerable women will receive the quality of support they so badly need.”

For full press release, see: <http://www.asylumaid.org.uk/data/files/publications/159/Poppy.pdf>.

Victim of trafficking awarded damages for being returned to Moldova and re-trafficked back to the UK

A victim of trafficking from Moldova was refused asylum despite the UKBA accepting that she had been a victim of trafficking and forced into prostitution on the basis that there was no risk of harm on return. When the police raided the brothel where she worked in Harrow, she did not disclose her story of trafficking to the police because her traffickers had threatened to harm her family if she told anyone. On return, she was apprehended by her traffickers, gang-raped and brutally tortured, she was then re-trafficked to Israel and then back to the UK.

She was awarded damages by the Secretary of State for the Home Department for the manner in which the UKBA had treated her case. It appears they failed to identify her as a victim of trafficking. The case was settled before it was brought to the High Court. The Poppy Project said that 21% of women to whom they provide services had already been sent home and re-trafficked at least once. This story highlights concerns raised by the loss of Government funding for the Poppy project.

To read full article, see: <http://www.guardian.co.uk/law/2011/apr/19/sex-trafficking-uk-legal-reform>.

International News

Afghanistan: Women still being given as compensation

Human Rights Watch has called on the Afghan Government to hold accountable those who still seek to impose brutal customary practices such as *baad*, whereby women and girls are given away to compensate for crimes as decided by a *jirga* (local council). Despite it being a criminal offence under

the Afghan Penal Code, *baad* is still a widespread practice and many women are not even aware of its prohibition. This is partly due to a lack of political will to enforce compliance with the law, illustrated by lax sentences for the perpetrators, and partly due to insufficient training provided to enforcement officers, which often results in the police refusing to register complaints under the law. *Baad* cases in which the women and girls experienced domestic violence also highlight the importance of protection services and escape mechanisms. It is essential that the Afghan Government strengthens the formal court systems and improve access to legal aid in order to prevent women's rights from being violated.

To read full article see: <http://www.hrw.org/en/news/2011/03/08/afghanistan-stop-women-being-given-compensation>.

Bangladesh: Parents continue to marry off their underage children

Health experts have warned that, despite government and NGO initiatives, child marriages are still a big problem in Bangladesh and one of the causes of the country's high rate of maternal mortality and morbidity. According to the 2011 UNICEF report on the State of the World's Children, 66 per cent of Bangladeshi girls get married before they turn 18. The prospect of paying a reduced dowry and protecting them from sexual harassment continue to prompt parents to marry off their daughters when they are still underage – with shattering consequences for their health. Child marriage has been illegal in Bangladesh since 1929 but more often than not the law is not actually enforced. NGOs and government officials agree that the only way to end this harmful practice is to educate and advocate.

To read full article see: <http://www.irinnews.org/report.aspx?reportID=92375>.

Côte d'Ivoire: Refugees fleeing to Liberia subjected to rape, abuse and murder

Ivorian refugees who have fled into neighbouring Liberia have reported widespread rape, abuse and murder. Women and children are being particularly targeted, with some women being forced to watch their children being raped. The atrocities are committed by armed supporters of both former president Laurent Gbago and his successor Alassane Ouattara, as well as (to a lesser extent) opportunists preying on the vulnerability of refugees.²⁴ According to Human Rights Watch, sexual violence has been on the increase in the region over the last decade and has developed a clear political dimension during times of political unrest. As people have also come forward who have witnessed extra-judicial killings and massacres, some NGO workers have noted a large ethnic dynamic in the widespread violence, bordering on crimes against humanity.

To read full article see: <http://www.irinnews.org/report.aspx?reportID=92417>.

Egypt: Female protestors subjected to 'virginity tests'

Amnesty International has issued a call to the Egyptian authorities to immediately investigate serious allegations of torture against women protesters arrested in Tahrir Square in the aftermath of last month's protests which brought about the fall of former President Hosni Mubarak. At least 18 women were put in military detention on 9 March and subjected to profoundly degrading and discriminatory

²⁴ See also Women's Asylum News, Issue 100, March 2011, p. 8, http://www.asylumaid.org.uk/data/files/publications/157/WAN_March_2011.pdf.

treatment. Amnesty was told that the women were beaten, given electric shocks, strip searched and forced to submit to 'virginity checks' if they wanted to avoid being charged with prostitution. All of the women were brought before military tribunals, which in Egypt have a track record of severely limiting defendants' right to a fair trial and right to appeal.

To read full article see: <http://www.amnesty.org/en/news-and-updates/egyptian-women-protesters-forced-take-%E2%80%98virginity-tests%E2%80%99-2011-03-23>.

Europe: New Convention on preventing and combating violence against women and domestic violence

The Committee of Ministers of the Council of Europe has adopted a new Convention on preventing and combating violence against women and domestic violence.²⁵ There are a number of articles relevant to migrants and asylum seekers in Chapter VII entitled "Migration and Asylum".

Article 59 addresses autonomous residence status for victims whose residence status is dependent on a spouse/partner. Article 60 addresses gender-based asylum claims noting that (i) states should recognise that gender-based violence against women amount to persecution or serious harm, (ii) each Convention ground should be given a gender-sensitive interpretation and (iii) states should ensure gender-sensitive reception procedures and support services for asylum seekers and gender guidelines and gender sensitive asylum procedure including refugee status determination. Article 61 requires states to ensure the principle of *non-refoulement*.

The Convention will now be open to signature to Council of Europe member states. The Convention will enter into force 3 months after 10 states have signed it.

For more information and to access the Convention see:
http://www.coe.int/t/dc/press/news/20110406_cm_EN.asp.

European Union: Asylum Procedure Directive recast approved by European Parliament

In early April 2011, the European Parliament adopted the report prepared by the *rapporteur*, MEP Sylvie Guillaume (S&D, FR), by a short majority. Part of the push for a revised Directive came due to the continued disparity of treatment of asylum seekers throughout the European Union. The draft legislation adopted by the European Parliament is based on the presumption that better first instance procedure would enable member states to better distinguish asylum seekers from other migrants and would limit secondary movement of asylum seekers prompted by different national procedures.

The draft Directive contains safeguards for asylum seekers such as personal interviews being conducted by qualified and trained staff and the right to free legal representation. The European Parliament has also emphasized that asylum seekers should be allowed to remain in the territory of the member states until a final decision is received, including any appeals. Additional safeguards for vulnerable people, including pregnant women, unaccompanied minors, and the victims of rape or torture were included in the Parliament's proposal. This includes for example, the principle that applicants victims of gender-related persecution should be interviewed by "*an interviewer of the same*

²⁵ For more information about the drafting of the Convention see Fadela Novak-Irons, "UNHCR and the drafting of the Council of Europe Convention on preventing and combating violence against women" in Women's Asylum News, Issue 99, February 2011, http://www.asylumaid.org.uk/data/files/publications/154/WAN_February2011.pdf.

sex if so requested, who has specific training on the issue of interviews regarding gender-based persecution". The European Parliament also proposes that *"the detention of minors shall be strictly prohibited in all circumstances"*.

The European Commission is expected to present a revised recast Directive in June 2011, noting that the Parliament's proposals would be taken into account.

For more information see:

<http://www.europarl.europa.eu/en/pressroom/content/20110406IPR17100/html/Asylum-a-single-EU-procedure-with-higher-standards-of-protection>,
http://news.bbc.co.uk/democracylive/hi/europe/newsid_9443000/9443116.stm.

For the European Parliament's proposal see:

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0136+0+DOC+XML+V0//EN&language=EN>.

India: Impunity for perpetrators of violence against women

Two teenage girls, Akhtar and Arifa, killed by unknown gunmen are the two latest victims of widespread violence against women in the Kashmir Valley. Police blamed the militant Lasker-e-Toiba (LeT) for their deaths, but the group denied any responsibility and accused police of decrying their reputation. Since the armed struggle for independence began in 1989, thousands of killings in the Kashmir region have been attributed to unknown gunmen; and instead of holding accountable those responsible, both pro-India leaders and separatists have been laying blame on the other side. Bearing the brunt of the conflict have been the women in the region, many falling victim to rape, torture and murder. The extent of their sacrifice was illustrated in a 2005 report by Medecins Sans Frontiers (MSF), according to which sexual violence in war-torn Kashmir was even graver than in Sri Lanka or Sierra Leone.

To read full article see: <http://ipsnews.net/news.asp?idnews=54930>.

Saudi Arabia: Women excluded from political participation

The Saudi Government has decided to deny women their right to vote or run for council seats in the upcoming municipal elections due to a lack of preparation, thus depriving them of their right to participate in the political decision-making process and their right to equal status before the law. The Saudi Government has a history of finding excuses not to allow women to vote. When the first municipal elections (the kingdom's only elections for political office) were held in 2005, the Government justified the exclusion of women from the vote by arguing that they would not be able to verify their identity as many women did not have identity cards – despite the fact that the Government had started issuing ID cards to women since 2000. Even though the Saudi Government has undertaken various reforms to the election system in recent years, the focus has been on administrative issues instead of addressing women's participation.

To read full article visit: <http://www.hrw.org/en/news/2011/03/31/saudi-arabia-let-women-vote-run-office?tr=y&auid=8116259>.

New Publications

Slavery, Forced Labour, Debt Bondage and Human Trafficking: From conceptual confusion to targeted solutions

Centre for Human Rights & Humanitarian Law, Issue Paper 2, February 2011

Produced by the Program for Human Trafficking and Forced Labour at the American University Washington College of Law, this paper looks at a growing issue of concern, particularly in the asylum, gender and migration sector: human trafficking. It asks questions about the definition of human trafficking and its relationship to forced labour, debt bondage and human trafficking. By questioning whether the international political focus in human trafficking – in particular the focus on trafficking into forced prostitution – has undermined efforts to address forced labour, debt bondage and slavery, the paper aims to provide more conceptual clarity.

To read the full paper, see: <http://rightswork.org/wp-content/uploads/2011/03/Issue-Paper-2.pdf>.

Preventing Undocumented Pregnant Women And Children From Accessing Health Care: Fostering Health Inequalities In Europe

European Anti-Poverty Network, European Women's Lobby Medecins du Monde & Platform for International Cooperation on Undocumented Migrants, March 2011

The report summarises a public hearing on the difficulties faced by undocumented pregnant women and children in accessing health care which was organised by various organisations. The hearing took place in December 2010 at the European Parliament, with debates and presentations given by health care practitioners, migrants and representatives of NGOs and coincided with the closing of the European Year for Combating Poverty & Social Exclusion and the drafting of a report on reducing health inequalities within the European Union. While the first panel discussed undocumented migrants' access to maternal and child health care and the differences in law among EU member states, it also highlighted that the role of health care practitioners is to provide care and not to act as immigration officials. The second panel looked at the discrepancies between international legal obligations towards women and children's rights and national policies in EU member states, but also drew attention to successful cooperation between NGOs and local government authorities.

To read the full report, see: <http://www.epim.info/wp-content/uploads/2011/02/Preventing-Undoc-Women-and-Children-from-Accessing-Healthcare-PICUM-2011.pdf>.

Focus on Women

Rights of Women, Issue 13, 2011

The latest issue of *Focus on Women*, Rights of Women's policy newsletter, is now available to download from the Rights of Women website.

With articles on the government's Action Plan to End Violence Against Women and Girls and the campaign to save legal aid and its particular relationship to cases of domestic violence, the thirteenth edition of the Rights of Women's policy newsletter discusses some current and very relevant issues. It also gives updates on piloting domestic violence protection notices and orders, a possible step

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towards ending 'no more recourse to public funds' and the UK opting in to the EU Human Trafficking Directive.

To read the full newsletter, see:

http://www.rightsofwomen.org.uk/pdfs/Focus_On_Women/focus_on_women_issue_13_2011.pdf

As part of Rights of Women's work with London Councils, they need to make sure that their policy work is supporting the capacity of London-based voluntary, community, and statutory sector organisations to understand and engage in decisions affecting women in London. Rights of Women would be very grateful if London-based readers of *Focus on Women* would take 2 minutes to give feedback through this online survey: <http://www.surveymonkey.com/s/77WT6B9>.

Scotland: A Safe Place for Child Traffickers? A Scoping Study into the Nature and Extent of Child Trafficking in Scotland

Scotland's Commissioner for Children and Young People and the Centre for Rural Childhood, Perth College UHI

The study reports that at least 80 and possibly many more children may have been trafficked into Scotland in 18 months without a single person being convicted for the crimes. It notes that in cases where child trafficking has been identified there was a poor response to their needs and a lack of prosecution of traffickers. On the basis of the report, the Commissioner has made a series of recommendations to the police, the UKBA, local authorities, Scottish and UK governments.

To read full report, see: <http://www.sccyp.org.uk/publications/adults>.

To read press release, see: <http://www.sccyp.org.uk/article.aspx?menuId=7547>.

UK Training and Events

Training Seminar on Forced Marriage, "Honour Based Violence" & Female Genital Mutilation for Professionals by the Iranian and Kurdish Women's Rights Organisation (IKWRO)

24 May 2011, 2pm-5.30pm, Free

Speakers: **Diana Nammi**: Director of IKWRO - **Suzelle Dickson/Ben Rawlings**: Forced Marriage Unit - **Ann-Marie Hutchinson**: Specialist family lawyer - **Jenny Comery**: Youth Programmes Coordinator, FORWARD

Venue: The Resource Centre, 356 Holloway Road, London N7 6PA - Tube: Holloway Road

IKWRO invites teachers, educational authorities, social workers, GPs, Nurses, police officers, housing officers and all professionals working with refugee and asylum seeking women to attend this vital training seminar. The aim is to help you and your organisation to have a deeper understanding of 'honour' based violence, FGM, and forced marriage to prevent and stop violence by recognising the warning signs.

To register please contact: ikwro.training@gmail.com, Tel: 020 79206463

Charter of rights of women seeking asylum



Endorsements: 217²⁶

Google group membership: 141

Women Seeking Sanctuary Advocacy Group Wales (WSSAG) is a self help group. It came to existence after a couple of its members attended an Advocacy Course On Human Rights for women seeking sanctuary organized by Oxfam in 2009. At the end of the course, we felt like it was time for us to stand up for ourselves, to own our destiny, to start lobbying decisions makers, advocating for ourselves and campaigning on issues that affect us directly. The group is run by and is for women seeking sanctuary themselves.

Our women have different nationalities, religions, races and sexual orientations. And we are all at different stages of the asylum process, some have recently arrived in the country, some still waiting to hear from their claims, some refused, some destitute, some living with a threat of deportation and some finally granted. We do have also in our midst migrant women.

We offer moral, emotional, social and practical support to one another. WSSAG is a platform where we all share our experiences, difficulties, as a problem shared is a problem halved. We feel that together we make a better stand.

Even though we do not give immigration advice, we signpost our ladies to where to get help, we encourage and promote social cohesion with the host community. We are committed to promote a positive image of people seeking sanctuary through our involvement in the community.

In partnership with the Ethnic Minorities Communities First Team In Cardiff, we have produced a booklet: **SEEKING SANCTUARY: *Journeys of Despair and Hope*** about real life stories of brave women who have fled human rights abuse, persecution, and all sorts of other abuses but still have decided to speak out about their ordeals and hope to rebuild their lives.

We have endorsed the Charter because it highlights some specific gender issues facing women seeking sanctuary and also it represents hope for us. We believe that it is a useful tool to engage the UKBA to treat women fairly and with dignity during the asylum process and therefore have some better chances to rebuild their lives.

For more information about WSSAG, see: www.wssaqwales.org.uk.

The *Charter* illustrates the progress that campaigners can make when we work together. For more information on the Charter and the Every Single Woman campaign, please go to www.asylumaid.org.uk/charter

We invite all *Charter* endorsers to share their news, and contribute a short article about their organisation's work for a forthcoming issue of Women's Asylum News. For further information please contact charter@asylumaid.org.uk.

²⁶ 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:
Freepost 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
(for more information on this issue, please contact: Christel Querton)

Asylum Aid
Club Union House
253-254 Upper Street
London N1 1RY

Tel: 020 7354 9631
Fax: 020 7354 5620
Email: womenasylumnews@asylumaid.org.uk

www.asylumaid.org.uk

