

Women's Asylum News

Women's Project at Asylum Aid

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Gender in Refugee Law: From the Margins to the Centre

Catriona Jarvis, Asylum and Immigration Tribunal Judge (Retired)

Catriona Jarvis spoke at the Annual Scholars Lecture of Goodenough College, which incorporated the book launch of *Gender in Refugee Law: From the margins to the centre* (Routledge 2014). Below is an edited version of her speech, which we are grateful to her for sharing with us.

In the area of gender in refugee law, there appears to have been what may be regarded as

a regression, a slippage, of some kind. Gains appear to be lost, in whole or in part. Where issues of gender had become visible, they no longer seem to be quite in focus, and doors that had opened, and had allowed some women, girls, and even lesbians and gay men to pass through, look as though they may now be closing if not already shut.

There has certainly been a gradual increase in accessibility to asylum procedures since the 1970s and 80s.

It was not until the early 90s, for example, that a substantive right of appeal against refusal to recognize a person as a refugee found its way into UK law. Then in 2000, on the coming into force of the Human Rights Act 1998, breaches of human rights became directly justiciable in the UK domestic courts. However, recent years have seen serious limitations to access to justice through loss of entitlement to legal aid and other legal restrictions, although a right of appeal on both refugee and human rights grounds has, for the present, survived the latest measures that remove most rights of appeal through the 2014 Act.

I have identified myself as a feminist publicly since at least 1968. I became a judge in the UK in 1992 and, as best I could, given the constraints, wrote feminist judgments from then until the latter part of 2013 when I retired. Being a judge is a solitary occupation, but being a feminist judge in the immigration and asylum tribunal was to tread not only a solitary, but also a lonely path. Although I sat as a second tier appeal Judge from 2004, and from February 2010 in what is known as the Upper Tribunal, Immigration and Asylum Chamber, where we had taken on a number of judicial tasks from the High Court, very few examples of what I would describe as feminist judgments, including my own, ever appeared as reported cases.

It has been clear to me over the years that many of my judicial colleagues have been uncomfortable with my feminist approach and reasoning, expressing the view, wrongly in my opinion, that these attributes must mean that I should be considered by my colleagues to be biased as a judge, that I have had an 'agenda'; although it has never been said precisely what that agenda might be. It has been inferred that my judgments are not, as the late Lord Bingham put it "legally motivated," but are the product of "extraneous considerations." (1)

Despite these views, over the last 21 years only a handful of my judgments have ever been appealed and even fewer successfully appealed.

It is no more than speculation, but I wonder whether the impetus that makes it very difficult for the feminist voice to be heard, may in part be due to the apparent view of

some judges, that their judicial role in the field of immigration, asylum and human rights is inherently a restrictive, gate-keeping function, and that the gate would be thrown wide open were cases to be reported that:

- include women;
- challenge gender bias in legal doctrine and judicial reasoning;
- employ contextualization and particularity;
- seek to remedy injustices and improve the condition of women's lives (I would add here: and to improve the lives of other vulnerable, disadvantaged and excluded persons such as children and all those who are not heterosexual)
- promote substantive equality, and
- draw on feminist legal scholarship to inform reasoning. (2)

I would like to set out below some suggestions as to how we can address the situation with regard to gender related matters in a practical way to bring about improvement.

The remarks that I have already made highlight, amongst other points, the importance of judicial diversity, so that the judiciary is properly representative of our society.

The continuing need for education and training on gender issues – which concern both men and women, as well as on equal treatment is highlighted, to include work on an appropriate methodology for assessing credibility. It may be that this would be in the form of 'refresher training' if appropriate.

Likewise, the need for more and better quality, reports on countries of origin that include detailed information on gender issues is called for.

There is also a need, I suggest, for safe spaces, probably separate spaces initially, in which first instance decision makers, lawyers, experts and the judiciary can learn about and discuss how to deal with difficult and sensitive issues such as sexism, racism and torture including rape and other sexual assaults.

Also of importance, as I have said elsewhere, is a safe space in which judges may speak of the adverse effects upon them of deciding cases after hearing testimony and reading reports that deal with very unpleasant and often traumatic events, on a daily basis. Vicarious trauma in judges is well recognized in the USA, where research has been conducted and reported, but no such studies appear to have been reported yet, as far as I know, relating to judges in the UK. I do not know the position in the EU or other countries. Of course, first instance decision makers and lawyers will also be adversely affected by vicarious trauma too. The formation of a self-protective barrier may lead first instance

decision makers and others toward the making of a negative decision, albeit sub-consciously.

Such matters are not burdens we ought to expect people to bear without support, and we should not expect family and friends to provide that support.

As far as the Immigration and Asylum Chamber is concerned, in November 2000 the Immigration Appellate Authority, as it was then called, adopted Gender Guidelines for the Judiciary. (3) They drew on the earlier good work of the Refugee Women's Legal Group that had, in 1998, published the award winning Asylum Gender Guidelines for first instance decision makers at the Home Office. Whilst placing heavy reliance on case law, the IAA Gender Guidelines also aimed to provide real, practical help to judges and lawyers working in an extremely stressful and demanding area of law.

In 2006, following one of the regular changes in emanation of the tribunal that took place in 2005, creating, for what was to be a short period of time, a single tier tribunal (the Asylum and Immigration Tribunal, 'AIT'), the Gender Guidelines were summarily removed from the website and declared not to be the policy of the AIT. Since which time offers to update them have been declined.

There is a need for a fresh look at such guidance, whether for judges or other decision makers. Although there is a Practice Direction on Child, Vulnerable Adult and Sensitive Witnesses, produced by the Senior President of Tribunals, of October 2008 and there is a subsequent Immigration and Asylum Chamber Guidance Note of October 2010, for judges of both the First and Upper Tier, neither deals with gender issues or vulnerability in detail.

As former Rapporteur of a Working Party of the International Association of Refugee Law Judges, I led work from 2008 on the development of (as yet unpublished) Judicial Guidelines on Vulnerable Persons for Refugee Law Judges, which in turn are built upon the excellent Canadian guidelines. (4) For example, a traumatized woman may wish to have a particular person sit with her whilst she gives her evidence.

Other suggestions that could improve the situation include

- Presenting and arguing guidelines, protocols and relevant case law on gender in detail, in each case.
- Those seeking international protection should have the benefit of good lawyers who can fully prepare and present their cases, with the assistance of legal aid where needed.
- There may also be further research to be done into the judicial assessment of

credibility, potentially with training to follow as appropriate.

- Lastly, I wonder whether it would be helpful to create an international association: a coalition or consortium – there are various possible models - with gender issues as its focus.

Looking to the future, I hope that we can build on these ideas to ensure that rights are respected, not just for women and girls and those who raise gender as their claim or part of their claim, but for each and every person who is entitled to be provided with international protection.

1. T Bingham, 'The Judges: Active or Passive?' (2005) 139 Proceedings of the British Academy 55, 70
2. Ed. R Hunter, C McGlynn and Erika Rackley 'Feminist Judgments From Theory to Practice' (2010) Hart Publishing, p35
3. Asylum Gender Guidelines, Nathalia Berkowitz and Catriona Jarvis (November 2000), Immigration Appellate Authority, Crown Copyright.
4. Guidelines for Vulnerable Persons, The Vulnerable Persons Working Party, International Association of Refugee Law Judges

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Sector update

Women at Risk in Short-Term Holding Centres

The Detention Forum, a network of organisations working on detention issues, has been carrying out a “virtual tour” of the UK detention estate in a campaign called [Unlocked](#), which focusses each week on a different issue or detention centre. In the week of 21-27 September the tour focused on short-term holding centres, which were described as among the worst accommodation where migrants can be detained in the whole of the UK. In particular, the Forum drew attention to the risks faced by women in this type of detention facility.

Unlike in other detention centres, women and unrelated men can be held together in short-term holding centres, leading to a situation where one or two women may find themselves detained along with a large majority of unknown men. Given the high proportion of asylum seeking women who have experienced sexual or gender-based violence, this experience can be traumatic, if not actually dangerous for them. While in most short-term holding centres detainees are held pre-departure for just a few hours at a time, there are some which accommodate detainees for up to a week, with women complaining that they feel vulnerable at night unable to lock their doors.

Despite [criticism](#) of the lack of provisions to ensure the safety of women by detainee support groups and statutory inspection bodies, a Home Office [commitment](#) to complete gender equality impact assessments for all holding centres by the end of Summer 2012 has not been met. Unlike other detention centres in the UK, Short-Term Holding Centres are not regulated by the [Detention Centre Rules 2001](#) and while a separate set of rules specifically for short-term facilities has been in development since 2005, according to the [Unlocked article](#), detainees in these centres continue to face a concerning protection gap.

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Women and Girls' Safety Manifesto: Priorities for the general election 2015

The End Violence Against Women Coalition (EVAW) has published a [Women and Girls' Safety Manifesto](#) outlining five key priorities for political parties to address violence and discrimination against women in the run up to the general election in May 2015.

A key call from the manifesto is for a new law to be introduced to ensure access to specialist support and advocacy community services for all women, including refugee women or those with an uncertain immigration status, who have experienced sexual or domestic violence.

The manifesto also calls for national and local government to work with civil society women's organisations to develop concrete strategies and action plans to tackle violence against women and girls. These plans must ensure that specialist services receive adequate resourcing in order to provide sufficient support to all women, including marginalised groups of women such as members of black and minority ethnic communities or women with disabilities or mental health needs, and that these services be made accessible to all women, regardless of immigration status.

The manifesto also calls for an end to the detention of women who are survivors of gender-based or sexual violence. It recommends that guidance for Home Office employees be changed in order to ensure that women claiming to have suffered such violence in any form as part of their asylum application are not considered suitable for detention at any stage during the asylum process.

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National News

New Country Guidance on 'contested' areas of Iraq highlights risk to women

The Home Office has published a new [country information and guidance](#) report on the security situation in the 'contested' areas of Iraq on 22 August. The report highlights women, as well as LGBTI people, children, and members of religious or ethnic minority groups, as being at increased risk in these areas from discrimination and violence at the hands of 'Islamic State' (IS) militants.

The report warns of severe human rights violations that have taken place against women, ranging from areas where, under 'IS' control, women are required to stay at home at all times and not to go outside at all (p.49), to reports of women being treated as "booties of war" and facing rape and sexual violence (p.51).

The report was released shortly before Western nations, including the UK, began airstrikes against 'IS' in Iraq.

A plethora of media reports have emerged detailing sexual and other forms of violence against women in particular, perpetrated by IS militants in the contested areas of the region since the UN [declared](#) its highest level of emergency in the country in mid-August. A recent Human Rights Watch [report](#) on the situation states that young Yezidi women and teenage girls have been systematically separated from their families by IS and that many have been forced into marriage or to convert to Islam. Human Rights Watch has said that although the full extent of abuses remains unclear, the treatment of Yezidi civilians by 'IS' could constitute crimes against humanity.

The Iraqi Women Network (IWN) also released a [statement](#) in early September, calling for Western support against 'IS' and citing mass abductions and sexual slavery of women and girls, particularly those from minority groups. IWN also drew attention to the desperate plight of the 160 women held in the Badush prison in Mosul, and to the dangers caused by a lack of medical equipment in the occupied regions, in particular for pregnant women.

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International News

Landmark US ruling recognises victims of domestic violence as 'particular social group'

In a landmark [judgment](#) that could affect the asylum claims of many more women, the highest immigration tribunal in the United States, the Board of Immigration Appeals (BIA), has ruled that a woman fleeing domestic violence in Guatemala can constitute a member of a 'particular social group' and be granted refugee status on that basis.

In the Matter of A-R-C-G, the court ruled that there was a general failure on the part of Guatemalan authorities to protect women victims of domestic violence, even when called, having noted their failure to intervene in this case where the defendant was repeatedly brutally attacked, beaten, burned and raped by her husband.

Although this is not the first time that asylum has been granted in the US on the grounds of domestic violence, this ruling is the first one to set a formally binding precedent. Members of the [Centre for Gender and Refugee Studies](#), who have worked on these issues over the past decade, hope that this judgment will bring an end to the inconsistent approach of the courts.

The judgment lays out that, *"Depending on the facts and evidence in an individual case, "married women in Guatemala who are unable to leave their relationship" can constitute a cognizable particular social group that forms the basis of a claim for asylum or withholding of removal."* These words will have great importance to the [estimated](#) 300 women currently awaiting their appeal at the BIA for asylum claims based on domestic violence.

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Court rules baby born to asylum seeker on Australian soil is an "unauthorised maritime arrival"

The Federal Circuit Court in Australia has ruled that an 11-month-old baby born to an asylum seeker in Brisbane will take the status of an "unauthorised maritime arrival" and will not be eligible to apply for a protection visa to remain in the country.

The ruling follows a change in legislation introduced by the Australian Minister for Immigration, [Scott Morrison](#), two weeks ago, which stipulates that babies born to asylum seekers will receive the same status as their parents, thus they will be classified as "unauthorised maritime arrivals" despite having arrived in Australia by birth and having

Australian birth certificates. The change in legislation is intended to counteract the perceived “incentive” for pregnant women to engage people smugglers and make illegal journeys to seek asylum in Australia.

The baby’s mother, Latifar Myuddin, is a Rohingya Muslim who claims to have fled persecution in Burma, and she claims that her son, Farouz, will be made stateless by the ruling. Latifar was taken by plane to Brisbane from the offshore detention centre on the island of Nauru in order to have a premature caesarean section when she experienced difficulty with the pregnancy.

This ruling has the potential to force another 100 babies born to asylum seeker mothers in Australia to start their lives in offshore detention camps, where conditions have been repeatedly criticised by [human rights groups](#) and [doctors](#) in the strongest terms for breaching human rights standards.

The lawyer acting on behalf of the Myuddin family has said in the [Brisbane Times](#) that they will be appealing against the judgment, and will seek an undertaking from the government that they and the other mothers and babies potentially affected will not be removed until the appeal has been heard.

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Colombian Women’s group wins Nansen award

The Colombian displaced women’s group Red Mariposas de Alas Nuevas Construyendo Futuro (Network of Butterflies with New Wings Building a Future) has been awarded this year’s [Nansen Award](#) for extraordinary service to the forcibly displaced by UNHCR.

‘The Butterflies’ provide sanctuary and assistance to women survivors of forced displacement and sexual violence in the city of Buenaventura on the Western coast of Colombia. According to a [new report](#) by UNHCR, Colombia is the country with the second highest number of internally displaced people in the world, after Syria, with one in every 10 people displaced.

The report focuses on Buenaventura, which has been disproportionately affected by the ongoing conflict in the country, and it highlights the prevalence of the use of sexual violence against the women of the region. Buenaventura has higher unemployment and numbers of people living below the poverty line than the rest of the country, as well as a higher proportion of Afro-Colombians living there, who are more vulnerable to the violence the conflict brings. There are endless horror stories of women left brutalized and displaced by the armed groups who run the city.

The 'Butterflies' work with the women survivors of torture, rape and kidnapping by the illegal armed groups which operate in the city. Women are targeted by these militias for revenge or as a show of strength. The official authorities are unable

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UK Training and Events

Striving for excellence in maternity care in Bradford

The University of Bradford and City of Sanctuary Maternity Stream are hosting a free [conference](#) on Thursday 6 November. While refugee and asylum seeking women make up only 0.5% of the population of the UK, they account for 14% of maternal deaths. This conference is aimed at improving understanding of the issues facing pregnant asylum seekers, sharing information about the various statutory and non-statutory services available to these women in the area, and examining how the maternity stream of City of Sanctuary can address this question.

For more information contact j.wilcock@bradford.ac.uk

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Seeking Asylum in the UK: LGBT Experiences

A free, full-day conference examining the issues faced by LGBT asylum seekers organised by [Sahir House](#) (Merseyside's HIV support centre) will be held at the University of Liverpool on Thursday 6 November. While Liverpool is a key dispersal centre for asylum seekers in the UK, support groups in the region are concerned about a lack of appropriate services dedicated to the needs of this group. The discussion on the day will inform collaborative research into this problem, with the aim of influencing policymakers to improve support services.

For more information contact Elaine@sahir.uk.com

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Restoring and Enhancing Resilience

The Women and Girls Network (WGN) is running a free seminar in London on Wednesday 12 November. The session will explore ways to empower clients' recovery from trauma and gender-based violence, using methods and clinical models from CBT, positive

psychology and narrative therapy to help develop resilience and inner strength in survivors to protect and assist those who have had to leave their homes and communities behind to seek safety. For more information and to apply, download a form [here](#).

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Managing Secondary (or Vicarious) Stress

The Evelyn Oldfield Unit (EOU) is running training on managing vicarious stress for women from a migrant or refugee background. The training is free of charge and will take place on 29 October from 10AM to 4PM. The training is aimed at women working or volunteering for refugee women's groups, who offer advice to others, and who find listening to the traumatic stories of others stressful. The training will teach some self-protection methods to manage this vicarious stress.

For more information or to register please contact sarah@evelynoldfield.co.uk

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Volunteer with Asylum Aid and help produce Women's Asylum News!

Asylum Aid is recruiting a new Communications Volunteer. The role of the Communications Volunteer involves assisting the work of the Communications Officer in researching, producing and distributing Asylum Aid's regular newsletters, Women's Asylum News and Asylum News. There is also the possibility of assisting with other elements of communications work at Asylum Aid, depending on need and the volunteer's particular skills set and interests.

Volunteers have been supporting the work of Asylum Aid since its beginnings. The vital work of volunteers enables us to continue our life saving work of protecting women, men and children from torture.

The volunteer programme at Asylum Aid is based on a reciprocal model that ensures that the needs of the volunteer are taken into account. Asylum Aid welcomes people of all ages, from all walks of life and from all parts of the community. Becoming a volunteer for Asylum Aid provides you with an interesting and dynamic work place, a chance to update your skills in a supportive environment, and an opportunity to play a vital part in life-saving work.

For full role description and person spec, please download the application pack [here](#).

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Publications

28 Too Many: FGM in Mali

28 Too Many has published a new [country profile](#) on Mali, where 91.4% of women and girls have undergone FGM. Not only is this rate incredibly high, but it has increased since 2006, when their report showed a rate of 85.2%.

The report highlights both the prevalence of FGM in Mali and the difficulty in tackling it for several reasons, including the fact that the practice is seen as being mandated by religion despite their being no religious requirement for FGM in either of the main religions (Islam and Christianity) practised in Mali. Respect for age in many of the cultures plays a role in the continuation of the practice; if an elder member of society is in favour of FGM then younger members must respect their authority.

Society is patriarchal and much of this is enshrined in law; the village chief and elders are always male. The caste system can both fight and facilitate FGM. Members of the highest (noble) caste are still expected to behave in a refined and traditional way, but there is more freedom among the professional and slave castes, meaning anti-FGM messages can be spread more easily within these groups, particularly through the use of griots (traditional oral storytellers).

Other factors that make tackling FGM in Mali particularly challenging include the huge amount of diversity of ethnic groups represented in the country, and social and political upheavals which can alter the vulnerability of different groups of women.

The report details the different ways in which FGM is being tackled, particularly by using resources which already exist within the society among other methods. There is also a detailed breakdown of the prevalence of FGM and different types of FGM depending on various different factors e.g. the status of the mother, regionally, by religion etc. The government has led public interventions and campaigns in healthcare.

The report calls for further research to be done in Mali, highlighting the main areas in which anti-FGM campaigning has been successful and how.

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The extent and impact of asylum accommodation problems in Scotland

The Scottish Refugee Council has published a report entitled '[The Extent and Impact of Asylum Accommodation Problems in Scotland](#)' concerning the state of housing for asylum seekers in Scotland.

The research shows that women (and particularly women with children) are more likely to express dissatisfaction with their accommodation than men. When broken down by gender, the figures show that more women than men had complained about the size or standard of their accommodation, while in February 2014, twice as many women as men complained of harassment (2 vs. 4).

The report states that the higher rate of complaints from women calls into question how well women are being catered for within the asylum system, and whether providers are fulfilling their duty to protect the best interests and safety of the child.

The report provides case studies which show the needs of mothers with children not being fully taken into account. Three of the four case studies document a lack of concern for the wellbeing of mothers and their children in regard to the way in which they are accommodated.

The report concludes that “Scotland’s asylum seekers seem too often to be placed in accommodation of inappropriate physical quality, with in practice, insufficient consideration being given to critical needs, including health, gender, welfare of children and vulnerability, stemming often from their histories of persecution and trauma.”

The Scottish Refugee Council makes recommendations for the Home Office and service providers as to how they can improve their services, including for the Home Office to initiate a comprehensive review of accommodation services in Scotland with a view to improving monitoring and contract compliance on the part of providers.

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Charter of rights of women seeking asylum



Endorsements: 351

Google group membership: 170

Mental Health and Asylum Seeking Women

Solace Surviving Exile and Persecution has been providing psychotherapy and advocacy support for asylum seekers and refugees for over eight years in West Yorkshire, about half of whom are women. In all, we have helped over 500 women with mental health problems which arise out of the asylum seeker experience.

The work we do with women at Solace is unlike most mental health agencies whose work is mostly one-to-one therapy or occasionally group work once a week and no more. Most mental health agencies tend to use one form of therapy, such as Cognitive Behavioural Therapy (CBT) which has been all the rage in the NHS for the past few years.

At Solace, we offer all of the above and much more, including help with practical issues, such as addressing housing and immigration problems, as well as family reunions, which cause so much stress to women. In one recent case, we helped a woman reunite with her children who were in hiding in Eritrea.

We also offer complementary therapies, particularly those that focus on reducing physical pain. We run stress management groups which focus on learning techniques to help people reduce their stress, anxiety and physical pain. We also offer art therapy and run a bibliotherapy group to allow people to explore their feelings and process their traumatic experiences.

Why all these different activities? Mostly because asylum seekers and refugees have faced and continue to face some of the most difficult circumstances that any human being could endure and they need intensive, multi-faceted support. It's hardly surprising, then, that they suffer from much higher rates of mental health difficulties than other population groups, including post-traumatic stress, acute anxiety and depression, often accompanied by chronic physical pain, arising out of protracted periods of severe stress.

Our approach at Solace in a nutshell is 'holistic' in the sense that we try to address as many of the needs of the women we help as possible. Any support we and other refugee support organisations provide helps alleviate distress and this helps us to work therapeutically with them.

For more information please go to www.solace-uk.org.uk

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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:
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