

# Rights & Information Sheet for survivors of rape seeking asylum in the UK

by Women Against Rape

It is estimated that 50% of women seeking asylum in the UK are rape survivors. If you suffered rape or other sexual violence in your country of origin, what happened to you and its impact on you and your loved ones are a vital part of your asylum claim. It is crucial that the full details of everything you have suffered are given to the immigration authorities as soon as possible. We include here important guidelines and case law which can help you pursue your claim. We thank the All African Women's Group and Black Women's Rape Action Project for their invaluable input.

## 1. Home Office interviews

The Home Office (HO) decides on your asylum claim on the basis of an interview with you. It is crucial that you give as full an account of what happened at your interview and that the notes of the interview are accurate. Any "discrepancies" (that is, differences) between these notes and what you say later (to a lawyer for example) are often used to discredit rape survivors' testimonies and dismiss a claim.

Do not hand over any original evidence supporting your asylum claim at your interview. These should be submitted by your lawyer by recorded delivery. Make sure you keep a copy of everything.

*"Women who have been sexually assaulted may suffer trauma. The symptoms of this include 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. Case-workers should be aware of this and how such factors may affect how a woman responds during interview."* Immigration Nationality Directorate Gender Guidelines.

Although rape survivors generally are recognised as "vulnerable witnesses", asylum seekers are not. However you do have the right to:

- ◆ A legal representative to be present at the HO interview but legal aid will *not* pay for it except if you are on the "fast-track", under 18, are being charged with "illegal entry" or suffer from "mental incapacity".
- ◆ Take a friend or counsellor with you.
- ◆ Have the interview tape-recorded so what you say cannot be misrepresented. It is best to ask for this in writing beforehand and if it is refused, ask for the refusal to be noted at the interview.
- ◆ Be interviewed by a woman officer.
- ◆ Ask for an interpreter and specify if you want a woman. Even if you know some English, you should make sure you understand everything. Don't try to "make do" without an interpreter unless English is your first language. Even women with very good English have found small mistakes they made used to dispute their "credibility".
- ◆ Stop the interview and ask for another interpreter if the person translating for you is hostile or not interpreting properly.
- ◆ Take as long as you need to give your account and make sure that everything is recorded accurately.

- ◆ If you do not feel able to speak about being raped, tell the interviewer that there are other things that have happened to you which you are too upset to describe at the moment.
- ◆ Ask to be referred to someone who is trained in working with victims of sexual violence so they can help you report the rape.
- ◆ Do not sign the notes of the interview until the interviewer has read back to you (through translation if necessary) all the questions you were asked and your answers. If you think the notes are not accurate and/or do not understand what they say, you can ask for the notes to be changed until you are sure they represent what you have said.
- ◆ As soon as you can after the interview, go through the record with your lawyer (and an interpreter if necessary) so you can submit any clarification to the Home Office before they consider your case.

## 2. Reporting rape

When you speak about your experiences, try to give as much detail as possible. Often officials and lawyers don't ask women if they have been raped, so you may need to raise it yourself. If it is too difficult, explain that there is more you want to talk about. Ask for what you need to help you speak, for example, a woman lawyer, the presence of a friend, a referral to a counselling group, privacy, etc. You need to describe:

### Where and when you were raped

- ◆ When and how often it happened?
- ◆ Who were the men who raped you?
- ◆ Were they armed? Did they wear a uniform?
- ◆ Where did the rape happen?
- ◆ Did you suffer other violence on top of the rape?
- ◆ What did the men say to you? Did they make any threats? Did they tell you why they were attacking you? Did they ask you to give them information about yourself or about someone else in your family?
- ◆ Why do you think you were attacked?
- ◆ Were your children or other family members there? Were they attacked too?
- ◆ Did anyone witness some or all of the rape?

### Did you seek help?

- ◆ If you reported at the time, who did you tell and what happened as a result?
- ◆ If you didn't report, why not? What did you fear might happen if you did?

## How has the rape affected you?

The impact of rape lasts long after the incident/s. Documenting this is a vital part of your claim and can provide supporting evidence of your account. The persecution you fear may not only be further rape but hostility from others. You may also be dependent on counselling and other support, and so returning could violate your human rights.

*“Rape causes physical and mental suffering in the victim. In addition to the violence suffered at the time it is committed ... [it] also causes a psychological trauma that results on the one hand from having been humiliated and victimised, and on the other, from suffering the condemnation of the members of their community if they report what has been done to them”*<sup>1</sup> IAA Guidelines

## 3. Reports on Rape Trauma Syndrome

An expert report by a psychiatrist, counsellor or specialist organisation like Black Women’s Rape Action Project or Women Against Rape can be commissioned by your lawyer. They will need to apply for legal aid (or an extension of legal aid). If you are refused legal aid, ask for the reasons for refusal to be given in writing because this might help explain a delay or a change of representative.

Such a report can evaluate whether you suffer from Rape Trauma Syndrome, a form of Post Traumatic Stress Disorder. In our experience, if no medical, psychiatric or specialist report is presented on your behalf, your account of being raped is more likely to be dismissed.

These are some of the questions you are likely to be asked for the report:

- ◆ Were you injured during the rapes and did you get any medical treatment afterwards?
- ◆ Are you suffering any Sexually Transmitted Diseases (STDs) as a result of rape?
- ◆ Are you still suffering from any injuries you received? Are you suffering emotionally? Do you suffer from nightmares, flashbacks, insomnia?
- ◆ What impact has this had on your relationships?
- ◆ If you were not able to speak about being raped before, why not? Were you afraid of any consequences, such as rejection by your husband or family members?
- ◆ Did you get pregnant from the rape and if so, are you now raising a child from rape? What effect does that have on you? What is it like for your child?
- ◆ How do you feel about being returned to the place where you were raped? Would you be in danger of being raped again or face hostility from others in your community because of the rape?

If you don’t get an expert report, you can ask your lawyer to make sure all this information is included in your statement.

## 4. What your lawyer should do

- ◆ Explain your entitlement to legal aid and what it covers. If they say there is not enough money to cover the work needed on your case, ask them to apply for an extension. If they ask you for money, ask them why they cannot or will not do the work on legal aid. You may need to change to another firm if their firm does not do legal aid work.
- ◆ Take a full statement from you about everything that

happened to you, including the rape, which caused you to flee your country. It can be helpful to take a friend with you when you tell your lawyer, or to put it in a letter. (If you don’t want anyone in your house to know about the rape, for example your husband or parents, ask your lawyer not to send to your home correspondence which refers to the rape.)

- ◆ Gather useful precedents which might help your case, both in national and international law. Show your lawyer the list of references at the end of this Rights Sheet, and insist they go through them with you to make sure all the possible arguments are being made on your behalf.
- ◆ Refer you to a specialist to provide a report about the rape and its impact on you. (See point 3)
- ◆ Gather information about your country of origin. The Home Office and courts often claim it is safe for women to return to their country of origin or at least to another part of it. If you feel you would be in danger, explain why. This should include: conditions for rape survivors, services (such as counselling) which may or may not be available, the way the community treats rape survivors, the situation of single mothers. You must also explain your circumstances in detail: sex, civil status, age and life experience, family responsibilities, health, language, education, skills, previous stay or employment there, local ties, available or realisable assets, lack of financial support....<sup>2</sup> Officials have to consider what you say.

## 5. Reporting rape late

◆ A legal precedent we helped win in 1998 established that traumatised women may be “unable” not “unwilling” to report rape when it first happens<sup>3</sup>.

◆ Even if it takes a long time for you to be able to speak about being raped, once you do speak, what you say should be taken into account in your asylum claim. It may be grounds for submitting a fresh claim.

*“Torture, sexual violence and other persecutory treatment produce feelings of profound shame . This ‘shame response’ is a major obstacle to disclosure. Many victims will never speak about sexual violence or will remain silent about it for many years”*. IAA Guidelines

◆ If you did not speak about being raped when you made a statement you can ask for it to be amended to include the details of the rape. You can also explain why you did not report this earlier, for example during the Home Office interview.

◆ If your lawyer says it is “too late” for you to report the rape, show them the information about the precedent ruling and the guidelines above. If they refuse to help you, you should complain to the Senior Partner in the firm.

## 6. Appealing against the Home Office refusal

If the Home Office refuses your claim, you have the right to appeal to the Tribunal. It is crucial that you go through the refusal letter carefully with your lawyer so that everything the Home Office says is responded to. For example:

◆ They may say they don’t believe you because there are “discrepancies” between what you said in the Home

Office interview and in your statement. You will need to address and account for how these discrepancies arose, otherwise they will be brought up again in your appeal.

◆ They may believe what happened to you but say it was just soldiers “behaving badly” or looking for “sexual gratification” and so you do not qualify as a refugee. In this case, make sure your lawyer has all the information about the context in which you were raped: for example if soldiers were questioning you about your husband’s, son’s or other relative’s political activities.

◆ Even if they believe you, they may say that it is safe and reasonable for you to go back to another part of your country. If it is not safe, make sure your lawyer has all the information about the dangers/conditions you would face.

*“An asylum seeker’s gender must be taken into consideration when deciding whether internal relocation is reasonable or unduly harsh. Financial, logistical, social, cultural, legal and other barriers may significantly affect a woman’s ability to travel to another area of the country, and to stay there without facing hardship.”* IAA Guidelines

◆ Immigration Judges are much more likely to agree with the Home Office and dismiss your appeal if the Home Office say they did not believe your account to be true. Although cuts in legal aid have reduced the amount of money lawyers can pay for reports, you can press them to commission one for you and this will help establish your credibility.

◆ Insist on a case conference with the barrister who will represent you at your appeal so you can check that everything has been done and they don’t just find out about your case on the morning of your appeal!

### **If your lawyer won’t help**

Lawyers are increasingly likely to refuse to represent women under the “merits test” – that is if they think that you have a less than 50% chance of winning. You will have to argue your case with them but use the information here to make your case. Write why you think they are mistaken in refusing to help you and you can use this to appeal to the senior partner in their firm against the decision.

If your lawyer still won’t appeal and you have no other option, you may have to represent yourself. Contact us for advice if this happens.

## **7. At the appeal hearing**

You are entitled to:

- ◆ Take a friend or anyone else who will support you.
- ◆ Ask for an interpreter.
- ◆ Ask for an all female court, including the interpreter if you don’t want to speak about the rape/s in front of men.
- ◆ Submit written evidence or have witnesses to testify to your good character, e.g. from your church or children’s school. The Immigration Judge will take note and it will help establish that you are an honest and reliable person.

*“Women’s asylum claims will be more appropriately considered if interviewer, representative and decision-makers, including judiciary, are aware of the particular procedural and evidential difficulties that women asylum seekers face.”* IAA Guidelines

## **8. Challenging an Immigration Judge’s ruling**

If your case is refused, go through the ruling in detail and write down everything that you disagree with, and say why. Show this to your lawyer and ask them to go through it with you and see if the Immigration Judge has made a mistake in the way they have recorded the facts of your case or in the way they have interpreted how the law applies to it.

You have 5 working days to apply for your case to be reconsidered. If this application is refused, you have 5 working days to apply again to the Administrative Court. This normally costs £400 but your lawyer can apply for the fee to be waived, or you can make the application yourself. If this application is successful there will be a “review and reconsideration” hearing.

At any point in these proceedings your lawyer might start asking you for money. Some may be ready to work for free (or at least to get a barrister to represent you for free). Whatever happens with your lawyer, always put in writing what you are asking them to do and any questions you have about what they tell you. There are unscrupulous lawyers who take money but never make submissions, or make such bad submissions that they are automatically rejected. Protect yourself from bad representation by making sure you know at every point what your lawyer is doing; insist they give you a copy of any letter or document they submit.

If your application for reconsideration is refused, you may have the right to appeal to the Court of Appeal and possibly even to the House of Lords. A final appeal to the European Court of Human Rights might be possible once you have exhausted all the legal challenges in the UK courts first. This would need to be discussed with your solicitor who will need a barrister’s opinion before proceeding.

## **9. If your marriage has broken down because of domestic violence**

If your immigration status depends on your marriage but it has broken down because of rape or other domestic violence, get legal advice immediately as you may be eligible to apply for the right to remain in the UK

## **10. If your case is closed**

Once your legal case is finished you will receive a letter saying you must leave the country. If you are reporting regularly, you could be taken into detention. If you are in NASS accommodation, they could come for you there. Without legal proceedings you are vulnerable to being deported but there is still much you can do. Legal Action for Women has published an excellent *Self-Help Guide against detention and deportation*, which provides vital information about what to do in this situation, including about whether you might have grounds for making a fresh claim.

Any time you have new evidence either about what happened to you or what may happen if you are returned to your country of origin, this evidence may be grounds for making a fresh claim.

## 11. Getting help from your MP

Contacting your MP may be a lifeline. As soon as your lawyer says nothing more can be done, you should approach your MP. If you know your MP's name, call for surgery details. If not, call the House of Commons on [0207 219 3000](tel:02072193000) with your postcode. They will tell you who your MP is and put you through to them. See if you can attend your MP's "surgery" so you can meet them in person. They will be more likely to remember you and feel they should do something. The Home Office has a special office dedicated to answering inquiries from MPs and they can get cases reviewed or flights stopped. If you have an email address you can also write to your MP using <http://www.writetothem.com/>. This website also automatically writes back to find out your MP responded. If not a reminder is sent.

## 12. If you are in detention

The Immigration Service's own instructions state that they should "avoid" detaining victims of torture, pregnant women, unaccompanied children under 18, anyone suffering from serious medical conditions or who is mentally ill.

- ◆ If any of these apply to you, immediately inform the authorities and ask to be released. Put your request in writing, send a copy to your lawyer and MP so they can also press for you to be released.
- ◆ Ask to see the doctor in the Removal Centre and insist s/he tells the Management of Detained Cases Unit (MODCU) on the basis that you report being a victim of torture. Make sure you keep a copy of whatever you write.
- ◆ You can also make the case that the UNHCR advise against detention of torture victims. It is Home Office policy to give at least 24 hours notice of removal<sup>4</sup> and if they do not, their failure can be the basis of a legal challenge.
- ◆ There has also been a significant recent ruling which condemned the Home Office for deliberately using detention and immediate removal to stop people getting legal help.<sup>5</sup>
- ◆ There may also be challenges you can make to the European Court of Human Rights, and/or to the United Nations – specifically the UN Special Rapporteur on Torture and the Special Rapporteur on Violence Against Women.<sup>6</sup>

### Notes

1. Raquel Marti de Mejia v Peru, Case 10.970, Report No. 5/96, Inter-American Commission on Human Rights, March 1 1996
2. Januzi v SSHD E2003 EWCA Civ 1187
3. RvSSHD ex parte Ejon (QBD) [1998] INLR 195
4. Letter from Immigration Minister Tony McNulty MP to Immigration Law Practitioners Association January 2006
5. Contact: Centre for Human Rights, United Nations, 1211 Geneva 10, Switzerland. Fax: 00 41 22917021
6. R (on the application of (1) Predrag Karas (2) Stanislava Miladinovic) v SSHD [2006] EWHC 747 (Admin)

### Some useful documents:

1. *Asylum Policy Instruction: Gender Issues in the Asylum Claim* are the Immigration and Nationality Directorate's internal guidelines to officials considering women's claims. They cover: 1) "*The additional considerations caseworkers should have in mind when assessing claims for asylum that could include gender related issues; and 2) how to take gender issues into account when looking at the persecution experienced and whether there has been a failure of state protection.*" <http://www.ind.homeoffice.gov.uk/6353/6356/6368/apigenderissues.pdf>
2. *Asylum Gender Guidelines* published by the Immigration Appellate Authority, November 2000 (<http://www.asylumsupport.info/publications/iaa/gender.pdf>) *They aim:* "To ensure that the asylum determination process is accessible and that the procedures used do not prejudice women asylum seekers or make it more difficult for them to present their asylum claims; to ensure that the judiciary are aware of the particular evidential problems which may be faced by women asylum seekers and that appropriate steps are taken to overcome them." *The Guidelines are a combination of all relevant case law and other legal precedents.*
3. *Sexual and Gender-Based Violence Against Refugees, Returnees and Displaced Persons: Guidelines for Prevention and Response*, UNHCR, September 2003 <http://www.unhcr.org/cgi-bin/texis/vtx/protect/openssl.pdf?tbl=PROTECTION&id=3f696bcc>.
4. UNHCR Guidelines. Revised edition February 2003 says that: "*The detention of asylum seekers is inherently undesirable*". <http://www.rcmvs.org/investigacion/Asylum.htm>