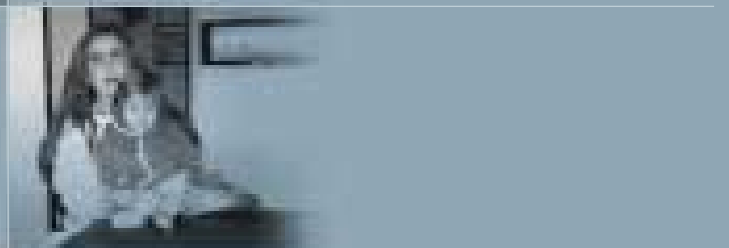




Refugee Women At Risk

Unfair U.S. Laws Hurt Asylum Seekers



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Acknowledgements

The Lawyers Committee gratefully acknowledges the generous support of the Fund for New Citizens of The New York Community Trust, The Fund for New Jersey, The New York Bar Foundation, The Picower Foundation, The George W. Rentschler Foundation, and The Rhodebeck Charitable Trust. We also would like to thank the many lawyers and law firms whose generous financial and pro bono support makes our work helping asylum seekers possible.

In addition, we would like to extend a special thank you to: the Women's Bar Association of the State of New York for sponsoring the summer legal internship that enabled us to begin this project, the legal interns who contributed to this project, and the many refugee women and their attorneys who provided us with the information included in this report.

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ISBN 0-934143-96-X
U.S. \$10.00

Executive Summary

Around the world women often suffer persecution just because they are female, and experience persecution differently because they are women. Women who are beaten by their husbands, raped with impunity, forcibly sterilized, ritually mutilated, sold into sexual slavery and targeted for death by relatives in the name of family honor can become refugees when their governments fail to protect them. Some of them flee to the United States in search of safety.

The United States has for many years had a proud tradition of protecting refugees, and has set an example for other countries in protecting women from gender-related violence. But the ability of refugee women to gain asylum in the U.S. was significantly undermined by a 1996 immigration law called the “Illegal Immigration Reform and Immigrant Responsibility Act of 1996.” That law created new barriers for asylum seekers including:

- (1) a summary “expedited removal” process, which gives INS inspectors at airports and borders – rather than trained immigration judges – the power to order the immediate deportation of a person who arrives in the U.S. without proper travel documents;
- (2) “mandatory detention” of asylum seekers who are subject to the expedited process; and
- (3) a filing deadline that bars asylum claims that are not filed within one year of a refugee’s arrival.

There is no way to know exactly how many of the thousands of women affected by the 1996 law were in fact refugees who were deserving of asylum. But the cases we do know of raise serious concerns about the impact of the 1996 law on refugee women. As detailed in this report, a woman from the Dominican Republic who fled severe domestic violence was ordered deported under expedited removal. A rape survivor from Albania was deported to her country of persecution under expedited removal. Women who have fled forced marriage, rape, forced sterilization, domestic violence, and other gender-related violence have been detained in jails – sometimes for lengthy periods of time, without the opportunity to challenge their detention before a judge. Other women who sought asylum based on fears of “honor killings” and genital mutilation have had their asylum claims rejected based on the one-year filing deadline.

When a woman with a gender-based asylum claim is barred from applying for asylum because of “expedited removal” or an unrealistic filing deadline, or when a woman fleeing domestic violence is detained and in despair abandons her asylum claim so that her child will not have to endure the lengthy separation caused by that detention, something is significantly wrong with U.S. laws and procedures.

Refugee women who flee from gender-based harm may be particularly vulnerable to these barriers, but the impact of these provisions on all refugees is cause for serious concern. The hurdles facing refugees have only multiplied as a result of actions taken by the U.S. government in the wake of the September 11 attacks. The U.S. should restore fairness to the asylum process so that vulnerable refugees, like the women profiled in this report, are not unfairly denied a safe haven in this country.

Refugee Women at Risk: Unfair U.S. Laws Hurt Asylum Seekers

“It was not easy for me to decide to leave my homeland. But when I came here, my head was full of the things I learned about America from my school books in Togo. They taught me it was a country that always helped the needy, a country that sent aid to refugees. My teachers told me it was a great land, where people believed in justice.

Instead . . . I was taken to prison in shackles and in handcuffs, and I was abused by prison guards. Yet I am not a criminal. I had done nothing wrong. Why was I put in prison? Why was I treated this way?”

– Fauziya Kassindja

Fauziya Kassindja fled Togo to escape female genital mutilation. She was 19 years old. She came to the United States seeking refuge, but when she arrived at Newark International Airport, she was handcuffed and shackled. The Immigration and Naturalization Service (INS) detained her for 16 months in prisons and detention centers. Ms. Kassindja was finally released in April 1996 – after *The New York Times* profiled her plight. Her treatment sparked outrage over U.S. detention practices and the legal hurdles faced by women who seek asylum from gender-related violence.

Around the world women often suffer persecution because they are female, and experience persecution differently because they are women.¹ In some countries, laws and social mores dictate gender-specific treatment; in others, women are more vulnerable to violence during wars or ethnic crises because they are often left alone to care for children or elderly family members.² Women who are beaten by their husbands, raped with impunity, forcibly sterilized, ritually mutilated, sold into sexual slavery and targeted for death by relatives in the name of family honor, can become refugees when their governments fail to protect them. Some of them flee to the United States in search of safety.

Those women who seek refuge here face significant barriers to gaining the protection they deserve. In fact, since Fauziya Kassindja’s ordeal, America’s policies toward those who flee here seeking asylum have become even more unfair and inhumane.

In 1996, Congress passed – and President Clinton signed – the “Illegal Immigration Reform and Immigrant Responsibility Act of 1996,” a package of restrictions that impede the ability of genuine refugees to gain protection in the U.S. These barriers include:

- **Expedited Removal**

Under expedited removal, INS inspectors at airports and borders are given the power to order the immediate deportation of people who arrive in the U.S. without proper travel documents. While genuine asylum seekers are not supposed to be deported under expedited removal, the process is so hasty and lacking in procedural safeguards that mistakes can and do happen.

- **Mandatory Detention**

The law calls for the mandatory detention of asylum seekers who are subject to expedited removal. Subsequent parole possibilities are woefully deficient because the decision to release an asylum seeker is entrusted to local immigration officials rather than to a judge or other independent authority.

- **One-Year Filing Deadline**

The filing deadline bars asylum claims that are not filed within one year of a refugee's arrival unless the refugee is deemed to satisfy one of two narrow exceptions. As a result of this filing deadline, the asylum claims of many deserving refugees have been rejected or denied.

Hua Zhen Chen

Victim of forced abortion

Detained for nearly two years

Hua Zhen Chen fled China after Chinese government officials forced her to have an abortion. She was detained for 19 months in Virginia area jails even though she had relatives and family friends in Ohio and New York who were willing to take care of her.¹⁰ Chen, a 28-year-old housewife, is married to

an engineer and is the mother of a four-year-old daughter. In 1999, Chinese family-planning officials seized her, brought her to a hospital, and forced her to undergo an abortion. When she learned that officials might forcibly sterilize her, Chen fled China. She arrived in the U.S. in December 1999, and was taken in handcuffs and shackles to the first of five different jails. After suffering the trauma of a forced abortion and being incarcerated in a series of criminal jails in the U.S. for nearly two years, Chen was severely depressed and in a fragile emotional state. She was finally released in late July 2001, after her pro bono lawyers and several national advocacy organizations raised her case with INS officials in Washington, D.C. Chen has since been granted asylum.

Women and Asylum

There is no way to know exactly how many women affected by the 1996 law were refugees deserving of asylum. But the cases we do know of raise serious concerns about the impact of the 1996 law on refugee women.

A woman from the Dominican Republic who fled severe domestic violence was ordered deported under expedited removal. A rape survivor from Albania was deported to her country of persecution under expedited removal.

Women who have fled forced marriages, rape, domestic violence and other gender-related violence have been detained in jails — sometimes for lengthy periods of time, without the opportunity to challenge their detention before an independent authority. Other women who sought asylum based on fears of domestic violence, “honor killings,” and other harms have had their asylum claims rejected based on the one-year filing deadline.

Many women, who come from cultures where women have few rights, are uncomfortable - or are unable, in some cases - to talk to men about their experiences.

Although these barriers have affected all asylum seekers, women – especially those who are fleeing gender-based persecution and traumas – are in some ways particularly vulnerable to the risks these barriers create because:

- Gender-related forms of persecution are often difficult for women to talk about, particularly for women who come from cultures where they would be subject to further persecution or scorn if the nature of their mistreatment became public knowledge.³

How has September 11 Affected Asylum Seekers?

In the wake of the tragic events of September 11, the hurdles facing asylum seekers have only multiplied. While none of the perpetrators of the September 11 attacks were asylum seekers or refugees, various measures taken by the U.S. government that affect non-citizens in general will adversely affect refugees who seek asylum in the U.S.¹ For instance, changes made to the Board of Immigration Appeals have led to a dramatic increase in the number of asylum denials that have been essentially rubber-stamped on appeal – depriving many asylum seekers of a meaningful

appellate review. At the same time, new concerns have arisen regarding the INS’s use of its detention authority, including reports of discriminatory parole policies aimed at asylum seekers from Arab or Muslim backgrounds. The transfer of the INS to the Department of Homeland Security will leave asylum seekers in an even more vulnerable position. These recent steps taken by the U.S. government undermine a system that is designed to protect people who are victims of horrific human rights abuses – a system with rigorous safeguards designed to flag and exclude those who might pose a danger.²

- Many women, who come from cultures where women have few rights, are uncomfortable - or are unable, in some cases - to talk to men about their experiences. That difficulty tends to be even greater when the experiences relate to sexual violence or mistreatment by male family members.
- Many women refugees may also come from countries where they have been denied access to education and prohibited from interacting with the legal system. Their vulnerability may be compounded by their obligations to care for young children.

Unfair Laws Counter U.S. Tradition of Protecting Refugee Women

The United States has taken important steps to protect refugee women in past years. In 1995, the INS issued guidelines to assist asylum officers in adjudicating women's asylum claims. And in 1996, following the public outcry over the treatment of Fauziya Kassindja, the U.S. Board of Immigration Appeals issued a ground-breaking decision recognizing that asylum could be granted based on fear of female genital mutilation (FGM).

In 2001, Attorney General Janet Reno took another critical step towards protecting women refugees when she vacated a 1999 Board of Immigration Appeals decision in *Matter of R-A-* that would have prohibited a victim of severe domestic violence from receiving asylum. The Department of Justice had just previously proposed regulatory changes to further confirm that women with gender-based asylum claims may be eligible for asylum. But those regulations have yet to be issued.

The U.S. government's leadership in recognizing gender-based asylum claims is crucial in setting an example for many other nations and should be applauded.

But this leadership in developing refugee laws to account for gender-based persecution is undercut when women are prevented on procedural grounds from presenting their claims for asylum. When a woman with a gender-based asylum claim is barred from applying for asylum because of "expedited removal" or an unrealistic filing deadline, or when a woman fleeing domestic violence is detained and, in despair, abandons her asylum claim so that her child will not have to endure the lengthy separation caused by that detention, something is significantly wrong with U.S. laws and procedures.