



**Refugee Council**  
**The Vulnerable Women's Project**  
Refugee and Asylum Seeking Women  
Affected by Rape or Sexual Violence  
Literature Review

February 2009



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# Executive Summary

Refugee women are more affected by violence against women than any other women's population in the world and all refugee women are at risk of rape or other forms of sexual violence. Sexual violence is regarded the UN as one of the worst global protection challenges due to its scale, prevalence and profound impact. Up to half a million women were raped during the Rwandan genocide; more than 90% of women and girls over the age of three suffered sexual violence in parts of Liberia, while three out of four women have survived sexual violence in parts of Eastern Congo.

That is the global context for the Refugee Council's Vulnerable Women's Project (VWP), set up in 2006 with the support of Comic Relief to offer pragmatic holistic therapy, a mixture of practical support and therapeutic counselling, to refugee and asylum seeking women who have been subjected to sexual violence. About three quarters of the project's clients have been raped; a similar number experience trauma-related psychological distress and about one in five have gynaecological problems. 15% of the women have become pregnant as a consequence of being raped and 5% have had a child. Half the project's clients have been Sri Lankan Tamils, with Eritreans, Congolese, Ivorians and Somalis the next biggest groups. Some clients are in situations where they are exploited and in perpetual fear of sexual or other forms of physical abuse; many consider suicide.

Estimating the prevalence of rape, sexual assault and sexual exploitation amongst any population of women is difficult, primarily because women commonly hide the experience. But around half of all women worldwide are expected to suffer some

form of violence in their lifetime – sexual assault, stalking, or domestic violence. Although in most cases the perpetrator is an intimate partner, 20% – 40% of women have experienced sexual assault by men other than partners in their adult lifetime.

Estimating the actual prevalence of rape in refugee producing countries is particularly problematic because of the effects of war, civil war and the disintegration of civil society. A substantial proportion of refugee women arriving in the UK can be assumed, however, to have survived rape, attempted rape, other sexual violence or sexual exploitation. Many come from countries with high levels of sexual violence linked to factors such as traditional attitudes, societal attitudes that condone rape or blame the survivor, lack of effective judicial redress and poverty. Some women, including many of those claiming asylum on the basis of gender-specific persecution, come from countries where sexual violence by security forces has been institutionalised.

Women coming from conflict zones will be especially affected: 'war rape' has reached epidemic proportions, as the nature of war has changed. Most conflicts are now civil wars fought mainly with small arms, with civilians accounting for more than 80% of deaths. Rape has been used strategically, as a weapon of war in attempts to destroy the opposing culture. In Bosnia, the systematic rape of up to 50,000 women with the intention of 'ethnic cleansing' led to it being recognised as a war crime. In Rwanda, where almost all the female survivors were victims of rape or other sexual violence, or were profoundly affected by it, rape was ruled by an international

criminal tribunal to be an act of genocide. The trend towards ever greater brutality towards women has continued in countries like Liberia, Sierra Leone, Sudan and Congo.

Once women have fled their homes, they are further exposed to the risk of sexual violence and exploitation. The most vulnerable are girls, older women, disabled women and girls, those living in urban areas and those who have not left their country (internally displaced people). At least 50% of women from the conflicts in Sierra Leone and Liberia suffered some form of sexual violence, rising to over 80% of women in IDP and refugee camps. When collecting water and firewood women risk sexual violence either from other refugees, or from hostile host communities, while shortages of food can put women under pressure to offer sex so that they and their families can eat. Many refugee women have been separated from the father or partner who would normally protect them, while the change in gender roles brought about by the displacement situation can lead to high levels of domestic violence.

With almost no legal avenues for international travel open to them, refugee women are forced to take ever greater risks in order find protection. There have been many cases of women being raped by smugglers, or forced to 'exchange' sex for passage to safety, while a growing number of refugees and internally displaced persons (IDPs) are at risk of trafficking for sexual exploitation. Some have even been targeted by traffickers in reception centres and refugee camps. Between 4,000 and 10,000 migrant women and girls are estimated to be sexually exploited in the UK. Many report suffering physical and sexual violence before, during and after their journey to the UK.

Arrival in the UK, in the protection space, should signal safety, but refugee women are highly likely to belong to one or more of the groups that are at higher risk of rape than the UK average (5%). Poorer women are up to three times more likely to report being raped: all asylum seekers are living in poverty on less than 70% of income support, most refused asylum seekers are rendered totally destitute and women with refugee status are more likely to be living in poverty than other women because of additional barriers to the job market. Women with refugee status are more likely to be living in social housing where women are twice as likely to report having been raped as women in private rented

accommodation and four times as likely as those in owner-occupied households. Asylum seeking women either live in housing provided by UKBA or receive 'subsistence only' support and 'sofa surf' with friends and family, which can make them more vulnerable to sexual violence and exploitation. Most refused asylum seekers are destitute, and many are homeless, further elevating the risk of sexual violence or exploitation.

About half of refugee women in the UK are the head of their household, placing them in a category of women (single, separated or divorced) who are almost four times more likely to report having experienced sexual assault. Poor health is another risk factor, with women in poor health at twice the risk of being raped as healthy women. As many as 20% of refugees in the UK have severe physical health problems and two thirds have experienced anxiety and depression. Between 5% and 30% have been tortured, including many who have been subjected to rape and sexual violence. Women who have been raped have a high risk of a sexually transmitted infection and those fleeing conflict are at a particularly high risk of having contracted HIV.

Sexual exploitation – being forced either into prostitution or exchanging sex for somewhere to stay – is a risk for some of the thousands of asylum seeking women who are left destitute when their claims are refused. Meanwhile, migrant and trafficked women make up an increasing proportion of sexually exploited women in the UK.

Refugee women are particularly vulnerable to domestic violence, which is connected to refugee men's experience of a loss of status and changed gender roles. In addition to rape, sexual assault and sexual exploitation, refugee women in the UK may be vulnerable to other forms of gender-based violence, such as forced marriage, honour crimes and female genital mutilation (FGM).

In light of the ubiquity of rape and sexual violence it is perhaps surprising to note that rape is prohibited in every major domestic legal system, and its prohibition is a norm of international law. Sexual violence is prohibited by the laws of war as well as by international human rights law; international criminal tribunals have convicted men of using rape as form of genocide. The international community has pledged at the highest level to tackle the problem, most recently in a UN Security Council resolution passed in 2008 that recognises sexual

violence as an issue of international peace and security. And yet, every day, women are raped with impunity. In the context of a global culture of discrimination, women do not report crimes for fear of being stigmatized or of further violence, or for lack of faith in the justice system, while justice systems suffer from gender-bias or are otherwise flawed.

Sexual crimes are committed with impunity in conflict situations for similar reasons as in other contexts, exacerbated by a breakdown in the institutions, family and other structures that would normally protect women. In addition, there are problems of jurisdiction when crimes are committed by armed forces. The international community's failure in the face of the extraordinary scale and ferocity of sexual violence seen in conflicts in recent years has been a result of sexual violence not being seen as a security issue, of a lack of methods of prevention and protection, of women's reluctance to report incidents of sexual violence and of the absence of leadership to tackle the problem.

Even after a conflict is formally over, entrenched impunity and incapacitated justice systems often result in women facing the same or even increased risk of sexual violence. Despite stronger mandates given to peacekeeping forces and successful prosecutions before international criminal tribunals, impunity too often remains the norm. Peacekeeping forces face challenges including a lack of political commitment, resources and doctrine; they may be unaware of incidents of sexual violence, because they take place away from regular security patrols and women do not report them; they are short of intelligence on perpetrators, and they face numerous operational challenges. International criminal tribunals are designed to deal with a few 'big fish' and not the majority of cases; women face stigma and even murder if they testify and investigations and prosecutions have been poorly managed. Amnesties are sometimes granted for crimes committed during the conflict, even though many argue that prosecutions and punishment are needed as a deterrence, to safeguard the rule of law and to allow societies to heal.

For women who flee, UNHCR has developed numerous policies, guidelines and conclusions on refugee women at risk. But the international protection system has often failed to meet refugee women's needs because of a lack of resources and effective systems. For a small number of extremely

vulnerable refugee women at continued risk in their region of origin, protection is assured via resettlement to other countries. The UK has accepted a small number of 'women at risk' via its 'Gateway' resettlement programme.

Most survivors of sexual violence seeking refuge in the UK first have to overcome a range of gender-specific barriers in order to leave their country, and then negotiate a plethora of overseas border controls. Finally, they have to convince decision-makers that they qualify for international protection (unless they are a dependent of another asylum seeker). The sexual violence they have experienced may constitute 'gender-specific' harm relating to persecution in a case for asylum, although, historically women's experiences have been marginalised in interpretation of the Refugee Convention and they face various procedural and evidential barriers.

Developments in case law, new European law and the introduction of gender guidelines have helped some women fleeing sexual violence to be recognised as refugees in the UK. Guidelines may not be sufficient, however, to overcome a persistent presumption amongst decision makers, particularly in relation to some ethnic groups, that rape is a private act, motivated by overwhelming sexual desire, rather than an act of persecution linked to the applicant's political opinion.

A lack of gender sensitivity in the asylum procedure and in evidence assessment of asylum claims has further restricted women's access to protection in the UK. A number of improvements have been made following the introduction of gender guidelines by the Home Office, UNHCR's audit of decisions through the Quality Initiative (QI) and the implementation of the New Asylum Model for determining claims. Nevertheless, survivors of sexual violence suffer from a shortage of female interviewers and interpreters, from being wrongly detained during the process, from decision-makers lacking the skills to assess gender issues and making incorrect assumptions about their credibility in the face of medical evidence; and from the poor quality of information about women in their country of origin.

Trafficked women who fear being returned to their country can apply for asylum – the UK is one of only a few countries that grants asylum on the grounds of fear of trafficking. Most claims are refused,

however, with the majority of successful claims only granted on appeal. Like other survivors of sexual violence, women who have been trafficked are reluctant to go to the authorities for help. As well as fear of violence from the traffickers, stigma and lack of faith in the justice system, the fear that they or their dependents will be removed or deported is a major barrier to justice and security. The UK government has taken a number of positive steps to protect victims of trafficking, but trafficked women are routinely detained, causing them considerable mental distress; there is only one shelter for trafficked women in the UK, and it is not clear how the government proposes to reconcile the introduction of a 'reflection period' for victims of trafficking with the strict deadlines of the asylum process.

In cases of domestic violence, refugee women are particularly reluctant to go to the authorities, not only for family and cultural reasons, but also because they fear that it may jeopardise their immigration status or that of their family. Those whose asylum claims have been refused risk becoming homeless, because shelters are unable to accommodate people who have no recourse to public funds.

The government has taken steps to tackle forms of gender violence that affect refugee women, other than rape, sexual assault and sexual exploitation, such as honour killings, forced marriage or FGM. Most notably it introduced the Forced Marriage Act at the end of the 2008, while ACPO, in a linked initiative, has published a new honour-based violence strategy for police forces. Critics point out that honour-based abuse rarely leads to prosecutions; that the increase in the minimum age for a spouse visa risks discrimination and interference with human rights; that there have been no prosecutions relating to FGM and there are not enough culturally-sensitive healthcare services for women.

The extension in 2004 of NHS charging to refused asylum seekers risks denying vital health care to the most vulnerable of the vulnerable: survivors of sexual violence who have been rendered destitute and homeless. Survivors of sexual violence may be denied treatment for the long-term serious injuries that result from rape and health care services, as well as vital psychological and emotional support.

The End Violence against Women Campaign has

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argued persuasively that the issue of sexual violence against BME women, including refugee women, should be tackled within an integrated violence against women strategy that would ensure that all women fleeing violence are afforded appropriate redress, protection and support. The Charter for women asylum seekers, which calls for measures to create a gender-sensitive culture in the UK Borders Agency and for the Agency to comply with the new Gender Equality Duty, would complement such a strategy.

# Chapter One – Introduction

Refugee women are more affected by violence against women than any other women's population in the world<sup>1</sup>. Many suffer sexual violence, which has been described by a senior UN official as '*one of the worst global protection challenges due to its scale, prevalence and profound impact.*'<sup>2</sup> Since 2006 the Refugee Council's Vulnerable Women's Project (VWP) has been offering specialist advice, help and support to refugee women who have been subjected to rape or other sexual violence. The learning from that casework is available in the form of a Good Practice Guide (Keefe, 2009). This paper seeks to situate that learning in the context of the international research literature on the subject and other information available to the Refugee Council. It will look at the prevalence of sexual violence and issues of impunity/access to justice in clients' home countries (particularly Congo and Sri Lanka), regions of origin as well as in the UK. It will also address refugee women's rights to appropriate health care in the UK and its availability. This report will not look at the impact on individuals of sexual violence, including rape, as that theme is covered by the Good Practice Guide.

## War rape

Up to 500,000 during Rwanda genocide  
64,000 in Sierra Leone  
40,000 in Bosnian war  
4,500 in one province of Congo in 6 months  
100s every day in Darfur

Source: Stop Rape Now: UN Action Against Sexual Violence in Conflict [www.stopraperow.org](http://www.stopraperow.org)

- 1 UNHCR Deputy High Deputy High Commissioner L. Craig Johnstone, reported in *UNHCR backs 16 days of opposition to violence against women* press release, UNHCR 25 November 2008 available at [www.unhcr.org](http://www.unhcr.org) (accessed 26 Nov 2008).
- 2 Jan Egeland, UN Under Secretary General for Humanitarian Affairs, addressing the UN Security Council, 21 June 2005.

# Chapter Two – The Refugee Council’s vulnerable women’s project

The Refugee Council’s Vulnerable Women’s Project (VWP) was set up at the end of 2006 with the support of Comic Relief to address the needs of refugee and asylum seeking women who had been subjected to sexual violence, including rape. The project grew out of the work of the Council’s bi-cultural mental health team that was established in 2000 and is integrated into a wider service that offers advice and support to more than 30,000 asylum seekers and refugees every year. Alongside individual casework, the vulnerable women’s project aims to raise awareness amongst UK and EU decision-makers of the needs and rights of refugee women who have survived rape and sexual exploitation.

The project’s ‘pragmatic holistic therapy’ approach developed by the bi-cultural team scored well in a preliminary report of an external evaluation by the European Centre for Migration and Social Care at the University of Kent, using an internationally established template<sup>3</sup>. The service was assessed on six specific aspects of good practice and in relation to seven accomplishments in the care of refugees:

- 1 Taking refugees seriously as competent interpreters of their own lives
- 2 A holistic approach which offers integrated programmes of social, emotional and psychological help
- 3 A receptivity towards culture
- 4 A recognition of the impact of ongoing events on refugees’ lives
- 5 An orientation towards empowerment through ownership and participation

- 6 An engagement with family and meaningful others
- 7 An emphasis on enhancing refugees’ own capabilities.

The evaluators found that some clients were in situations where they were exploited and were in perpetual fear of sexual or other forms of physical abuse. A high proportion of clients said they may well have committed suicide if it were not for the intervention of the team.

In the 21 month period between 1 December 2006 and 31 August 2008 the project supported 153 women. Of these women,

- 76% had been raped, either in their country of origin or the UK
- 15% had become pregnant as a result of being raped
- 5% had had a child as a result of being raped
- 35% had suffered some form of violence
- 22% had been sexually abused
- 9% had been threatened with rape or sexual abuse while in detention in their country of origin
- 27% had physical injuries
- 76% were experiencing trauma-related psychological distress
- 20% had gynaecological problems as a result of their experiences.

The average age of women presenting to the Refugee Council in connection with rape or sexual

violence was 34. The largest group of women (48%) was aged between 25 and 34; 8% were under 18. Most were asylum seekers with outstanding claims.

The largest groups of clients were from the following countries:

- Sri Lanka (Tamils): 50%
- Eritrea: 7%
- DRC: 6%
- Ivory Coast: 5%
- Somalia: 5%

Where the data is available, this report will draw on examples from these countries.

3 Watters, C *Key findings from an Evaluation of the Bi-Cultural Mental Health Team at the Refugee Council* Unpublished.

# Chapter Three – Definitions

Unless given in a context where precise immigration status is directly relevant, refugee women should be taken, in this paper, to mean women who have sought asylum and whose claims are undecided or have been refused, as well as women granted refugee status or humanitarian protection.

UNHCR's Guidelines on Sexual and Gender Based Violence (SGBV) note that the terms 'sexual violence', 'gender-based violence' (GBV) and 'violence against women' (VAW) are terms that are commonly used interchangeably, though their meanings differ (UNHCR, 2003). This paper will follow the expanded definition of sexual and gender-based violence used in those Guidelines:<sup>4</sup>

*'... gender-based violence is violence that is directed against a person on the basis of gender or sex. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.... While women, men, boys and girls can be victims of gender-based violence, women and girls are the main victims. ... [gender-based violence] shall be understood to encompass, but not be limited to the following:*

*a) Physical, sexual and psychological violence occurring in the family, including battering, sexual exploitation, sexual abuse of children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.*

*b) Physical, sexual and psychological violence occurring within the general community, including*

*rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution.*

*c) Physical, sexual and psychological violence perpetrated or condoned by the State and institutions, wherever it occurs.'*

Both violence against women (any act of gender-based violence that results in, or is likely to result in, physical, sexual and psychological harm to women and girls) and sexual violence are forms of gender based violence. Whilst not seeking to minimise the devastating impact of rape, sexual assault and sexual exploitation on children or on men, the scope of the Refugee Council's Vulnerable Women's Project is limited to the experiences and support needs of adult refugee women.

Gender based violence can be specific to women (e.g. rape, sexual violence, female genital mutilation, forced abortion) and, as the Home Office's gender guidelines state (2006), in the context of asylum claims should be considered as forms of *serious harm* that can amount to persecution.

*A woman may experience:*

- i) gender-specific persecution for reasons unrelated to gender (e.g. raped because of activity in a political party);*
- ii) non-gender-specific persecution for reasons relating to her gender e.g. flogged for refusing to wear a veil); or*
- iii) gender-specific persecution because of her gender (e.g. female genital mutilation).*

This paper will focus on women who have experienced sexual violence including exploitation and abuse (and not on other forms of gender-based violence experienced by women and girls), which UNHCR defines as *'any act, attempt or threat of a sexual nature that results, or is likely to result, in physical, psychological and emotional harm'*.

Examples UNHCR gives include:

- Rape and marital rape
- Child abuse, defilement and incest
- Forced sodomy/anal rape
- Attempted rape or attempted forced sodomy/anal rape
- Sexual exploitation
- Forced prostitution
- Sexual harassment
- Sexual violence as a weapon of war and torture

'Trafficking' should be read in line with the definition in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons (the Trafficking Protocol<sup>5</sup>).

### 3.1 Definitions of rape in international law

The legal definition of rape used by the International Tribunal for Rwanda in *Akayesu* in 1998 is still considered by women's rights advocates to be the best standing definition in terms of recognising the range of sexual violence to which women are subjected, and the conditions of generalised oppression in which rape commonly takes place. Drawing an analogy with torture, the Tribunal found that rape was a form of aggression and could not be captured in 'a mechanical description of objects and body parts'. The definition requires coercion on the part of the perpetrator, rather than non-consent of the victim. This was important, as international law now recognises that during armed conflict, normal ideas of consent to sexual relationships cannot apply, given the general atmosphere of coercion and violence (Amnesty International, 2004b). The court defined rape as:

*'A physical invasion of a sexual nature, committed on a person under circumstances which are coercive. The Tribunal considers sexual violence, which includes rape, as an act of a sexual nature which is committed on a person under circumstances which are coercive. Sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact.'*<sup>6</sup>

Within months, however, this approach had been ignored by the Tribunal for Yugoslavia (ICTY), in its *Furundzija* judgement, which reverted to the 'body parts and consent? model of many national jurisdictions.<sup>7</sup> The 1998 Rome statute that established the International Criminal Court (ICC) takes elements of both approaches. Mackinnon argues that references to consent in its evidentiary code will allow rapists to 'walk away' through a door that had been 'firmly shut' by Akayesu (MacKinnon, 2006). UNHCR nevertheless uses the ICC definition:

*'The invasion of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body by force, threat of force, coercion, taking advantage of a coercive environment, or against a person incapable of giving genuine consent.'* (UNHCR, 2003)

4 based on Articles 1 and 2 of the *UN General Assembly Declaration on the Elimination of Violence against Women* (1993) and Recommendation 19, paragraph 6 of the 11th Session of the CEDAW Committee.

5 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime Art 3 (a): "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.' Available at [www.unodc.org/unodc/en/treaties/CTOC/index.html](http://www.unodc.org/unodc/en/treaties/CTOC/index.html) (Accessed 1 Dec 08).

6 Prosecutor v Akayesu, Case No. ICTR-96-4-T, (2 Sep 1998) paras 598,688, available at <http://69.94.11.53/ENGLISH/cases/Akayesu/judgement/akay001.htm>

7 Prosecutor v Furundzija, Case No. IT-95-17/1-T, Judgment (10 Dec 1998) available at [www.un.org/icty/furundzija/trialc2/judgement/fur-tj981210e.pdf](http://www.un.org/icty/furundzija/trialc2/judgement/fur-tj981210e.pdf)

# Chapter Four – How many refugee women are affected by rape, sexual assault or sexual exploitation?

*Sexual violence is ubiquitous; it occurs in every culture, in all levels of society and in every country of the world. (WHO, 2003, p. 1)*

Sexual violence is both a public health problem and a violation of human rights, but it has only recently come to be recognised as a legitimate health issue. At the heart of sexual violence against women is gender inequality. In his *In-depth study on all forms of violence against women* UN Secretary General Kofi Annan described violence against women as a *'violation of human rights, rooted in historically unequal power relations between men and women and the systemic discrimination against women that pervades both the public and private spheres. The broad context from which it emerges includes disparities of power in the form of patriarchy, sociocultural norms and practices that perpetuate gender-based discrimination and economic inequalities. Its scope and prevalence reflect the degree and persistence of gender-based discrimination that women face, which is often compounded by other systems of domination.'*<sup>8</sup>

It is generally acknowledged that millions of women suffer sexual violence worldwide – around half of all women will suffer some form of violence in their lifetime, be it sexual assault, stalking, or domestic violence – and that most perpetrators are male. It has been estimated that globally, one in five women will become a victim of rape or attempted rape in her lifetime (UNIFEM). In most cases (between 20% and 50%), the perpetrator is someone the victim knows, and perhaps knows well, such as a current or former intimate partner, or a relative (UN DAW, 2005). However, many refugee women have experienced sexual violence from someone not known to them. Like intimate partner violence, sexual assault and abuse of women by non-intimate partners has proven to be much more common than previously thought. Surveys find that between 20%

and 40% of women have experienced sexual assault by men other than partners in their adult lifetime (UN DAW, 2005). Nevertheless, reliable statistics remain scarce.

Refugee women, who are often separated from partners and other family members during flight are vulnerable to different types of violence at all stages of the refugee cycle:

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

While the focus of this paper is sexual violence, it should not be forgotten that refugee women also need protection from non-gender-specific harm, such as attacks on civilians, excessive use of force, genocide, disappearances, physical violence, harassment, arbitrary detention, torture, or forced recruitment into armed groups. Amnesty International warns that an over-emphasis on gender violence can lead to artificial classifications of particular types of harm as gendered violence, resulting in programs and resources to combat it, while other harm is left aside. (Edwards A., 2006)

#### 4.1 Methodological issues

Estimating the prevalence of rape, sexual assault and sexual exploitation amongst any population of women is challenging in the extreme. Women who have experienced rape or sexual assault commonly hide their experiences, fearing possible repercussions from the perpetrator, their family, or the wider community, and lacking any confidence that they will be treated fairly and appropriately by the authorities or that the perpetrator will be punished. Alongside shame and fear of dishonour or stigmatisation, psychological symptoms such as dissociation and avoidance can be reasons for non-disclosure (Granville-Chapman, 2004).

Estimating the prevalence of these experiences amongst refugee women is yet more complex as a consequence of the web of links between armed conflict and sexual violence. A report on the Rwandan genocide, for example, concluded that it was certain that almost all females who survived the genocide were direct victims of rape or other sexual violence, or were profoundly affected by it. Most survivors reported the belief that rape was the norm for virtually all women during the genocide, yet *'most women have chosen to remain silent about their ordeals, almost a collective decision of the women of Rwanda not to seek justice for that particular violation.'*<sup>9</sup>

The Sexual Violence Research Initiative<sup>10</sup> argues that existing research into sexual violence is limited, particularly in the developing world, because of a history of cultural taboos and lack of political leadership:<sup>11</sup> *'In many settings sexual violence remains one of the least researched, resourced and punished forms of gender based violence and continues to remain low on the agenda of policy makers, service providers, and funders'* (Dartnall, 2008). Most research has been carried out in the developed world, primarily in the United States and researchers report 'huge gaps' in the research literature.

In order to understand the experiences of refugee women in the UK, however, meet their support needs, and undertake preventive work it is essential to learn from the available evidence about the level of risk they face.

The incidence of **reported** rape and sexual violence varies widely from country to country, as a result of a number of factors. As well as actual variations in the level of violence, there may be differences in research methods, definitions of violence, sampling techniques, interviewer training and skills, and cultural differences that affect women's willingness to reveal intimate experiences (Watts & Zimmerman, 2002).

In addition, states may have widely differing legal definitions of rape: for instance, in many countries rape within marriage is not recognised in law. States may not collate statistics on rape, or even rape convictions at a national level. Cultural norms around women's roles have a significant effect on both the prevalence of rape and sexual violence, and on the likelihood that a victimised woman would seek help or redress.

As a result of these factors, international comparisons of recorded rape statistics are unhelpful, unless the states being compared are of broadly similar cultural and social economic makeup.<sup>12</sup> The UN Office on Drugs and Crime (UNDOC), which has gathered data on recorded crime, including rape, from 75 countries, advises that figures should be "*interpreted with great caution*" because of different legal definitions of offences in various countries, as well as different methods of data collection.

The most accurate data on prevalence of violence against women comes from population-based studies, but they are expensive and tend to be limited to partner violence. Reflecting women's actual experiences, rather than what they report to officials, all the major surveys show that the prevalence of violence perpetrated against women is greater than official crime or health data indicate (UN DAW, 2005). Data can be gathered by service-providers, but it is often not collected systematically or in a standardized form, can be of varying quality and liable to double counting as women seek help more than once from the same agency or from different agencies. Unfortunately, refugee women tend to be omitted from large national surveys that are conducted only in households in the dominant

local language. International experts have called for new methods to address violence that occurs in refugee populations.

The UN Special Rapporteur on violence against women has argued that broader studies might conclude that sexual harassment, rather than partner violence is the most common form of violence against women (UN Human Rights Council, 2008). She points to a German study that found rates for sexual harassment four times greater than for physical or sexual violence from a current partner. The same study also found higher rates of intimate partner violence for migrant women and higher rates of all forms of violence against women for prostitutes, prisoners and refugees (Hagemann-White, 2001, p. 305).

Estimating the actual prevalence of rape in refugee producing countries is particularly fraught with difficulties, as the factors outlined above are further compounded by war, civil war and disintegration of civil society. Lack of security, inaccessibility of some locations and the inability of victims to travel make it difficult to obtain data. The World Health Organisation notes that reports of rape, sexual assault, sexual exploitation, sexual bartering, intimate partner violence and other forms of sexual violence are increasingly surfacing in emergency settings, including conflict, although the true extent of this is not known because of a lack of concrete data (WHO, 2007).

Sexual violence against women in armed conflict and post-conflict situations remains under-documented. Other areas needing further research include: trafficking in women for sexual and other exploitation; traditional harmful practices (other than female genital mutilation/cutting); forced marriage; early marriage; acid throwing, dowry or 'honour' related violence; stalking; sexual harassment and violence in custody. Relatively few data are available on violence against certain groups of women, including members of ethnic minorities, women with disabilities and migrant and undocumented women (UN Secretary General, 2006, p. 66).

The prospect of improved data on 'war rape' is offered by Security Council Resolution 1820 (2008) which requires the UN Secretary General to produce regular global reports on the use of sexual violence in armed conflict, the first by 30 June 2009.

## 4.2 Sexual violence and exploitation in countries and regions of origin

Several factors are widely believed to contribute to high levels of rape internationally (as opposed to simply reported rape). They include:

- Traditional gender norms that support male superiority and entitlement (Krug, Dalhberg, Mercy, Zwi, & Lozano, 2002)
- Societal attitudes to rape, that condone rape and/or blame women for their victimisation (WHO, 2003)<sup>13</sup>
- Situations of generalised violence (Medical Foundation, 2004)
- Lack of effective redress (Amnesty International, 2006b) (Amnesty International, 2006b)
- Poverty (Krug, Dalhberg, Mercy, Zwi, & Lozano, 2002)

Refugee women in the UK are likely to have come from countries where some or all of these factors are in play. Further, some may come from countries where rape has been institutionalised as a practice within the conflicts of their homeland, within their police or security services or within the camps to which they flee.

Many women will have suffered sexual violence for reasons unrelated to persecution. Indeed there is evidence that domestic violence increases at times of armed conflict and may intensify even further post-conflict.<sup>14</sup>

Some women, however, will have been individually targeted, their persecutors using rape or other sexual violence as gender-specific methods of torture, punishment or intimidation. For those women, the sexual violence they have experienced is likely to be a key ground for claiming asylum. The reason for their persecution may be gender-based (e.g. refusing to wear a veil or to undergo FGM) or may not (Crawley H., 2001). The three men, for example, who raped Klodiana Kacaj, the daughter of a member of the Albanian opposition Democrat Party, told her, '*Your father did not want to please us so you are paying the bill for him, we are using you to hurt him.*'<sup>15</sup>

### 4.2.1 Conflict situations

***'It is more dangerous to be a woman than to be a soldier right now in DRC.'***

– Major General Patrick Cammaert, former UN Military Advisor and Deputy Force Commander, Eastern DRC, May 2008<sup>16</sup>

In recent years, mass rape in war has been documented in numerous countries, including Bosnia, Congo, Cambodia, Liberia, Peru, Rwanda, Sierra Leone, Somalia, and Uganda. The New York Times described the Sudanese government turning the whole of Darfur into a rape camp.<sup>17</sup> Sexual violence against women was reported in almost every armed conflict investigated by Amnesty International in 1999 and 2000. It was committed by almost every party involved, even including peacekeeping troops.<sup>18</sup> Rape in war has reached epidemic proportions<sup>19</sup> and is thought to be on the increase, although data is inadequate (UNIFEM, 2008).

Sexual violence in conflict takes a variety of forms, including '*individual rapes, sexual abuse, gang rapes, genital mutilation, and rape-shooting or rape-stabbing combinations, at times undertaken after family members have been tied up and forced to watch.*' Sterilisation, sexual slavery and forced prostitution are also common forms of wartime sexual violence (OCHA, 2008). Women are physically and economically forced or left with little choice but to become sex workers or to exchange sex for food, shelter, safe passage or other needs; their bodies become part of a barter system, a form of exchange that buys the necessities of life (Rehn & Sirleaf, 2002). After incidences of sexual violence, women are often rejected by family or community. Despite pity for the trauma the women have suffered, society marks the victims as 'damaged goods' (El Jack, 2003). In war, women's bodies have become a battleground.

Of all the forms of gender based violence, sexual violence predominates in the early stages of conflict, when communities are first disrupted, populations are moving, and systems for protection are not fully in place. '*Sexual violence is the most immediate and dangerous type of gender-based violence occurring in acute emergencies*' (UNHCR, 2003).

The rape and sexual assault of women during armed conflict is not new, but it has been described as one of history's greatest silences (Rehn & Sirleaf, 2002). Olujic (1995) argues that rape was used by the German army as a weapon of terror as it

marched through Belgium in World War I; gang rape was part of the orchestrated riots of Kristallnacht which marked the beginning of Nazi campaigns against the Jews. It was a weapon of revenge as the Russian Army marched to Berlin in World War II, it was used when the Japanese occupied Chinese city of Nanking in 1937, by the Pakistani army in Bangladesh in 1971, and by American G.I.s in Vietnam to terrorize the population into submission. According to several sources, historically, military commanders have tolerated rape by their soldiers because it was so widespread. In some cases, they actively facilitated it in order to 'reward' soldiers: the Japanese Imperial Army during World War II established rape camps where more than 200,000 women and girls were enslaved in 'comfort stations' throughout Asia.

The nature of war has changed greatly over the past century, however, and with it, the use of sexual violence. Just five per cent of the casualties of World War I were civilians; by the 1990s they accounted for about 80% of deaths. Civilians had become the targets in conflicts that were mostly civil wars about identity – religious, political or ethnic. They were being killed mostly with the cheap, mass-produced, small-calibre weapons that had proliferated since World II (Harris & Reilly, 1998). Conflicts were often more 'personal', fought at close quarters with weapons that made it easy to rape women (Palmary, 2005).

Human Rights Watch's (2005) report on sexual violence in the Congo war identified the 'patterns of sexual violence' which are reflected in many refugee producing situations. The report recorded the systematic use of sexual violence (in addition to opportunistic attacks by individual combatants) to:

- Scare the civilian population into submission;
- Punish the civilian population for supporting or allegedly supporting opposition forces;
- Reward the soldiers, including after defeat (this study drew particular attention to the practice of kidnapping women and girls as sexual and domestic slaves for soldiers in the field); and
- Target members of particular ethnic groups seen as the 'enemy'.

A study carried out in 2003 into rape during the armed conflict in the Congo's South Kivu Province, found that rapes had been carried out in a context where a large number of widows and displaced

women had become heads of household; war and poverty had forced women into 'survival sex' or prostitution and traditions persisted where women were seen as the private property of a man and his family. Rapes were carried out with unprecedented cruelty, aimed at maximum humiliation and degradation. For example, the great majority (79%) were gang-rapes, rather than rapes by individuals, victims were forced to have sex with each other, including family members and 12% had had objects inserted in their genitals. Survivors were left with profound physical, psychological and emotional trauma, exacerbated by ostracism of many by their families and community (International Alert, 2005).

In some regions of Eastern DRC, as many as 70% of girls and women of all ages have been raped or sexually mutilated.<sup>20</sup> In 2004 40,000 cases of sexual violence against women and children were reported, including 25,000 in South Kivu (Amnesty International, 2004a). Another 27,000 sexual assaults were reported in South Kivu Province in 2006. The recent resurgence of violence in Eastern Congo has again been characterised by rape. A single NGO, Médecins sans Frontières, reported treating at least 5,700 rape survivors in North Kivu between January and November 2008 and noted that most do not go to hospital for fear of being stigmatised.<sup>21</sup>

*'In prison I was raped, beaten, every day...tortured. It went on for more than five months. [...] I keep on seeing the same pictures, it's like a nightmare, it keeps coming.'* – Chloe, 24-year-old Congolese client of the Vulnerable Women's Project

Until the 1990s 'war rape' was side-lined as a gender/women's issue, a 'random, private, inevitable by-product of war'.<sup>22</sup> Widespread sexual violence by armed groups is now commonly seen as either a strategic 'method of warfare', to terrorise an opposing group or as 'opportunistic', with armed groups and ordinary civilians exploiting conflict and chaos to attack women. But a 2008 literature review by UN OCHA concluded that this dichotomy was too simplistic and identified four main theories to describe motivations for sexual violence in conflict:

- A *Gender Inequality Theory*: Unequal power relations, discrimination and misogyny in patriarchal societies are exacerbated by the promotion of aggression and violence during war;
- B *The Psycho-Social and Economic Background*

*Theory:* The triggers for sexual violence lie in a nation's or armed group's history and psycho-social dynamics;

C *The Strategic Rape Theory:* sexual violence is used to achieve strategic aims e.g. to instil fear in, cause to flee, demoralise or punish an enemy population and tear communities apart; or alternatively, to increase aggression in troops, reward them and boost morale;

A *The Biosocial Theory:* that sexual desire is the main motivation for rape, but is regulated by sociocultural factors (OCHA, 2008).

Participants at a conference convened by OCHA concluded that none of these theories was adequate, nor even a combination of them: further research and new approaches were needed. For example, the scale of the sexual violence in the Congo has been compared to an epidemic and Wood suggests using models for the spread of disease to analyse it (OCHA, 2008).

### Jenita's story

*Jenita, a 26 year old Tamil woman, had only just been released from detention in Sri Lanka when she first came to the Refugee Council. She had been severely beaten and still had open wounds on her back and legs that required hospital treatment before she could be assessed by the Vulnerable Women's Project. She later told a project worker that soldiers had arrested her and her brother in the family shop they managed for their father, accusing them of helping the LTTE, which they denied. They were taken to an army camp where they were held in separate cells and interrogated. Jenita was raped and suffered cigarette burns to her chest, arms and legs. As a result of the torture, Jenita now suffers panic attacks, dizziness and shortness of breath; she also has difficulty sleeping and is frightened of being alone.*

*Once she had registered with a doctor Jenita was offered psychological help, but she found the trauma counselling difficult, as it meant having to confront things she would rather forget. Her Refugee Council counsellor remembers her spending entire sessions in silence or in tears: 'The first six sessions of her counselling she did not say a word; she would simply gaze at me or cry.' A breakthrough came when her counsellor asked Jenita what had been the worst thing that had happened to her in prison. 'The day when*

*one of the guards opened my cell door, placed a hood over my head and led me outside', she replied quietly. After six weeks in captivity, she was convinced she was going to be executed; in fact, her family had paid a ransom and she was being handed over to them. With the support of her counsellor, staff at the Medical Foundation for the Care of Victims of Torture and a sympathetic general practitioner, Jenita has begun gradually to talk about her fears.*

*Jenita's brother was not released with her and she has not heard from him or her family since she arrived in the UK.*

The Refugee Council's Tamil clients report a presumption in the Sri Lankan Tamil community that a young woman will be raped if she is detained in Sri Lanka. Some can be identified as ex-detainees (by security forces, as well as community members), because they have cigarette burns on parts of their body that are usually visible when wearing a sari and blouse (arms, shoulders and lower abdomen).<sup>23</sup> They feel compelled to leave Sri Lanka for fear of further persecution, shame and family fears that they will become pregnant. Being a single mother is a source of shame, whether or not the child is a consequence of rape.

Women in Sri Lanka have experienced rape, detainment, harassment at checkpoints and other violations of their personal security in the two decades of civil war (UNIFEM, 2006). The US State Department has noted that the resumption of the conflict has led to an increase in gender-based violence perpetrated by the security forces: 'human rights groups in northern districts allege that the wives of men who have "disappeared" and who suffer economic deprivation as a result often fall prey to sexual exploitation by paramilitaries and members of the security forces.' The International Crisis Group observed that Sri Lankan Tamil women are particularly disadvantaged by displacement and the return to war: 'those in conflict areas and refugee camps in the north and east have regular complaints of increased sexual violence and enforced sex work from soldiers and armed men. There is also evidence of more domestic violence due to the highly militarised environment' (International Crisis Group, 2008). Human Rights Watch (HRW, 2008) reported that the inadequacy of proper latrine and washing facilities also increases the danger of sexual and gender-based violence

(SGBV) against displaced women in the Vanni, because they are forced to use open-air facilities, often in isolated jungle areas, instead.

As Palmary (2005, p. 31) observes, women living in conflict zones are at risk of sexual violence not simply as a by-product of wider violence and social instability, but as a consequence of their role in constituting their tribe, ethnic group or nation: *'The women of a nation are often portrayed as symbols of cultural identity (Yval-Davis 1990). In particular, they are, through their roles as caregivers, educators of children and guardians of familial relations, given the task of transmitting social and cultural norms and values. What this suggests is that, far from being outside of conflict, women through their traditional roles as mothers and socialisers of families, are called to participate in reproduction of the fatherland'*. In a context where women are given a particular role in the reproduction of their ethnic and national groups, Palmary argues, rape is both a violation of the individual and social body.

In countries like Rwanda, Bosnia, Sudan, Sierra Leone, Kosovo and other conflicts, sexual violence has been used in an attempt to destroy the opposing culture. Long-term psychological damage, as well as the existence of children born of rape can have consequences that last for generations.

The two best documented cases of this use of rape and sexual violence as part of a wider campaign of genocidal intent are found in the treatment of women during the conflict in Bosnia-Herzegovina (1992–1995) and in Rwanda (1994).

Evidence suggests that at least 20,000 Bosnian women were raped during the war, as part of a programme of 'ethnic cleansing' (Hansen, 2001 and (Snyder, Gabbard, May, & Zulcic, 2006) war crime in Article 5. This figure is likely to be a significant under-estimate as a consequence of under reporting, with the estimated real incidence ranging from 25,000 to 50,000 women. During this conflict women were commonly gang-raped publicly, in front of family and community, and transferred to 'rape camps' or even to the front line to be raped over a protracted period of time by Serbian soldiers. The use of rape and sexual violence in Bosnia-Herzegovina was so systematic and widespread that it prompted the recognition of rape as a war crime in the Article 5 of the Statute of the International Criminal Tribunal for the Former Yugoslavia, and the first ever successful

prosecutions for war crimes solely on the basis of rape and sexual violence.<sup>24</sup>

Rape played a similar role in the 1994 genocide in Rwanda, where between 500,000 and 1 million Tutsi men, women and children were killed, and as many as 500,000 women and girls were raped.<sup>25</sup> One third were reportedly gang-raped (Amnesty International, 2004b).

A 1996 report by the U.N. Special Rapporteur on Rwanda found that *'rape was the rule and its absence the exception.'* The forms of gender-based and sexual violence were varied and included individual rape; gang-rape; rape with sticks, guns, or other objects; sexual enslavement; forced marriage; forced labour; and sexual mutilation. *'Rape was systematic and was used as a "weapon" by the perpetrators of the massacres. This can be estimated from the number and nature of the victims as well as from the forms of rape'* (de Brouwer, 2005).

In 1998, with its judgment in the case of *Akayesu*<sup>26</sup> the International Tribunal for Rwanda became the first international court to recognise rape in civil war as a crime against humanity and as a form of genocide for *'causing serious bodily or mental harm'* to members of an ethnic group, with the intent to destroy it, in whole or in part. The Rome Statute of the International Criminal Court established in 2001 now recognizes that rape in conflict situations is a war crime and a crime against humanity.

In spite of these egregious examples of widespread rape and sexual violence and action taken by the international community to bring the perpetrators to justice, 'war rape' continues to be endemic. According to the peace agreement ending the civil war in Sierra Leone, women had been 'particularly victimized during the war', with more than 250,000 raped (UNICEF, 2005).

A study conducted by the World Health Organization (WHO) in 10 of Liberia's most populous counties found that 90.8% of women and girls had been subjected to one or multiple acts of abuses and/or sexual violence during the war; 75% were raped – most of them gang raped (UN Human Rights Council, 2008).

UNIFEM sees a disturbing trend towards *'unheard-of brutality'* against women and girls, in *'unheard-of numbers'*: *'three out of four women in parts of the Eastern Kivus in DRC, 90% of all females above the age of three in parts of Liberia; up to 50% of women*

and girls in Sierra Leone suffered some form or threat of sexual violence during the conflict. In short, it is clear that in terms of both intent and degree of harm, rape has emerged as one of the defining characteristics of conflict in our time, a cheap yet highly effective method of conducting conflict, terrorizing and forcibly displacing civilians.' (Goetz, 2008)

#### 4.2.2 Post-conflict and peacetime situations

Sadly, refugee women's experiences of sexual violence and sexual exploitation are not limited to situations of ongoing conflict. Palmary observes that the prevalence of small arms post-conflict contributes to widespread rape:

*'The changing nature of war also shifts the kinds of violence that are possible. Light weapons are easily used to intimidate people, for example to rape women, in a way that heavy arms are not. This is no less the case post-conflict where small arms slide easily into ongoing violence after wars end.'*

The dramatic rise in rape since the Rwandan genocide has been attributed to the availability of small arms in the region (Amnesty International, 2004b). Similarly, in Eastern DRC, sexual violence was observed to increase once fighting stopped and the situation was stabilized. It may be that increased security meant that more rapes could be reported to humanitarian organisations. Alternatively, it might be attributed to large scale sexual violence committed by civilian men, including demobilised combatants and/or to the continuation of inter-group conflict by other means. The legacy of impunity for war-time rape may be 'peace-time rape', a perception that women can be violated without consequence (UNIFEM, 2008).

Some have attributed physical and sexual abuse by male partners to the demeaning effect of the armed conflict, which produces guilt and anger for having failed to assume their perceived responsibility of protecting their women. Nevertheless, increased gender based violence during and after conflict often reflects patterns of violence that existed in the pre-conflict period (El Jack, 2003). Amnesty International recorded testimony from one Congolese activist that in some traditions widows are considered the property of the husband's family and suffer sexual violence from his relatives (Amnesty International, 2008). The same report observes that there is a direct link between discrimination practiced against women in general and the violence inflicted in times of war: *'The fact*

*that women in DRC are considered to be second class citizens is closely related to the violence inflicted upon them and to the discriminatory absence of appropriate measures on the part of the state to combat such violence'*. The economic, social, cultural and political discrimination that lies at the root of sexual violence against women is likely to continue post-war.

A large group of the Vulnerable Women's Project's clients are from Eritrea, where, long after war with Ethiopia in 1998-2000 human rights organisations have expressed concern that many of the women who were raped during the conflict are suffering in silence because *'the prevailing social view of rape focuses on its shamefulness'*. The problem of sex and gender based violence in Eritrea, however, goes well beyond the plight of survivors of war rape. The World Council against Torture reports that up to 90% of women in some regions of Eritrea may be victims of domestic violence; rape in marriage is not a crime; girls who become pregnant may be kicked out of the home, beaten, stoned, or even killed for the sake of family honour; and 89% of girls and women have experienced FGM (OMCT, July 2004 ).

In Sri Lanka and other parts of South East Asia many women who survived the tsunami were sexually abused, an indication that the chaos and social disorganisation of all types of humanitarian disaster opens the door to sexual violence.<sup>27</sup>

A 2006 report by Amnesty International describes the situation in Nigeria, which is free of major conflict or emergencies, as nevertheless one where *'Rape of women and girls by both the police and security forces, and within their homes and community, is acknowledged to be endemic... – not only by human rights defenders but also by some government officials at both federal and state levels'*. A senior civil servant told Amnesty that around 60 per cent of violence against women was committed in army barracks or police stations (Amnesty International, 2006b, p. 1).

#### 4.2.3 Forced displacement

When women are forced to flee their homes, they are further exposed to the risk of sexual violence and sexual exploitation, either as internally displaced persons (IDPs) or as refugees in another country, as well as during their journey to seek protection. About 6.2 million refugees exist in protracted situations, many living their whole lives warehoused in camps.

Human Rights Watch's 2005 report on sexual violence amongst the displaced population in Darfur and Chad (Human Rights Watch, 2005) documents the vulnerability of refugee Darfuri women in the camps of Chad. Not only are these women vulnerable to cross border attacks and to re-victimisation as a result of family and community ostracism as a result of their having been raped, they are also forced to exchange sex for 'protection' or for food and other resources in order to survive life in the refugee camp.

In 2003, the International Rescue Committee conducted research among Liberian refugee women and adolescents, ages 15 to 49, living in refugee camps in Sierra Leone. 74% of the women and adolescent girls interviewed reported having experienced at least one incident of sexual violence before being displaced, and 66% said they experienced at least one incident of sexual violence during displacement (UNICEF, 2005). Participants at a UNIFEM conference in 2008 referred to the conflicts in Sierra Leone (1991–2002) and Liberia (1980–2003), and pointed to evidence that at least 50% of women suffered some form of sexual violence, rising to over 80% in IDP and refugee camps (UNIFEM, 2008).

The Womens's Commission for Refugee Women and Children (2006) identifies a number of groups of particular concern:

- *displaced girls* are at increased risk of abuse, exploitation, coercion and manipulation because of their age, developmental stage and maturity;
- *displaced older women* are at increased risk of violence and exploitation;
- *urban refugee women and girls* receive little or no assistance, compared to women in camps;
- *physically disabled women and girls* may lack the mental or physical capacity to resist physical violence and sexual advances;
- *internally displaced persons (IDPs)* receive far less attention, fewer resources and fewer services than refugees.

The dangers associated with firewood collection have been highlighted by the Womens' Commission, as well as a range of other risk factors: "Every day, in hundreds of camps around the world, millions of women and girls venture out into this danger, risking rape, assault, abduction, theft,

*exploitation or even murder, in order to collect enough firewood to cook for their families."* In Tanzania, for example, refugee women and girls are attacked by roving gangs when they travel in isolated jungle areas to find the means to cook food for their families. Many of these women and girls fled their homes in Burundi or the Democratic Republic of Congo in search of protection from the very same danger (Patrick, 2006).

The perpetrators of sexual exploitation in refugee camps include the very people who are supposed to protect women and girls. A 2002 study by UNHCR and Save the Children shocked the international community when it revealed that sexual exploitation was widespread, carried out by aid workers, peacekeepers and community leaders. Families were pressuring girls to exchange sex for items such as soap, biscuits or a tarpaulin. Moreover, it was carried out with impunity: no member of staff had been fired as a result (UNHCR and Save the Children UK, 2002). The authors of the study pointed to poverty and power as the main reasons. Ferris observes that gender roles often change in camps, with fathers, for example, feeling unable to prevent their daughters from entering into exploitative relationships having lost their role as family provider. Meanwhile men might assert their power as men, in order to get food, because social inhibitions are weakened (Ferris, 2007).

UNHCR identifies the factors that make women vulnerable to sexual violence, particular in camp settings as including:

- Collapse of social and family support structures;
- geographical location and local environment (high crime area);
- design and social structure of camp (overcrowded, multi-household dwellings, communal shelter);
- design of services and facilities;
- predominantly male camp leadership – gender-biased decisions;
- unavailability of food, fuel, income generation, leading to movement in isolated areas;
- lack of police protection;
- lack of UNHCR/NGO presence in camps;
- lack of security patrols;
- lack of individual registration and identity cards;
- hostility of local population (refugees are considered materially privileged).

(UNHCR, 2003)

Human Rights Watch has reported that women brew and sell alcohol in camps in Darfur and that the combination of alcohol and wide availability of guns has led to incidents of sexual violence (HRW, 2008, p. 15).

Sexual violence features prominently in senior UNHCR policy adviser Ninette Kelly's analysis of the current major challenges for refugee protection in the developing world:

- *Cross border attacks on refugee camps sited near borders and the militarisation of camps* leave women vulnerable to forced conscription, trafficking, extortion and mistreatment;
- *hostility from host communities* (often caused by competition for resources, such as water, firewood and grazing areas for livestock) leaves refugee women more vulnerable to rape and violence;
- *violence within refugee communities* often takes the form of high levels of domestic violence by men<sup>28</sup> frustrated by enforced idleness and lack of resources, women are vulnerable to being raped when collecting firewood or walking through remote areas and harmful traditional practices, such as forced marriage and FGM are prevalent in refugee situations;
- *reductions in food rations as a result of budget cuts*<sup>29</sup> are linked to women providing sexual services in order to survive.

(Kelley N., 2007)

In their effort to tackle irregular migration, the UK and other states have placed a plethora of border controls overseas that effectively prevent refugees fleeing from their own countries and getting to a place of safety. In countries of transit that do not offer effective protection, such as Turkey, refugees live on the edge of society and refugee women suffer abuse, domestic violence, social exclusion and aggression from the local police. Refugee Council researchers in Turkey heard accounts of refugee women resorting to prostitution in order to survive, as they had no other means of supporting themselves. Though vulnerable to violence, sex workers in Turkey are barred from women's shelters (Refugee Council, 2008).

With almost no legal avenues open to them, refugee women are forced to take ever greater risks in order to reach a protection space. 39% of the women 'boat

people' who fled Vietnam in the late 1970s and early 1980s were abducted or raped by pirates while at sea, a figure that is likely to be an underestimate (Krug, Dalhberg, Mercy, Zwi, & Lozano, 2002). Many have no option but to engage the services of agents (human smugglers) to reach their destination. Whilst there is limited evidence on the vulnerability of women to rape, sexual violence and sexual exploitation at the hands of smugglers, law enforcement in the area of transnational crime has uncovered many cases of women being raped by smugglers, or forced to 'exchange' sex for passage to safety.<sup>30</sup> The distinction between the human smuggler and the trafficker, who relies on deception or coercion in order to exploit women sexually, is often a fine one.

#### 4.2.4 Trafficking

Trafficking, particularly trafficking for the purposes of sexual exploitation is widely regarded as a growing problem. The link between displacement and trafficking is not yet widely researched but countries experiencing conflict and human rights abuses are also generally source countries of trafficked women and girls (Women's Commission, 2006).

Several studies have found that a growing number of refugees and internally displaced persons (IDPs) are at risk of trafficking and UNHCR staff suspect that people have been targeted by traffickers in reception centres and in refugee camps. In Nepal traffickers are even thought to use refugees in camps to assist traffickers in identifying and recruiting the most vulnerable refugees (Riiskjær & Gallagher, 2008, p. 6).

Estimates of the number of women who are trafficked vary considerably, a function of the difficulty in obtaining accurate data on what is a hidden activity. In 2008 the US State Department estimated 640,000 women and girls (of a total of 800,000) were being trafficked each year worldwide (State Department, 2008). A large scale study by the International Labour Organisation (ILO) found that globally 1.39 million people had been trafficked for commercial sexual exploitation, 98% of them women and girls (ILO, 2005, pp. 12–15).

In 2001, the European Commission indicated that 120,000 women and children were brought into Western Europe illegally every year and exploited mainly in the sex industry,<sup>31</sup> while the International Organisation for Migration (IOM) cites figures ranging from 120,000 to 500,000 women trafficked into Europe annually (IOM, 2003, p. 314). Between

4,000 and 10,000 migrant women and girls are estimated to be sexually exploited in the UK at any one time.<sup>32</sup>

A minority of women in this group are likely to be refugees forced into the hands of traffickers. For some, experiences related to being trafficked will put them at such a risk of harm that they qualify for refugee status as a result. The majority will have humanitarian protection needs as a consequence of being a victim of trafficking and sexual exploitation.

Trafficked women are vulnerable to abuse by anyone they encounter along their journey: escorts, drivers and border officials, as well as traffickers themselves. A recent survey of 55 trafficked women in the UK found that 40% disclosed having experienced physical and 38% sexual violence of varying degrees prior to trafficking, either from family members or from others in their community (Stephen-Smith, 2008). Of the 28 trafficked women interviewed in another study, 23 had been confined, raped, or beaten during the journey, 25 had been 'intentionally hurt' and reported having been sexually abused and coerced into involuntary sexual acts, including rape, forced anal and oral sex, forced unprotected sex, and gang rape (Zimmerman, 2003).

Chinese women trafficked to work in brothels in Scotland are reported to be routinely raped and beaten until 'their spirit is broken' and they are made to believe their family at home will be harmed if they try to escape or do not 'perform' in a suitable manner for customers. (Cahill, 2008)

## Summary

Estimating the prevalence of rape, sexual assault and sexual exploitation amongst any population of women is difficult, primarily because women commonly hide the experience. But around half of all women worldwide are expected to suffer some form of violence in their lifetime – sexual assault, stalking, or domestic violence. Although in most cases the perpetrator is an intimate partner, 20 – 40% of women have experienced sexual assault by men other than partners in their adult lifetime.

Estimating the actual prevalence of rape in refugee producing countries is particularly problematic because of the effects of war, civil war and the disintegration of civil society. It is reasonable to assume, however, that a significant proportion of refugee women arriving in the UK will have survived rape, attempted rape, other sexual violence or sexual exploitation, particularly if they have fled conflicts. Many come from countries with high levels of sexual violence linked to factors such as traditional attitudes, societal attitudes that condone rape or blame the survivor, lack of effective judicial redress and poverty. Some, including many of those claiming asylum on the basis of gender-specific persecution, will come from countries where sexual violence by security forces has been institutionalised. Women coming from conflict zones will be especially affected: rape in war has reached epidemic proportions. The nature of war has changed: most are civil wars fought mainly with small arms over religious, political or ethnic identity. Civilians now account for more than 80% of deaths in most conflicts. Rape has been used strategically, as a weapon of war in an attempt to destroy the opposing culture. In Bosnia, the systematic rape of up to 50,000 women with the intention of 'ethnic cleansing' led to it being recognised as a war crime. In Rwanda, where 500,000 women were raped – almost all the female survivors, according to some estimates – rape was viewed by an international criminal tribunal as an act of genocide. The trend towards women has continued, with more than three quarters of women in Eastern Congo and more than 90% of females above the age of three in parts of Liberia suffering actual or threatened sexual violence during conflict.

Once women have fled their homes, they are further exposed to the risk of sexual violence and

exploitation. The most vulnerable are girls, older women, disabled women and girls, those living in urban areas and not in camps and those who have not left their country (internally displaced people). At least 50% of women from the conflicts in Sierra Leone and Liberia suffered some form of sexual violence, rising to over 80% in IDP and refugee camps. When collecting water and firewood women risk sexual violence either from other refugees, or from hostile host communities, while shortage of food can put women under pressure to offer sex so that they and their families can eat. Many refugee women have been or partner who would normally protect them, while the change in gender roles brought about by the displacement situation can lead to high levels of domestic violence. With almost no legal avenues open to them, refugee women are forced to take ever greater risks in order reach a protection space. There have been many cases of women being raped by smugglers, or forced to 'exchange' sex for passage to safety, while a growing number of refugees and internally displaced persons (IDPs) are at risk of trafficking for sexual exploitation. Some have been targeted by traffickers in reception centres and in refugee camps. Between 4,000 and 10,000 migrant women and girls are estimated to be sexually exploited in the UK at any one time. Many report suffering physical and sexual violence before, during and after their journey to the UK.

- 8 (UN Secretary General, 2007 p102) Accessed at <http://daccessdds.un.org/doc/UNDOC/GEN/N06/419/74/PDF/N0641974.pdf?OpenElement>
- 9 *Rwanda the Preventable Genocide, Report of the International panel of eminent personalities*, OAU 2000, [www.africa-union.org/Official\\_documents/reports/Report\\_rowanda\\_genocide.pdf](http://www.africa-union.org/Official_documents/reports/Report_rowanda_genocide.pdf)
- 10 Based in South Africa, the SVRI is an initiative of the Global Forum for Health Research.
- 11 *Group calls for more research on sexual violence*, press release, SVRI 2007. Available at [www.svri.org](http://www.svri.org) (accessed 27 November 2008).
- 12 The highest rate recorded by the UN of Office on Drugs and Crime is for Canada at 75 per 1000. The rate for England and Wales was 27 per 1000 and 18 per 1000 for Scotland, for which data was recorded separately. South Africa had the highest rate in 2001-2002 (116/1000), but is missing from this latest survey, as are some of the Vulnerable Women's Project's clients' main countries of origin, such as DR Congo, Eritrea and Sudan. National statistics for 75 states can be found at *The Ninth United Nations Survey on Crime Trends and the Operations of Criminal Justice Systems* (2003 – 2004) UN Office on Drugs and Crime available at [www.unodc.org/unodc/en/cts9.html](http://www.unodc.org/unodc/en/cts9.html) accessed 1 Dec 2008.
- 13 '*Prevailing myths affect the way in which society responds to rape and rape victims. When prevailing myths go unchallenged rape is supported, justified, and even condoned. Myths tend to be victim blaming; instead of holding the perpetrator responsible for his behaviour, the victim is blamed and held responsible for the assault, especially in cases where the victim knows the perpetrator*' (World Health Organisation, 2003 p10). *Guidelines for Medico-Legal Care for Victims of Sexual Violence, Geneva*.
- 14 Violence in Post-Conflict Situations. Amnesty International USA [www.amnestyusa.org/violence-against-women/stop-violence-against-women-svaw/violence-in-post-conflict-situations/page.do?id=1108238](http://www.amnestyusa.org/violence-against-women/stop-violence-against-women-svaw/violence-in-post-conflict-situations/page.do?id=1108238)
- 15 *Kacaj v SSHD* [2002] EWCA Civ 314.
- 16 Presentation to Wilton Park Conference: 'Women targeted or affected by armed conflict: what role for military peacekeepers?', May 27 – 29, Wilton Park, Sussex, [www.unifem.org/news\\_events/event\\_detail.php?EventID=175](http://www.unifem.org/news_events/event_detail.php?EventID=175)
- 17 Kristof, N. D. (2007, June 15). The Weapon of Rape. *New York Times*. [www.nytimes.com/2008/06/15/opinion/15kristof.html?pagewanted=print](http://www.nytimes.com/2008/06/15/opinion/15kristof.html?pagewanted=print)
- 18 Sexual violence fact sheet, Amnesty International USA, [www.amnestyusa.org/violence-against-women/stop-violence-against-women-svaw/sexual-violence/page.do?id=1108243](http://www.amnestyusa.org/violence-against-women/stop-violence-against-women-svaw/sexual-violence/page.do?id=1108243) (accessed 24 Nov 2008).
- 19 Jan Egeland, former UN Coordinator for Humanitarian Affairs (FMR, 2007).
- 20 *Harvard Program Addresses Rape In the Congo*, press release, Harvard Humanitarian Initiative, 11 October, 2007 [www.hsph.harvard.edu/news/press-releases/2007-releases/press10112007.html](http://www.hsph.harvard.edu/news/press-releases/2007-releases/press10112007.html) Accessed 27 November 2008.
- 21 *DRC: Healthcare crisis as cholera, malnutrition rise*, 21 November 2008. IRIN. [www.irinnews.org/Report.aspx?ReportId=81602](http://www.irinnews.org/Report.aspx?ReportId=81602) Accessed 27 November 2008.
- 22 UNIFEM: *PowerPoint Presentation on Security Council Resolution 1820: Women, Peace and Security, 2008* [www.stoprapenow.org/advocacyResources.html](http://www.stoprapenow.org/advocacyResources.html) Accessed 27 November 2008.
- 23 Similarly, women raped by soldiers or policeman in Darfur are marked with wounds that leave scars or brands, as a sign that they have been raped and a signal to their community to flee.
- 24 Article 5 (g) states: '*The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population: ... (g) rape*'. For full text of the relevant judgements in Zelenovic and other lead cases see [www.un.org/icty/glance/jankovic.htm](http://www.un.org/icty/glance/jankovic.htm)
- 25 Sexual and Gender-Based Violence in Conflict: A Framework for Prevention and Response, UN OCHA <http://ochaonline.un.org/News/HotTopics/SexualandGenderBasedViolence/AFrameworkforPreventionandResponse/tabid/4751/language/en-US/Default.aspx> accessed 28 November 2008.
- 26 Prosecutor v Akayesu, Case No. ICTR-96-4-T , 2 Sep 1998 available at <http://69.94.11.53/ENGLISH/cases/Akayesu/judgement/akay001.htm>
- 27 Manuel Carballo, Executive Director of the International Centre for Migration and Health (ICMH), writing in *Forced Migration Review* (FMR, 2007).
- 28 52% percent of displaced women in Colombia, for example, experience domestic abuse, as compared to 20 percent of non-displaced women (Women's Commission, 2006).
- 29 In 2005 In 2005, the World Food Programme cut food rations in some countries by 25 to 50 percent.
- 30 See for example the case of R.v.Mazreku.
- 31 Report on Europe Against Trafficking in Persons Conference, October 2001, Berlin, [www.osce.org/documents/odihhr/2001/12/1919\\_en.pdf](http://www.osce.org/documents/odihhr/2001/12/1919_en.pdf)
- 32 Townsend, M., (2007) 'Sex slaves' win cash in landmark legal deal *The Observer*, Sunday December 16 2007.

# Chapter Five – Sexual violence and exploitation in the UK

Arrival in the UK, in the protection space, should signal safety for refugee women. Unfortunately, evidence suggests these women are more at risk of sexual violence and sexual exploitation than women who are settled UK residents.

The most recent crime statistics for England and Wales show that in 2007/2008 the police recorded 11,648 incidents of rape and 20,534 incidents of sexual assault on a woman.<sup>33</sup> But only a fraction of cases are reported.

The 2001 British Crime Survey (BCS), a large, national victim-focused study, found that only about 15% of rapes came to the attention of the police.<sup>34</sup> The major reason given for choosing not to report the offense to the police was lack of confidence in the police and justice system. Other reasons included fear of more violence, fear of humiliation and belief that it was a private matter. The study points out that it may be particularly difficult for some black and minority ethnic (BME) groups to go to the police, for fear of repercussions within their family or community, or because of language barriers; people who are in the country illegally may be concerned about being forced to leave the country; people sexually assaulted by a partner may be fearful of the repercussions of reporting to the police for their safety and the wellbeing of their family (Home Office, 2007).

The 2001 BCS estimated an annual incidence rate of 47,000 adult female victims of rape.<sup>35</sup> The widely quoted figure of 80,000, taken from the 2004 BCS includes women who suffer attempted rape and is generally considered a conservative estimate.<sup>36</sup> Since the age of 16, 7% of women had suffered a serious sexual assault at least once in their lifetime

and 5% had been raped (Kelly, Lovett, & Regan, 2005). Even this type of large scale survey is likely to underestimate the true prevalence rate, for a range of reasons (Myhill & Allan, 2002, p. vi). Other studies have indicated a much higher rate, the most commonly cited being Painter's 1991 study of 1007 women, which found that 1 in 4 women had experienced rape or attempted rape, while 1 in 7 had experienced being coerced into sex, rising to 1 in 3 amongst divorced or separated women. 91% had told no one at the time (Painter, 1991). The 2007 Cross Government Action Plan on Sexual Violence and Abuse<sup>37</sup> states that 23% of women over 16 experience sexual assault and 5% of women suffer rape (Home Office, 2007). The study found 6% of women had experienced *serious*<sup>38</sup> sexual assault, compared to 7% in 2001 (Finney, 2006).

The BCS surveys also confirm that that the overwhelming majority of women are raped or sexually assaulted by men that they know. 51% of serious sexual assaults were committed by current or former partners of the victim, just 11% by a stranger (Finney, 2006).

Whilst vulnerability to rape and sexual assault is a consistent experience of women in the UK, some groups of women are at particular risk. Myhill and Allen identified the following risk factors:

- **Age.** Younger women, particularly women in the 16–24 age group were more likely to have experienced rape or sexual assault in the last year than older women included in the study and women in the 16–19 age group were more than four times more likely to have been victimised than any other age group.

- **Poverty.** ‘Risks were highest for women from households with low levels of income. For instance, women from households with an income of less than £10,000 per year were more than three times more likely to have reported being raped than women from households with an income of more than £20,000.’
- **Social Housing.** ‘Women living in the social rented sector (accommodation rented from local authorities or housing associations) were more likely to report having been raped. Their risks were twice as high as women living in the private rented sector and four times as high as women in owner-occupier households.’
- **Health.** Women who classified their health as ‘bad’ at the time of the attack were at twice the risk of being raped than those with ‘fair’ health and almost five times the risk of those with good health (Myhill and Allen, 2001).

Alcohol and marital status are other major risk factors. Single, separated or divorced women are almost four times more likely to report having experienced sexual assault in the last year than married women (Home Office, 2007). About 50% of refugee women in the UK are the head of their household, cut off from the support of the family and extended female network many would be used to. Single female asylum seekers, are more likely to be living alone than male asylum seekers, or with men and women from other nationalities. Alone in a strange town, fearing to go out, many are extremely vulnerable, particularly young women, who are particularly open to exploitation by men (Dumper, 2008).

Furthermore, refugee women are highly likely to fall into one or more of the other higher risk groups for sexual violence.

### 5.1 Poverty

Across the EU, key factors that make a person more at risk of poverty include gender and being a member of a minority ethnic group. Women are generally at higher risk of poverty than men as they are less likely to be in paid employment, tend to have lower pensions, are more involved in unpaid caring responsibilities and when they are in work, are frequently paid less. Groups such as migrants and Roma suffer particularly from discrimination and racism, have less chance to access employment, often are forced to live in worse physical environments and have poorer access to essential services.<sup>39</sup>

The EU wide accepted standard for measuring poverty is set at 60% of the average income for the relevant state.<sup>40</sup> In the UK, Income Support is already below this ‘poverty threshold’ and Asylum Support for asylum seekers is set at 70% of Income Support. This means that almost without exception, asylum seeking women are living in poverty. Some women apply for support without accommodation, choosing to stay with family or friends, rather than risk being dispersed around the country. There they are likely to experience the increased vulnerability of other homeless women, who tend to sofa-surf to avoid being on the streets, as they are better than men at adapting to a host’s life and accessing support networks. Dependency on the host can make it difficult for women to refuse sexual demands.<sup>41</sup>

Whilst those with refugee status are entitled to work and to claim state benefits on the same basis as UK nationals, ethnic minorities are generally more likely to live in poverty.<sup>42</sup> Both the relatively low level that state benefits are set at, and the difficulties refugees face in accessing the job market contribute to a situation where refugee UK women are more likely than other women to live in poverty.<sup>43</sup>

Refugee women whose claims for asylum are rejected can be yet more vulnerable still. Most of those with children continue to receive asylum support, unless the child was born after their asylum claim was refused and their asylum support discontinued, and they did not apply for Section 4 (‘hard case’) support within six weeks of giving birth. A small proportion of women without children are eligible for Section 4 support, which is paid in the form of vouchers (e.g. if they are taking steps to return voluntarily), but the vast majority remain totally destitute.<sup>44</sup> 4% of the Vulnerable Women Project’s clients were destitute when they first contacted the Refugee Council, including ‘Chloe’, who was raped and beaten in a Congo prison. There has been no comprehensive UK-wide research into the numbers of women fleeing gender based violence who have been made destitute, but national research carried out by Southall Black Sisters indicates a consistent level of about 600 domestic violence cases a year (AIUK & Southall Black Sisters, 2008).

### 5.2 Social Housing

Likewise, refugee women are more likely than other groups of women to be living in social housing. At the end of 2007, of the 44,495 asylum seekers who

were being supported by the Asylum Support Directorate of the Borders and Immigration Agency (BIA) 34,150 asylum seekers were being supported in BIA dispersal accommodation and 1,440 were supported in initial accommodation. 8,900 were receiving subsistence only support and are likely to have been living with family or friends,<sup>45</sup> making them vulnerable to sexual violence or exploitation. Asylum seekers whose claims are refused either continue to live in BIA accommodation or become homeless, further elevating the risk of sexual violence or exploitation.

Finally, as noted above, women with refugee status commonly remain in a poverty trap, and as a consequence are likely to live in social housing.

### 5.3 Health

*'In addition to experiencing similar health problems as the rest of the UK population, refugees and asylum seekers also suffer from a range of physical and mental health problems as a consequence of experiences in their country of origin, sometimes made worse by poor access to healthcare and the dangerous and stressful journey to the UK'* (Burnett & Peel, 2001, pp. 544-547). Similarly, a recent epidemiological study among Afghan, Somali and Iranian asylum seekers and refugees in the Netherlands showed that on average they have poorer health than native Dutch citizens. Women were more likely to suffer from chronic conditions, PTSD and depression/anxiety (Gerritsen, Bramsen, Deville, Van Willigen, Hovens, & Van der Ploeg, 2006).

The British Medical Association identifies three categories of specific health problems experienced by refugees in the UK:

- psychological and social health problems (two thirds have experienced anxiety or depression)
- the effects of war and torture
- communicable diseases such as tuberculosis, hepatitis, HIV/AIDS and parasitic infections (BMA, 2002).

As many as 20% of asylum seekers and refugees in the UK have severe physical health problems that make their day to day life difficult (Burnett & Peel, 2001, pp. 544-547). Those problems may be attributable to conditions in countries of origin, such as poverty, lack of immunisations and other preventative medicine and the prevalence of

particularly diseases (Woodhead, 2000). Often, problems are compounded by the conditions they face upon arrival, such as adapting to a new culture and language, the complexity of the asylum system, dispersal procedures<sup>46</sup> and lack of information about services' (Kelley & Stevenson, 2006, p. 9). Wilson (2007) identifies the factors that combine to make refugees vulnerable to poor health in the UK as insecurity, poverty and powerlessness, as well as loss of community and being in an unfamiliar environment. There is evidence that the health of asylum seekers generally deteriorates in the first two to three years after arriving in the UK (BMA, 2002).

5-30% of refugees and asylum seekers have been tortured, including many who have been subjected to rape and sexual violence (Burnett & Peele, 2001). Women who have been raped or experienced sexual violence have specific health problems in addition to those of the general refugee population in the UK. Women who have been raped often have physical injuries such as cuts and bruising of their vagina, or defensive injuries to the hands, arms and legs. Although painful and distressing, for the majority of women these physical injuries heal quickly. However, in countries where most women and girls have undergone female genital mutilation, sexual violence can cause extensive tearing externally as well as internally. In a minority of cases women may have been sexually tortured, examples of which include being cut or shot in their genital area, having objects such as guns or knives forced into their vagina or anus or being bitten or burned with cigarettes during the attack. These types of physical injuries can be severe, cause continued extreme pain and require longer term health care (Clarke, 2004).

One of the most common physical consequences of rape and sexual violence is contracting a sexually transmitted infection. Women who are raped by strangers or acquaintances do not have the possibility of protecting themselves from the diseases of their perpetrator, while women who are trafficked as sex workers or who suffer partner rape cannot negotiate the conditions under which to engage in sexual relations due to the power constructs of the relationships between themselves and their male partner. As well as requiring medical treatment, contracting a sexually transmitted disease can compound the feelings of shame, violation and being unclean that women experience.

The risk of transmission after a single sexual contact with an infected person falls between 22–15% for Gonorrhoea and Chlamydia and between 20–27% for Hepatitis B 20–27%. The risk of transmission for HIV is between 0.1 and 5.6%, but this rate is elevated for victims of rape and sexual violence as a result of the increased risk of cuts and the lack of protective mucous.<sup>47</sup>

Refugee women are likely to come from countries where the rate of HIV infection is very high,<sup>48</sup> and the links between conflict, rape, and HIV infection are increasingly apparent. Conflict places women at increased risk of contracting HIV through direct transmission through rape, by placing them in situations where they may be forced to engage in 'survival sex' in order that they and their families might escape, or access food, shelter or services; and by exposing them to increased levels of overall violence including intimate partner violence, which in turn, makes it difficult for them to negotiate safe sex in their relationships. In a study of over 1,000 Rwandan genocide widows undertaken in the year 2000, 67 percent of rape survivors were HIV-positive (Ward & Marsh, 2006). In that year, the UN Secretary General wrote, '*Armed conflicts increasingly serve as vectors for the HIV pandemic which follows closely on the heels of armed troops and in the corridors of conflict*' (UN Secretary General, 2000). However a controversial recent study drew the surprising conclusion that widespread rape did not directly appear to increase the overall HIV prevalence in conflict-affected countries (Anema, Joffres, Mills, & Spiegel, 2008).

Whilst the likelihood of becoming pregnant after a single sexual assault is low, the institutional nature of rape in some conflicts elevates the risk that refugee women will become pregnant as a result of rape. Women who become pregnant as a consequence of rape, or are raped whilst pregnant need support to make decisions about their pregnancy, as well as support to cope with the impact of those decisions on themselves and their family over the long term.

Finally, refugee women may come from cultures where somatisation is common (physical manifestation of distress) or where there is a strong cultural prohibition against discussing mental distress. As a consequence, they may repeatedly access healthcare presenting with physical complaints, without mentioning emotional needs. For example, in a study of 107 Ugandan women raped

during war '*only two presented with symptoms that could be termed as psychological i.e. nightmares and loss of libido. 53% presented with physical complaints i.e. headaches, chest pain and rashes and 57% with gynaecological symptoms, mainly vaginal discharge, dating from the time of the rape*'. In fact, only a third of these women showed any physical signs of infection or illness (Adlington & Burnett).

Refugee women have complex health needs, arising from trauma and deprivation in their countries of origin, compounded by trauma and deprivation in the UK (Kelley & Stevenson, 2006, p. 10). The standard of housing provided for asylum seekers is so poor, for example, that it undermines their sense of safety and security, hinders the therapeutic process and may breach their human rights.<sup>49</sup>

Both physical and psychological problems can often be considered to be considered as '*normal human reactions to abnormal inhumane situations*': symptoms of a normal coping process in reaction to shocking and stressful experiences (Van Willigen in (Keygnaert, et al., 2008). Health care services can play a vital role in ensuring that they receive the healthcare they need, but also in referring them for psychological and emotional support, and in building trust in the authorities here in the UK.

*Even if they fail to disclose the event itself, persons who have experienced sexual violence often seek medical assistance. Studies of the relationship between intimate partner violence, health status and female use of healthcare have shown that abused women consume more care than non-abused women* (WHO, 2003, pp. 10–11).

This interplay between physical health care, psychological support and practical social and welfare needs lies behind the Refugee Council's systemic approach to casework, which stresses the importance of understanding the client's *context* (Keefe, 2009).

## 5.4 Domestic violence

*'In some parts of the world at least, one woman in every five has suffered an attempted or completed rape by an intimate partner during her lifetime.'*  
(WHO, 2003, p. 1)

Domestic violence occurs across all classes, ethnic groups and cultures. However, asylum seekers and refugees are particularly vulnerable (Wilson, Sanders, & Dumper, 2007).

Research shows that between a third and half of women experiencing physical abuse are also raped by their partners at least once. Women who are raped by their husbands are likely to be raped many times – often 20 times or more – and they are more likely than women raped by acquaintances to experience oral and anal rape. Rape by a partner is more likely to result in physical injury than rape by a stranger, such as damage to the vaginal and anal areas, lacerations, soreness, bruising, torn muscles, fatigue and vomiting. The emotional impact is often more severe and longer-lasting: long term effects on women include anger, depression, eating disorders, sleep problems, problems establishing trusting relationships, sexual dysfunction and negative feelings about themselves.<sup>50</sup>

Sexual and domestic violence were areas of great concern to about a quarter of refugees and asylum seekers participating in community research conducted in Yorkshire in 2004:<sup>51</sup> *'[I]nterviewees talked about rape carried out by family and community members, rather than by soldiers and state agents. Experiences of domestic violence and sexual violence were therefore related, and indicate alarming levels of oppression and abuse of women in some countries of origin – which continues in the UK'* (Wilson, Sanders, & Dumper, 2007).

Domestic violence is associated with some refugee men's gendered experience of asylum. Many men experience a loss of status as asylum seekers. Once recognised as refugees and entitled to work, men are less likely to find employment than refugee women, affecting their status in the family (BMA, 2002). They may feel threatened by Western gender roles and the greater freedom enjoyed by women: *'Frustration, fear, anxiety, poverty and traditional beliefs can, for some men, be factors leading to domestic violence. They are, however, no excuse.'* (Wilson, Sanders, & Dumper, 2007).

For refugee women, the consequences of intimate partner violence can be particularly problematic. The vast majority of women asylum seekers do not make an independent claim for asylum, and are instead included as a dependent on their husband or partner's claim. Many women do not know that they are entitled to make an asylum claim, or access government support, in their own right. This, coupled with cultural pressures, means that refugee women are more likely to stay in abusive relationships where they face rape or sexual violence.

## 5.5 Vulnerability to sexual exploitation

Most international studies of on and off-street prostitution identify migrant women as a high risk group for being forced into sex work, and information from law enforcement agencies in the UK suggests that migrant women and trafficked women make up an increasing proportion of sexually exploited women in the UK. Recent research found that only 19% of women working as prostitutes in flats, parlours and saunas were originally from the UK (Poppy Project, 2004).

The most reliable estimate concluded that there were more than 280,000 refused asylum seekers in the UK at risk of destitution as they had no right to work or access asylum support.<sup>52</sup> The Red Cross has estimated that at least 26,000 destitute asylum seekers are living off Red Cross food parcels, but the actual number of destitute asylum seekers is thought to be much higher as the Red Cross does not distribute food parcels in all cities (CSJ, 2008).

There is little in the literature on the link between destitution and sexual violence and exploitation, but in 2004 the Mayor of London warned that asylum seekers rendered destitute would be vulnerable to intense exploitation, intimidation and abuse in the sex industry (Mayor of London, 2004). When researching destitution for a 2006 report, Amnesty International was told by people working with rejected asylum seekers that they suspected that some of the women through desperation had turned to prostitution to survive, and that young girls were possibly given floor space in exchange for sexual favours. Several women they interviewed who were now living on friends' floors had been raped before fleeing their country (AIUK, 2006a).

A 2006 report on destitute refused asylum seekers by Refugee Action found that 60% of respondents had slept on the street on at least one occasion, with women often attracting unwanted attention, harassment and sexual abuse. Many feared approaching the police to report incidents of sexual harassment and assault, avoiding contact for fear of being picked up, put in detention and deported. A small group (more males than females) admitted to selling sex in order to survive (Refugee Action, 2006). 10 of the vulnerable women who presented to the Refugee Council's project (6.5%) said they had been forced into prostitution or exchanging sex for a somewhere to stay.

*'Men offered me accommodation but they wanted sex with me. Now I have no food. I stayed in a church and then went to the police and stayed two nights in a cell. Last week some people tried to rape me...'* 27-year-old Somali woman interviewed by Refugee Action

## 5.6 Other gender-based violence

While the scope of this review is limited to rape, sexual assault and sexual exploitation, it should be noted that refugee women in the UK may be vulnerable to other forms of gender-based violence, such as forced marriage, honour crimes and female genital mutilation (FGM).

Clients of the Refugee Council's Vulnerable Women's Project, particularly those from Iran, have expressed fear that they may be blamed for having been raped and could be assaulted or even killed. Currently, no reliable data are available on the number of women either at risk, or actual victims, of 'honour' crimes in the UK, but according to a recent report (Hafez & Brandon, 2008), most honour killings – the most extreme form of honour crime – known to have occurred in the UK have been carried out by people of South Asian origin. The United Nations Population Fund has estimated that around 5,000 women die in honour killings every year worldwide, the vast majority in Pakistan, India and Bangladesh. The Association of Chief Police Officers (ACPO) estimates that 12 people are murdered every year in the UK for reasons of 'honour' (ACPO, 2008).

An estimated 1,000 British Asian girls are forced into marriage each year, but there are no reliable statistics on the incidence of forced marriage (Coy, Lovett, & Kelly, 2008). Nevertheless, it is known to be practiced in several communities in the UK, include refugee communities from the Horn of Africa and the Middle East, as well as South Asia. According to ACPO, every year 500 men and women report their fear of *'being forced into marriage, or their experience of rape, assault, false imprisonment and much more as the consequence of being in a marriage without their consent'* (ACPO, 2008).

Forced marriage should not be confused with arranged marriage, where both parties marry of their own free will, after their families have performed a match-making role. Nor is it a religious issue: forced marriage is a violation of a fundamental human right, condemned by all major religions. Wilson

(2007) lists many different contexts where forced marriage can occur. Those that are particularly relevant to this report include:

- women who have been raped being forced to marry the perpetrator as a way of reducing shame to the family;
- women being forced into marriage by traffickers as a way of maintaining control and to help with immigration;
- young girls and child soldiers being forced to 'marry' combatants in conflict situations.

Forced marriage can involve many different forms of abuse ranging from emotional pressure to murder ('honour killing'), which can lead to self harm, mental health problems and suicide (Wilson, Sanders, & Dumper, 2007).

An estimated 66,000 women and girls in England and Wales have undergone FGM, in the main prior to arrival in the UK, with a further 30,000 girls and young women at risk (Coy, Lovett, & Kelly, 2008). Girls in the UK are reported to be taken out of school for the practice and suffer physical and psychological health consequences as a result. The prevalence of FGM is about 75% and up to 98% in Somalia and Djibouti, so women and girls from refugee communities from those countries are likely to be particularly at risk (Kelly & Sen, 2008). Nevertheless, FGM has not been an issue of concern to clients of the Refugee Council's Vulnerable Women's Project, so will not be dwelt on in this report.

A recent community-based study carried out in the Netherlands and Belgium found that young refugee women (and men) are extremely vulnerable to several types of gender based violence, including sexual violence (Keygnaert, et al., 2008). The evidence indicates that refugee women in the UK are at a much higher risk of rape and sexual violence than the general population.

## Summary

Arrival in the UK, in the protection space, should signal safety, but refugee women are highly likely to belong to one or more of the groups that are at far higher risk of rape than the UK average of 5%: young women; poor women; women living in social housing; women in poor health and single, separated or divorced women.

**Poverty:** Women living on less than £10,000 a year are more than three times as likely to report being raped than women from households with an income of more than £20,000. All asylum seekers are living in poverty on less than 70% of income support, most refused asylum seekers are rendered totally destitute and women with refugee status are more likely to be living in poverty than other women because of additional barriers to the job market.

**Social Housing:** women in social housing are twice as high to report having been raped as women in the private rented accommodation and four times as owner-occupied households. Women with refugee status are more likely to be living in social housing because of difficulties finding employment. Asylum seeking women either live in housing provided by UKBA or receive 'subsistence only' support and 'sofa surf' with friends and family, which can make them more vulnerable to sexual violence and exploitation. Most refused asylum seekers are destitute, and many are homeless, further elevating the risk of sexual violence or exploitation.

**Marital Status:** Single, separated or divorced women are almost four times more likely to report having experienced sexual assault. About half of refugee women in the UK are the head of their household.

**Health:** women in poor health are at twice the risk of being raped as women in good health. As many as 20% of refugees in the UK have severe physical health problems. Two thirds of refugees have experienced anxiety and depression. Between 5% and 30% have been tortured, including many who have been subjected to rape and sexual violence. Those who have been raped will have a high risk of a sexually transmitted infection. Refugee women fleeing conflict are at higher risk of having contracted HIV, either through rape, through having had to engage in

'survival sex; or because of increased levels of intimate partner violence that make it difficult for them to negotiate safe sex. A study of Rwandan rape survivors found 67% to be HIV-positive.

Refugee women are particularly vulnerable to domestic violence, which is connected to refugee men's experience of a loss of status and changed gender roles.

Migrant and trafficked women make up an increasing proportion of sexually exploited women in the UK – more than 80% of women working as prostitutes in London are migrants. Thousands of asylum seeking women are left destitute when their claims are refused; a small proportion report being forced into prostitution or exchanging sex for somewhere to stay.

In addition to rape, sexual assault and sexual exploitation, refugee women in the UK may be vulnerable to other forms of gender-based violence, such as forced marriage, honour crimes and female genital mutilation (FGM).

- 33 Crime statistics for England and Wales, Home Office [www.homeoffice.gov.uk/rds/pdfs08/hosb0708chap3.pdf](http://www.homeoffice.gov.uk/rds/pdfs08/hosb0708chap3.pdf)
- 34 Although the trend is towards greater reporting: 60% of those who had suffered rape in the year leading up to the survey had told someone about it. 2001 British Crime Survey (cited in Kelly, Lovett, & Regan, 2005).
- 35 This was significantly lower than the previous year's estimate of 61,000.
- 36 End Violence against Women: *Rape and Sexual Violence*. Accessed at [www.endviolenceagainstwomen.org.uk](http://www.endviolenceagainstwomen.org.uk) 10 December 2008.
- 37 The action plan refers to the 2004/5 BCS Interpersonal Violence Module (IPV),
- 38 In this survey less serious sexual assault includes indecent exposure, unwanted sexual touching and sexual threats.
- 39 European Anti-Poverty Network (EAPN): *Poverty and Inequality in the European Union*. Accessed at [www.poverty.org.uk](http://www.poverty.org.uk) on 15/11/08.
- 40 *ibid*.
- 41 Eden & Vacciana: *A woman's place: women and hostel provision in London*, Eaves Housing for Women, 2004 [www.eaves4women.co.uk/Lilith\\_Project/Documents/Reports/lilith\\_hostel\\_report.pdf](http://www.eaves4women.co.uk/Lilith_Project/Documents/Reports/lilith_hostel_report.pdf)
- 42 *Households Below Average Income An analysis of the income distribution 1994/95 – 2006/07*, DWP 2008 [www.dwp.gov.uk/asd/hbai/hbai2007/pdf\\_files/full\\_hbai08.pdf](http://www.dwp.gov.uk/asd/hbai/hbai2007/pdf_files/full_hbai08.pdf)
- 43 Bloch's 2002 study noted that only 29% of refugees were in employment as opposed to 60% of the minority ethnic community as a whole (Bloch, 2002).
- 44 For a more detailed discussion about the support available to refused asylum seekers, see *More Token Gestures: A Refugee Council report into the use of vouchers for asylum seekers claiming Section 4 support* (October 2008), Available at [www.refugeecouncil.org.uk/policy/position/2008/section4vouchers.htm](http://www.refugeecouncil.org.uk/policy/position/2008/section4vouchers.htm)
- 45 Home Office 2008: Asylum Statistics UK 2007, Home Office, London. [www.homeoffice.gov.uk/rds/pdfs08/hosb1108.pdf](http://www.homeoffice.gov.uk/rds/pdfs08/hosb1108.pdf) accessed 15 /11/08.
- 46 Since the Immigration and Asylum Act 1999, asylum seekers wishing to access both cash support and accomodation have been dispersed outside of London on a no choice basis. For many this has meant isolation and social exclusion as a result of living in communities without a history of inward migration, and without established refugee or minority ethnic communities.
- 47 Pre-pubescent girls are more likely to sustain physical injuries during rape and consequently more likely to be infected with HIV.
- 48 Two thirds of the total number of people living with HIV/AIDs are in Sub-Saharan Africa. UNAIDS (2006) Aids Epidemic Update [www.unaids.org/en/HIV\\_data/epi2006/default.asp](http://www.unaids.org/en/HIV_data/epi2006/default.asp) (accessed 13/7/2007).
- 49 *Housing conditions may breach human rights* (2008, Oct 13). Medical Foundation. Accessed at [www.torturecare.org.uk/news/latest\\_news/2296](http://www.torturecare.org.uk/news/latest_news/2296)
- 50 James-Hanman, D: *Raped by person known*, (2008, 17 March) New Statesman. Accessed at: [www.newstatesman.com/life-and-society/2008/03/partner-rape-women-violence](http://www.newstatesman.com/life-and-society/2008/03/partner-rape-women-violence)
- 51 Wilson, Atkin & Shutt, *Sexual health in exile: the sexual health concerns, issues and needs of refugees and asylum seekers in South and West Yorkshire: a community research report* (2007). Centre for HIV and Health Accessed at [www.tandem-uk.com](http://www.tandem-uk.com)
- 52 *Returning failed asylum applicants*, National Audit Office, 2005, [www.nao.org.uk/publications/nao\\_reports/05-06/050676.pdf](http://www.nao.org.uk/publications/nao_reports/05-06/050676.pdf)

# Chapter Six – Access to Justice

*‘Sexual violence profoundly affects not only the health and safety of women, but the economic and social stability of their nations.’*

– US Secretary of State, Condoleeza Rice, 19 June 2008

Considerable progress has been made since the 1990s in establishing legal standards to tackle sexual violence in both domestic and international law. Rape is now prohibited in every major domestic legal system (although not all countries yet prohibit rape by within marriage), and its prohibition is a norm of international law. International humanitarian law (the laws of war) prohibits both states and non-state armed groups from committing rape and other forms of sexual violence (HRW, 2008). Women are protected under international human rights law from rape and sexual assault as forms of torture and other ill-treatment and as discrimination based on sex (HRW, 2008). The Committee of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) has specifically defined violence against women and girls as a form of discrimination and has set out a wide range of obligations on states aimed at ending sexual violence.<sup>53</sup>

The right to an effective remedy in human rights law obliges states to prevent, investigate and punish serious human rights obligations. Victims must be provided with reparations, including compensation for damages.

Under the 1998 Rome Statute of the International Criminal Court, when crimes of sexual violence are committed as part of armed conflict, they can be prosecuted as war crimes. Crimes of sexual violence can also amount to crimes against humanity and even acts of genocide. States are obliged to investigate alleged war crimes, including by members of their armed forces, and prosecute those responsible. Non-state armed groups are also obliged to prevent sexual violence, investigate and punish those responsible.

Alongside the development of this framework in international law, sexual violence has been addressed by the United Nations at the highest level. The Declaration against Violence against Women adopted by the UN General Assembly in 1993 condemned all violence against women including sexual violence, while the Platform for Action from the UN Fourth World Conference on Women in Beijing in 1995 declared that violence against women, including rape, sexual slavery and forced pregnancy was an obstacle to equality, development and peace.

Thanks to the efforts of women’s activists, the UN Security Council adopted a landmark resolution in 2000 on Women, Peace, and Security (SCR 1325 (2000)). States would be held accountable for sexual violence committed by their armed forces and police; they were responsible for putting an end to impunity for rape and sexual violence and, where necessary, for prosecuting those responsible for war crimes. The resolution mandated the UN to take action, where the level of violence merited it, and to gather information about sexual violence.<sup>54</sup> It also stressed that women’s and girls’ protection needed to change in the transition from conflict to post conflict: protection of witnesses at international tribunals was just as important as protection while in refugee and IDP camps.

Despite this powerful signal from the Security Council, the use of sexual violence as a weapon of war, particularly in Africa, did not diminish. In 2004 UN Secretary-General Kofi Annan called for action to end the gender-based violence that had reached *‘almost epidemic proportions’* in parts of Congo and Darfur: *‘Every effort must be made to halt this*

*odious practice, and bring the perpetrators to justice.*<sup>55</sup>

In 2007 China, Russia and South Africa resisted a further Security Council resolution, on the grounds that sexual violence was an unfortunate by-product of war, and one that was addressed by a number of U.N. agencies, but not a matter of international peace and security.<sup>56</sup> The UN's General Assembly adopted its own resolution that year on Eliminating rape and other forms of sexual violence in all their manifestations, including in conflict and related situations.<sup>57</sup>

In June 2008, the Security Council finally recognised sexual violence as an issue of international peace and security. SCR 1820 requires exclusion of sexual violence from any amnesties reached at the end of conflict,<sup>58</sup> establishes a form of monitoring mechanism and provides a stronger mandate for peacekeepers by signalling that sexual violence is a peacekeeping priority. Women's advocates have welcomed SCR 1820, but ask if the United Nations can 'walk the walk'.<sup>59</sup> They warn that the intentions expressed in SCR 1820 and 1325 need to be reflected systematically in the day to day work of the UN and States.<sup>60</sup>

Despite a wealth of international legal standards and numerous UN initiatives at the highest level, crimes of sexual violence are still being committed against women throughout the world on a massive scale, with many perpetrators unlikely ever to be punished. A global culture of discrimination against women allows sexual violence to occur daily and with impunity (Amnesty International USA).

In August 2008 United Nations Secretary-General Ban Ki-moon published the results of a survey on activities taken by States to eliminate rape and sexual violence:

*'Women continue to be victims of rape and sexual violence, perpetrated by intimate partners as well as non-partners, in many settings. They are at particular risk in certain situations, including in conflict and post-conflict settings. Studies indicate, however, that only a small percentage of such crimes come to the attention of the police, and an even smaller number result in convictions. Shame, fear of retaliation from their families or communities, as well as fear of being re-victimized by the criminal justice system, often prevents women from seeking redress.'* (UN Secretary-General, 2008)

That said, women's advocates and scholars warn of the dangers of stereotyping women as victims, specifically victims of sexual and gender-based violence. Edwards argues that this can lead to women's agency being ignored or neglected by distorting the image of women to that of '*apolitical victims of "private" male sexual aggression*'.

O'Kane's study (2008) of woman activist-refugees on the Burma–Thai Border demonstrates that for some, the adversity of displacement can lead to political empowerment. Kirk and Taylor (2007) urge that efforts to protect women and girls from sexual violence recognise that women have multiple identities and through their roles as mothers, heads of households, combatants and peace activists often demonstrate incredible resiliency, coping and survival skills. Women need to be empowered and supported to act to assert their rights within their families, organisations and communities.

### Summary

Rape is prohibited in every major domestic legal system, and its prohibition is a norm of international law. Sexual violence is prohibited by the laws of war as well as by international human rights law and international criminal tribunals have convicted men of using rape as form of genocide. The international community has pledged at the highest level to tackle the problem, including in UN Security Council Resolution 1820 adopted in 2008 that recognises sexual violence as an issue of international peace and security. And yet, in a global culture of discrimination, every day, women are raped with impunity. Women need to be empowered to act to assert their rights.

## 6.1 Protection from sexual violence in regions of origin

*'We know from grim experience how sexual violence in conflict wreaks devastation on individuals, families, communities, and entire societies. [...] Widespread and systematic sexual violence further heightens insecurity. There are consequences for recovery and reconciliation. When alleged perpetrators are not prosecuted and brought to justice, the rule of law is undermined and impunity reigns.'*<sup>61</sup>

UN Secretary-General Ban Ki-Moon, 2008

With the prohibition on rape and sexual violence so clear in national and international law, why is it so common and so few perpetrators punished? That such crimes can so often be committed with

impunity is attributable to a range of reasons, some generic, some specific to situations of conflict or flight.

Some barriers to justice are common to crimes against women in any context:

- women are afraid of being stigmatized (sexual violence is the only crime where the victim is more likely to be stigmatised than the perpetrator);
- women are afraid of further attacks;
- medical evidence is difficult to obtain;
- the authorities are slow to bring prosecutions;
- the criminal justice system is biased against women.

In some countries, these problems can be severe in peace time. Amnesty International, for example, has reported that men from all walks of life commit rape with impunity in Nigeria, but particularly the security forces. While Nigeria has ratified relevant international treaties, with no federal or state legislation criminalizing violence against women, rape in the family, the community, and by the police and security forces occurs on an 'alarming scale'. Women have little hope of obtaining justice or reparation. Most do not report rape and less than 10% of cases result in convictions, owing to a range of factors, including difficulties obtaining medical evidence, discriminatory attitudes amongst the police, short timescales for the prosecution of public officials, lack of an effective, independent police review body, police referring rape to courts that do not have jurisdiction and discriminatory Sharia laws that makes it difficult to secure a conviction while exposing women to severe punishment if allegations of rape are not substantiated (Amnesty International, 2006b).

Problems like these are exacerbated at times of conflict amidst danger, confusion and lack of social order (Amnesty International, 2004b).

Around the world, sexual violence is too often committed with impunity because:

Women do not report crimes for fear of being stigmatized or of further violence, or for lack of faith in the justice system;

The justice system suffers from gender-bias or is otherwise flawed.

### 6.1.1 Conflict situations

As UNHCR observes in its guidelines on sexual violence (UNHCR, 2006), during a crisis, such as armed conflict or natural disaster, institutions and systems for physical and social protection may be weakened or destroyed. Police, legal, health, education, and social services are often disrupted; many people flee, and those who remain may not have the capacity or the equipment to work. Families and communities are often separated, which results in a further breakdown of community support systems and protection mechanisms.

Human Rights Watch, in its reports on seeking justice for sexual violence in Congo (2005) and sexual violence in Darfur (2008), sets out a range of reasons why rape and sexual violence are frequently committed with impunity:

- Survivors are reluctant to report crimes or give evidence for fear of retribution, out of shame and fear of being (further) stigmatised, or because they have been told by the authorities to keep silent;
- survivors are unable to identify the perpetrator;
- legal barriers prevent cases from going to court, including cost and survivors' lack of awareness of the possibility of litigation;<sup>62</sup>
- police are ineffective or perceived as such;
- medical evidence is difficult to obtain;
- the armed forces are immune from prosecution or there are problems about jurisdiction over the military.

Additional obstacles include the damage to the judicial system incurred during the conflict and the success of some perpetrators in seeking asylum abroad (Amnesty International, 2004b). Sexual violence is often considered to be a private issue, rendering it 'invisible' – 'either literally, since it happens behind closed doors, or effectively, since legal systems and cultural norms too often treat it not as a crime, but as a family matter, or a normal part of life'. This is further complicated during armed conflict because physical and sexual violence, particularly against women, often occur in public or in full view of family and/or community (El Jack, 2003).

Addressing a conference on the role of peace-keepers, UNIFEM adviser Anne-Marie Goetz said the international community may not yet be properly equipped to deal with sexual violence of the scale

and ferocity witnessed in Rwanda, South Sudan, Darfur, Liberia, Sierra Leone, DRC and Haiti. The reasons for the failures to prevent sexual violence or protect victims lay in *'a complex mix of denial and difficulty in understanding this as a security issue (compounded by a lack of data), a sense of defeatism in identifying effective methods of prevention and protection, women's own social subordination and consequent reluctance to report this atrocity, and the need for leadership, institutional incentives, and mission support in addressing the problem.'*

Increasingly, however, information is being gathered, awareness is growing of the vast scale and terrible consequences of sexual violence, and international institutions and legal mechanisms are being mobilised in an effort to stop it from occurring.

### Summary

Sexual crimes are committed with impunity in conflict situations for similar reasons as in other contexts, exacerbated by a breakdown in the institutions, family and other structures that would normally protect women. In addition, there are problems of jurisdiction when crimes are committed by armed forces. The international community's failure in the face of the extraordinary scale and ferocity of sexual violence seen in conflicts in recent years has been a result of it not being seen as a security issue, of a lack of methods of prevention and protection, of women's reluctance to report incidents of sexual violence and the absence of leadership.

### 6.1.2 Post-conflict situations

*'The changing nature of warfare, as a result of which civilians are increasingly not just random, incidental victims of conflict, but targets of it, makes it crucial for (...) peacekeeping missions to fight impunity (...) Provided with a robust mandate, peacekeepers can play an important role in protecting civilians from sexual violence during armed conflict.'*

Major General Patrick Cammaert,  
former UN Military Advisor and Deputy Force  
Commander, Eastern DRC<sup>63</sup>

As the UN Secretary General Ban Ki-Moon has recently observed, women are no longer in jeopardy only during periods of actual fighting; they are just as likely to be assaulted when there is calm, by armies, militias, rebels, criminal gangs or even police (Ban, 2008).

A former commander of UN peacekeeping forces has spoken of a 'climate of impunity' in most post-conflict situations, where sexual violence can be safely committed without perpetrators having to risk arrest, prosecution or punishment. He warned that when perpetrators are not held responsible, there is a risk that sexual violence will de-generate into widespread or systematic crime and he argued that the political will to end the vicious cycle of impunity often did not exist (Cammaert, 2008).

Although armed conflict officially ended in the Democratic Republic of Congo (DRC) in 2003, for example, it re-started in the provinces of North and South Kivu in 2007. By the end of 2007 widespread human rights abuses by all parties to the conflict had caused 500,000 people to flee their homes. A peace conference led to an 'Act of Engagement' signed on 23 January 2008 by Congolese armed groups in the Kivus, in which they committed to an immediate halt to violations of international humanitarian law, including *'acts of violence... of all forms against the civilian population, particularly women and children...'* (Amnesty International, 2008). Two months later, however, a UN independent human rights expert said that sexual violence against women was rampant in the DRC, the majority of perpetrators unpunished, especially in 'no-law' zones. In South Kivu Province, for example, 14,200 rape cases were registered between 2005 and 2007 but only 287 were taken to court.<sup>64</sup>

According to Amnesty International, entrenched impunity and an incapacitated judicial system mean that there is little prospect of victims obtaining justice or redress for the crimes they have endured in the DRC. The organisation believes that the prime movers of the insecurity in the Kivus, on both government and armed group sides, are aware of their obligations under international humanitarian law, as they are *'drawn unceasingly to their attention'* by the UN as well as international and national human rights and humanitarian organizations (Amnesty International, 2008, p. 23).

In such situations, peace-keeping forces have an important role to play. Increasingly mandated to protect civilians from violence,<sup>65</sup> including sexual violence, they nevertheless face a range of challenges, such as:

- a lack of political resolve and resources, doctrine and guidance;

- survivors tend not to report sexual violence for fear of social stigma, re-victimisation, or due to 'built-in bias' in the legal system;
- a lack of intelligence on attack patterns and the profile of perpetrators;
- sexual violence often takes place away from any regular security presence: in homes, at water points at pre-dawn hours, in forests where women forage for fuel, in fields where they cultivate crops;
- operational challenges, such as:
  - unclear distinctions between military and police functions;
  - differing level of priority given to combating sexual violence by mission leaders;
  - divergent attitudes towards sexual violence in countries contributing troops to peace-keeping missions;
  - inadequate resources to deal with logistical and infrastructural challenges, such as the size and variety of terrain and splintered armed groups;
  - variation in training of troops in addressing sexual violence;
  - the need for strategies to dissuade armed groups who may see the ability to rape at gunpoint as an incentive to fight;
  - widespread availability of weapons as a result of incomplete demobilization, disarmament and reintegration (DDR) (UNIFEM, 2008).

There have been important successes in the use of international law, but the tribunals and ICC have had their limitations. Almost half of all persons indicted by the international criminal Tribunals have been charged with rape or sexual assault, either as perpetrators or superiors (Goetz, 2008). On the other hand, various deficiencies of the Tribunals system have been identified:

- they are designed to deal with and have jurisdiction over relatively few cases – the 'big fish': most cases have to be handled by domestic courts;
- prosecutions have been slow and costly, resulting in few convictions;
- women who testify risk ridicule, stigma and ostracism; some witnesses have even been murdered;

- investigations into sexual violence have been poorly planned or abandoned in favour of other avenues of inquiry because of pressure to bring cases to court (Glassborough, 2008).

In the interest of achieving peace and stability, in some contexts, amnesties have been granted for crimes committed during conflict. Indeed, some have argued that justice is not always achievable at times of conflict and attempting to prosecute perpetrators fully can risk re-igniting conflicts. In its 2004 report *Lives Blown Apart*, however, Amnesty International described how women's rights defenders had challenged that idea (Amnesty International, 2004b). The report pointed out that international criminal courts had been empowered to take a more gender-sensitive approach, individual perpetrators had been prosecuted and some legal and practical difficulties had been addressed.

NGOs and international organisations generally argue that the perpetrators of gross human rights violations must be prosecuted and punished in order to deter others from committing similar crimes, to safeguard the rule of law and to allow societies to move on. Some argue forcefully that post-conflict prevention and recovery cannot take place without prevention or justice. Neglect of atrocities against women can sow the seeds of future conflict, because it leads to long-term corrosive build-up of hatred, the loss of community cohesion and capacity to cooperate on any grounds but that of narrow identity politics and contempt for social difference (Goetz, 2008).

### Summary

Entrenched impunity and incapacitated justice systems often result in women facing the same or even increased risk of sexual violence after a conflict is formally over. Despite stronger mandates given to peacekeeping forces and successful prosecutions before international criminal tribunals, impunity too often remains the norm. Peacekeeping forces face challenges including a lack of political commitment, resources and doctrine; lack of information about incidents of sexual violence, because they take place away from regular security patrols and women do not report them; lack of intelligence on perpetrators, as well as a range of operational challenges. International criminal tribunals are designed to deal with a few 'big fish' and not the majority of cases; women face stigma and even

murder if they testify and investigations and prosecutions have been poorly managed. Amnesties are sometimes granted for crimes committed during the conflict, although many argue that prosecutions and punishment are needed as a deterrence, to safeguard the rule of law and to allow societies to heal.

### 6.1.3 Forced displacement

*'But they are all at risk – do you want to resettle every woman in this camp?'*

Senior Refugee Camp Manager  
(Pittaway & Bartolomei, 2005)

When women are forced to flee, the practical responsibility for ensuring that they are protected as refugees or internally displaced persons often falls to UNHCR. Since the mid-1980s UNHCR has paid considerable attention to the needs of refugee women, including those fleeing or at risk of sexual violence. Following the UN Decade for Women (1975 – 1985), a number of conclusions of the UNHCR Executive Committee (EXCOM) addressed the international protection of refugee women, including their need for protection and assistance from violence and exposure to sexual abuse or harassment and in 1991 UNHCR issued guidelines on the protection of refugee women.

Against the backdrop of the Bosnian conflict, in 1993 EXCOM adopted a Conclusion on refugee protection and sexual violence, which called for training programmes and female field staff, the prosecution of perpetrators, culturally appropriate gender-sensitive counselling, implementation of the Guidelines, and the provision of medical and psycho-social care. As Edwards observes, it also started to shift the focus from refugee camps to the need for more gender-sensitive asylum determination systems in industrialised countries.

In 1995 UNHCR issued guidelines on prevention and response to sexual violence against refugees. Refugee women were a cross-cutting theme of the 2001–2003 Global Consultations on international protection that marked the 50th anniversary of the 1951 Refugee Convention. The *Agenda for Protection* that emerged from the consultations included a section on refugee women. In 2001 UNHCR hosted an inter-agency lessons learned conference on sexual and gender-based violence. Recommendations included publication of a field

guide, training across all agencies, monitoring and evaluation of programmes, better coordination between agencies, and engaging refugees in the development and implementation of programmes (UNHCR, 2001).

Following the shocking revelation in 2002 that UNHCR and NGO staff had been involved in the sexual exploitation of women and children, UNHCR developed a code of conduct for staff and, in 2003, new *Guidelines for Prevention and Response on SGBV against Refugees, Returnees and IDPs* (UNHCR, 2003), while EXCOM adopted a Conclusion on protection from sexual abuse and exploitation.

Despite this plethora of policies, guidelines and conclusions it was argued that there was too little emphasis on implementation (Edwards A. , 2006). In 2005 Pittaway and Bartholomei successfully made a case for an EXCOM Conclusion on Women at Risk, on the grounds that, in most refugee situations, **all** women and girls are at risk of rape and other forms of sexual and gender based violence:

*'Many refugee women and girls experience multiple traumatic events, in situations of conflict, during flight and in countries of first and subsequent asylum. The impact of each event is compounded by ensuing incidents and further compounded by lack of adequate protection. This creates extreme levels of risk and vulnerability to further abuse and trauma. [...] Because of resource shortages and lack of effective systems, the international protection system often fails to respond to the needs of these women. [...] This systems failure can lead to further incidences of violence, exploitation, sexual abuse and even death.'* (Pittaway & Bartolomei, 2005)

#### Summary

All refugee women are at risk of rape or other forms of sexual violence. UNHCR has developed numerous policies, guidelines and conclusions on refugee women at risk, but the international protection system has often failed to meet their needs because of a lack of resources and effective systems.

### 6.1.4 Resettlement of Women at Risk

UNHCR operates a Women at Risk (WaR) programme to identify extremely vulnerable women and transfer them rapidly to a country that accepts refugees for resettlement. In 2004, 2,119 women and girls were resettled as “Women-at-Risk” out of

a total of approximately 42,008 refugees resettled through UNHCR (2006). Women at risk are one of five categories of refugees who qualify for resettlement on the UK's Gateway programme. A total of about 1,000 refugees have been resettled to the UK since Gateway was started in 2003,<sup>66</sup> of whom about 17% have been women at risk.

Pittaway and Bartholomei have argued that the WaR programme was failing for a number of reasons:

- interpretations of the term were varied and subject to personal bias and discretion;
- difficulties in identifying priority cases when all were potentially at risk;
- confusion about what constituted risk;
- delays in organising departures;
- lack of interim protection measures;
- decisions makers not considering rape and sexual abuse being a sufficiently serious protection issue;
- a perceived increase in false claims.

The EXCOM Conclusion adopted in 2006 identified a range of wider environmental risk factors. It was welcomed by NGOs for acknowledging the capacity of refugee women and the need for their participation – in identifying risks, planning responses and decision-making on protection issues.<sup>67</sup>

### Summary

For a small number of extremely vulnerable refugee women at continued risk in their region of origin, safety is assured via resettlement to other countries. The UK has accepted a small number of 'women at risk' via its 'Gateway' resettlement programme. Women's advocates pointed to flaws in the system, including that rape and sexual abuse were not taken seriously enough in resettlement decisions and persuaded UNHCR's Executive Committee to adopt a Conclusion in 2006 aimed at addressing those issues.

### 6.1.5 Trafficked women

The 2000 UN Trafficking Protocol (or 'Palermo Protocol'),<sup>68</sup> represented a milestone in the fight against trafficking by providing an international definition. According to UNHCR (2005) there is an international acceptance of the need to protect the human rights of victims, as well as to criminalize trafficking and enforce the law. This is expressed in

numerous UN initiatives, including General Assembly resolutions, the UN High Commissioner for Human Rights (UNHCHR)'s Recommended Principles and Guidelines on Human Rights and Human Trafficking<sup>69</sup> and the World Health Organization's (WHO) Ethical and Safety Recommendations for Interviewing Trafficked Women.

The idea that victims of trafficking may be entitled to refugee status is relatively new. When the topic '*membership of a particular social group*' was discussed at the UNHCR's Global Consultations meeting in San Remo in September 2001, trafficking was not included at all in the formal discussion (Piotrowicz, 2008). In 2006 UNHCR issued its own Trafficking Guidelines (UNHCR, 2006), which clarify how an individual who has been trafficked or fears being trafficked if they return to their country might qualify for refugee status, but underline that not all victims or potential victims of trafficking meet the definition of a refugee: they must have a '*well-founded fear of persecution*' linked to one or more of the five grounds set out in the Refugee Convention.

The Guidelines acknowledge UNHCR's dual responsibility of prevention and protection: the agency has a duty to prevent refugees from falling victim to traffickers as well as to ensure that women who have been trafficked receive the protection to which they may be entitled as refugees.

An evaluation of UNHCR's anti-trafficking activities noted, however, that the Guidelines pay relatively little attention to the agency's preventative role (Riiskjær & Gallagher, 2008). Furthermore, while UNHCR has taken the lead in developing guidance on asylum claims based on a fear of trafficking, UNHCR staff themselves have entertained few such claims in those countries where they carry out refugee status determination (RSD).

The evaluators recommended that EXCOM adopt a Conclusion on access to protection of victims of trafficking or potential victims in need of international protection. This would highlight the importance of ensuring that victims or potential victims of trafficking have access to asylum – especially important given governments' reluctance to consider such claims as well as the low number of cases presented in UNHCR's RSD operations.

The evaluation noted that UNHCR's Guidelines on sexual violence contain little information regarding specific prevention or response strategies directed

towards trafficking victims and recommend that UNHCR update its handbooks, manuals and guidelines in light of the Trafficking Guidelines.

UNHCR has observed that the problem is implementation of the international standards – even within Europe, with its additional standards, such as the EU’s 2002 Framework Decision on combating trafficking in human beings (2002/629/JHA) and Directive (2004/81/EC) on issuing short-term residence permits to victims of trafficking who cooperate with the police, as well as the Council of Europe’s 2005 Convention on Action against Trafficking in Human Beings and the work of the Organisation for Security in Europe (OSCE). UNHCR noted that although most EU countries had introduced legislation to tackle trafficking, penalties varied significantly, they had different definitions of trafficking and trafficked victims, some had not ratified the Trafficking Protocol and most did not conform to the standards set out in the Directive on short term residence permits (UNHCR, 2005, p. 8).

Other issues identified by UNHCR included:

- People entering the EU in an irregular manner, including those with legitimate refugee claims, do not file asylum applications for fear of being detained and/or deported;
- shelters for trafficked women in South Eastern Europe were ‘virtually empty’, possibly because not all states offered women a ‘reflection period’ or temporary residence permit and women were either returned to their country immediately or only allowed to remain if they gave evidence against the traffickers;
- lack of support post-return led to re-trafficking;
- women did not understand that they could apply for asylum, even if they were offered a residence permit;
- inconsistency between European countries in recognising trafficking victims as refugees;
- an ‘overriding emphasis’ on return as the appropriate response to victims of trafficking.

Others have identified a range of additional reasons why refugee women who are victims of trafficking, like other trafficked women, may be particularly reluctant to approach the authorities, including:

- fear of repercussions from the traffickers to themselves or their families;

- fear of the social stigma of being identified as involved in prostitution;
- feelings of self-blame;
- a perception that others will think that sex must have been consensual;
- a perception that they will not be believed as witnesses;
- fear of being prosecuted themselves for prostitution-related offences;
- a fear that they or their dependents will be removed or deported.

Following a European study into the impact of trafficking on health, Zimmerman (2003) concluded that pressure from police, prosecutors and immigration officials to give evidence against traffickers could be deemed unintentional coercion and re-victimisation. The study noted that pressures related to asylum and residency status have enormous consequences on mental health.

### Summary

Like other survivors of sexual violence, refugee women who have been trafficked are reluctant to go to the authorities for help. As well as fear of violence from the traffickers, stigma and lack of faith in the justice system, the fear that they or their dependents will be removed or deported is a major barrier to justice and security.

## 6.2 Claiming asylum in the UK

For a small minority of refugee women survivors of sexual violence, the route to safety lies in seeking asylum in the UK. In addition to having to circumvent the UK’s overseas border controls, refugee women face a range of gender-specific barriers to leaving their country, including:

- cost – single women who have lost male partners or relatives may have few means of getting funds to escape;
- unwillingness to leave dependents behind, such as children or elderly relatives;
- cultural restrictions on travelling without a male chaperone;
- fear of rape and sexual harassment (Dumper, 2008);
- difficulties obtaining travel documents as a woman (Refugee Council, 2008, p. 27).

In most western countries, including the UK, one third of asylum seekers are female (Crawley H., 2001). However, the overall proportion of refugee women to men may be approximately the same or higher, if the numbers arriving with asylum seekers as dependents are taken into consideration, together with those arriving later under family reunion rules (Dumper, 2008).

Few data are available on the number of refugee women in the UK who have experienced sexual violence. In 2007, however, women and girls accounted for 37% of the nearly 2,000 referrals to the Medical Foundation for the Care of Victims of Torture, many for treatment for the trauma of rape and sexual violence.<sup>70</sup> An analysis by Asylum Aid, found that the proportion of women asylum seekers to men was higher from countries with widespread civil unrest or conflict. It was lower from countries where human rights violations are overtly political and where women's rights are repressed (Dumper, 2008, p. 23). Just over a quarter of respondents in a Refugee Action study cited war as the main reason for leaving their country (Dumper, 2008, p. 22). Given the prevalence of sexual violence in contemporary conflicts, it is likely that a substantial proportion of refugee women from those countries will have experienced sexual violence.

Four out of the main five countries of origin of the Vulnerable Women's Project clients (Sri Lanka (10th), Eritrea (4th), DRC (7th), and Somalia (2nd)) are amongst the 10 countries whose female nationals made the greatest number of asylum claims as principal applicants in 2006. Women from the five countries accounted for 30% of claims by female principle applicants in 2006 (Dumper, 2008). Zimbabwe accounted for most asylum claims by women in 2006 and it may be significant that the risk of sexual violence played an important of a recent country guidance case. In allowing the appeal of 'RN', the Tribunal found that:

*'On being identified as someone not able to demonstrate loyalty to the ruling party she may find herself taken to one of the camps established by the militias where there is a real risk she would be detained and molested, physically and sexually.'*<sup>71</sup>

Gender-specific persecution (such as rape or other sexual violence) can be inflicted on women for political reasons, as in the case of RN, but does not necessarily constitute persecution because of gender. Persecution can be described as gender-

related when a woman is being persecuted because she is a woman.

While international refugee instruments are gender-neutral, Crawley argued that women are unable to benefit equitably from international protection under the Refugee Convention for two reasons:

- 1) In interpreting the Refugee Convention, women's experiences have been marginalised;
- 2) Procedural and evidential barriers (Crawley H., 2000, p. 5).

### Summary

Survivors of sexual violence seeking refuge in the UK first have to overcome a range of gender-specific barriers, then negotiate a plethora of overseas border controls. The sexual violence they have experienced may constitute 'gender-specific' persecution in a case for asylum, although, historically women's experiences have been marginalised in interpretation of the Refugee Convention and they face various procedural and evidential barriers.

### 6.2.1 Interpretation of the 1951 Refugee Convention

To qualify for refugee status, a woman has to demonstrate that if she is returned from the UK, she will face a real risk of being persecuted for one of the five grounds set out in the 1951 Refugee Convention (race, religion, nationality, political opinion, or membership of a social group) and that the state in question is unwilling or unable to protect her.

In addition to developing case law in the interpretation of the Refugee Convention, the UK is now bound by European law in this area. The Qualification Directive, which had to be implemented by 10 October 2006, states that persecution can take the form of 'acts of sexual violence' and of 'a gender-specific nature'.<sup>72</sup> While rape and sexual violence can amount to persecution under the 1951 Convention and European law, it has often dismissed in practice as a criminal act committed by individuals. A Ugandan woman, Rose Najjemba, for example, was raped by Ugandan soldiers questioning her about a rebel group, but her asylum claim<sup>73</sup> was initially turned down on the grounds that, 'there was nothing in the evidence ... to suggest that the incident was anything more than a very serious criminal act of sexual gratification on the part of the soldiers' or, as

the Court of Appeal put it when upholding the decision, *'simple and dreadful lust'*. Immigration minister Beverley Hughes later granted her asylum, however, on the grounds that she suffered *'inhuman and degrading treatment'*.<sup>74</sup>

In many cases, the difficulty the applicant faces is in demonstrating that the motivation for the persecution is one of the five grounds set out in the 1951 Convention. The idea of adding a gender ground was considered during UNHCR's 2001–2003 global consultations on international protection, but ultimately rejected on the grounds that a proper reading of the 1951 Convention should be *'gender-inclusive and gender sensitive'* (Haines, 2003). According to Crawley, the difficulties facing women asylum seekers stem not from the absence of 'gender' in the Refugee Convention's grounds but rather from *'the failure of decision makers to acknowledge and respond to the gendering of politics and of women's relationship to the state when applying that definition to individual cases'* (Crawley H., 2000).

In a landmark decision, the House of Lords found in *Shah and Islam* (R Viat & SSDH ex parte Shah; Islam v IAT (1999) 2AC 629), a domestic violence case, that gender could constitute a 'particular social group' at risk of persecution. In 2006, in the case of *Fornah*, the House of Lords accepted that Female Genital Mutilation (FGM) should be considered persecution under the terms of the Refugee Convention and that women at risk of FGM could be regarded as belonging to a particular social group. In other cases, refusal to comply with social mores relating to their gender has been recognised as a political act that has caused women to be persecuted.

However, the literature points to numerous examples of and reasons for the failure to take into account of women's experiences when interpreting refugee law, including that:

- refugee and human rights law emphasises the individual targeting of civil and political rights over deprivation of social and economic rights;
- the male-dominated 'public sphere' is favoured over the 'private', so that membership of a political group is seen as grounds for political asylum, but resistance to discriminatory laws, or the kind of supporting roles women might take are not;

- the law has evolved based on a 'male paradigm' derived from the experiences of male asylum seekers.

Women's advocates in the UK have long fought for guidelines to assist in a proper gender-sensitive interpretation of refugee law. The Refugee Women's Legal Group (RWLG), published its own Gender Guidelines for the Determination of Asylum Claims in the UK in July 1998. UNHCR's current guidance is provided in its 2002 Gender Guidelines,<sup>75</sup> as well as the agency's Guidelines on International Protection: Membership of a Particular Social Group (UNHCR, 2002). Earlier versions had suffered from a general lack of political will with respect to their implementation, as evidenced by their ad hoc application (Pittaway & Bartolomei, 2005). The UK's Immigration Appellate Authority introduced gender guidelines for asylum appeals in 2000 (IAA, 2000) and the Home Office eventually followed suit for initial decisions with Asylum Policy Instructions (APIs) on gender issues in 2004, updated in 2006 (Home Office, 2006), becoming only the second EU country after Sweden to do so (Asylum Aid, 2005).

In 2006, UNHCR's Executive Committee adopted a Conclusion on Women at Risk<sup>76</sup> that recommended that action be taken to "ensure that refugee status determination procedures provide female asylum-seekers with effective access to gender-sensitive procedures and recognize that gender-related forms of persecution in the context of Article 1A (2) of the 1951 Convention relating to the Status of Refugees may constitute grounds for refugee status."

Crawley, however, took the view that that the core problem could not easily be addressed by the implementation of guidelines alone, namely, the tendency among decision makers to allow a public/private dichotomy to engender the determination process as a whole (Crawley H., 2000). Good (2006) argued that refugee identities of both men and women are gendered social constructs. The Home Office, and often the courts, fail to acknowledge the activities of women survivors of rape as political, persist in regarding the rape itself as a private, act motivated by sexual desire, and presume that male sexuality is such that a man can be suddenly overwhelmed by desire, to the extent that a rape by a soldier, policeman or government official can be dismissed as the act of an individual. Good considers that these presumptions may be 'ethnically determined': *'While rapes of Tamil women are usually considered by*

*British courts to be ethnically-driven offences committed by delinquent individuals, rapes of Bosnian women tend to be seen as examples of politically motivated ethnic cleansing.'*

A 2006 study of the implementation of the Home Office's gender guidance for Asylum Aid's Refugee Women's Resource Project (RWRP) identified a few examples of good practice, but '*the overwhelming impression was one of a lack of awareness of gender issues and of the Guidance not being followed by decision-makers*' (Ceneda & Palmer, 2006).

Positive findings from the RWRP study included that the Home Office Guidance referred to women who have suffered trauma and sexual assault, which carried implications for an assessment of their credibility i.e. that it could lead to persistent fear, a loss of self-confidence and self-esteem, difficulty in concentration, an attitude of self-blame, a pervasive loss of control and memory loss or distortion. The Guidance was praised for mentioning that women's claims can be based on 'low level' political activities. However, it was criticised for its vagueness and several gaps were identified (some in comparison to the RWLG, IAA, RWLG and UNHCR guidelines), such as:

- the possibility of serious harm being inflicted by the state or those associated with it;
- that caseworkers should consider whether protection is actually available, not merely in law or theory;
- broader interpretations of 'membership of a social group' and 'political opinion'.

The RWRP researchers found numerous procedural and evidential flaws in decision-making, which are dealt with in the next section. Their findings on interpretation of the 1951 Refugee Convention included:

- many examples where the Guidance was clearly not followed;
- a poor understanding by decision-makers of the Refugee Convention, particularly in relation to women's experiences;
- a culture of disbelief at the Home Office, which, when combined with ignorance or bias against women, had a particularly severe impact on fair decision-making.

In relation to sexual violence, the RWRP researchers found numerous instances of caseworkers not accepting rape as persecution under the 1951 Refugee Convention, but considering it rather as a random act of violence by police or army personnel, a failure of discipline, unrelated to the applicant's political opinion.

### Summary

Developments in case law, new European law and the introduction of gender guidelines have helped some women fleeing sexual violence to be recognised as refugees in the UK. Guidelines may not be sufficient, however, to overcome a presumption amongst decision makers, particularly in relation to some ethnic groups, that rape is a private act, motivated by overwhelming sexual desire, rather than an act of persecution linked to the woman's political opinion.

### 6.2.2 Procedural and evidential issues

The problems survivors of sexual violence face in finding protection in the UK are not limited to reaching the country and decision-makers' sometimes restrictive approach to interpretation of the Refugee Convention. A 2003 report by Asylum Aid, cited in Dumper (2008), documented numerous ways in which UK asylum procedures failed women. Since then, the Home Office has made a number of welcome changes following the introduction of its gender guidance in 2004, as part of the reforms of the asylum process with the implementation of the New Asylum Model (NAM) in 2007, and in response to UNHCR's Quality Initiative. For example, since December 2007 the BIA have started asking all applicants at screening as to whether they have a preference to the gender of their case owner.<sup>77</sup> The Refugee Council has welcomed NAM's case owner approach and several asylum seekers surveyed reported positive experiences of it (Refugee Council, 2008).

European Union member states have set minimum standards for asylum procedures<sup>78</sup> as well as for qualification for refugee status, though they include little related to gender, apart from a provision that would 'normally' allow a woman to be interviewed in private, without family members present. The European Commission is expected to make proposals for reform of those Directives in April 2009.

Despite these positive steps, UK asylum procedures continue to give cause for concern with respect to

survivors of sexual violence. A shortage of female interviewers and interpreters, for example, inhibit women's ability to tell their stories, especially when they have experienced sexual violence (Ceneda & Palmer, 2006). UNHCR has expressed concern at decision makers in the detained fast track taking an incorrect approach to the assessment of credibility, as well as their apparent reluctance to accept medical evidence of torture or ill treatment and their lack of the skills necessary to correctly identify and assessment gender issues in asylum claims (UNHCR, 2008). In its previous Quality Initiative report UNHCR had observed that the assessment of credibility and establishing the facts of an asylum claim was a problem area for 'a significant proportion of NAM decision makers'. While the UK's criminal courts have recently recognised that the trauma of rape can cause feelings of shame and guilt which might inhibit a woman from going to the police,<sup>79</sup> an asylum seeker is obliged to immediately tell a stranger of any sexual violence that might form the base of her asylum claim and submit to intense questioning if she is to avoid being locked up in the detained fast track or risk appearing to lack credibility.<sup>80</sup>

Other problems include the quality and use of country information. Decision makers have been found to lack knowledge of women's situation and status in countries of origin, a problem exacerbated by the poor quality of information on women's issues provided to them (Ceneda & Palmer, 2006).

The Independent Asylum Commission (IAC) has expressed concern at the treatment of women in the asylum system (IAC, 2008a). It specifically criticized the UK Border Agency for:

- non-implementation of its gender guidelines when interviewing traumatised women;
- wrongly selecting women with claims based on sexual violence for the detained fast track, against the guidelines in the Asylum Policy Instructions; and for
- failing to ensure that gender-specific claims for asylum such as female genital mutilation and trafficking were adequately addressed by the asylum system (IAC, 2008b).

That women who have experienced sexual violence should be wrongly detained is of great concern. Six clients of the Vulnerable Women's Project (3.9%) had been detained in the UK for immigration reasons. The decision to detain a person, and all

reviews of detention, require an assessment of whether that person is 'fit to be detained', with particular regard to the vulnerability of torture survivors. The experience of agencies such as BID (Bail for Immigration Detainees) and evidence from HMIP inspections suggest that asylum seekers with health or mental health problems and torture survivors are often detained, sometimes for long periods of time.

A 2006 report by HM Inspector of Prisons found that the health service at Yarl's Wood Immigration Removal Centre fell far short of a standard of care fit for survivors of sexual violence: '*the healthcare service was not geared to meet the needs of those with serious health problems or the significant numbers of detainees held for longer periods for whom prolonged and uncertain detention was itself likely to be detrimental to their wellbeing [...] The inadequacy of healthcare systems in the IRC was compounded by the unresponsiveness of the IND to clinical concerns*' (HM Inspector of Prisons, 2006).

The IAC's recommendations included:

- that an asylum seeker with a claim based on sexual violence should be asked whether they wish the hearing to be conducted specifically by a woman or a man and that this request should normally be accommodated;
- that all case owners should receive specific facilitated training in how to conduct asylum interviews and assess claims for asylum in accordance with the UKBA gender Asylum Instruction;
- that there should be a review of fast tracked decisions and appeals on asylum seekers in detention to make sure that claims of torture or other traumatic ill-treatment are always put before the decision-maker and that gender guidelines have been rigorously followed in interviewing;
- that UKBA should ensure that it complies with the Equality Act 2006;
- that UKBA should implement the EU qualification and procedures directive in a gender-sensitive way;
- that the gender impact of current policies should be reviewed;
- that child care should be available to women during interviews;
- that women have suffered gender-based harm should not be detained.

## Summary

A lack of gender sensitivity in the asylum procedure and evidence assessment of asylum claims has further restricted women's access to protection in the UK. A number of improvements have been made following the introduction of gender guidelines by the Home Office, UNHCR's audit of decisions through the Quality Initiative (QI) and the implementation of the New Asylum Model for determining claims. Nevertheless, survivors of sexual violence suffer from a shortage of female interviewers and interpreters, from being wrongly detained during the process, from decision-makers lacking the skills to assess gender issues and making incorrect assumptions about their credibility in the face of medical evidence; and from the poor quality of information used about women's situation in their country of origin.

### 6.2.3 Trafficked women

A UNHCR study found that the UK was one of only 10 out of 42 European countries that ever granted asylum on the grounds of fear of sexual exploitation (UNHCR, 2005), but in practice, very few trafficked women are granted refugee status in the UK. Many do not feel safe to return, but cannot prove that they would face persecution under the terms of the 1951 Refugee Convention. They may face rejection by their families and community, fear being re-trafficked and lack confidence in the ability or the willingness of the state to protect them, but many come from countries that the UK has designated as safe, which means that they can be returned automatically (Dumper, 2008).

UNHCR found that when asylum claims were successful, they were granted on human rights grounds rather than under the 1951 Refugee Convention (UNHCR, 2005). In 2006 a survey of 32 trafficked asylum seekers by Asylum Aid and Eaves Housing, which runs the Poppy Project, reinforced those concerns about decision making in trafficking cases. Only one of the women was granted asylum at first decision stage, while 80% of those refused had the decision overturned on appeal – six times the national average. In a subsequent study, all 12 cases that had received initial decisions were refused, with eight of those decisions overturned on appeal, five of them granted refugee status (Stephen-Smith, Sachrajda, & Gower, 2008).

The Poppy Project study welcomed improvements to the asylum process brought by the introduction of the

NAM system, in particular a '*noticeable cultural shift*' amongst case owners reflected in a general willingness to provide female case owners and interpreters and more flexible reporting arrangements for POPPY service users. Nevertheless, it concluded that the procedural improvements had had little impact on the quality of initial decisions, with cases involving trafficked women are still regularly having to go to appeal in order to have their need for international protection recognised.

## Summary

Trafficked women who fear being returned to their country can apply for asylum – the UK is one only a few countries that grants asylum on the grounds of fear of trafficking. Most claims are refused, however, with the majority of successful claims only granted on appeal. Real improvements in procedures for deciding trafficked women's asylum claims have not resulted in better quality initial decisions.

### 6.3 Protection of refugee women against sexual violence in the UK

The previous section has dealt with the possibilities and difficulties facing refugee women seeking protection via the UK asylum system from sexual violence in their countries of origin. This section will deal with issues of access to justice and protection from sexual violence in the UK itself.

While more women are reporting rape, the conviction rate nevertheless remains extremely low. In England and Wales, the rate of conviction for rape, after trial, decreased from one in three cases reported (32%) in 1977 to one in 19 in 2003 (5.3%).<sup>81</sup> In 2005/6 it was up slightly at 5.6%.

The first barrier to securing a higher rate of convictions is that women often do not report the crime for reasons that include shame and self-blame a perception of the ineffectiveness of the criminal justice system, and uneven local service provision (Home Office, 2007). When crimes are reported, two thirds drop out early on in the criminal justice process, either because the victim withdraws or for lack of evidence. The issue of consent is particularly hard to prove.

40% of adults in the general population do not tell anyone if they have been raped, a figure that is likely to be significantly higher amongst refugee women than the general population. Clients of the

Refugee Council's Vulnerable Women's Project often feel unable to disclose rape to relatives. Congolese clients report, for example, that women have been raped are ostracised because it is assumed that they will have contracted HIV as a result. Consequently many Congolese women are reluctant to tell their husbands in case the fear of HIV infection will cause him to leave them and are reluctant to attend support groups. Many of the Iranian clients seen by the Project feel unable to tell close relatives for fear of being blamed for the rape, assaulted or even killed.

The government's Action Plan on Sexual Violence (Home Office, 2007, p. 8) recommends specialist support services for women from black and minority ethnic (BME) communities, who may not talk about their experiences with family or other members of their community, let alone contacting the police or support services, for a range of reasons:

- religious and other cultural factors, such as taboos and fear of stigma;
- the language barrier, when English is not their first language;
- fear that their immigration status, or that of their dependents, may be put at risk. (Women whose asylum claims have been refused are particularly likely to fear that contact with authorities might lead to them or their families being removed).

The UN Secretary General reported in 2008 that the UK was the only country to have informed him of a national plan that specifically targets sexual violence. Practical measures include an expansion of Sexual Assault Referral Centres (SARCs) announced by the government when it published its Action Plan for Tackling Violence in early 2008. On the other hand, campaigners have drawn attention to the massive under-funding of Rape Crisis centres, which has resulted in services being closed.

The availability of specialised support services is generally patchy and inconsistent. Almost one third of local authorities have no specialised domestic violence services. Only one in five local authority areas have a specialised voluntary/third sector sexual violence service, and less than one in four has any sexual violence service at all. Less than 1 in 10 of local authorities have specialised services for BME women which would address forced marriage, female genital mutilation and honour crimes (Coy, Lovett, & Kelly, 2008).

In 2008 the UN's CEDAW committee urged the government to improve funding for women-only services and women's organisations, increase provision of support and counselling services for victims of violence, and develop a unified strategy to eliminate violence against women and girls, with the financial backing needed.<sup>82</sup> It specifically urged the UK government to review its '*no recourse to public funds*' policy to ensure the protection of and provision of support to victims of violence (Asylum Aid, 2008).

### Summary

Trafficked women who fear being returned to their country can apply for asylum – the UK is one only a few countries that grants asylum on the grounds of fear of trafficking. Most claims are refused, however, with the majority of successful claims only granted on appeal. Real improvements in procedures for deciding trafficked women's asylum claims have not resulted in better quality initial decisions.

### 6.3.1 Trafficked women

In its 2005 overview of anti-trafficking initiatives in Europe, UNHCR recorded that the UK had signed the main international legal instruments, though it had not ratified the Trafficking Protocol (UNHCR, 2005). At the national level it had introduced an offence of trafficking for sexual exploitation in the Sexual Offences Act (2003). The Poppy Project has noted a number of positive developments (Stephen-Smith, Sachrajda, & Gower, 2008), including setting up the UK Human Trafficking Centre (UKHTC) in 2006 as a '*multi-agency centre that provides a central point for the development of expertise and operational co-ordination in relation to the trafficking of human beings*'; signing the Council of Europe Convention on Action against Trafficking in Human Beings in March 2007 and publishing the UK Action Plan on Tackling Human Trafficking the same month.

Nevertheless, the UK government's high-profile campaign against trafficking appears to reflect the international trend to emphasise law-enforcement over the human rights approach. In July 2008 the Home Office announced that 'a major police probe' into trafficking had led to 528 arrests.<sup>83</sup> In November 2008 the government announced new legislation that would make it a criminal offence to buy sex from a trafficked woman: men using a prostitute who had been trafficked would risk a charge of rape and a life sentence.<sup>84</sup>

A survey of trafficked women in detention in the UK found that trafficked women are routinely detained in the UK in immigration detention centres or prison, yet international guidelines recommend that victims of serious sexual violence must not be held in prison-like conditions. All the women displayed mental distress to a varying degree. Depression, suicidal ideation, feelings of hopelessness, intrusive thoughts, flash backs, loss of concentration, insomnia and nightmares were the most common symptoms reported (Stephen-Smith, 2008).

UNHCR expressed concern in 2005 that there was only one shelter in all of the UK dedicated to trafficked women, run by the Poppy Project. It had just 25 places, available only to women who agreed to testify against their traffickers in court.

Amnesty International welcomed the UK's ratification of the Council of Europe Convention on Action against Trafficking in Human Beings in December 2008 but warned that vulnerable people would continue to be at risk without longer recovery periods, guaranteed residency permits and more and properly-funded accommodation for survivors of trafficking.<sup>65</sup> Amnesty reported that the government was set to introduce a 45-day 'reflection period' to meet the health and recovery needs of trafficking victims – more than the 30 day minimum required by the Convention (though less than the 90 days called for by Amnesty). Yet, when it wrote to the Poppy Project in 2007, the Borders Agency appeared uncertain as to how asylum seekers in the NAM process could be afforded even a 30 day reflection period without impinging on its objective of speedy decisions (Stephen-Smith, Sachrajda, & Gower, 2008).

### Summary

The UK government has taken a number of positive steps to protect victims of trafficking, most recently ratifying the European Convention on Action against Trafficking in Human Beings in December 2008. However, trafficked women are routinely detained, causing them considerable mental distress; there is only one shelter for 25 trafficked women in the UK, and it is not clear how the government proposes to reconcile the introduction of a 45 day 'reflection period' for victims of trafficking with the strict deadlines of the asylum process.

### 6.3.2 Domestic Violence

*'Refugee women have a particularly hard time of it due to the uncertainty of their immigration status, their*

*lack of knowledge of the language, of systems, of services, and their experience of racism – all of which is made worse by their invisibility stemming from subjugation in their own communities.'* (Johal, 2003)

In the last decade, awareness and concern about domestic violence has increased in the UK – some say at the expense of a specific focus on rape.<sup>66</sup> Initiatives to improve services, legislation and protection for women, include the introduction of the Domestic Violence Rule, Domestic Violence Courts and Sexual Assault Referral Centres (SARCs).

As with all rape and sexual violence, however, the main barrier to protection and justice is under-reporting. Women raped by their husbands or intimate partners are even less likely to report it than other survivors of sexual violence, for a variety of factors that often apply even more to refugee women than to the general population. They may not report abuse because they feel ashamed, or fear that they will not be believed or will incur retribution by their husband. They may feel family loyalty or that they cannot leave the relationship. They may see sex, even forced, as a 'wifely duty' and may not know that rape in marriage is against the law in the UK. Refugee women may feel particular pressure from their family and community and those who press for divorce often face becoming very isolated. They may speak little English and be unaware of their rights and services available to them.

Many refugee women will fear contact with the authorities, because of what they have been through and will be worried that any action might lead to them or their children being removed from the UK (Wilson, Sanders, & Dumper, 2007). Some, but not all, will be protected by the Domestic Violence Rule which allows a woman who is a spouse or long-term partner of a British national or someone who is settled in the UK to apply to stay permanently if their relationship breaks down during the two-year probationary period and if she can prove that domestic violence was the cause.

With the growing problem of destitution amongst asylum seekers, homelessness will be a real fear for many refugee women. Women whose asylum claims have been refused are in a particularly difficult position. They have no recourse to public funds, so will have difficulty in accessing emergency refuges in cases of domestic violence because of their inability to contribute financially through housing benefit. Some shelters may be able to fund some places

themselves, but many refugee women will be forced to remain in abuse relationships or sleep rough.

In a joint report, Amnesty International and Southall Black Sisters argued that by excluding this vulnerable group of women from claiming the benefits they need to access safe accommodation and support, the Government was failing to respect its obligation under international human rights law to act with due diligence to respect, protect and fulfil the rights of this vulnerable group of women (AIUK & Southall Black Sisters, 2008). They called on the government to follow the examples of countries like Canada, USA and Austria, by taking steps to ensure that women fleeing domestic violence in the UK have access to crisis, temporary and permanent accommodation, specialist support services and essential financial support, irrespective of their immigration status.

### Summary

The government has taken a number of welcome initiatives to tackle domestic violence. Refugee women, however, will be particularly reluctant to go to the authorities for family and cultural reasons, but also because they fear that it may jeopardise their immigration status or that of their family. Those whose asylum claims have been refused risk becoming homeless, because shelters are unable to accommodate people who have no recourse to public funds.

### 6.3.3 Other forms of gender based violence

*'We must shatter the taboo surrounding forced marriage – it is domestic violence which runs roughshod over fundamental human rights.'*

Shami Chakrabarti, Director, Liberty

#### Honour killings

Honour killings are treated as murder in the UK, but abuse in the name of honour that does not result in death is rarely detected or the perpetrator prosecuted (Kelly & Sen, 2008). In October 2008 the Association of Chief Police Officers (ACPO) published a new honour based violence (HBV) strategy, the main priorities of which are to identify the scale of HBV across the UK and to ensure that victims or potential victims have the confidence to report their fears or actual violence. It urges police forces to review their witness protection schemes to ensure the inclusion of victims of potential HBV.

#### Forced marriage

The Forced Marriage (Civil Protection) Act 2007 came into force on 25 November 2008 and enables injunctions to be made to pre-empt and prevent forced marriages. Although these injunctions have no legal force outside of the UK, one was successfully used in December 2008 to persuade a Dhaka court to order the release of NHS doctor Humayra Abedin who was allegedly being held against her will by her parents, having been tricked into travelling home to Bangladesh and marrying a man she hardly knew.<sup>87</sup>

Two days later, on 27 November, the Home Office followed the example of Denmark and the Netherlands by raising the minimum age to 21 to be eligible for a visa to enter the UK as a spouse or fiancé. The minimum had previously been raised from 16 to 18, a move critics labelled a product of 'simplistic understandings of "culturally sensitive" service provision' that 'not only denies migrant communities the right to family reunion, but has failed to protect from forced marriage' (Coy, Lovett, & Kelly, 2008). Research indicates that the perceived benefits are outweighed by the risks (Hester, et al., 2008).

The main perceived benefit of a higher minimum age was based on the assumption that slightly older people would have greater maturity, access to education and financial independence, placing them in a stronger position to resist forced marriage. Raising the age was expected to:

- increase the risk of physical and psychological harm to victims and potential victims of forced marriage (young British women would be taken abroad to marry and kept there forcibly until they were old enough to sponsor their spouses; there would be an increased risk of attempted suicide and self-harm and victims would be prevented from accessing some potential sources of support, such as those provided via child protection legislation and education-based counselling support);
- risk discrimination arising from a measure that would have a disproportionate effect on certain minority communities;
- risk interfering with human rights by interfering with marriages entered into – or arranged – by mutual consent;
- be seen as a measure to restrict immigration and lead to an increased use of falsified immigration documents to circumvent the restrictions.

## FGM

Although FGM is prohibited under the Female Genital Mutilation Act (2003), which repeals and strengthens the provisions of the 1985 Prohibition of Female Circumcision Act, the authors of a proposed integrated strategy on violence against women note there have been no prosecutions in the UK (Coy, Lovett, & Kelly, 2008). They argue that the government has put too few resources into awareness-raising about the legal and health consequences of FGM.

Asylum seekers dispersed around the country may have difficulty in accessing culturally-sensitive healthcare services. For example, there are no specialised services for women who have undergone, or are at risk of, FGM in Northern Ireland, Scotland or Wales, and only 15 services across England (mostly gynaecological healthcare).

### Summary

The government has taken steps to tackle forms of gender violence that affect refugee women, other than rape, sexual assault and sexual exploitation, such as honour killings, forced marriage or FGM. Most notably it introduced the Forced Marriage Act at the end of the 2008, while ACPO, in a linked initiative, has published a new honour based violence strategy for police forces. Critics point out that honour-based abuse rarely leads to prosecutions; the increase in the minimum age for a spouse visa risks discrimination, interfering with human rights and being seen as a measure aimed primarily to restrict immigration; there have been no prosecutions relating to FGM and there are not enough culturally-sensitive services.

- 53 Committee on the Elimination of all Forms of Discrimination Against Women, 'Violence Against Women', General Recommendation No.19 (eleventh session 1992), UN. Document CEDAW/C/1992/L.1/Add.15
- 54 See Human Rights Watch, 15 June 2008: *Rape in War: Will the United Nations Walk its Talk?* available at [www.humanrightswatch.org](http://www.humanrightswatch.org) Accessed 26 November 2008.
- 55 *Africa cannot develop unless women exercise real power says Secretary-General in message to Addis Ababa session*, SG/SM/9408, AFR/991, Press Release, United Nations, New York, 6 July 2004. [www.unis.unvienna.org/unis/pressrels/2004/sgsm9408.html](http://www.unis.unvienna.org/unis/pressrels/2004/sgsm9408.html)
- 56 LA Times, *U.N. Security Council says sexual violence akin to war crimes*, 20 June 2008. <http://articles.latimes.com/2008/jun/20/world/fg-violence20> accessed 3 December 2008.
- 57 A/RES/62/134, of December 2007
- 58 Something Amnesty International had called for in 2004 (Amnesty International, 2004b).
- 59 Mollman, M: *Rape in War: Will the United Nations Walk Its Talk?*, Human Rights Watch 25 June 2008 [www.hrw.org/en/news/2008/06/24/rape-war-will-united-nations-walk-its-talk](http://www.hrw.org/en/news/2008/06/24/rape-war-will-united-nations-walk-its-talk)
- 60 NGO Working Group on Women Peace and Security: *Statement to the Security Council*, October 2008 [www.womenwarpeace.org/docs/Update+Report+21+Oct+2008+WPS.pdf](http://www.womenwarpeace.org/docs/Update+Report+21+Oct+2008+WPS.pdf)
- 61 Message from the United Nations Secretary-General Ban Ki-Moon to the Wilton Park Conference on May 27 2008, [www.unifem.org/news\\_events/event\\_detail.php?EventID=175](http://www.unifem.org/news_events/event_detail.php?EventID=175)
- 62 In Darfur, survivors of rape can be prosecuted for having committed adultery (HRW, 2008).
- 63 Presentation to Wilton Park Conference: *Women targeted or affected by armed conflict: what role for military peacekeepers?*, May 27 – 29 2008, Wilton Park, Sussex, [www.unifem.org/news\\_events/event\\_detail.php?EventID=175](http://www.unifem.org/news_events/event_detail.php?EventID=175)

- 64 DRC: *Majority of rapists go unpunished* IRIN, 18 March 2008 [www.irinnews.org/Report.aspx?ReportId=77340](http://www.irinnews.org/Report.aspx?ReportId=77340) (accessed 1 Dec 2008).
- 65 Most recently, under Security Council Resolution 1820 of June 2008.
- 66 Gateway Protection Programme API, Home Office [www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions) Accessed 3 Dec 08.
- 67 NGO Statement Agenda Item 5(a) International Protection, 57th Session of the Executive Committee UNHCR, 2-6 October 2006 [www.icva.ch/doc00001868.html](http://www.icva.ch/doc00001868.html) Accessed 9 Dec 2008.
- 68 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing the 2000 United Nations Convention against Transnational Organized Crime.
- 69 Recommended Principles and Guidelines on Human Rights and Human Trafficking, Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council. E/2002/68/Add.1 of 20 May 2002.
- 70 *2008 International Women's Day*, (2008, 6th March) Medical Foundation. Accessed at [www.torturecare.org.uk/news/latest\\_news/1421](http://www.torturecare.org.uk/news/latest_news/1421)
- 71 RN (Returnees) Zimbabwe CG [2008] UKAIT 00083
- 72 Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. OJ L304/12.
- 73 *N v SSHD* (CA) [2002] EWCA Civ 1082, par. 9.
- 74 Asylum Aid: *Leave granted to woman who lost at every appeal stage*, Women's Asylum News, Issue 32, May 2003. Accessed at: [www.unhcr.org/refworld/pdfid/47b17597d.pdf](http://www.unhcr.org/refworld/pdfid/47b17597d.pdf)
- 75 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, UNHCR 2002.
- 76 EXCOM Conclusion No. 105 (LVII) 2006.
- 77 Asylum Aid: *Gender Sensitive Interviews- update*, Women's Asylum News, issue number 71, January 2008. Accessed at [www.unhcr.org/refworld/pdfid/478ce18d0.pdf](http://www.unhcr.org/refworld/pdfid/478ce18d0.pdf)
- 78 Art 13 (1) Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States. OJ (2005) L 326/13.
- 79 *Court ruling hailed as refuting 'rape myth'* (2008, October 25). The Guardian. Accessed at [www.guardian.co.uk/uk/2008/oct/25/rape-trials-ruling](http://www.guardian.co.uk/uk/2008/oct/25/rape-trials-ruling)
- 80 Forcing the pace of disclosure and insensitive questioning can re-traumatize a torture survivor and activate post traumatic stress symptoms (Granville-Chapman, 2004).
- 81 *A Gap or a Chasm?* Home Office 2005 Accessed at: [www.homeoffice.gov.uk/rds/pdfs05/hors293.pdf](http://www.homeoffice.gov.uk/rds/pdfs05/hors293.pdf)
- 82 Corry, D: *UN backs Rape Crisis* (2008, 5 August) New Statesman. Accessed at [www.newstatesman.com/uk-politics/2008/08/rape-crisis-centres-women](http://www.newstatesman.com/uk-politics/2008/08/rape-crisis-centres-women)
- 83 Home Office press release: *Major police probe into trafficking leads to 528 arrests*, 2 July 2008.
- 84 *The Guardian: New law to criminalise men who pay for sex with trafficked women*, 19 November 2008. Accessed at [www.guardian.co.uk/society/2008/nov/19/prostitution-justice](http://www.guardian.co.uk/society/2008/nov/19/prostitution-justice)
- 85 Amnesty International: *Trafficking: Convention ratification welcomed but more protection needed*, 17 December 2008. Accessed at: [www.amnesty.org.uk/news\\_details.asp?NewsID=17992](http://www.amnesty.org.uk/news_details.asp?NewsID=17992)
- 86 Kelly, L: *Rape the forgotten issue*, (2008, 12 March) *New Statesman*. Accessed at: [www.newstatesman.com/life-and-society/2008/03/sexual-violence-rape-women](http://www.newstatesman.com/life-and-society/2008/03/sexual-violence-rape-women)
- 87 BBC News: *The fight against forced marriage* (2008, 15 December) Accessed at <http://news.bbc.co.uk/1/hi/uk/7783351.stm>

# Chapter Seven – Access to health care

The role of health care services has been mentioned above<sup>90</sup> in building trust in UK authorities, as well as ensuring that refugee women who have suffered sexual violence receive the health care they need, including psychological and emotional support.

It is essential that refugee women are able to access appropriate sexual screening and other health care and advice at the earliest opportunity. The long term consequences of untreated sexually transmitted diseases can include infertility and death. Pregnant women will need medical and emotional support, particularly if they are pregnant as a result of rape. Some women will require treatment for serious physical injuries as a result of rape, while others may present with physical problems that are manifestations of psychological distress.

Regrettably, the government has been trying to strip some of the most vulnerable of these vulnerable women of their entitlement to health care – those whose asylum claims have been refused.

In April 2004 the government introduced an amendment to the National Health Service (Charges to Overseas Visitors) Regulations 1989, extending charging for NHS services to refused asylum seekers. The rationale given was the need to protect NHS resources from ‘health tourism’, yet the government had conducted no cost-benefit analysis beforehand. The implication was that asylum seekers were fraudulently coming to the UK for health treatment and should seek treatment in their home country, although most refused asylum seekers are either too frightened or simply unable to return (Kelley & Stevenson, 2006, pp. 5, 6).

In January 2005 the Department of Health issued guidance which declared that refused asylum seekers would no longer be eligible for treatment in secondary care unless for treatment that was started before their asylum claim was refused, or for an illness with ‘public health implications’, such as tuberculosis. Exception would be made where treatment was ‘immediately necessary or life-saving’, meaning treatment provided in an accident and emergency department (Reeves, et al., 2006).

In 2006 the Refugee Council documented a number of cases of people desperate for help who had been denied access to health care. They included pregnant women, who were living rough, people with cancer, who had been denied treatment, women with diabetes and a woman experiencing abdominal pains and bleeding after being raped (Kelley & Stevenson, 2006).

In April 2008 a judicial review of the case of an asylum seeker<sup>91</sup> refused hospital treatment found that Department of Health guidance was unlawful in not stating that some refused asylum seekers may be ‘ordinarily resident’ and, as such, entitled to health care. A refused asylum-seeker who has been in the UK for more than six months and can show a current IS96 form granting temporary admission is now likely to receive free treatment.<sup>92</sup>

The Department of Health appealed against the ruling, but, as of the time of writing, judgment had not been given.<sup>93</sup> The guidance on its web site follows the April 2008 ruling, while underlining that patients will be charged if after, receiving emergency treatment, they are later found to be chargeable:

*'For secondary care, failed asylum seekers who are not considered ordinarily resident in the UK are not generally eligible for free hospital treatment. However, immediately necessary treatment to save life or prevent a condition from becoming life-threatening should always be given to failed asylum seekers without delay, irrespective of their eligibility for free treatment or ability to pay. However, if they are found to be chargeable, the charge will still apply, and recovery should be pursued as far as the trust considers reasonable.'*<sup>94</sup>

GP practices have the discretion to accept (or refuse) refused asylum seekers as registered NHS patients. The General Medical Council makes it clear in Good Medical Practice that decisions about access to care should be based on 'clinical judgement of patients needs,' and 'without discrimination' (Reeves, et al., 2006). The Department of Health advises that emergencies or treatment which is immediately necessary should continue to be provided free of charge within primary care to anyone, where in the clinical opinion of a health care professional this is required.<sup>95</sup>

Treatment for certain communicable diseases such as malaria, yellow fever and tuberculosis is always free of charge whatever the immigration status of the patient, as is treatment at a special clinic for sexually transmitted diseases. HIV, however, is the exception to the exception: only initial diagnosis and counselling are free for everyone: refused asylum seekers can be charged for further treatment. If an asylum seeker is undergoing hospital treatment when her claim is finally rejected this treatment will continue free of charge until completed.

### Summary

The extension in 2004 of NHS charging to refused asylum seekers risks denying vital health care to the most vulnerable of the vulnerable: survivors of sexual violence who have been rendered destitute and homeless. Women may be denied treatment for the long-term serious injuries that result from rape and health care services, as well as vital psychological and emotional support.

90 See section 5.3.

91 R(A) v Health Secretary and West Middlesex University Hospital NHS Trust [2008] EWHC 855 (Admin) see [www.leighday.co.uk/news/news-archive/access-to-health-care-charges-for-foreign](http://www.leighday.co.uk/news/news-archive/access-to-health-care-charges-for-foreign)

92 Immigration Law Practitioners' Association (ILPA) Information Sheet: Access to Health Care 12 May 2008 [www.ilpa.org.uk](http://www.ilpa.org.uk) (accessed 24 Nov 2008).

93 The DoH plans to review access to NHS healthcare by foreign nationals by the end of 2008. The review will include access to both primary and secondary care and particularly the eligibility of refused asylum seekers.

94 See Department of Health: Asylum seekers and refugees, including table updated Nov 2008 [www.dh.gov.uk/PolicyAndGuidance/International/AsylumSeekersAndRefugees/fs/en](http://www.dh.gov.uk/PolicyAndGuidance/International/AsylumSeekersAndRefugees/fs/en) (accessed 24 Nov 2008).

95 *ibid.*

# Chapter Eight – Conclusion

The End Violence Against Women Campaign has argued persuasively that the issue of sexual violence against BME women, including refugee women, should be tackled within an integrated violence against women strategy. It would be founded on a perspective of violence against women drawn from UN definitions and based on fundamental principles and standards of gender equality, human rights, non-discrimination and due diligence.

*‘A whole of government integrated strategy on VAW would ensure that all women fleeing violence are afforded appropriate redress, protection and support, whether this is women in the UK or those fleeing to the UK.’ (Coy, Lovett, & Kelly, 2008)*

The Charter for women asylum seekers, produced by Asylum Aid and endorsed by the Refugee Council would dovetail with such a strategy. It reminds the government that it has obligations under international law, European Community law and under the UK’s human rights legislation to ensure equal treatment of women and men – including asylum seekers. It argues that a gender-sensitive culture must be created within the UK Borders Agency as a whole to ensure women’s rights are recognised and that a number of specific measures are needed in order to comply with the Gender Equality Duty which came into force in April 2007 (Asylum Aid, 2008).

All asylum seekers have the right to be treated consistently, with fairness, dignity and respect in accordance with the UK’s obligations under the international refugee and human rights conventions.

For women, this means:

- 1 women seeking asylum have the right to have their protection claims determined by an asylum system in the UK that is informed, in all aspects of its policy and operations, by a thorough understanding of the particular forms of persecution and human rights abuses that women experience because of their gender and of their particular needs as women;
- 2 women seeking asylum have the right to an asylum determination process that recognises and takes into account their experiences of persecution and human rights abuses;
- 3 women seeking asylum have the right to accommodation, support and healthcare appropriate to their particular needs as women;
- 4 women seeking asylum have the right to be treated with dignity in a way that is appropriate to their needs as women.

The Rights of Women Seeking Asylum: A Charter  
Asylum Aid, 2008

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# Appendix 1

## Selected international instruments of law, policy and practice relating to sexual violence

Adapted from Sexual and Gender-based Violence in Africa (Rumbold, 2008)

- 1993 World Conference on Human Rights (Vienna)
- 1994 International Conference on Population and Development (ICPD- Cairo)
- 1995 World Summit for Social Development (WSSD – Copenhagen)
- 1995 Fourth World Conference on Women: Action for Equality, Development and Peace (Beijing)
- 1995 Crime Congress (Cairo)
- 1996 Second UN Conference on Human Settlements (Istanbul).

### International treaties

- Convention on the Elimination of All Forms of Discrimination against Women
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women
- International Covenant on Civil and Political Rights and Optional Protocol
- International Covenant on Economic, Social and Cultural Rights
- International Convention on the Elimination of All Forms of Racial Discrimination
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention on the Rights of the Child and Optional Protocols
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime
- Rome Statute of the International Criminal Court
- Geneva Convention relative to the Protection of Civilian Persons in Times of War (Fourth Geneva Convention)

### Regional treaties

- European Convention on Human Rights (ECHR)
- Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
- South Asian Association for Regional Cooperation Convention on Preventing and Combating Trafficking in Women and Children for Prostitution

### International policy instruments

- Vienna Declaration and Programme of Action, adopted at the World Conference on Human Rights
- Programme of Action of the International Conference on Population and Development
- Beijing Declaration and Platform for Action, adopted at the Fourth World Conference on Women
- Outcome document of the twenty-third special session of the General Assembly entitled: "Women 2000: Gender equality, development and peace for the twenty-first century" (General Assembly resolution S-23/3)

#### Selected UN General Assembly resolutions

- Declaration on the Elimination of Violence against Women, resolution 48/104
- Crime prevention and criminal justice measures to eliminate violence against women, resolution 52/86
- United Nations Millennium Declaration, resolution 55/2
- Traditional or customary practices affecting the health of women and girls, resolution 56/128
- Elimination of domestic violence against women, resolution 58/147
- Working towards the elimination of crimes against women and girls committed in the name of honour, resolution 59/165
- Trafficking in women and girls, resolution 59/166
- Violence against women migrant workers, resolution 60/139
- 2005 World Summit Outcome, resolution 60/1

#### Security Council resolutions

- Resolution 1325 (2000) on women and peace and security
- Resolution 1820 (2008) on acts of sexual violence against civilians in armed conflicts

#### UNHCR

- UNHCR EXCOM, 'Women and Girls at Risk', Conclusion No. 105 (LVI), 2006
- UNHCR EXCOM, Protection from Sexual Abuse and Exploitation, Conclusion (No. 98 (LIV), 2003
- UNHCR EXCOM, 'Refugee Protection and Sexual Violence', Conclusion No. 73 (XLIV), 1993
- UNHCR EXCOM, 'Refugee Women and International Protection', Conclusion No. 64 (XLI), 1990
- UNHCR EXCOM, 'Refugee Women and International Protection', Conclusion No. 39 (XXXVI), 1985
- Guidelines for Prevention and Response on SGBV against Refugees, Returnees and IDPs 2003
- Guidelines on International Protection 2002: Gender-Relaence Against Refugees: Guidelines on Preventioted Persecution within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees
- Sexual Violn and Response, 1995

- Guidelines on International Protection: Membership of a Particular Social Group
- 'Guidelines on the Protection of Refugee Women', July 1991, paras. 57–62
- 'Gender Sensitive Techniques', 1991

#### European Union

- Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status
- Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted
- Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.
- Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers
- Council Framework decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings
- Fighting trafficking in human beings: an integrated approach and proposals for an action plan COM/2005/0514 final

#### Council of Europe

- Council of Europe Convention on Action against Trafficking in Human Beings (2005)
- Recommendation Rec (2002)5 on the protection of women against violence
- Recommendation No. 1450 on Violence against Women in Europe (2000)

#### Commission on Human Rights resolution (most recent)

- Elimination of violence against women, resolution 2005/41

#### United Nations treaty bodies

- Committee on the Elimination of Discrimination against Women: general recommendation No. 12, violence against women
- Committee on the Elimination of Discrimination

against Women: general recommendation No. 14,  
female circumcision

- Committee on the Elimination of Discrimination  
against Women: general recommendation No. 19,  
violence against women,
- Committee on the Elimination of Racial  
Discrimination: general recommendation No. 25,  
gender related dimensions of racial discrimination
- Human Rights Committee: general comment No.  
28, equality of rights between men and women  
(article 3)
- Committee on Economic, Social and Cultural  
Rights: general comment No. 14, the right to the  
highest attainable standard of health
- Committee on Economic, Social and Cultural  
Rights: general comment No. 16, the equal right  
of men and women to the enjoyment of all  
economic, social and cultural rights (article 3)

#### Inter-Parliamentary Union

- How Parliaments can and must promote effective  
ways of combating violence against women in all  
fields, resolution of 12 May 2006

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