Misjudging Rape

Breaching Gender Guidelines & International Law in Asylum Appeals

Black Women's Rape Action Project
Women Against Rape

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Black Women's Rape Action Project

BWRAP was founded in 1991 to win justice for women of colour, immigrant women and women seeking asylum who are rape survivors, and to get rape recognised as persecution and therefore grounds for asylum. It provides advice and support to women who are victims of racist attacks.

Women Against Rape

WAR is a multi-racial women's organisation founded in 1976. It offers counselling, support, legal advocacy and information to women and girls who have been raped or sexually assaulted. It supports survivors when they report to the police, seek protection from further attacks, or are preparing for court, applying for compensation, or claiming asylum from rape.

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Introduction

The particular persecution women face is not recognised by the 1951 United Nations Refugee Convention but governments have agreed there is no need to amend the Convention because *"the text, object and purpose of the Convention require a gender-inclusive and gender-sensitive interpretation".*[1] It is up to governments to put this into practice and United Nations agencies and policy documents have urged governments to adopt guidelines for considering women's asylum claims.[2]

In the UK, where at least 50% of women seeking asylum are victims of sexual violence,[3] rape survivors face an uphill battle establishing how their claims for asylum relate to the Refugee Convention and why they should be granted protection.[4] Whilst public criticism has grown about the poor quality of initial decisions made by the Home Office on asylum claims – a 99% refusal rate for those decided under the fast-track in detention, 80% for others – there has been little scrutiny of the decisions made by adjudicators, now immigration judges,[4a] at appeal. Yet, as appeal rights have been eroded, the immigration judge hearing may be the last (or even only) chance for a woman to describe the persecution she suffered and why she was forced to flee. If immigration judges get their decisions wrong, vulnerable and traumatised women, children and men are sent back to face further rape and even death. This dossier provides evidence of how adjudicators and immigration judges regularly flout international law and Gender Guidelines when they consider the asylum claims of women and girls seeking safety and protection from rape.

The Gender Guidelines

Work in the UK began in earnest in the mid-1990s to draft and lobby for guidelines to cover all aspects of women's asylum claims. Black Women's Rape Action Project contributed, pressing particularly for recognition of the specific obstacles and discrimination faced by rape survivors.[5] Eventually, in 2000, the Immigration Appellate Authority published its *Asylum Gender Guidelines*, a combination of case law, legal precedents and guidelines for how evidence should be considered and appeal hearings conducted by adjudicators.[6]

The Guidelines recognise that:

"The experiences of women in their country of origin often differ from those of men, for example, women's political protest, activism and resistance may manifest itself in different ways. This may alter the nature of their asylum claims, their ability to produce evidence relating to their claim, both oral and documentary, and the appropriate procedures to be used in determining their asylum claims."(1.7)

They aim to:

". . . ensure that the asylum determination process is accessible and that the procedures used do not prejudice women asylum seekers or make it more difficult for them to present their asylum claims; to ensure that the judiciary are aware of the particular evidential problems which may be faced by women asylum seekers and that appropriate steps are taken to overcome them." (1.8)

Methodology

We prepared our report from a sample of 65 rulings by adjudicators and immigration judges in cases of women seeking asylum from rape, who had come to BWRAP or WAR for help – either before or after their appeal hearing. Most were from African countries, including the Democratic Republic of Congo, Eritrea, Ethiopia, Kenya, Nigeria, Rwanda and Uganda; others were from Albania, Kosovo, Romania and Turkey as well as India and Pakistan. We looked at how the decisions made related to the Guidelines. Only two decisions referred to the Guidelines specifically.

The Guidelines are a lengthy legal document, so we include here a selection of their content which is particularly relevant to the claims of rape survivors and the rulings we considered.

We contrast each issue the Guidelines address with examples of rulings by adjudicators and immigration judges where the Guidelines were not adhered to. We also include a few cases where adjudicators and immigration judges have followed principles laid out in the Guidelines, showing the very different outcomes in women's appeals when they are treated sensitively and with a full appreciation of the impact of rape.

Not just research

The rulings and other information from which this report is compiled were forwarded to us by women, or legal representatives on their behalf, urgently in need of help. While research into asylum seekers' experiences is increasingly available, even specifically on women's situation, practical support and advice is much harder to find. Our report includes some information about what we did to help women and the impact of rulings on women and children's lives. We want to publicise the Guidelines so that women know what they are entitled to, and to give an idea of what can be done for women preparing for appeal hearings. We also include other key international documents and case law which adjudicators frequently ignore.

Summary of findings

- 88% of Home Office (HO) decisions disbelieved women and dismissed their reports of rape.
- 43% of adjudicators' rulings completely disbelieved women's reports of rape; and an additional 14% only partially believed them.
- 43% of rulings accepted the woman's account of rape but only 23% of rulings allowed women's appeal under the Refugee Convention or the European Convention on Human Rights.
- Women with expert reports corroborating their account of rape were six times more likely to win their case than those without.
- 20% of women had not been able to speak about rape before the Home Office considered their case; and 14% still had not reported by the time of their hearing.
- In 10% of hearings, adjournments were requested to allow more time for women to speak about their ordeal and to get expert reports. 71% of these requests were refused, no expert report was available as a result, and every woman's account of rape was disbelieved.
- Of appeals refused where rape was accepted but not as grounds for asylum, 43% of rulings dismissed rape by officials as "simple dreadful lust", "the act of unruly officers", or similar, and thus it was not considered persecution.
- In addition to the 23% rulings which allowed women's appeals, a further 4% accepted rape as persecution but said that it would not be "unduly harsh" for women to return to a different part of the country from which they fled ("internal relocation").

The legal framework determining rape survivors' claims (jurisprudence)

Under the UN Refugee Convention, a person should be recognised as a refugee:
"owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion . . . and is unable or, owing to such fear, is unwilling to avail himself of the protection of [his home] country; or who . . . as a result of such events, is unable or, owing to such fear, is unwilling to return to it."
"The Refugee Convention exists to provide protection to both men and women. The Convention should thus be interpreted in a manner which reflects the experiences of both men and women". (3.1)

1. Rape as persecution

"To be recognised as a refugee an asylum applicant must fear a form of harm which constitutes 'persecution' within the meaning of the Refugee Convention." (2.1)

The Guidelines, in quoting Baroness Blatch, state that:
"Rape and other forms of sexual violence clearly amount to persecution in the same way as do other acts of serious physical abuse."[7]

This confirms UNHCR Guidelines:[8]
"There is no doubt that rape and other forms of gender-related violence . . . have been used as forms of persecution, whether perpetrated by State or private actors." (B9)

But the way the Convention has been interpreted by adjudicators and the higher courts make it very difficult for rape survivors to show they are entitled to protection, even when it is accepted that the rape they suffered amounted to persecution. And even where there is helpful case law or useful precedents, adjudicators often ignore them.

We did not find any example of an adjudicator dismissing rape as insignificant and not "serious harm" – clearly the anti-rape movement has had an impact. We found that the most common way adjudicators dismissed the asylum claims of rape survivors was by disbelieving women's accounts — unsurprising in the UK context, since women face a shamefully low conviction rate (only 5.3% of reported rapes result in conviction).

A long-standing member of the Immigration Appeals Judiciary described how his colleagues ignored the Guidelines:

"Despite all the gender guidelines and the need to exercise sensitivity to victims who allege persecution through rape, in recent years I notice that some decision makers demand a much higher degree of proof from women. A finding of negative credibility based on discrepancies is often determined and the claim rejected outright if there is evidence, for example, a) that the rape is not revealed on arrival . . ., b) of a lack of corroborative medical evidence from country of persecution, c) of medical evidence submitted long after arrival – this is viewed as self-serving, d) of not telling their solicitor so that a late statement can be filed, e) of not telling their husbands or family members due to stigmatisation — considered to be absolutely implausible. Expecting that women from rural societies in Africa would reveal information about the rape before the hearing is based on western perceptions. There is no regard to the lack of support systems for such vulnerable women."[9]

43% of adjudicators' rulings completely disbelieved women's reports of rape; and an additional 14% only partially believed them.

43% of rulings accepted the woman's account of rape but only 23% of rulings allowed women's appeal under the Refugee Convention or the European Convention on Human Rights.

2. Convention grounds

The Gender Guidelines aim to:

". . . ensure that women's asylum claims are fully considered under the Refugee Convention so that jurisprudence properly reflects the experiences of both female and male refugees." (1.8)

"Convention grounds" are the five categories of *"race, religion, nationality, membership of a particular social group or political opinion"*. To be entitled to protection a claimant must show that they fear they will be persecuted because of their race, religion, nationality, membership of a particular social group or political opinion. Women can be raped because of any of these categories, e.g. because of their political activity. We give below examples of the use of *"social group"* and *"political opinion".*

a) Social Group

"The existence of discrimination against the group in question may have a particular role in determining whether the group is a particular social group under the Refugee Convention."(3.34)

Being persecuted on the grounds of gender – being a woman – is not included in the list of "Convention grounds". The only way a woman can show inclusion within the Refugee Convention on grounds of gender is by arguing her "membership of a particular social group". But it is difficult to argue that you are part of a "social group" and therefore lawyers pursue it infrequently.

"Social group" was only discussed in 14% of cases and only accepted in two rulings as Convention Grounds for accepting rape as persecution and therefore grounds for asylum.

A "social group" cannot be defined by the persecution suffered by an individual, the group must exist independently of that persecution[10].

The precedent-setting case "Shah and Islam"[11], which is referred to in the Guidelines, established that two women suffering domestic violence were members of a "social group" because social and legal discrimination against women prevented them from getting the protection of the government of Pakistan, and so they were entitled to the protection of the Refugee Convention.

A recent Law Lords' ruling found that women in Sierra Leone are a particular social group because they "are perceived by society as inferior". They allowed an appeal, finding that the Female Genital Mutilation with which the woman was threatened was persecution on Convention grounds.[12] The Law Lords paid particular attention to the UNHCR gender guidelines in reaching their decision.

Even though there have been repeated rulings by the House of Lords that excluding gender from social group arguments is contrary to the UK's international obligations, immigration judges continue to go to extraordinary lengths to refuse protection to women.

Recently, the UK adopted a European Directive setting down minimum standards for refugee recognition.[13] This refers specifically to gender as a relevant consideration, however the UK omitted this reference when adopting these minimum standards. Immigration judges are now relying on this omission to reject arguments based on social group.

Ms Z became disabled as a baby after contracting polio and grew up in care in Kenya. From 1997 she struggled to make a living as a street seller. She and other street hawkers who were of Kikuyu origin, were targeted by the police. Ms Z suf-

fered repeated rape and other sexual abuse, including while detained, and finally death threats by police officers.

Whilst adjudicator Ms M Colvin (February 2003 and supplementary determination April 2004) accepted some of Ms Z's account, she did not accept that she had been raped by police. In a further appeal, the immigration judges laboured to exclude Ms Z from being a member of a social group: "The appellant is a Kikuyu woman who is disabled. We accept that these are immutable characteristics and as such could lead to the appellant being considered to be part of a social group. We do not accept, however, that being a hawker is an immutable characteristic as the appellant is not required to be a hawker. . . . although we accept that opportunities for the disabled in Kenya are limited that does not mean she must work as a hawker on return. . . . As she is not required to be a member of that group or indeed to be a hawker the increased incidents of harassment or sexual abuse to which hawkers are subjected is not something that flows from the appellant's immutable characteristics of being a disabled Kikuyu woman but from the fact that she was a hawker. If she returned to Kenya and was not a hawker there is nothing to suggest that she would face an increased level of harassment. Therefore we do not accept that it is the appellant's immutable characteristics that have led to the ill-treatment of which she complained in the past." Mr DK Allen, Mr AL McGeachy, Mr ME Fraenkel (November 2004)

Baroness Hale was one of the Law Lords who ruled in the Sierra Leone case. In an earlier ruling in the House of Lords, Baroness Hale showed how rape survivors too could be argued to be a "social group":

"The fact of current persecution alone is not enough to constitute a social group: a group which is defined by nothing other than that its members are currently being persecuted would not qualify. But women who have been victims of sexual violence in the past are linked by an immutable characteristic which is at once independent of and the cause of their current ill-treatment. They are certainly capable of constituting a particular social group under the Convention."[14]

None of the rulings we looked at considered this approach.

b) Political Opinion

"Women may face persecution because of a Refugee Convention ground which is attributed or imputed to them. In many societies a woman's political views, race, nationality, religion and social affiliations are often seen as aligned with relatives or associates or with those of her community. It is therefore important to consider whether a woman is persecuted because of a Convention ground which has been attributed or imputed to her." (3.3)

"It is necessary to ensure that "political opinion" is interpreted to include women's political activities." (3.22)

"Involvement in the women's movement with the aim of improving women's position in society is political activity." (3.25)

Women claiming asylum on the basis that they suffered rape as a result of their political opinion must overcome many obstacles. Not only do they face the same sexism as other rape survivors making asylum claims, but the political activities they are involved in are more likely to be dismissed as too low-level or insignificant.

Women's political activities are usually less recognised than men´s. Leafleting, holding meetings, running errands or delivering messages, providing food and shelter to other activists, doing the caring work so others can attend meetings and defending cultural traditions, are the political activities women are most often involved in. They are as crucial to sustaining liberation movements as so-called high-level de-

cision making, writing or public speaking. Governments and government agents know that women´s life-sustaining work is at the heart of such movements, and women are often systematically targeted in order to destroy community adhesion and defeat movements for change. The sexism that prevents women getting recognition for their caring work and its contribution to movements for change is a problem that women face everywhere – it is not confined to those countries women may be fleeing from.

Women are also imprisoned, beaten, raped and tortured in other ways to get information about or to punish husbands, sons or other male relatives for their political activity. Meetings may have been held in their house over long periods of time without the women having been told or having known the purpose of such meetings. Yet this "imputed" political activity is also dismissed, contrary to the Guidelines. Of course, in countries where opposition parties are illegal, women (or men) are unlikely to carry membership cards or other identifying documents.

Ms AB had been an active member of the Democratic Party (DP) in Uganda since she was eighteen. Both she and her husband were taken into detention as a result of their political activities. Ms AB never saw her husband again. She managed to escape but was later detained again, suffering many months of repeated rape and other violence. The lawyer representing Ms AB apparently failed to read the report commissioned from the Medical Foundation to whom she had reported, for the first time, the rape she had suffered. Her statement for her appeal was not amended with this crucial information. Unusually, the adjudicator at her appeal, Mr M E Curzon Lewis (September 2004), did not use this to dismiss her account. He recorded her account of her political activities:" . . . [she] became a country representative in the Women Domestic and Child Welfare Group [of the DP]; . . . The Appellant and her husband were supporters of Dr Besigye . . . she used to attend political meetings with her husband, because they were members of RA, and also committee members on the task force of Dr Besigye. These meetings took place in members' homes, including the Appellant's matrimonial home. . . . she became a member of the People's Redemption Army. . . . The Appellant used to take notes at these house meetings . . . in the run-up to the election these meetings took place every night . . . she organised transport for rallies. She distributed election material and canvassed locally for Dr Besigye."' But he dismissed the seriousness of her political activity as "always at local level" and asserted that she did not have a "prominent profile".

A second period of detention was dismissed due to apparent "discrepancies" between the notes made at Ms AB's Home Office interview and the fuller details of her experiences, which she reported later, leaving the adjudicator free to conclude that: "I find no reason to conclude that the appellant would be at risk in 2004 when her last encounter with the authorities was three years ago . . .She has had no political profile whatsoever since then . . . She has not made out a well founded fear of persecution for reasons of political opinion, and does not engage the Refugee Convention."

In 28% of rulings, women's own or their "imputed" political activity (that is, of other family members, husbands, etc.) was dismissed, so there were no Convention grounds to entitle them to protection.

3. State or non-state agents?

"It will be necessary to consider whether the fear is of persecution from an agent of the state (for example a police or army member) or a non-state

agent (for example an opposition group)."(2.4)

Deciding whether or not those responsible for rape are State agents is a crucial decision that immigration judges must make. Yet they often make arbitrary decisions about this – accepting that rape took place but disputing who the rapists were, as in Ms Y's case.

In October 2001 Ms Y was raped by plain-clothed Ugandan government agents in front of her father, who was involved in opposition politics. They had come to her home to interrogate her father about his political activities. He was badly beaten and then dragged away. Ms Y never saw him again. She was helped to flee to the UK and, as she was only fifteen, given leave to remain as an unaccompanied minor until her eighteenth birthday in March 2002. The Home Office refused her subsequent asylum claim. Mrs L H S Verity accepted much of Ms Y's oral evidence at her appeal (September 2002) but dismissed her description of the rapists as government agents, without any explanation why. ". . . it is perfectly possible that they [the men who came to her house] were criminals and that their actions had nothing whatsoever to do with the government or with politics." Ms Y successfully appealed against this ruling but Mr T R Cockrill who reheard her case (December 2004) refused her again on the same grounds, accepting her as truthful about being raped but not by whom, reiterating that: ". . . the attack on the appellant had nothing to do with the appellant's father's political beliefs or opinions."

Neither adjudicator considering Ms Y's case explained why they decided she was telling the truth about one part of her experiences and lying about another. The result was that they accepted her account of rape but did not accept that it was perpetrated by State agents, and therefore confirmed the Home Office's initial decision to refuse her asylum. Further attempts to pursue Ms Y's asylum claim failed and she is threatened with removal.

43% of adjudicators' rulings completely disbelieved women's reports of rape; and an additional 14% only partially believed them, taking their claims outside the scope of the Convention.

4. Failure of State protection

"If 'serious harm' has been inflicted by the State or its agents (associated organizations or groups) it follows that there is a 'failure of State protection'"[1] (2B.1);

"'Serious harm' inflicted by the State and/or by those associated with the State, including sexual violence, is the responsibility of that State regardless of its formal attitude or public position in relation to such conduct."[15] (2B.6)

Even though the case law outlined above is clear, our research showed that women are refused protection because they are deemed not to be victims of persecution but of "random acts" by individual "unruly officers" acting for their own sexual gratification.

A mother of five, Ms Najjemba was raped by soldiers after she and her son were interrogated about whether their shop sold provisions to "rebels". Her oldest son was beaten unconscious and then dragged away (she believes he was killed). Terrified for her life she fled to the UK in December 2000 leaving her four younger children behind.

After her asylum claim was refused, Ms Najjemba's case went to appeal in July 2001. Mrs JE Nichols ruled that the rape Ms Najjemba suffered was only "a gratuitous act of violence against the appellant during the course of the arrest of her son" and dismissed her appeal. The Immigration Appellate Tribunal refused her leave to appeal, reiterating that "the rape of the Applicant was extraneous to the political or military activities of the soldiers and did

not engage the Refugee Convention."

The Adjudicator's ruling in Ms Najjemba's case contrasted sharply with a ruling by Ms C Jarvis,[16] considering the same issue in another case.

Ms NK, also from Uganda, was detained and raped by prison guards because she supported the opposition candidate during the Presidential elections of 2001. After being refused by the Home Office, she appealed and was given full refugee status by Ms C Jarvis (April 2002) who commented: "It seems to me that it is doubtful that rape can ever be regarded as simply an act to achieve sexual gratification. It is a form of abuse of power, usually perpetrated by men against women, but also by men against men. As it has been put by Deputy Assistant Commissioner Wyn Jones of the Metropolitan Police: 'We want to kill the myth that rape is sexually motivated – it is usually intended to inflict violence and humiliation.'"

With excellent legal representation and WAR's support, Ms Najjemba was able to take her case to the Court of Appeal. But Judges Lord Justices Latham and Simon Brown upheld the Adjudicator's decision, ruling that Ms Najjemba's rape was not a matter of persecution, but of "simple and dreadful lust".

The UNHCR expressed their deep concern about the way Ms Najjemba's case was treated:

" . . . In Ms Najjemba's case, there were clear political elements in the facts surrounding her rape. It was inflicted during (and was triggered by) a search for a militant rebel group opposed to the government; the perpetrators were government soldiers on duty; the impunity with which the rape was perpetrated was not exceptional – it was a regular feature of the political context of abuses in that part of Uganda; and, at the same time as the rape, her son was brutally beaten, accused of collaborating with the rebels and taken away, never to be seen again. These contextual elements should have been interpreted as taking the rape beyond the merely criminal dimension into the realm of persecution thus providing a strong link to the Convention ground of political opinion."[17]

Ms Najjemba courageously spoke out in the media and WAR gathered support from the women's movement. This won her indefinite leave to remain; and years later, after overcoming further obstacles, her children were able to join her. But her victory established no legal precedent and we regularly see rulings which dismiss women's appeals on exactly the same grounds.

It is hard to believe that other forms of violence would be dismissed similarly on grounds of motive, e.g. a man suffering electric shocks in detention because the guards just "felt like it". In our view this is another example of how rape survivors face discriminatory treatment by adjudicators. UNHCR also felt that a dangerous precedent has been set which contravenes the Convention itself:

"UNHCR's view is that to require proof of the motivation of the persecutor is to misapprehend the concept of persecution, and to introduce a new element into the refugee definition that limits its scope, and contradicts the object and purpose of the 1951 Convention."[4]

Of appeals refused where rape was accepted but not as grounds for asylum, 43% of rulings dismissed rape by officials as "simple dreadful lust", "the act of unruly officers", or similar, and thus it was not considered persecution.

5. No protection from rape by "non-State agents"

"There may be a failure of State protection in relation to 'serious harm' inflicted by non-State actors. Protection may exist, in theory, but not in practice. Even where the official policy is

to provide protection, no protection may exist in practice." (2B.8)

"Treatment which would constitute 'serious harm' if it occurred outside the family will also constitute' serious harm' if it occurs within a family context." (2A.23)

"Where State protection exists it must be meaningful, accessible, effective and available to a woman regardless of her culture and position. A woman may be unwilling or unable to alert the authorities of her country of origin to her need for protection, for example, where doing so may put her at risk of violence, harassment, shame, rejection by her society or even prosecution." (2B.4)

Women who have been raped by "non-State agents" can still be entitled to refugee status if they can show they were unable to get state protection in the country they fled. This can include rape and other domestic violence by family members, as in the Shah and Islam case.[18]

There are many reasons why women do not report rape, even if it appears that protection does exist. Research by WAR[19] found that only one in twelve women reported rape in London. Such a high level of under-reporting is likely to be even higher in countries where there is less legal protection from rape. The most common reason given for not reporting was fear of violent reprisals. Rather than securing protection, women may fear that reporting will increase their vulnerability to further violence.

Ms X is from Ethiopia. She was described as "a pretty young woman" *by RJ Manuell, the adjudicator, who refused to consider why she had been unable to seek protection and dismissed her account of rape: "The claim that she had been sexually abused by the head of the Muslim household and yet she had not complained to anyone . . . made no sense at all. . . I claim that she was not sexually abused." September 2003*

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6. Well-founded fear of persecution

"Determination as to whether the asylum applicant has a 'well-founded' fear will include:
- determining whether the applicant has a subjective fear of return; and
- determining whether that fear is objectively 'well-founded." (4.1)

The Convention does not apply only to people who have already experienced persecution, but also to those who have "a well-founded fear of being persecuted". Drawn up in the wake of the gas chambers, the Convention would have been no protection at all if it had excluded those fearing persecution. Not many people escaped the gas chambers. But the Convention´s inclusive approach was aimed at preventing such genocide happening ever again by making it easier for those in danger of violence to seek protection. You might have thought that having already experienced rape and other torture, a woman would have demonstrated that her fears were well-founded. But having suffered persecution in the past is not enough to win protection. Asylum seekers also have to show that they could suffer it again in the future.

Ms Najjemba's case illustrates the obstacles women face. Although her account of rape was accepted, it was dismissed because the Adjudicator did not accept it was inflicted for "Convention grounds". Her fears about what would happen to her if returned to Uganda were not judged to be well-founded. UNHCR expressed concern about the "test" which was applied by the Adjudicator in her case: "While [Ms Najjemba's] profound suffering was expressly recognised by the IAT, the High Court and the Court of Appeal, UNHCR is concerned that the subjective impact of her experiences was not weighed in favour of recognising her need for international protection. This concern is

underscored by the fact that the situation in Western and Northern Uganda provide a reasonable and objective basis for the applicant's continuing fear. The question here is not whether Ns Najjemba's past experiences are likely to be exactly replicated . . . Neither is it whether she could face serious harm emanating from the same sources that caused her to flee . . . Rather, it is whether, considering that Ms Najjemba continues to labour under the psychological impact of past persecution, there exist factors in the current situation in Uganda that might exacerbate her fear, so as to warrant extending international protection to her".

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7. Discrimination against rape survivors may amount to persecution

"Discrimination (and discriminatory treatment) may:
- Amount to 'serious harm' within the meaning of the Refugee Convention; be the/a factor which turns 'harm' into 'serious harm' and a breach of human rights (for example, discriminatory access to police protection or education);
- be a factor in failure of State protection in the Refugee Convention (thus the State may protect some groups in society and not others)." (2A.7)
"Sexual violence may have traumatic social repercussions for the victim. These may be affected by the victim's cultural origins and/or social status. Such social repercussions may include, but are not limited to, rejection by (or of) the spouse and by family members, stigmatisation or ostracism by the wider community, and punishment and/or deprivation of education, employment and other types of assistance and protection." (2A.21)

Although the Guidelines acknowledge the ongoing impact of rape, there was little appreciation of this in many of the adjudicators' rulings. Expert research confirms the long-lasting traumatic effects rape can inflict.[20] But it tends to be viewed by adjudicators as a one-off traumatic event when in reality its aftermath can last for years.

Adjudicators' considerations about whether women have a well-founded fear of persecution are invariably limited to whether there is a risk of further rape. For example, they completely disregard the hostility and ostracism which may face women who are bringing up children conceived as a result of rape or their ongoing difficulties of raising their children.

"Women may be targeted, not simply because of their own race, but also because they are perceived as propagating a racial group or ethnic identity through their reproductive role. This may also affect the form which persecution on the grounds of race takes, for example, sexual violence or control of reproduction." (3.6)

Ms AB is from Uganda. She explained her daughter was conceived as a result of the rape she suffered whilst held in detention and was born after she arrived in the UK in 2002. Even though her husband had disappeared in Uganda, she put his name on the birth certificate because she did not want her baby to feel unwanted or stigmatised. But Mr Curzon Lewis used this against her when he refused to accept her account of a second period of detention, including further rape, identifying amongst his "areas of concern": "The fact that the UK birth certificate for her child . . . identifies the father as Mr AB, albeit the Appellant claims to have had no sight or sound of him since 28 June 2001."

In some notable exceptions, including where we provided expert reports documenting the continuing traumatic effects of rape, adjudicators have taken women's ongoing needs into account and granted them leave to remain under Arti-

cle 8 of the European Convention of Human Rights.[21] We referred earlier to an extraordinary ruling in the House of Lords by Baroness Hale, in which she outlined what legal arguments and instruments could be used to grant women protection under the Refugee Convention.

"All four members of the B family suffered persecution at the hands of the Serb police because they were Kosovan Albanians. Mrs B . . . was raped in front of her husband, her sons and twenty to thirty of their neighbours. . . To suffer the insult and indignity of being regarded by one's own community (in Mrs B's words) as 'dirty like contaminated' because one has suffered the gross ill-treatment of a particularly brutal and dehumanising rape directed against that very community is the sort of cumulative denial of human dignity which to my mind is quite capable of amounting to persecution. Of course the treatment feared has to be sufficiently severe, but the severity of its impact upon the individual is increased by the effects of the past persecution. The victim is punished again and again for something which was not only not her fault but was deliberately persecutory of her, her family and her community. Mrs B is fortunate indeed because her husband has stood by her. But Mrs B states that this is seen as a 'big disgrace for a man' and Mr B states that 'according to our culture I should reject her.' The pressure to do so adds to the severity of the ill-treatment they may fear on return."[22]

8. Rape – a weapon of war and crime against humanity

"Rape is considered to be a method of psychological torture because its objective, in many cases, is not just to humiliate the victim but also her family or community." [23]***(3.6)***

" Sexual violence may be a violation of the right not to be subjected to torture or cruel and degrading treatment or punishment and may be a crime against humanity." (2A.19)

Rome Statute of the International Criminal Court. Article 7 - Crimes against humanity

1. For the purpose of this statute 'crime against humanity' means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:... g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity. (2A.22)

Rape is often used to punish women for their own or other family members' political affiliations, opposition to repressive dictatorships or refusal of military service. In "conflict zones", opposing forces count on the fact that women will be ostracised; they are considered to have brought shame and dishonour to husbands or families and are likely to face even greater rejection if they become pregnant with "enemy" children. In war and conflict zones, when families and individuals face such extreme difficulties in maintaining everyday life, women's work nurturing and protecting the community is even more indispensable. Rape damages or even severs relationships between women and those who depend on them, so undermining the survival of the community.

Rape trauma is compounded by other torture, such as witnessing brutal murders of children and other loved ones, having to leave children behind when fleeing, and ongoing separation. Family responsibilities make it harder for women to leave situations of violence and even when they do, many find themselves vulnerable to further violence: in refugee camps, or from UN "peacekeepers" and charity workers.[24]

We looked at a number of rulings in the cases of women who had fled rape in war-torn countries where rape is widespread and documented as a "weapon of war". But even in a country like the Demo-

cratic Republic of Congo (DRC), where as many as one in three women have been raped in a devastating war in which five million have been killed,[25] women are denied protection.

Ms W is from DRC. She was detained by the authorities after her husband was suspected of defecting from the army, and she suffered repeated rape and other torture. Although adjudicator Miss L Thornton accepted Ms W's account of the violence she suffered in detention, she did not accept she had been imprisoned as a result of her husband's defection. Ms Thornton dismissed Ms W's entitlement to protection, quoting a Tribunal ruling, "Sinanduku":[26] "The background evidence certainly shows that there is a possibility and to that extent a risk of rape in the Congo but because the general risk exists for all, it does not follow that there is a real risk for each individual. In order to establish a real risk arising from the general risk faced by an entire category of people, it must be shown from the evidence that there is ***a consistent pattern of a gross, flagrant or mass occurrence of the conduct feared.****" . . . although I accept that the Appellant was raped by Commander X, this does not of itself amount to persecution within the Convention". (February 2003)*

The horrendous extent of rape in the DRC is well documented.[27] In a country where entire hospitals are dedicated to treating women suffering severe internal injuries such as fistulas resulting from rape, we wonder, just how more "gross and flagrant" does rape have to get?

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9. Rape in detention

The Guidelines cite the European Court of Human Rights decision in 1997 which recognised that:

" . . . rape committed by an official or person in authority on a detainee must be regarded as treatment or punishment of an especially severe kind." " . . . the applicant had been the victim of torture at the hands of officials in violation of Article 3 (of the European Convention on Human Rights.)..."[28] (2A.19)

Yet in none of the rulings on these women's claims did the adjudicator apply this Guideline or abide by the precedent setting case law quoted in it, when considering rape of women in detention. In some cases they decided not to believe the women's accounts or they concluded that the rape they suffered was not for the "right" reason.

In Ms V's case, the adjudicator did not believe that she had suffered rape in detention when she was only sixteen (2003).[29] As a result, she was returned to Angola in December 2003 where she was immediately detained at the airport. She was interrogated and sent to a prison for four weeks where she suffered further rapes and beatings. She managed to escape and return to Britain but her asylum claim was refused again. Her Appeal was heard in November 2004. The adjudicator, Ms PS Quigley found Ms V to be credible". . . I am satisfied that she was detained and subject to severe ill-treatment and rape on her return in December 2003 as claimed" but said it was not open to her to reconsider the previous ruling which had dismissed Ms V's explanation that she had been targeted as a result of her brother's political activities: " . . . I do not consider that the stated grounds in respect of the asylum appeal namely, on account of the Appellant's brother's links with UNITA or of her own political opinion, are persuasive as regards the period from the Appellant's return to Angola in December 2003. In addition, I accept that I am bound by the fact that this question has previously been determined. . . . as it has not been possible to credibly identify the cause of the Appellant's detention on arrival in December 2003, there are no grounds for believing that mistreatment will take place in future."

Ms V was detained for a total of thir-

teen months after returning to the UK. She was threatened with removal almost immediately after she bravely spoke out on the BBC Radio 4 "Broadcasting House" programme. BWRAP managed to find her legal representatives who stopped her flight just hours before she was due to be sent back. Her claim is still being considered.

Citing case law,[30] Mrs HS Coleman took a very different approach to whether she could reconsider a previous adjudicator's ruling when she allowed Ms TF's appeal. Ms TF never spoke about the rape she suffered in detention in Kenya until she disclosed this to WAR after her first appeal was over. ". . . I must now consider whether there is any new evidence which was not available at the time of the determination which changes the position. . . . This was undoubtedly a woman who was unable to speak of her experiences at the time of her original claim or appeal hearing . . . The effect of this late disclosure is that we now know that the appellant is a likely rape victim and that she suffered some terrible trauma which has seriously affected her mental health before she left Kenya." (August 2002)

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10. Trafficking and forced prostitution

"Where a victim of sexual violence has no alternative but to marry her attacker or become a prostitute, these are also human rights violations."(2A.2D)

While the government claims to have the interests of victims of trafficking at heart, we have been contacted by a number of women in detention who have not had any help in reporting the crime they have suffered so that their attackers are brought to justice. Adjudicators' rulings dismissing their appeals rely on the same basis as other rape survivors: lack of credibility; picking and choosing between what they will or won't accept in a woman's account which excludes her from protection under the Convention; "internal relocation".

Ms R was born in Nigeria but moved to Liberia when she was very young. After her parents died and her marriage broke up, she gladly accepted the offer of an old family friend to bring her to the UK. But once here she was forced to work as a prostitute to "repay" him for her fare. A businessman in dispute with her "uncle" helped her escape and she went to Manchester where she found other work. She was terrified when she was arrested in an immigration "raid" by about twenty police and immigration officers who kept threatening her that she was to be deported. Ms C A Parker (December 2005) claimed that "The respondent's normal practice when encountering a girl or woman whom they believed to have been trafficked is apparently now to refer them to the Poppy Project, an organisation which can provide assistance and support to women in such circumstances. However it would appear that the appellant was never referred to the Poppy Project and Ms Hamilton [the Home Office] suggests that this was because her SEF interview had been completed in Liverpool rather than at Yarl's Wood, where the practice is always to make contact with the Poppy Project."

The Poppy Project is funded by the Home Office and has strict criteria for those eligible to request their help, including that a woman must have been working in the sex industry in the UK within the last month. This excludes the many women who may have escaped but have taken time to hide and find help or have been detained. Contrary to the assertions of Ms Parker, none of the women who contacted us from Yarl's Wood reporting being victims of trafficking had been referred to the Poppy Project or any other support. There was no additional help available for women fleeing forced prostitution.

In fact, many women, not only women who have been trafficked against their will or under false pretenses, face being forced into prostitution as a result of being deported. The ruling below was the only one which gave any consideration of this.

Ms Q was diagnosed as suffering from Rape Trauma Syndrome and in need of ongoing specialist support. In granting her appeal, the judges commented: "Mrs Heller [the barrister] submitted an article from The Guardian, describing the problems faced by failed asylum seekers who were returned to Uganda. . . Even if treatment were available to the appellant in Uganda, there was no evidence that she would be able to pay for it, particularly as she had two young children to support, and she was therefore likely to have to turn to begging or prostitution to survive." Judge Coleman and Judge Flynn (September 2006).

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11. Lesbian women seeking asylum

"A woman's choice of sexual orientation may itself be, or may be perceived as, an expression of political opinion." (3.31)
"Social and cultural norms regarding appropriate gender roles and behaviour may mean that homosexuals face violations of their human rights and suffer persecution. Restrictions on the ability to freely choose and practice their sexual orientation may be a breach of the right to respect for private life." (2A.25)
". . . an asylum seeker who has been persecuted because of her sexual orientation is unlikely to have documentary evidence of her sexual orientation." 5.41D

Despite this recognition of the discrimination and violence lesbian/gay people face and how it could apply to the Refugee Convention, adjudicators dismiss claims by lesbian women for a variety of reasons, including on the grounds that they could avoid danger by living secretly.

Ms RG started a close secret relationship with a childhood girl friend which lasted nearly 10 years. Following widespread government attacks on fellow members of the Eritrean Liberation Front in 1990, Ms RG fled to Ethiopia and was joined by her girlfriend. In 1998, war broke out between Eritrea and Ethiopia, and the Ethiopian authorities began to arrest Eritreans. Ms RG's home was raided while she was away. She went into hiding until friends arranged for her to leave Ethiopia with a Saudi Arabian family.[31] Her asylum claim in the UK was refused and her appeal (February 2003) was dismissed by Mrs P H Drummond Farral, who said that, "there are serious human rights abuses in Eritrea [but] there is no evidence before me that the appellant would not be able to carry on her sexual activities in private."

In another case, a lesbian woman from Uganda was arrested and raped by police because of her political activities, and was then persecuted by the authorities and shunned by her family after being discovered at her girlfriend's house. She was refused asylum by Mr James Devittie (May 2003): "The objective evidence does not satisfy me that a person who is in an open lesbian relationship would suffer persecution by the State or from non-State agents. This however is not to say that some degree of ill-treatment would not occur. I accept that she would suffer discrimination and social opprobrium. I am unable however . . . to accept that she would risk treatment that meets the high degree of harm that the Convention contemplates."

We are aware of several other cases involving lesbian women where an adjudicator has simply refused to accept that the woman was a lesbian, including in one case, because the woman had a child.[32] There is little adherence to the fact, as laid out in the Guideline above, that lesbian

women are unlikely to have documentary proof of their relationship, not only because of the difficulties faced by all people fleeing for their lives in taking documents, letters, photographs, etc., but also because the relationship may have necessarily been a closet one. Even when there is compelling evidence, for example, where women are picked up by the authorities in a gay bar, adjudicators still dispute that women are lesbian.

In other cases women have not been able to give the name and address of their partner for fear that their partner will be targeted or because the stigma (in any country, including the UK!) means that partners can't or won´t be public. (This is especially true if women have children and coming out as a lesbian could be used against them in any custody battle with ex-husbands or partners.)

Lesbian women have been further undermined by an adjudicator´s ruling which recognised that whilst homosexuals are persecuted in Uganda, the term "homosexual" and evidence relating to the treatment of homosexuals did not apply to lesbian women.

12. Internal relocation

"An asylum seeker's gender must be taken into consideration when deciding whether internal relocation is reasonable or unduly harsh. Financial, logistical, social, cultural, legal and other barriers may significantly affect a woman's ability to travel to another area of the country, and to stay there without facing hardship." (2B.12)

"In some cases a woman may be placed at risk of persecution simply by removing her to her country of origin from a country where she has been residing. The risk of return for women may be even greater than for men, for example, where women face difficulties in travelling alone or without a male escort."(3.5)

"- women may be unable, or less able, for example, for legal, economic or social (including economic) reasons to travel freely or to live on their own, or without family members thus limiting their ability to relocate within their country of origin. Women's childcare responsibilities may affect their ability to relocate;

- women may be targeted because they are vulnerable, especially young women who can easily be sexually abused or mothers who will do anything to protect their children."(5.18)

Even when women have overcome every other barrier, they can still be refused protection under the Convention because adjudicators decide they can be returned to another part of the country they fled. Although the Guidelines are adamant that gender "must" be taken into account in deciding whether in a particular situation, internal relocation would be "unduly harsh", we did not see any adjudicator's ruling which made clear they had considered fully the particular difficulties women would face as single mothers, as rape survivors facing being stigmatised, without a husband, family or community support and protection, no access to housing, employment, etc.

Ms P is from the DRC. A bitter and well-documented civil war has been raging in the North of the country for some years. In February 2003, Ms P, who is from the Hema tribe, was raped in front of her children by Lendu militia who attacked her home and hacked her father-in-law to death when he tried to help her. In June, the militia returned to her village while Ms P was in a field gathering food for the evening meal. She watched in horror as her husband and children were marched away, unable to do anything to stop what was happening. Later that month she arrived in the UK.

Ms CA Scott-Baker, hearing Ms P's appeal in February 2004, overturned the Home Office's decision that Ms P was not telling the truth and was not from DRC, and commented that "I note the stark state-

ment of the Secretary of State . . . in which he stated that the account was a total fabrication and I regret the use of this strong wording in this particular context." But despite accepting Ms P's account of her horrific experiences, the adjudicator then simply stated ". . . whilst I accept that the appellant may have been persecuted in Ituri because of her ethnicity I find that the appellant could [sic] returned to live in Kinshasa. Whilst I accept that life would be difficult for the appellant in Kinshasa, I do not find on the evidence that is before me that it would reach the threshold whereby it could be said . . . that it would be unduly harsh to return."

In fact Kinshasa is some thousand miles away from Ms P's home. She knows no-one in the city and would have no means of supporting herself. As a single woman she would be vulnerable to further rape and violence particularly because of her ethnicity, which would be clear from her name, language and appearance. The only way she could survive in DRC would be to return to the North where she might find people who know her and might provide her with some kind of support.

Recent case law[33] has established that in deciding on the reasonableness of internal relocation, *"Valuable guidance is found in the UNHCR Guidelines on International Protection of 23 July 2003. In paragraph 7 II(a) the reasonableness analysis is approached by asking 'Can the claimant, in the context of the country concerned, lead a relatively normal life without facing undue hardship?' and the comment is made: 'If not, it would not be reasonable to expect the person to move there.'"* Whether it is reasonable is assessed on the basis of social and economic factors like safety, ability to find a job, access to housing and sanitation, discrimination etc.

Of the 23% rulings which allowed women's appeals, a further 4% accepted rape as persecution but said that it would not be "unduly harsh" for women to return to a different part of the country from which they fled ("internal relocation").

13. Lack of support to rape survivors in the country they fled

"Moreover, the deprivation of certain of the socio-economic rights, such as the ability to earn a living, or the entitlement to food, shelter, or health care will at an extreme level be tantamount to the deprivation of life or cruel, inhuman or degrading treatment, and hence unquestionably constitute persecution."[34] (2A.4 Level Three Rights)

Rape survivors often fear that instead of receiving sympathy they will be held responsible for the attack, condemned as worthless and soiled, and ostracised. Sometimes women fear their whole family will be stigmatised. Unfortunately, such fears often turn out to be well-founded. In such circumstances, organisations promoting the rights of rape survivors and offering specialist counselling and other support are essential. Yet women invariably report that such services do not exist in the impoverished and war-torn countries they have fled.

Rape survivors who come to us for help benefit greatly from the self-help, support and counselling we provide. It is extremely detrimental to remove traumatised women from such support, especially once they have found the courage to speak out and identify themselves.

There was some acknowledgement of the needs of rape survivors in a United Nations Mission in Kosovo ruling that victims of torture in Kosovo should not be sent back there because of the limited number of psychiatrists available to assist the population.[35] But only on rare occasions has such consideration been given to women fleeing rape in African countries.

Ms TA is from Uganda. She suffered repeated rape by Ugandan soldiers but the Home Office refused to accept her account and her application but the Adjudicator, Mr ADE Metzer overturned both: "The medical evidence amounts to the fact that not only is the Appellant suffering from severe mental disorder, but that were she to be returned to Uganda, it would be likely that she would become 'seriously suicidal´. . . . I consider that in the particular distressing circumstances set out in the medical reports and in the evidence of the Appellant, it would be inhuman and degrading treatment to return the Appellant to anywhere in Uganda."

"Women's approach to pursuing their asylum claims may well be different than that of some men.
'The first and foremost preoccupation [of victims of torture] is with their asylum claim. There is a noticeable difference between men and women in the manifestation of this anxiety, with exceptions, of course. Men are often much more vocal and active in their anxiety, they change solicitors, seek letters, reports, ask to be brought forward in the queue. They cannot settle. Most women I have seen [over nine years of therapeutic work with survivors of torture] have just melted into the background after their arrival, especially if they have no children, or have left their children behind. They are frequently 'befriended' by a lawyer who does nothing, and they stay in the room allocated to them for weeks, months on end, just putting time and distance between themselves and their shame.' [Hinchelwood, G. Dr., Gender-based Persecution: Report to the UN Expert Group Meeting on Gender-based Persecution, November 1997]" (5.2)

"Melting into the background" is not a possibility in your own appeal hearing. For women who have survived this way, the intimidating atmosphere in court can be crushing. It can be profoundly traumatic to have to speak about rape publicly or even just to be the object of the attention of officials who know what has happened to you.

There is no Guideline specifically prohibiting the careless or cruel treatment of women. It *should* be taken as given that adjudicators will treat people with compassion and respect but this is not always the case. We include a few brief examples where women have been devastated by the treatment meted out to them.

Ms M is from Eritrea. When she was forced to flee Eritrea she had no choice but to leave her children behind. Separation from them compounded the trauma she suffered. She was extremely distressed to be told by Mrs LHS Verity (September 2002) in refusing her appeal:

"I feel no hesitation in suggesting that it is about time that the appellant started to take her responsibilities as a parent seriously and that she should help provide both emotionally and financially for her own children."

Ms A was raped by gendarmes in Turkey because she is Kurdish. Although she was extremely traumatised, her barrister decided that the women who had come to support her should not be allowed into the hearing (May 1998) for fear of upsetting adjudicator Ms Kennedy, who was known to prefer holding her hearings in private. When Ms A broke down, wailing in extreme distress, the representative from WAR, who was waiting outside to appear as a witness, had to run into the courtroom to intervene. At another hearing presided over by Ms Kennedy, a WAR volunteer and others insisted on staying in the courtroom. Ms Kennedy showed her displeasure by ordering that no one who left the room during proceedings would be allowed back in.

Appeal hearings

IMS Donnell, the Adjudicator at Ms K's hearing (2004), who is also from Turkey, refused to allow an adjournment even when Ms K started to disclose for the first time the rape she had suffered as a result of her human rights work. Ms K had never spoken about it before because she was terrified of how her husband would respond if he learnt about the rape. The lack of an adjournment meant that no consideration was given to any necessary precautions which should be taken to protect Ms K, and the adjudicator's ruling was posted to her home. Her husband arranged for a friend to translate the report, found out about the sexual violence she had suffered, beat up Ms K and left her.

Ms J was brought to the UK from Albania by agents because she hoped to earn more money as a waitress to help support her family back home. But she was forced to work as a prostitute, suffering months of imprisonment and rape, and was profoundly traumatised after her escape. PR De Haney dismissed her account (November 2004), saying she could have not have expected any other work than being a prostitute "It is simply not credible that she should ask me to believe that she was unaware that he [the man who arranged her travel] would expect her to work as a prostitute when she came to the United Kingdom, and that she hoped he would be getting her a job as a waitress or in some other capacity. I say this bearing in mind not only the fact that she has had minimal education leaving school at 14 when she first married and the fact that she has never worked or had any employment skills, nor was she able to speak any other language than Albanian."

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1. Delay in reporting rape: unable not unwilling

"Torture, sexual violence and other persecutory treatment produce feelings of profound shame. This 'shame response' is a major obstacle to disclosure. Many victims will never speak about sexual violence or will remain silent about it for many years." (5.43)

"Any indication that a woman's claim may not be treated as confidential is likely to seriously hinder her ability to provide full details of her claim and may discourage her from making a claim." (5.20)

'In a study of 107 Ugandan women who had been raped by soldiers, only half had told anyone about the rape incident as many as seven years after the rape, despite the fact that all still had problems related to the rape when they finally spoke of it.' Giller, JE, War, Women and Rape, London University 1995. (2A.21 Footnote 37)

The Guidelines document some of the reasons why women may be unable to speak about the rape they suffered. But late disclosure of rape is repeatedly used by adjudicators to dismiss women's accounts with little or no consideration of the difficulties they face. This not only contradicts the Guidelines but the High Court precedent BWRAP and WAR helped win that *women may be unable not unwilling to report rape*.[36] Even the slightest delay can be used to dismiss a woman's account of rape.

Women may not realise that it is essential to disclose certain information. Where there are factors which would cause women not to disclose such information, they are unlikely to do so un-

less clearly asked about such experiences. (5.22)

Ms GA is from Uganda. She was arrested and detained in a military barracks where she was raped and beaten by government soldiers because of her husband's involvement with rebels. It was only when the official conducting her interview with the Home Office asked if she had anything to add that she managed to speak about the rape she suffered. Hearing her appeal in Yarl's Wood in June 2005, Mr Warren L Grant supported the Home Office refusal accusing her of late disclosure and used this as grounds for not believing any of her account. "She did not mention being raped or being cut on the stomach. She mentioned rape for the first time when asked whether she had anything to add. I find that she has added a claim that she was raped as an embellishment."

In September 2000, Ms H became involved in supporting an opposition political party (BTF) in Uganda. Security forces raided her home the following August when she, her children and her sister were taken from the house. Ms H was detained for two months, where she suffered rape. She was then helped to escape by a soldier who sympathized with the BTF. She has not seen her children and sister since. But the adjudicator N M K Lawrence refused Ms H's appeal in her absence: "The appellant in her SEF (statement) makes no reference of being raped in detention. However in her interview she makes a passing reference to it. I would have thought if she had been raped she would have mentioned it at the first available opportunity, namely in the account given in the SEF (statement). I do not believe the appellant to have told me the truth. This is an embellishment to bolster her claim to asylum." (May 2003)

Judge Aujla showed the different outcome which could result by application of the Gender Guidelines in the appeal of Ms G who had been imprisoned and raped in Cameroon as a result of her sexuality: "In considering whether or not the late claim to be raped undermined the Appellant's credibility, I have borne in mind the Tribunal's Gender Guidelines. I have come to the conclusion that the Appellant's late claim to having been raped did not, in the totality of her circumstances under consideration, undermine her credibility." (July 2006)

20% of women had not been able to speak about rape before the Home Office considered their case; and 14% still had not reported by the time of their hearing.

2. Helping women speak

"The nature and quality of the evidence given at a hearing may be affected by the procedures adopted at the IAA, for example those adopted during the course of the hearing. Thus judiciary should consider whether the procedures which they adopt facilitate and encourage full disclosure by the asylum seeker." (5.4)

"Thus consideration should be given to: Hearing the appeal in a more informal environment such as that adopted by the family courts, with the parties sitting around a table rather than a formal court setting." (5.6)

"There are many reasons, some of which are referred to above, why women in particular are not forthcoming with full information about their experiences which will be exacerbated if gender-sensitive interviewing procedures are not followed. Special care must be taken in relation to evidence pertaining to sexual violence; care must be taken before drawing any adverse inferences where an appellant, or other witness, has earlier described a rape as an attempted rape or as touching, beating or other ill-treatment or even as pain or illness." (5.47)

Women´s difficulties in speaking about

rape may be overcome by:

"Requesting that evidence regarding sexual assaults be given in writing or through video link. Consideration should be given to the above even where not requested to do so by an appellant or their representative." (5.6.7)

Women definitely find it easier to cope with the demands of giving evidence in court if they have been given the chance first to go through their experiences in detail with a legal representative or another expert, as happens in the preparation of our own expert reports. Our interviews with women usually last at least two/two-and-a-half hours (longer if translation is needed) and sometimes, where women are in particular difficulty, we may need to have a second appointment. Taking this time means that women can disclose the full detail of what has happened, which is usually very distressing, in a sympathetic environment and take however long is needed to do so.

But despite the Guidelines, adjudicators frequently do not grant adjournments to allow women time to check their statements, or to get an expert report, even when they have only just started to speak about what happened – in some cases during the hearing. Invariably the difficulties women then face as they struggle to speak for the first time are used to dismiss their claims as "lacking credibility".

At Ms D's hearing a considerate and thorough barrister realised she had clearly suffered much more than she had previously disclosed to her lawyer, and asked for an adjournment so that her account of rape could be properly documented. But the adjudicator DM Page (November 2002) dismissed the request, accusing the barrister of inviting her to lie: "I am in no doubt that the appellant had given no thought to claiming that she had been raped until Mr J [her legal representative] felt inspired to ask her if she had been raped. . . White Ryland, the solicitors representing this claimant, are very experienced and would hardly have overlooked such a significant matter as a rape claim. . . Nearly a year has now passed since the time of this alleged rape, so any report was unlikely to prove trauma associated with rape".

In 10% of hearings, adjournments were requested to allow more time for women to speak about their ordeal and to get expert reports. 71% of these requests were refused, no expert report was available as a result, and every woman's account of rape was disbelieved.

3. Discrepancies: enabling women to explain their experiences

"More direct follow-up questions should be asked to ascertain details of the woman's full experiences. It should be remembered that a woman may not know what information is relevant to her claim and the questioner must use their skills to ensure that the correct information is disclosed. Moreover the questioner may not be aware of what information is relevant until the end of the interview. In such circumstances steps should be taken to ensure that a woman is questioned about these issues." (5.39)

Information may be missed, or appear confused and contradictory, as women struggle to speak about their experiences. Even good lawyers may not have had the time to go through a woman's statement in enough detail, especially now that legal aid cuts have reduced the time available to go through a woman's claim to four hours (30 minutes where a woman is being held on the fast-track in detention), which is halved where an interpreter is used. So women are pressed to give further details in court. Often adjudicators seize on an apparent "discrepancy" in women's accounts as evidence of their "lack of credibility".

In December 2003, Ms E suffered repeated rape in detention after her husband, a senior officer in the DRC army, defected. Her brother, who has full refugee status, said at her hearing that the remainder of their family in DRC had disappeared. This was apparently at odds with Ms E's statement that she knew where they were. When we asked Ms E about this, it only took a few minutes for her to explain that her statement had been prepared months before the hearing, whilst her brother had returned to DRC only weeks before and had discovered that their remaining family members had disappeared. He was asked to give evidence by her legal representatives when he attended court with her on the morning of her hearing. The lawyer made no attempt to explain this apparent discrepancy to the adjudicator, Mr DRB Lyons. Nor did the adjudicator ask Ms E to explain in the hearing. As a result of this major "discrepancy", Mr Lyons decided Ms E was not telling the truth and dismissed her account of being raped (September 2003). Ms E's lawyer closed her case and she lost her support and accommodation, spending many months sleeping on the floor of her brother's flat. We found Ms E a new lawyer who is making a fresh claim on her behalf. She has just been given support and accommodation.

"Credibility is a way by which the interviewer is able to express his ignorance of the world. What he finds incredible is what surprises him". Earl Russell, Hansard 5 April 2004

The following were given in rulings where the adjudicator found that women´s accounts lacked "credibility" and dismissed them as "fabricated".

"I do not believe that a pastor from a Church would assist someone whom he clearly believed to be a political prisoner at risk to his life and his work within the country and his own community." Mr Warren L Grant, re: Ms ZA (March 2006)

"It is not credible that a guard would release her if the prisoners were counted as she would be missed. There would be no reason whatsoever for the guard to release her even if he did feel that he did not agree with what was going on. If he did not agree with what was going on, if he was a man of conscience then it is not credible that he would forcefully rape her or force her to have oral sex." Mr PJ Clements, Ms E A (July 2005) .

Higher courts are particularly reluctant to overturn rulings by adjudicators who reject a woman's credibility for whatever reason, and lawyers are discouraged from taking such cases further. Women's asylum claims are then closed. They may spend months, even years, struggling to get help whilst suffering destitution, homelessness, detention, having their children taken into care, and facing removal back to the country they fled.

Case law cited by Ms C Jarvis in Ms GM's ruling demonstrated how in taking account of the Guidelines adjudicators have a responsibility beyond just "catching out" appellants.

"The decision maker frequently has to make his assessment on the basis of fragmented, incomplete and confused information. He has to assess the plausibility of accounts given by people who may be understandably bewildered, frightened, and perhaps desperate and who often do not understand either the process or the language spoken by the decision maker or investigator. Even applicants with a genuine fear of persecution may not present as models of consistency or transparent veracity (Sackville J in Rajalingam, upheld by the Court of Appeal in Karanakaran v SSHD [2000] INLR 122)."

4. Interpreters

"A woman may be reluctant, or find it difficult, to talk about her experiences through a male (or even female) interpreter or one who is a member of her community especially where these experiences relate to sexual or family issues." (5.30)

"Evidence from a witness who belongs to some other nationality giving evidence in a language other than English and through an interpreter ... again are a cause of uncertainty: a matter which an adjudicator should properly take into account in assessing credibility ... it is generally considered as central to the adjudicator's task that there is an assessment of credibility. In a cross-cultural situation, frequently through interpreters this is a formidable task." [Kasolo (IAT) (13190)] (5.44)

"Merely being a female does not guarantee an awareness of gender issues and even where the interviewer/interpreters have been female an asylum seeker may still not have fully disclosed all important features of her asylum claim." (5.33)

The role of interpreters is crucial. Adjudicators go through women's accounts in considerable detail and can use any inconsistency to discredit what women have said. Yet it is unlikely that anyone else in the hearing will be able to monitor an interpreter's accuracy. We know from our own experience of conducting in-depth interviews with women, the kinds of problems that can arise: misunderstandings and mistakes; well-meaning but mistaken attempts to "explain" what people mean on their behalf without double-checking the accuracy of the interpretation. Interpreters may not have the same vocabulary of the person they are assisting because they come from very different backgrounds or may have lost some vocabulary as a result of having lived out of their country of origin for many years. Women have reported worse from interpreters – male and female: hostility from interpreters who hold opposing political views about the conflict in their country; interpreters who have stepped in and answered questions on the women´s behalf because they think "they know best" how to respond. Barrister Louise Hooper, comments from her many years of experience representing cases at appeal that, *"adjudicators show a real reluctance to accept that interpreters get it wrong".*

Ms NK is from Eritrea. She discovered in the preparation for her appeal hearing that there were a number of mistakes made by the interpreter in her Home Office interview. Instead of allowing her to correct them, DA Kinloch (May 2003) used this to dismiss her account: "while interpretation problems clearly can arise, the number of problems counts against her."

Ms PJ is from Togo. Her house was raided by soldiers in May 2005 because she and her husband were active members of the opposition UFC party. The soldiers beat Ms PJ's husband and gang-raped her in front of him and her young niece who lived with them. She was then taken away and detained in a "torture" house for several days where she was raped and forced to perform oral sex. Early in June she fled to the UK where she was immediately detained in Yarl's Wood Removal Centre. Her case was put on the "fast-track" and refused by the Home Office and a judge, less than a month after she arrived. No expert evidence about the rape or about the conditions in Togo was presented at her appeal heard by Mr M A Clements (July 2005). The interpreter at her hearing made a mistake, translating her job as a high school teacher into a university lecturer in philosophy. The adjudicator, repeatedly referring to her as a university lecturer in philosophy, concluded that she should have known some English: "It would be expected that a professor of philosophy would have some basic English even if it were only to ascertain the country and the airport she

had arrived in. . . I therefore do not accept the appellant has the education she claims." The adjudicator then went on to use this to dismiss both her political activity and the rape she had suffered.

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5. The fast track – a procedure against the Guidelines

"Women's asylum claims will be more appropriately considered if interviewer, representative and decision-makers, including judiciary, are aware of the particular procedural and evidential difficulties that women asylum seekers face." (5.5)

Some of the women were detained as soon as they claimed asylum and were processed in the fast track system, which means that cases are deemed "straightforward" and processed within days.

All but one woman had reported rape to the authorities, which should have triggered a procedure whereby people get an independent medical and/or psychiatric assessment from the Medical Foundation.[37] Where this produced evidence that they have been tortured, it would mean their detention contravened the Home Office's Operation Enforcement Manual.[38] Yet none of the women were given this opportunity. In only one case did the woman's lawyer request that she be removed from the fast track and so released. This request was refused.

Ms JA is from Eritrea. She had never spoken about being raped, including to her lawyer. She spoke no English. She broke down in distress when she disclosed the rape to us after we spoke on the phone with the help of another young Eritrean woman who had befriended her in Yarl's Wood Removal Centre. She had already bravely gone to appeal unrepresented and struggled to make her case through translation to Ms EM Simpson (November 2005). Her request for an adjournment to get legal representation was refused. "Having regard to the Appellant's inability to give any details about new legal representatives, the Appellant having had three days to obtain fresh legal representation, the appeal being in the fast track system I considered that the appellant had had ample time to obtain legal representation." WAR made submissions about the rape Ms JA had disclosed and called for her imminent removal to be halted. This new information should have entitled her to make a fresh asylum claim, but she was removed and we have not heard from her since. The kind young woman who helped her has also been sent back.

The fast track also denies women access to health care which could be used as evidence to support their claim.[39] Yet adjudicators use lack of medical treatment to conclude that women were not suffering from ill-health. In a May 2006 ruling, the failure of the Home Office to refer someone in detention for a medical assessment within 24 hours was declared unlawful.[40]

Ms LL[41] is from Uganda and was raped by government soldiers looking for guns which her husband had hidden for a rebel group. He escaped, but she was arrested and taken to three different detention places where she was raped, tortured and sentenced to death until she managed to escape. Her account was rejected by the Home Office. Her appeal before Warren L Grant was heard whilst she was held in the fast track. Despite ill-health she had been unable to get medical or psychiatric care, the lack of which the adjudicator used to dismiss her claim. "The appellant has not undergone any form of medical treatment either in Uganda or in the United Kingdom and I do not believe that she was ever raped or ill-treated whether by the LRA [Lords Resistance Army] or by the authorities." (May, 2005)

Ms LL's ruling also included a striking example of the cursory consideration given to women's claims. Immigration

Judge Warren L Grant used almost ***identical wording*** *in her ruling and another woman's ruling to dismiss their account of rape. "Rape is a horrific crime which should not be utilised lightly merely to bolster an asylum claim. The appellant has not undergone any form of medical treatment either in Uganda or in the UK and I do not believe that she was ever raped or ill-treated. . . " (May 2005)*

Similarly Mr Grant admonished Ms GA for reporting rape: "I find that she has added a claim that she was raped as an embellishment. Rape is a horrific crime which should not be utilised lightly merely to bolster an asylum claim. The appellant has not undergone any form of medical treatment either in Uganda or in the United Kingdom and I do not believe that she was ever raped or ill-treated." The Home Office subsequently conceded that there was enough evidence of what she had suffered to provide grounds for a fresh claim. (June 2005)

Mr Grant used similar wording to dismiss three other women in the fast track in Yarl's Wood, including Ms ZA from Cameroon.

Ms ZA was targeted by the authorities in Cameroon for holding political meetings in her café, detained, interrogated, forced to have oral sex with an officer and then raped. Warren L Grant dismissed her account using almost identical wording to his other rulings (with a few embellishments of his own): "Rape is a horrific crime but exploiting it when it did not occur is reprehensible because it makes it that much more difficult to believe a genuine case." (March 2006)

50% of women whose cases were heard in the fast track were removed.

"Women may face additional problems in demonstrating that their claims are credible. Information to support a woman's claim may not be readily available and the nature of women's experiences and position in society may make it difficult or impossible for them to document their claims or provide evidence." (5.40)

"In many cases evidence given by an asylum seeker will not be corroborated; absence of corroboration does not mean that the account given is not credible. It is an error of law to require corroborative evidence in an asylum case." (5.42)

As we have already said, the first way in which adjudicators dismiss women's claims is to disbelieve their accounts of rape. Most adjudicators take little account of the difficulties rape victims face to "prove" their accounts are true. Even where such evidence does exist, or could be gathered, adjudicators are often quick to dismiss its relevance or authenticity.

1) Home Office interviews

"A non-confrontational exploratory interview is critical to allow for the full discussion of past experiences relating to a woman's claim and to facilitate the giving of all evidence which may be relevant to her claim. Where such an interview has not taken place this may affect the nature and quality of the evidence presented at appeal." (5.17)

"It is necessary to be aware that the manner in which the Home Office interview(s) was conducted and the manner in which the hearing is conducted may affect the evidence given. Evidence may be best obtained if during an asylum interview of a female asylum seeker the interview room and surrounding environment are conducive to open discussion, including providing ample time and ensuring that there are no disturbances and if interviewers and decision makers are aware of, and take into account, for example, women's childcare responsibilities and schedules, distances to be travelled and is-

sues of privacy. Failure to pay attention to such issues may affect the nature and quality of the evidence given." (5.18)

Notes of interviews, which are conducted after women first claim asylum and before the Home Office responds to their claim, are crucial evidence in appeals. Discrepancies between what women say in hearings and what they are recorded as saying in their interviews are used by adjudicators to dismiss their accounts. Adjudicators rarely comment on the circumstances of these interviews with officials, yet the Guidelines make clear the importance of this and how it might impact on what women say.

Ms XB is from Jamaica. She was targeted by gangs because of her political activity and suffered rape and other violence. Her ex-employer kindly paid for legal representation when he found out what she had been through and was determined she should get a fair hearing. When the Home Office refused to rearrange Ms XB's interview because the lawyer could not attend the time they had made, Ms XB refused to go ahead with the interview without legal representation, to which she was entitled. But hearing her appeal in Yarl's Wood, Mrs PH Drummond Farrall (September 2005) used this to dismiss her credibility, "Furthermore she has failed to cooperate with the Secretary of State in refusing to participate in an interview and this failure also undermines her credibility."

Evidence for the appeal

Legal aid is no longer available for lawyers to accompany asylum seekers at their initial Home Office interviews, with a few limited exceptions.[42] But since the government denies that victims of rape or torture are "vulnerable people", they are not entitled to representation.[43] BWRAP, WAR and sixteen other signatories wrote to the press condemning the Home Office for their life-threatening erosion of rape victims' rights. The government's response was to insist that representation is unnecessary as initial interviews "are non-adversarial". BWRAP and WAR wrote:

"No asylum seeker would agree: your life depends on convincing often hostile interviewers, often men, often in translation, who can use even minor "discrepancies" to undermine your credibility and deny your claim, and whose interview notes may record your distress, but not as clear indications that you are struggling to speak about intensely painful experiences. In these circumstances, women need more help and protection – not less.[44]

In a few appeals adjudicators criticised the way in which the Home Office used discrepancies at interview to refuse a woman's claim.

Ms YC was a midwife who helped mothers in her area of Uganda irrespective of what political sympathies they or their communities held. The Home Office rubbished her account of being raped as punishment for this, relying on alleged discrepancies in the Home Office interview. At Ms YC's appeal, Ms PS Quigley, admonished the Home Office, **"***Paragraph 7 appears to doubt the Appellant's claim that she was raped because she could not see the faces of her attackers. Firstly, I am surprised at the callousness of such a suggestion particularly when, secondly, the basis of such reasoning is so flimsy. . . In my view, the Respondent has either misinterpreted or manipulated the events described by the Appellant to arrive at an unfair conclusion. . . . In reviewing the Reasons for Refusal letter as a whole, I do not believe that arguments advanced by the Respondent are of sufficient weight to permit to find as he does. In particular, I do not consider that the minor variations or inconsistencies which appeared to trouble the Respondent are indicators that the Appellant had fabricated the claim or that her account of events is not credible. Given that many of these so-called "discrepancies" are incorrectly categorised as such, I do not place any real weight on these aspects of the Reasons for Refusal letter."* Ms YC's appeal was allowed under the Refugee Convention and the ECHR. (December 2003)

88% of Home Office (HO) decisions disbelieved women and dismissed their reports of rape.

2) Demeanour – judging women on how they look and act

"Cultural and other differences and trauma play an important role in determining demeanour i.e. how a woman presents herself physically, for example, whether she maintains eye contact, shifts her posture or hesitates when speaking." (5.24)

"The level and type of emotion displayed by a woman during the recounting of her

experiences should play a limited role in assessing her credibility. Individual, cultural and other differences and trauma all play an important role in determining demeanour and make it difficult to assess credibility." (5.44)
"A lack of displayed emotion does not necessarily mean that the woman is not distressed or deeply affected by what has happened." (5.44)
"Assessing demeanour of a witness may be particularly difficult where she is from a different country, is giving evidence either through an interpreter or in English which is not their first language." (5.44)
"Emotional trauma and depression is likely to affect a woman's ability to give testimony, her demeanour and the nature of the evidence which she gives. (5.21)
"In many cultures men do not share information about their political, military or even social activities with their female relatives, communities or associates." (5.45)

Some adjudicators seem barely to hide their dislike of the woman in front of them.

Ms YB is an educated woman from Eritrea who felt confident speaking up for herself in the hearing. This seemed to aggravate the adjudicator, Mr Baker (July 2003), who almost contemptuously dismissed her account. "Despite liberally seeding her account with the names of Eritrean nationals of prominence, her account does not hang together for me in any credible way." Despite Ms YB explaining that it was common in her community for husbands to spend the evening away from home, without telling their wives where they were or what they were doing, the adjudicator decided that she had described events relating to her husband "in a very shadowy way".

In his ruling, Mr Baker included observations about Ms YB eating sweets during the hearing – trivialising her reports of a medical condition, about which she had evidence from hospital and for which she had been advised to eat sweets to maintain her blood sugar level. "…curiously she was eating Rolo sweets during the hearing, not usually recommended for a diabetic with high blood sugar levels!" Ms YB had explained to him that she suffered from low blood sugar levels and that the Tigrynian word for "high" also means "bad", which is what she meant to convey. But Mr Baker seemed to be paying more attention to Ms YB eating sweets than to what she said at the hearing.

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3) Racism

There are no guidelines addressing the discrimination that Black women and other women of colour may face in pursuing their asylum claims, but former lay member of the IAT Anver Jeevanjee describes some of the blatant racism that goes on "behind the scenes":

"*Some of the judiciary openly refer negatively, prior to going into court, to hear cases concerning Nigerian, Kurdish, Sri Lankans, Somalis and other nationalities as being 'deceitful, liars, taking advantage of our soft touch, economic migrants,' etc. . . . Undoubtedly such prejudices must reflect in the final determinations."*[45]

In July 2004, Ms Kamwaura Nygothi complained at a conference organised by LAW about the racism faced by asylum seekers dispersed to Middlesborough and as a result was interviewed by *The Guardian:*

"I'm scared of what will happen when my asylum case comes up in North Shields – I haven't heard of any asylum seeker who has won their case there."[46]

Women Against Rape then wrote to the North Shields Immigration Appellate Authority (IAA)

". . . fears were expressed by a number of women asylum seekers . . .

They said that they knew of no Black African women whose case was heard at North Shields IAA who had been granted refugee status, despite the most compelling evidence. . . . They said that they felt that African women didn't get a fair hearing at North Shields IAA and that their claims may have been singled out for refusal because of racism. . . We are anxious to know whether the racism against asylum seekers which is reported as being prevalent in the area is also shaping court decisions. In our experience, judgments by Adjudicators vary greatly, even in very similar cases, and the IAA's own Gender Guidelines are not routinely implemented, resulting in inconsistent and apparently arbitrary judgments, especially in women's cases."

WAR asked for information about the decisions taken by North Shields IAA, including:

"What percentage of appeals made by Black African women are refused in North Shields and how does this compare to appeals by women from other countries? How many of these women are rape victims? How do these figures compare to national statistics?"

WAR never received a reply to this letter, nor the statistics requested.

4) Medical and other evidence of rape

"It should be noted that there is often no physical evidence following rape or sexual violence." (5.57)

We address above the particular problems faced by women in the fast track getting medical care and expert reports, and the impact of this on their appeals. But government legislation which has cut many asylum seekers off from access to free medical and other expert care means that these problems are increasingly faced by those who are not detained. Even pregnant women are having to wait months before they can see a GP, and are now facing charges for giving birth in hospital. Specialist psychiatric services are few and far between, some even specifically state that they think it inadvisable to try to provide counseling to someone who is terrified of being sent back.

"The stress of their uncertain status in this country confounds the multiple psychosocial problems that they undoubtedly already have and which we are not equipped to deal with in addition to the heavy volume of the more standard referrals." [47]

There are many examples of the lack of provision of health services being used by adjudicators as evidence that women's ill-health is not serious.

Ms MK is from Eritrea. The Adjudicator DA Kinloch concluded that it was "unlikely that she would not have investigations in the UK if she truly was suffering from abdominal pain which might be a sexually transmitted disease. This undermines her claim to have been raped, and greatly lessens the importance I give the medical report. . . ." (May 2003)

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5) Delays in claiming asylum: evidence of what?

"Delay in claiming asylum or revealing full details of an asylum claim will not necessarily be due to the lack of credibility of a particular asylum claim or claimant." (5.43)
"Delay in claiming asylum and/or in revealing full details about an asylum claim may also be validly occasioned by other factors including many procedural and evidential factors outlined in these guidelines." (5.43)

Government legislation now requires that adjudicators and immigration judges consider a delay in claiming asylum as damaging to a person's credibility.[48] Adjudicators frequently cite these delays as evidence of women being un-

reliable but do not generally apply the Guidelines on the reasons why women may not be able to claim asylum immediately or ask for an explanation of why the delays happened.

Ms MK's appeal was refused when Adjudicator DA Kinloch (May 2003) disbelieved her account because of the "delay" in claiming asylum: ". . . the appellant did not apply for asylum in the UK until four days after she arrived here. The fact that she chose to enter illegally and not to claim asylum immediately is something which in my view must count against her, even though there are possible explanations for the delay."

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6) Country of origin information

"There may be limited documentary evidence about the position of women in the country of origin."(5.50)

"An assessment as to whether a woman's fear of persecution is credible and well-founded should not be simply based on general conditions in the applicant's country of origin but should take into account the particular experiences of women in that country." (4.3)

"Background reports and country information often lack adequate information about the problems faced by women." (5.50)

"Even where a woman does not say that she fears (or has experienced) gender related persecution or gender-specific harm, her asylum claim may well be affected by the position of women in her country of origin. An assessment as to whether the fear of persecution is well-founded should not be simply based on general conditions in the applicant's country of origin but should take into account the particular experiences of women in that country." (5.48)

Ms KS is from DRC. Her family are from the Hema tribe in the Northern part of the country. They were persecuted by Lendu militia who killed her husband and later burned down her family home. She was subsequently captured by a group of uniformed Lendu and held in a military camp for three weeks where she was raped, beaten and tortured. Mr SCD Hulme (December 2003) did refer to country information about the problems faced by women in DRC but he dismissed these problems as insufficient to warrant further consideration. "Women are relegated to a secondary role in society and the law discriminates against women in many areas of life. . . [but]. . . it is my opinion that such discrimination does not come anywhere near to crossing the high threshold required to contravene Article 3 of the 1950 Convention."

Ms KS's statement made clear that she would not be safe anywhere in DRC and particularly referred to the dangers she would face in the capital, Kinshasa. However, Mr SCD Hulme considered that it would be safe to return her to Kinshasa whilst citing conflicting country information: "The British ambassador to the DRC said in a letter of November 2002 that he has not seen any evidence to indicate that returned failed asylum seekers are persecuted on arrival in Kinshasa. . . However, UNHCR has said that the humanitarian situation in the DRC continues to be of concern to them. They add that certain returnees may face serious problems following possible interrogation by security services upon arrival in Kinshasa. . ." Later in his summing up, he inaccurately summarised the UNHCR's information as relating only to people being returned who had previously been involved in political activities, and so said Ms KS, who had not been politically active, would be safe to be returned. (December 2003)

At Ms PJ's appeal, the judge, Mr MA Clements, disputed that she might be at risk if she returned to Togo, dismissing an

Amnesty International Report documenting the detention of returned asylum seekers, by saying that it "gives no provenance for their assertion . . . and therefore should not be relied on". Less than a month after this ruling, the UNHCR issued a position paper advising against returning people to Togo because of evidence of human rights abuses of those returned. (July 2005)

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7) BWRAP's and WAR's expert evidence

"If an interviewer or decision-maker receives medical, psychological, professional or other related expert evidence at any stage, it should be considered with care and assessed impartially." (5.56)

For many years, BWRAP and WAR have been providing expert reports for women assessing their account of the rape they suffered and its impact. At one hearing, Adjudicator E B Grant agreed to look at BWRAP's report, but told the barrister *before* being given the report that it was *"not worth the paper it is written on".* Unsurprisingly then, the report was ignored and the appeal was refused. But in many other cases both BWRAP and WAR's expert reports were central to helping women establish their entitlement to protection. In 2002, the Tribunal (JRA Fox) allowed an application for an appeal against a decision by Adjudicator Miss S I Bayne, *"in relation to the weight that the Adjudicator has placed on support from Sian Evans, from Women Against Rape . . . and failure to deal with the issue whether the applicant is a person so severely traumatised that she should not be returned and whether in fact she can be returned to Eritrea."*

Before legal aid cuts which took effect in 2004, we were inundated with requests to provide expert reports for women's hearings. Now such requests are few and far between because of lack of funds to pay for them. In two of the few recent appeals for which WAR prepared reports, both for Ugandan women, judges concluded that they were entitled to remain in the UK because of their dependence on our own and other specialist support. This support would not be available in their country of origin and its withdrawal would have a devastating impact – including the risk of suicide.

Ms TA suffered repeated rape by Ugandan soldiers but the Home Office refused to accept her account because the dates she gave for the rape and the birth of the child she had conceived meant she would have been pregnant for eleven months. It was only when we went over the months again with her on a piece of paper that she realised she had mistakenly said March, but had meant to say May. WAR made a written submission explaining what had happened and Mr ADE Metzer overturned the Home Office's refusal to accept Ms TA's account of rape (February 2005). "The WAR report confirmed . . . that her symptoms could impair her ability to recall and recount her experiences. . .I do not accept that this was a cynical fabrication by the Appellant. I note that one of the effects of being raped is a difficulty in recollection of precise dates."

A very recent ruling confirmed the crucial role BWRAP's report played in overturning the Home Office's dismissal of Ms Q's account of rape.

"The appellant has also submitted a detailed report from Ms Cristel Amiss, the Project Co-ordinator for Black Women's Rape Action Project, dated 17 August 2006. . . . She confirms that 'since October 2004 we have provided intensive support' to the appellant on a weekly basis and also that the appellant attends fortnightly self-help advice and counselling sessions. Ms Amiss states that, as a result of this assistance, the appellant has been able to speak about some

of her experiences, although she is still finding it very difficult to detail the rapes and other violence she suffered in Uganda as she remains very traumatised. This is also very corroborative of the appellant's claims. The fact that the appellant accessed specialist rape counselling and support as long ago as July 2004, well before that part of her claim was ever made to the Secretary of State, acts as proof that this is not a fabrication just added to enhance her asylum claim at a late date. . . .We find that she would face a real risk of persecution on return to Uganda. We find that the appellant has established a well-founded fear of persecution and we allow the appeal on asylum grounds." Judge Coleman and Judge Flynn (September 2006).

Women with expert reports corroborating their account of rape were six times more likely to win their case than those without.

8) Documentary evidence

"In many circumstances refugees do not have documentary evidence relating to events which have taken place or their fears of future persecution. The nature of women's activities and place within society may lead them to have particular problems." (5.41)

Even when women do have some documentation – passports, affidavits, newspaper cuttings – supporting their asylum claims, this evidence is frequently lost, ignored or dismissed as "bogus".

Ms AB, as we previously referred to, had reported two periods of detention but only the first was accepted by the adjudicator. The second detention in a so-called safe house, where prisoners can be held secretly, was disbelieved even though she presented an article from the Ugandan national paper, "The Monitor", about a subsequent fire which destroyed the safe house and referred to her having been held there. Mr Curzon Lewis asked Ms AB why she had been identified in this article and recorded her reply: "I was representing women in the country in my home area, so they mentioned me." But having already dismissed the significance of Ms AB's political activities, he would not accept her explanation: "She has put before the court no other subjective evidence to show that she was so well known in Uganda as to justify the Monitor in linking her name with a conflagration ten months later." He added as additional grounds for concluding the article was unreliable, "The reference to 'tramped up treason charges' is curious. One might have expected to find the article talking about 'trumped up' charges." (September 2004) Does Mr Curzon Lewis suspect the authenticity of his daily newspaper when he finds a typo? A newspaper without a typo might truly be thought to be curious!

We documented earlier how Ms PS Quigley had refused Ms V's appeal (November 2004), despite accepting she had been raped in detention in Angola after her previous asylum claim was refused and she was sent back there. Ms Quigley found "it has not been possible to credibly identify the cause of the Appellant's detention" and dismissed the documentary evidence Ms V had provided to corroborate her account of being wanted. "There was some initial discussion about an Arrest Warrant which the Appellant claimed had been handed to her in prison in Angola and which, once in the UK, she claimed to have handed to the IAA. It appeared that there was now no trace of this Warrant. . . I am not satisfied that, given that the Appellant failed to mention said warrant in her earlier Statement [lodged at the start of the hearing], she should be given the benefit of the doubt."

In Ms GA's ruling, Mr Warren L Grant noted "The summary records that he [the Secretary of State for the Home Department] also decided to certify the claim as clearly unfounded under section 94(2) of the Nationality, Immigration and Asylum

Act 2002 but that decision does not appear in the refusal letter and, whilst I did not raise it [this ommission] at the hearing, I am satisfied that it is a typing error." How can such a crucial issue be disposed of as a typing error? In stark contrast, another typing error – this time in a crucial document Ms GA submitted – was used as evidence of it being a fake: " I find that this declaration is self-serving and that it is not genuine. I note in this context that the stamp spells commissioner with three letters m." (June 2005)

Conclusion

Appeal hearings should be the opportunity for people to "have their day in court" – to put before the authorities, in person, the full account of the persecution they have suffered and their need for protection. Yet as this dossier demonstrates, this rarely happens.

Not only do immigration judges largely ignore the Gender Guidelines, some pay little attention to precedent-setting case law and display discriminatory attitudes. Many seem to put little value on people's lives and show little concern to have all the information they need to come to a just decision, or interest in what may happen to people if they are misjudged and sent back. Appeals of different women with similar experiences repeatedly have very different outcomes, according to who judges them.

Lack of legal aid has greatly exacerbated the problem. Many people now go to appeal hearings with inadequate legal representation or none. Expert medical or country reports to corroborate people's accounts are rarely gathered.

Only 23% of women in our sample were able to overcome the obstacles thrown in their way and win the right to asylum and protection they are entitled to under the Refugee Convention or the European Convention on Human Rights. The 77% who lost were then labeled "bogus" asylum seekers, which justifies their witch-hunting by the government and the media.

Rather than tackle the disadvantages faced by rape survivors, firstly by helping them to overcome the stigma and trauma rape inflicts so they are able to speak about it, the Home Office has built its policy on exploiting women´s vulnerability. The introduction of the fast track in detention institutionalised procedures which ensure that there is no time or resources for people to prepare their case properly. The removal of legal aid for representation at Home Office interviews, the declaration that rape survivors are not vulnerable, and the law which allows any delay in claiming asylum to be used to dismiss the claim, are all ways the government deliberately sabotages asylum seekers. Given the particular nature of their evidence, rape victims are among the first to fall foul of these rules, the first therefore to be denied protection. No wonder women feel they are paying the price for a government determined to glorify and bolster a political image of tough guys against immigrants.

Other policies also provide the framework in which adjudicators judge people's claims. When the government introduces an apartheid system for asylum seekers in children's education, in health, housing, legal representation and welfare; when it introduces legislation to make asylum seekers deliberately destitute – unprecedented in this country; when it legalises separating children from their mothers; when it

presides over a marked increase in racist attacks and suicides in detention; when it constantly moves the goal posts to ensure that asylum seekers are in the weakest possible position in relation to those with the power to judge their claim, all this amounts to a direction to the court: it signals to immigration judges that the government assigns no serious weight to people's claim for protection and that arbitrary dismissal and callous disregard would not be disapproved of by those who make career appointments.

The Gender Guidelines attempt to tackle some of the institutionalised sexism which is an extension of the exclusion of women from the UN Refugee Convention. But the government has refused to force immigration judges to apply them by giving these Guidelines statutory status. Even worse, since the introduction of the AIT (a new body introduced in 2004, primarily to reduce appeal rights), the Guidelines have been downgraded further. AIT Deputy President, G. Ockelton said recently. *"The 'Gender Guidelines' are not, and have never been, the policy of the AIT and they have no AIT approval. Their inclusion on the AIT website was an error."*[49] We have already heard of at least one case where this policy statement was used by an immigration judge to bypass the Guidelines in considering a woman's appeal.

In order to apply the Gender Guidelines and the law, properly to consider a claim without prejudice and to show compassion and sensitivity towards rape survivors or anyone appealing for asylum, adjudicators have to think and act independently and go *against* government policy. Few rise to the challenge.

The evidence in this dossier strengthens our demand for immigration judges to apply the Gender Guidelines. We also call for the support of those immigration judges who do their best to act justly in these increasingly unjust times, to press for the Guidelines to be assigned statutory status, and for recent developments in case law and international precedents to be incorporated.

The disbelief and callousness rape survivors face as detailed in this dossier, does not apply only to those seeking asylum. The shameful 5.3% conviction rate of reported rapists and the current witch-hunt and imprisonment of women whose reported attackers have not been convicted or have had their convictions overturned, shows that, regardless of immigration status, rape victims cannot rely on the authorities for either justice or protection. While it is true that women who are not applying for asylum do not face deportation, the nature of the oppression does not change just because the passport has a different stamp. Racism and official contempt for those who are foreign and vulnerable compounds the sexism all women are up against.

When rape survivors get the protection they are entitled to on claiming asylum, the climate will change for everyone, women and men, wherever they call home.

Notes

1 *The UNHCR's San Remo expert roundtable in 2001* (see Feller, Turk and Nicholson, *Refugee Protection in International Law, UNHCR's Global Consultations on International Protection,* (2003), Chapter 5.1, p. 336)

2 The UN Special Rapporteur on Violence against Women (1998), the UN Division for the Advancement of Women (1997), The UN Fourth World Conference on Women 1995, Platform for Action.

3 *A "Bleak House" for Our Times*, by Legal Action for Women (LAW) in collaboration with All African Women's Group, Black Women's Rape Action Project & Women Against Rape, found that 70% of women detained in Yarl's Wood Removal Centre had been victims of rape or other sexual violence. Published December 2005.

4 In 1998 the UK incorporated the European Convention on Human Rights into domestic law. Since 2 October 2000 adjudicators have been required to consider women's applications under this. Status given under the ECHR used to provide less fulsome protection than the Refugee Convention, however since August 2005 the position has equalised, with refugees and those given protection under the ECHR being granted five years' leave to remain, with the right to family reunion. At the end of five years their cases will be reconsidered. In our study, seven women won full refugee status and a further six won protection under the ECHR.

4a The Asylum and Immigration (Treatment of Claimants etc) Act 2004 abolished the two-tier appeal system of the Immigration Appellate Authority and established the Asylum and Immigration Tribunal to consider appeals. Adjudicators became immigration judges.

5 *Gender Guidelines for the determination of asylum claims in the UK,* Refugee Women's Legal Group July 1998.

6 Now called Immigration Judges.

7 HL Committee 20/4/96, Hansard Cols. 1485-1486

8 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, 7 May 2002.

9 Anver Jeevanjee, Statement to International Association of Refugee Law Judges, Edinburgh Conference, November 2004

10 Paragraph 11 UNHCR Guidelines on Membership of a Particular Social Group (7 May 2002) defines a social group as *"a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one's human rights."*

11 see Islam v SSHD; R v IAT ex parte Shah(HL) [1999] 2AC629 INLR 144, [1999] Imm AR 283

12 Fornah v SSHD [2006] UKHL 46

13 Article 10 (1)(d) of the Refugee Qualification Directive[1]

"*Gender related aspects might be considered without by themselves alone creating a presumption for the applicability of this article.*"

14 ex parte Hoxha [2005] UKHL

15 Horvath v SSHD (HL) [2000] 3 WLR 379

16 Ms Jarvis is co-author of the Asylum Gender Guidelines

17 Letter from Michael Kingsley-Nyinah, Deputy Representative, UNHCR, London to Rachael Despicht, Birnberg Peirce Solicitors, 4 March 2003.

18 Ibid reference 12

19 *Ask Any Woman: a London inquiry into rape and sexual assault,* Falling Wall Press, 1985

20 Symptoms of PTSD, once developed, were very tenacious in a proportion of survivors: 16.5% of rape survivors still had PTSD on average 17 years after the assault. (Psychological Trauma A Developmental Approach, Royal College of Psychiatrists 1997); The profound and long-term consequences reflect the violent, terrifying and traumatic nature of rape and parallel the responses to other life-threatening traumas. There is some evidence *that rape is more pathogenic than any other form of violent crime (Kilpatrick et al, 1987) (Treatment of rape victims, Gillian C.Mezey.*

21 Article 8 of the European Convention of Human Rights includes the right for respect for private and family life.

22 ibid reference 14

23 *Raquel Marti de Mejia v Peru,* Case 10.970, Report No. 5/9, Inter-American Commission on Human Rights,
March 1 1996.

24 "*UN Troops buy sex from teenage refugees in Congo camp*". The Independent, 25 May 2004

25 More than five million people were killed in resource-driven conflicts during the 1990s, while another five to six million fled to neighbouring countries, and anywhere from 11 million to 15 million people were displaced inside the borders of their home countries. *The Anatomy of Resource Wars* Michael Renner, Worldwatch Institute senior researcher, October 2002

26 Sinanduku [2002] UKIAT 05060

27 "The scale of rape in eastern DRC represents a humanitarian and human rights crisis . . .." Amnesty International Report, AFR 62/018/2004 26 October 2004

28 *Aydin v Turkey ((ECHR)) (1997) 25 EHRR 251]*

29 We cannot name the adjudicator at Ms V's first hearing. She lost all her case papers, including the first appeal ruling, when she was removed to Angola in 2003.

30 Starred [precedent-setting] tribunal decision Devaseelan [2002] UKIAT 00702

31 Ms V was forced to work for them without pay, kept as a virtual slave and raped by the head of the family for over three years.

32 "Elizabeth is a Ugandan lesbian who fled to the UK in 2004, having been detained in a so-called 'Safe House' for five months, during which time she was repeatedly raped, whipped and beaten. . . . Whilst the adjudicators recognise that homosexuals are persecuted in Uganda, they do not believe that the term 'homosexual' and evidence relating to the treatment of homosexuals, applies to lesbians. They have also questioned her identity as a lesbian, because she had a child as a young woman, although this is common among British lesbians too." www.elizabethmuststay.co.uk. Elizabeth's case was refused and she was deported to Uganda in June 2006. See also Asylum is a Gay Issue, Wages Due Lesbians www.allwomencount.net

33 Januzi (FC) v SSHD [2006] UKHL5

34 Hathaway J. The Law of Refugee Status Butterworths (1991) at page 111

35 "The chronic lack of mental-health structures for chronic psychiatric patients and the mentally disabled compels the United Nations Mission in Kosovo (UNMIK) to appeal to the host countries not to return such cases at this time." *(UNMIK April 2001 Briefing Note).*

36 RvSSHD ex parte Ejon,(QBD) [1998] INLR 195. In this case the repeated rape the woman suffered over a two-year period was not disclosed until many years after it happened. She only felt able to confide in her woman barrister after her asylum claim had been considered and refused. The Home Office refused her fresh claim stating she should have disclosed the rape earlier. Our expert report documented the severe trauma which had prevented the woman from speaking earlier and resulted in the Home Office decision being overturned in this Judicial Review.

37 People who report torture should have their cases referred to the Management of Detained Cases Unit which claims it refers people to the Medical Foundation (MF) for assessment. The MF confirmed to WAR that: "This is not true." Letter to WAR from David Rhys Jones, MF, 14 December 2005

38 Immigration Services Operation Enforcement Manual (Third EDN), Chapter 38 point 8.

39 One-third of women in detention reported receiving little or no medical care for their health problems. Ibid 3. Also see, "Inquiry into the quality of healthcare at Yarl's Wood

immigration removal centre", by HM Chief Inspector of Prisons, 20–24 February 2006. October 2006.

40 D and others [2006] EWHC 980 (Admin)

41 *Ms LL was one of 30 women who went on hunger strike in Yarl's Wood Removal Centre, in summer 2005, to protest against deportation and conditions in detention. BWRAP and WAR provided intensive support and helped publicise their demands. See* www.womenagainstrape.net*. The neglect she suffered was the subject of the Chief Inspector of Prisons inquiry referenced in note 37.*

42 ". . . unaccompanied minors, applicants going through the fast-track initial decision processes, those suffering from a recognised and verifiable mental incapacity which makes it impractical to undergo an interview without support. Hansard 27 April 2004, Col 755

43 According to David Lammy, the Minister for Constitutional Affairs, *"neither the DCA nor the Home Office are persuaded that victims of rape or torture, however defined, should be regarded as being in a category of vulnerable people."* Letter to Lord Phillips of Sudbury, Hansard 6 July 2004, Column 677.

44 Correspondence in The Guardian: *Erosion of asylum rights* July 12, 2004; *The fight for legal aid* 15 July 2004; *Legal aid is still available,* 19 July 2004. See: womenagainstrape.net/PressCoverage/lammy.htm;

45 Evidence to House of Commons Constitutional Affairs Committee, Asylum and Immigration

Appeals, Second Report of Session 2003-04

46 "Every moment for me is fear," *The Guardian,* 8 July 2004

47 *In 2002, Barnet, Enfield & Haringey Mental Health NHS Trust privately said it would accept no more refugees for psychological therapy because*: "The stress of their uncertain status in this country confounds the multiple psychosocial problems that they undoubtedly already have and which we are not equipped to deal with in addition to the heavy volume of the more standard referrals."

48 Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 section 8

49 Note from the Deputy President *C. M. G Ockelton.* p. 25, Issue 17/2006

Other publications:

Asylum from Rape Petition, by Black Women's Rape Action Project, April 2006

Rights and Information Sheet for Survivors of Rape Seeking Asylum in the UK, Women Against Rape, April 2006

Other publications from CROSSROADS Books:

A "Bleak House" for Our Times, An investigation into women's human rights violations at Yarl's Wood Removal Centre, Legal Action for Women with All African Women's Group, Black Women's Rape Action Project and Women Against Rape, published Crossroads Books, Second edition June 2006

For Asylum Seekers and their Supporters: A Self-Help Guide against Detention and Deportation, Legal Action for Women, published Crossroads Books, June 2005

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