



Refugee Women At Risk

Unfair U.S. Laws Hurt Asylum Seekers



Lawyers Committee for Human Rights

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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.

The 1996 Law and its Impact on Women

I. Expedited Removal

When expedited removal went into effect in April 1997, the U.S. fundamentally changed the way it treats many asylum seekers. Prior to that time, only an immigration judge could order the formal deportation of a person who arrived in the United States without valid travel documents. This was an important safeguard, since many genuine refugees are unable to obtain travel documents from their governments – the very governments that have targeted them for persecution. Before expedited removal, asylum seekers were assured the fundamentals of due process – the right to a hearing before an immigration judge and the right to have a deportation decision reviewed on appeal.

Under expedited removal, INS inspectors at U.S. airports and borders are authorized to issue removal orders that can be finalized upon cursory review by a supervisor solely because a person does not have valid travel documents. The expedited removal order can be executed immediately, and the inspector's determination cannot even be appealed to an immigration judge much less to a federal court judge. While asylum seekers are not supposed to be deported at this stage (they are supposed to be referred for further examination to determine if they have a “credible fear of persecution”), asylum seekers find the process utterly bewildering, and mistakes have been made. Mistakes are in fact inevitable given the summary nature of expedited removal and its lack of procedural safeguards.

Expedited removal can have life or death consequences. An on-the-spot decision of a single INS agent can mean safety and freedom, or forced return to face persecution.⁴

How many people does the INS deport under expedited removal?

In fiscal year 1999, the INS deported 89,035 people under expedited removal, and 99.3% of those deportees were returned without a referral for further examination to determine whether a “credible fear of persecution” existed or whether U.S. citizenship or another lawful basis existed for

admission into the United States. In fiscal year 2000, approximately 85,338 people were deported under expedited removal; and in fiscal year 2001 approximately 69,772 people were deported under expedited removal.

How Expedited Removal Affects Women

The INS has not published statistics reporting how many women have been deported under expedited removal. But *The Expedited Removal Study*, a University of California, Hastings College of Law report released in May of 2000, examined data provided by the U.S. government, and concluded that women were more frequently deported under expedited removal (rather than under regular immigration removal proceedings) than men. The Study offered several possible explanations for this difference, including that expedited removal may be applied in a manner that disfavors women.⁵

Refugee women are particularly vulnerable to the risks posed by expedited removal for a number of reasons:

- **Some women may be afraid to tell an INS Agent why they have fled.** Women are often targeted for persecution because they are women, and they may flee forms of persecution in their home countries that are related to their gender, such as female genital mutilation, rape, forced marriage, “honor killings,” forced sterilization, and domestic abuse. The personal or social shame experienced by these women can be acute. Disclosing these experiences publicly in an adversarial environment to male strangers may be highly traumatic, particularly for women who, for cultural or religious reasons, would be ostracized if the nature of their harm became known.⁶
- **Others, suffering from Post-Traumatic Stress Disorder, may be unable to talk about what has happened to them.** For women who are survivors of torture, rape and gender-related traumas, talking about their experiences is often extremely difficult. Experts who work with survivors of torture

"Jane Doe"

A rape survivor

Deported under expedited removal⁵

Jane Doe fled Albania after being gang-raped by masked, armed men. She arrived at the Boston airport in May 1997 with invalid travel documents, and was put into expedited removal. Traumatized by her recent experiences and unassisted by counsel, Jane was too ashamed and afraid to explain to a male Albanian interpreter – provided by the INS – what had happened to her. Without even being

allowed to apply for asylum, Jane was deported under expedited removal. She was put on a flight back to Albania where she went into hiding. After *The New York Times* found out about and reported on her story, Jane was finally allowed to return to the United States to apply for asylum – and asylum has since been granted.

and trauma say that those who suffer from Post-Traumatic Stress Disorder (PTSD) have difficulty relating information about their mistreatment to U.S. government authorities particularly if they have not had time to recover from their trauma.⁷

- **Intimidation magnifies women's difficulties.** Asylum seekers have reported misconduct from INS inspectors including insults, taunting, and abusive language – conduct that can create a hostile or intimidating atmosphere, magnifying the difficulty a woman faces in discussing traumatic experiences. As detailed below, “Ms. Koromah,” a rape survivor from Sierra Leone, was so intimidated that she was unable to talk about her rape after INS inspectors at the airport accused her of lying and threatened her with deportation. In May 1999, the Women’s Commission for Refugee Women and Children reported that it had interviewed dozens of women who had been subjected to the expedited removal process and that these women “universally recount fear, intimidation, and confusion suffered throughout the process.”⁸
- **Shackling and strip-searches re-traumatize survivors of abuse.** Many asylum seekers have reported that officials at the airport have subjected them to strip-searches and invasive body cavity searches – procedures that can be particularly traumatizing for rape survivors. INS policy and written guidelines make clear that handcuffing and shackling are not mandatory,⁹ and specifically note that restraints should normally not be used on women. But in practice, these guidelines are not observed. Female asylum seekers are routinely handcuffed, shackled or otherwise restrained. The use of restraints on women who are trauma survivors is especially problematic, as the use of restraints can in effect recreate a prior traumatic experience.¹⁰

"Ms. Koromah"

A rape survivor from Sierra Leone

Intimidated and detained by the INS⁶

Ms. Koromah fled from Sierra Leone on a borrowed passport after she was abducted and raped by rebel forces who killed her parents. When she arrived at JFK International Airport in the fall of 1999, Ms. Koromah was not provided with an interpreter. INS inspectors accused her of lying and

threatened her with deportation. Terrified, she was unable to talk about her rape and her fears in a language she did not speak. Ms. Koromah was detained for two months, and was released only after Temporary Protected Status became available to Sierra Leoneans in November 1999.

"The case of Aracelis Gonzalez also reveals the serious flaws in expedited removal. A woman who has escaped to the United States after her partner bought a gun, held it to her head, and threatened to kill her cannot even receive an asylum hearing.... This could not have been the intention of even the supporters of expedited removal."

— Senator Patrick Leahy, in a letter to the INS Commissioner

- **Women do not know that their persecution can qualify them for asylum.** Women who are victims of gender-related abuses may not realize that they may qualify for what is popularly referred to as political asylum, and as a result, they may not realize that they can exercise the right to apply for asylum during expedited removal. This confusion is only compounded by the Board of Immigration Appeal's 1999 decision denying asylum to a victim of severe domestic violence. Although that decision was subsequently vacated, the Bush administration has not indicated whether regulations will be issued governing these claims.
- **Failure to recognize gender-based claims.** INS inspectors and adjudicators who are entrusted with expedited removal determinations may fail to recognize gender-based

asylum claims. When the 1996 immigration law passed, some refugee advocates feared that asylum seekers with non-traditional claims - particularly women with gender-based asylum claims - might be turned away under expedited removal. (This fear was in part based on the fact that, even prior to expedited removal, Fauziya Kassindja's FGM-based asylum claim had initially been rejected by an immigration judge.¹¹) Unfortunately, this fear has proved justified. Although the Department of Justice subsequently issued a regulation instructing those who make expedited removal determinations to consider whether the claims are novel or unique,¹² given the expedited nature of these proceedings, it is likely that similar mistakes will continue to occur.

"Aracelis Gonzalez"

A victim of domestic violence

Ordered removed⁴

Aracelis, a victim of severe domestic violence, was ordered deported under expedited removal on August 14, 2000, even though the INS found her credible. She suffered from severe domestic violence in the Dominican Republic, including repeated beatings and rape, and fled in fear for her life. The INS's decision to deport her was apparently based on the fact that the INS officers who inter-

viewed her believed that she would not be able to articulate a claim for asylum based on gender-related persecution. Her deportation was averted after the Lawyers Committee and several U.S. Senators complained to the INS about its decision to deport her under expedited removal. After several months in detention, she was released and has since been granted asylum.

II. The Detention of Women Seeking Asylum

Under the 1996 immigration law asylum seekers are subject to “mandatory detention,” and are held in detention facilities and jails. They are technically eligible for parole once they establish that they have a “credible fear of persecution” and meet certain criteria under INS parole guidelines.¹³ But the decision to parole an asylum seeker is not made by an independent authority; it is instead entrusted to local INS officials who have wide discretion in applying the parole guidelines.

Parole is implemented in an inconsistent and sometimes arbitrary manner.¹⁴ The problem is so severe that, in December 2000, the INS issued a regulation simply to confirm that the INS Commissioner could exercise authority over local INS parole determinations. As a result of these flawed procedures, many asylum seekers –including survivors of rape, gender-related harms and torture –are detained even when they have family or other community contacts who are willing to house and support them.

Parole for asylum seekers, already restrictive in some areas of the U.S., seems to have become even more restrictive in the wake of September 11. Particularly troubling are reports of discriminatory parole practices. The press has documented cases in which asylum seekers from Middle Eastern or Muslim backgrounds, who would previously have been paroled prior to September 11,

“During the eight months I spent in the detention center I didn’t see the sun. There was no fresh air. We have everything in the same hall - toilet and everything. It was horrible.... They said it is not a prison. It’s, in fact, a prison from my point of view. There is no window, no freshness, nothing.

– Adolphine Mwanza, a Congolese rape survivor

Adolphine Mwanza

A rape survivor

Denied parole despite U.S. convent’s support

After being raped and tortured in the Congo, Adolphine Mwanza was detained for eight months in the U.S. even though a New Jersey convent was willing to house and support her.⁷ As a young girl in the Democratic Republic of Congo – then called Zaire – Adolphine Mwanza aspired to become a nun and enter a local Roman Catholic convent. But her family was brutally targeted by the dictatorial rulers of her country, and soldiers kidnapped, tortured and raped Adolphine. She went into hiding,

and with the help of two Catholic priests escaped her country, traveling on invalid travel documents. She was sent to the INS detention center in Elizabeth, New Jersey. Despite the invitation of a Catholic convent in New Jersey, the New Jersey INS denied her parole request. Adolphine was held at the detention facility for eight months, and was only released after she was granted asylum in July 2000.

have been denied parole. For instance, two Christian women who fled Iraq were denied parole in Miami, even though one of the women had strong community ties, specifically her U.S. citizen sister and legal permanent resident mother. In another case, a thirteen-year old Iraqi girl was detained for over five months as a result of delays in the new security checks affecting asylum seekers from Iraq and other countries.¹⁵

Following the arrival of a boat of Haitian asylum seekers in Florida in December 2001, and a subsequent boat which arrived in late October 2002, the INS has instituted a discriminatory parole policy directed at Haitian asylum seekers. As a result, Haitian men, women and children have been detained in Florida for prolonged periods of time, even though other asylum seekers are routinely released on parole in Florida.

“At the [detention] facility, they took away my clothes and gave me an orange prison uniform. I was treated like a criminal. I was kept in a room with 12 other women for 23 hours a day. There was no privacy. The toilets and shower were in the same room behind only a low wall – so that you could see someone’s upper body as they sat on the toilet.”

– “Mina Buhani,” an Afghan woman

For refugees, it is devastating to be imprisoned like a criminal by the country they turned to for protection. For refugee women – many of whom have suffered unspeakable abuses – detention can be particularly traumatizing.

Privacy and dress

While detained, women must wear prison-like uniforms, a requirement that can be especially difficult for women who come from cultures where they are required to wear dresses

“Mina Burhani”

A teacher from Afghanistan targeted by the Taliban

Refused parole⁹

The INS refused to parole Mina Burhani from detention even though she had U.S. citizen relatives who were willing to support her. In 1998,

Mina was targeted by the Taliban regime in Afghanistan because her sisters are Christian and because she opened a school to teach young girls – a violation of Taliban prohibitions. After the Taliban beat her and threatened her with death, Mina fled Afghanistan. Arriving at JFK in October 1998, she was detained and shackled at secondary inspection. She soon fainted and was taken to a hospital. The New York INS refused to parole her despite the fact that she had a U.S. citizen sister. She was only released after a Senator’s office and the Lawyers Committee complained about her parole denial. She was subsequently granted asylum.

or head-coverings. The Lawyers Committee recently assisted a Rwandan refugee who felt humiliated and dehumanized when, in addition to all the other indignities that accompanied her imprisonment in a Connecticut jail, her hair was shaved off, without explanation – leaving her with very uneven close-cropped hair instead of the braids she arrived with. At the larger detention facilities, women lack any degree of meaningful privacy as the toilet and shower areas are separated from the general living area by only a partial barrier. This lack of privacy may be particularly difficult for women who come from cultures where they are required to behave modestly and to keep others from seeing them even partly unclothed.

Detention exacerbates depression and trauma

For survivors of torture, rape and other forms of gender-based persecution, detention often exacerbates the symptoms of post-traumatic stress and depression. One Lawyers Committee client – a woman who fled Cameroon after suffering torture and an attempted rape – became extremely depressed after nearly three years in county jails and detention facilities. She said: “I just feel deadened and hopeless.... Often I cannot sleep or eat. Sometimes I cannot stop crying. I think about the torture that I experienced, and I sit and re-live my experiences in my mind.” Experts in treating torture survivors have confirmed that detention can further exacerbate the effects of depression and trauma.¹⁶

Beatrice Okum

A Sudanese slave

Detained and handcuffed

Beatrice Okum, a Christian woman from Southern Sudan, was detained in the U.S. for nearly five months after she escaped from 14 years of slavery in Kenya.⁸ Her detention in the U.S. triggered flashbacks reminding her of her lengthy enslavement. At the age of 14, Beatrice and her family fled their village in Southern Sudan, which was targeted for attack by the Sudanese National Islamic Front because the villagers were Christian. During repeated attacks Beatrice was separated from her mother, her brothers and her sisters. She does not know if they are alive, dead, or were forced into slavery. At the age of 15, Beatrice was targeted by a group of Kenyans who told her stepfather that they helped girls to flee from war zones. These people actually

took Beatrice to Kenya and forced her into slavery. Beatrice spent the next 14 years of her life as a slave. With the help of a friend, she was finally able to escape from her captors. When Beatrice arrived in the U.S. in November 2001, she was handcuffed, shackled and brought to a detention facility. She could not believe that she fled slavery only to be imprisoned in the United States. When she was brought to the hospital for some medical treatment, she said that she was held in handcuffs "like a criminal" in plain view of other patients, an experience that was deeply embarrassing and dehumanizing. After nearly five months in detention, Beatrice was granted asylum and released from detention in April 2002.

Separation from children

Women are sometimes separated from children or other family members while detained. The separation of families has been reported across the country – in Florida, Georgia, Minnesota, Illinois, Pennsylvania, New York, California and Texas. The INS has refused to provide some mothers with contact visits, even with young children. A Peruvian woman, who arrived at the Atlanta airport in December 1999, was handcuffed in front of her 9-year-old daughter and taken to a county jail. Her child – who was already traumatized from the persecution the family had suffered in Peru – was taken away and placed in another institution. When the woman learned that if she wanted to apply for asylum she would be detained and separated from her already traumatized child for longer, she withdrew her request for asylum and returned to Peru – even though she feared for their safety there.¹⁷

Karyna Sanchez

An Ecuadorian domestic violence survivor

**Separated from her daughter for one year
in an INS detention center**

After being separated from her young child for a year while in INS detention, Karyna Sanchez abandoned her asylum claim and returned to her country, despite fearing for her safety. Karyna had endured a long history of beatings, stalking, kidnapping, death threats, and rape at the hands of her politically powerful husband. Karyna fled Ecuador and arrived in Houston, Texas in the

summer of 1999. She was detained at a local Texas jail for five months while waiting for her case to be transferred to New York. After Karyna was transferred, the New York INS refused to parole her, even though her three-year old U.S. citizen daughter was living nearby with friends who were willing to house and support Karyna. Karyna was detained and separated from her three-year-old daughter Ashley for nearly one year. Ashley visited the facility only twice – and on both occasions mother and daughter were separated by thick glass windows in the visiting area. The visits were so upsetting to Ashley that Karyna decided that she should not be brought back to the facility again. Karyna was desperately worried about her 3-year-old, and the trauma she was enduring because of the separation. After a year in INS detention, Karyna decided to abandon her asylum case and be returned with her daughter to her country, despite the fact that she feared for her safety.³

Since the INS detains children, some women have also faced the impossible choice of either letting their children be detained or letting their children return to a country where their lives may be in danger. After INS officers threatened to detain her 8-year-old daughter in a facility in another state, a woman who had fled Peru to escape domestic violence abandoned her asylum claim and returned to an uncertain fate in her home country.

Vulnerability to abuse in detention

Women in immigration detention are vulnerable to abuse. Many do not speak English, and some have no family or friends in this country in whom they can confide about their experiences in detention. In October 2000, the Women's Commission for Refugee Women and Children reported "widespread sexual, physical, verbal and emotional abuse of detainees, especially women" at the Krome Service Processing Center, an INS detention center on the outskirts of Miami, Florida.¹⁸ The Justice Department launched an investigation into the conduct of at least 15 INS officers at Krome. One officer was indicted on four charges of sexual assault, and plea bargained to two misdemeanor charges. The female detainees were moved to the Turner Guilford Knight Correctional Center

"At the end of the visit, she did not want to leave. She was crying and clinging to the shelf in front of the little window. They had to tear her away....

Recently she seemed sick, and my friends took her to the doctor. The doctor told them she could not find anything medically wrong, but that perhaps the child was simply very sad."

– Karyna Sanchez, on her separation from her three-year old daughter

"Yudaya Nanyonga"

A political refugee

Abused in a county jail¹¹

Yudaya escaped from Uganda after government forces targeted her family because of her brother's political activities. She was initially detained at the Wackenhut facility in Queens, New York, but was then transferred to the York County Prison in York, Pennsylvania. Following the transfer, Yudaya experienced an emotional breakdown. The prison regarded her breakdown as a suicide attempt and sent a "Quick Response Team" to her cell – four men, three in riot gear, and two dogs. Without the presence of a woman, they forced Yudaya to strip. Yudaya's cultural and religious background strictly

forbids women from appearing nude before men who are strangers. Yudaya sobbed and begged to keep her underwear. The guards placed her naked and spread-eagled in four point restraints on a cot. She remained handcuffed and shackled to the bed for 72 hours and was injected with sedatives. She remained in solitary confinement for a week before being transferred back to maximum security. After nearly two years in detention, she was paroled in April 1999, after the press and human rights organizations publicly criticized the INS about her mistreatment. She was subsequently granted asylum.

(TGK), a county jail in Florida that was designed for pre-trial detention of criminal offenders. Last year the Women’s Commission and the Florida Immigrant Advocacy Center publicly criticized the treatment of women asylum seekers at the county jail, where women reported strip-searching, deprivation of sleep, and the seizing of rosaries and other personal and religious objects.¹⁹ The transferred women subsequently reported incidents of sexual harassment and molestation by male trustees at TGK.²⁰

III. The Asylum Filing Deadline

The 1996 immigration law imposes a filing deadline on asylum applications. An asylum seeker in the U.S. must file an asylum application within one year of her arrival or she will be barred from obtaining asylum

unless she qualifies for one of two exceptions. An exception is met only in the case of either “changed circumstances that materially affect eligibility” for asylum or “extraordinary circumstances relating to the delay in filing” the application. Since the filing deadline has been in effect, more than 13,000 asylum seekers have had their claims rejected by the INS based on the filing deadline.

“I had never heard of the word ‘asylum’ before ”

– “Sameera Kuttab,” a young Jordanian woman who feared “honor killing” and only learned about asylum several years after her arrival in the U.S.

"Sameera Kuttab"

A Jordanian woman who fears honor killing

Denied asylum due to filing deadline¹²

Sameera came to the U.S. in August 1996 to visit her family. She subsequently learned that she was pregnant and became very afraid that the men in her family would kill her for dishonoring the family by becoming pregnant while not married. Sameera could not return to Jordan because she feared she would be killed, but she was also afraid that she would be in danger from family members in the U.S. She left her family secretly and lived in hiding until her child was born. She felt isolated because the people hiding her did not speak Arabic, and she could not associate with the close-knit Arab community for fear that her family would then learn her whereabouts. For the next few years, she lived

in a series of shelters and relied on the charity of several new friends who housed her as she struggled to care for her young child. She repeatedly sought legal assistance, but did not have the money to pay for a lawyer. She called more than 20 different phone numbers seeking assistance, but was not given any help. She only learned that she might have an asylum claim after she contacted a pro bono organization that helped her find a volunteer attorney. But the INS asylum office rejected her asylum claim based on the one-year filing deadline. Eventually, with the help of her pro bono lawyer, Sameera made her case to an immigration judge and was granted asylum.

An analysis of asylum statistics conducted by two academic experts revealed that the percentage of asylum seekers who are found by the INS to not satisfy the exceptions to the filing deadline actually increased – from 37% in fiscal 1998, to 39% in fiscal 1999, to 42% in fiscal 2000, to 52% in fiscal 2001 – indicating that “as rejections of late filers became a bureaucratic routine rather than a new and therefore closely observed procedure, asylum officers may have become more deadened to the injustice of their rejection decisions.”²¹

The filing deadline has become a barrier to asylum for many genuine refugees. Refugee women – who may be suffering from the effects of abuse, may be caring for young children, or may not even know that they may be able to seek asylum based on gender-related harms – face some particular challenges as a result of the filing deadline.

- **Difficulty seeking legal representation.** Many genuine refugees arrive in this country unable to speak English, unfamiliar with our legal system, and unable to afford food and housing, let alone legal counsel. Finding legal representation can be difficult to impossible. A May 2000 report issued by Georgetown University revealed that fewer than one in four asylum applicants is represented at the initial asylum office stage.²² The difficulty of obtaining legal representation and navigating a legal system in another language is compounded for women who come from cultures where they may have been deprived of educational opportunities or prohibited from interacting with governmental or legal authorities.
- **Responsibility for children and basic needs.** The difficulties women face in meeting the filing deadline are exacerbated for those who are alone or who bear primary responsibility for young children. Basic needs, such as food, shelter, medical treatment, and stable

"Oumou Amine"

A woman from Mali threatened with genital mutilation

Denied asylum due to filing deadline¹⁴

Oumou came to the U.S. in 1990 to visit her older sister, but then learned that if she returned home to Mali, she would be forced into an arranged marriage and would have to undergo female genital mutilation. In fear, Oumou remained in the U.S. She did not apply for asylum. Asylum based on fear of FGM was not officially recognized by the Board of Immigration Appeals until 1996. In February 1998, Oumou's parents informed her that

they had arranged another marriage. While initially unaware that political asylum had become an option for her, Oumou finally consulted an attorney and applied for asylum in August 1999. The Immigration Judge found that Oumou faced a clear probability of persecution in Mali, and withheld her removal, but denied Ms. Amine's asylum claim based on the filing deadline.

care for children will often take priority over locating resources needed to approach the legal system.

- **Particular difficulty for traumatized women.** Many asylum seekers arrive in this country still suffering from the effects of the torture or persecution they have faced. Women who are torture or rape survivors are often traumatized, and as a result may find it difficult to apply for asylum – a process which will require them to revisit in detail the mistreatment they have suffered. Medical experts have confirmed this problem – noting the case of a rape survivor, who still suffered from the effects of her torture several years later, and was only able to discuss her abuse in order to apply for asylum after she had been in therapeutic care.²³ Despite the fact that those who are suffering from the effects of torture should qualify for an exception to the filing deadline, survivors of torture and trauma have been denied asylum as a result of the filing deadline.
- **Women may not know they are eligible for asylum.** As stated earlier, women with gender-based asylum claims – including claims relating to “honor killings,” domestic violence, female genital mutilation and other harms – may be unaware of their potential eligibility for asylum. As a result women with deserving asylum claims – like “*Oumou Amine*” who sought asylum based on her fear of FGM (see previous page) – have been denied asylum based on the filing deadline.

"Suhaila Karim"

An Afghan woman who feared honor killing
Denied asylum due to filing deadline¹⁵

Suhaila and her family fled Afghanistan for Pakistan in late 1996 after her brother-in-law was murdered and her father was arrested and tortured. Suhaila came to the U.S. in January 1998 after her family arranged for her to marry a U.S. citizen of Afghan origin. However, when she arrived in the U.S., the man refused to marry her. Suhaila subsequently developed a romantic relationship with another man in the U.S. and they had two children together out of wedlock. The first child was born in the fall of 1998 and the second in the spring of 2000. Suhaila was terrified to return to Afghanistan or Pakistan, as having

children out of wedlock is a serious violation of Islamic rules according to both the Taliban and her family. She feared that she would face death by an honor killing. Suhaila was not aware that she could apply for asylum until she consulted with an attorney. She then filed for asylum in December 2000. While the Immigration Judge withheld her removal after finding that she faced a clear probability of persecution in both Afghanistan and Pakistan, the judge denied her asylum claim based on the one-year filing deadline.

IV. Conclusion and Recommendations

The United States has had a proud tradition of protecting refugees, and has set an example for other countries in protecting women from gender-related violence. But U.S. leadership in this area has been undermined by the barriers imposed by the 1996 immigration law. 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 U.S. should restore fairness to the process so that vulnerable refugees, like the women profiled in this report, are not unfairly denied a safe haven in this country.

The Lawyers Committee recommends that the following reforms be made to the expedited removal, detention and filing deadline provisions of U.S. law.

- **Limit expedited removal to immigration emergencies.** Congress should sharply restrict the use of expedited removal to extraordinary migration situations. It should ensure that additional safeguards are included in those situations where expedited removal is authorized. These safeguards, which should include immigration judge review of all removal orders, will reduce the risk of mistaken deportations.
- **Restore due process.** The decision to deport an asylum seeker or other individual who arrives without proper documents should not be entrusted to immigration enforcement officers at the airport or border. Instead, these decisions should be made by trained immigration judges in fair proceedings that afford individuals the right to legal representation and the opportunity to have decisions reviewed on appeal.
- **Improve conduct of secondary inspection.** The INS must reform its conduct of secondary inspection and dramatically improve the training of inspectors. Women should generally be interviewed by female officers and female interpreters. The INS should cease the practice of handcuffing and shackling women and other people who do not constitute a risk to others.
- **Clarify detention policies.** Congress should clarify that the policy of the United States generally is not to detain asylum seekers who pose no risk to the community, and in particular not to detain asylum seekers who have met the “credible fear” standard by establishing a significant possibility of winning asylum. Any exceptions to this general rule should be narrowly tailored. These changes would ensure that U.S. law is consistent with American tradition and international standards.

- **Reform parole procedures.** The Department of Justice should issue regulations providing for immigration judge review of decisions to detain asylum seekers, and periodic review of detention determinations. These regulations should also specify the criteria to be considered in evaluating decisions to detain, and should make clear that asylum seekers who meet the “credible fear” standard and pose no danger to the community should generally be released. Congress should require that the Department of Justice issue such regulations. The regulations should specifically provide for the parole of women and men who are responsible for the care of children and for the parole of families. The INS should no longer be permitted to issue only guidelines – rather than regulations – on parole of asylum seekers, as this practice has repeatedly proven insufficient to ensure accountability and compliance by local INS districts.
- **Alternatives to detention.** Asylum seekers should generally not be detained. In those cases in which it is determined that some degree of supervision is needed, the INS should be required to consider alternatives to detention, including supervised release, and for women with children, release to family, friends, or facilities operated by non-profit agencies.
- **Improve Detention Conditions.** Asylum seekers should not be housed with criminals or in remote county and local jails. The Department of Justice should issue regulations codifying its detention standards. All asylum seekers should be provided with appropriate medical care, including professional counseling for survivors of torture, rape or gender-based persecution. All detention facilities should be staffed with female officers and with female health care staff. Adequate visitation, including contact visits with children and other family members, should be permitted.
- **Eliminate the one-year filing deadline.** Congress should eliminate the one-year asylum filing deadline. At the very least, the filing deadline should be eliminated in affirmative asylum applications, and the fact that an application has been filed more than one year after arrival should be considered a negative discretionary factor, subject to a good-cause exception, in connection with asylum applications filed defensively before immigration judges.

Changes made by the U.S. government in the wake of September 11, including changes to the immigration appellate process, have further eroded the fairness of the U.S. asylum system. The transfer of the INS to the Department of Homeland Security will leave asylum seekers in an even more vulnerable position. Restoring fairness to the asylum process is more important than ever. A fair asylum system is essential to ensure that the U.S. lives up to its obligation to protect the victims of human rights abuses who flee to its shores in search of refuge.

Endnotes (For Sidebar Endnotes see page 21)

¹ As one expert on women's human rights has emphasized, "[s]ignificant numbers of the world's population are routinely subject to torture, starvation, terrorism, humiliation, mutilation, and even murder simply because they are female." Charlotte Bunch, *Women's Rights as Human Rights: Toward a Re-Vision of Human Rights*, 12 Hum. Rts. Q. 486, 486 (1990).

² Nancy Kelly, *Gender-Related Persecution: Assessing the Asylum Claims of Women*, 26 Cornell International Law Journal 625, 626 (1993).

³ *Id.* at 630.

⁴ In our October 2000 report, *Is This America? The Denial of Due Process to Asylum Seekers in the United States*, the Lawyers Committee documented many disturbing incidents of error and abuse during expedited removal.

⁵ The Expedited Removal Study, *Report on the First Three Years of Implementation of Expedited Removal*, (May 2000), at 54-55. The authors of the report provide a number of possible explanations for why women are more frequently removed pursuant to expedited rather than regular removal than men, including: "(1) women may present themselves without proper travel documents at the ports of entry more frequently than men; (2) a higher percentage of men may be present in the population of non-arriving aliens subject to regular removal; or (3) expedited removal may be applied in a manner that disfavors women." For more information on the study go to www.uchastings.edu/ers.

⁶ Kelly, *supra* note 3, at 630.

⁷ For example, Dr. Allen Keller, the Director of the Bellevue/NYU Program for Survivors of Torture has explained that: "Generally, the most deserving asylum applicants are unable to speak about their persecution immediately after they arrive in the United States. Victims of torture, and others who suffer from Post-Traumatic Stress Disorder (PTSD), have great difficulty relating their stories both to their representatives and

to U.S. authorities until they have had time to recover from their trauma."

⁸ Women's Commission for Refugee Women and Children, *Amicus Brief in American Immigration Lawyers Association v. Reno*, May 17, 1999. *AILA v. Reno*, 18 F. Supp. 21, 38 (D.D.C. 1998), *aff'd*, 199 F.3d 1352 (D.C. Cir. 2000).

⁹ INS HQDDP Operations (Detention and Removals), Enforcement Standard, "Use of Restraints," February 11, 1998.

¹⁰ Jennifer Honig and Susan Fendell, *Meeting the Needs of Female Trauma Survivors: The Effectiveness of the Massachusetts Mental Health Managed Care System*, 15 Berkeley Women's Law Journal 161, 174 (2000).

¹¹ See *Comments on Proposed Expedited Removal Regulations INS No. 17-88*, filed with the INS on February 3, 1997 at 28 (Lawyers Committee for Human Rights) (citing *Kasinga* case and stressing that regulations should make clear that unprecedented or novel asylum claims should not be rejected under expedited procedures); Michele R. Pistone and Philip G. Schrag, *The 1996 Immigration Act: Asylum and Expedited Removal – What the INS Should Do*, 73 Interpreter Releases 1565 (November 11, 1996) ("If the new [expedited removal] law had been in effect when Ms. Kasinga entered the U.S., and her screening officer had thought that she could not win because granting asylum on this ground was at that time unprecedented, she might have been summarily removed.")

¹² 8 C.F.R. § 208.30(e)(2).

¹³ Immigration and Nationality Act [hereinafter INA] § 235 (b)(1)(B)(v).

¹⁴ See Lawyers Committee for Human Rights, *Detention of Refugees: Problems in Implementation of the Asylum Pre-Screening Officer Program*, 1994; Lawyers Committee for Human Rights, *Refugees Behind Bars: The Imprisonment of Asylum Seekers in the Wake of the 1996 Immigration Act*, August, 1999. See also

Sidebar Endnotes

¹ Among the steps taken by the Department of Justice since September 11 are a proposal to limit the ability of the Board of Immigration Appeals to review decisions of immigration judges (67 Fed. Reg. 7309 (Feb. 19, 2002) and regulatory changes instituted to increase INS detention authority (66 Fed. Reg. 48334 (Sept. 20, 2001); 66 Fed. Reg. 54909 (Oct. 31, 2002)). In addition, the U.S. and Canada have agreed to sign a “safe third country” agreement that will limit the access of asylum seekers who pass through one country to the asylum system of the other.

² INA § 208(d)(5)(A)(i). In addition, anyone who presents a risk to U.S. security is barred from asylum, as are those who have persecuted others or committed serious crimes. INA § 208(b)(2).

³ Karyna was represented *pro bono* by attorneys at Latham & Watkins, through the Lawyers Committee’s Asylum Program.

⁴ For confidentiality reasons, “Aracelis’s” real name has not been used in this case. Aracelis was represented *pro bono* through the Lawyers Committee’s asylum program by attorneys at the firm of Allen & Overy.

⁵ To protect her privacy, this asylum seeker was identified as “Jane Doe” publicly and in connection with a lawsuit that was brought challenging expedited removal. *American Immigration Lawyers Association (AILA) v. Reno*, 18 F. Supp.2d 38 (D.D.C. 1998). This information was obtained from September 20, 1997 and January 14, 1998 articles in *The New York Times*. Jane was represented *pro bono* by the American Civil Liberties Union and the law firm of Davis Polk & Wardwell.

⁶ For confidentiality reasons, “Ms. Koromah’s” real name has not been used in this profile. The information in this profile is based on an interview with Ms. Koromah.

⁷ Adolphine was represented *pro bono* by New York University Law School’s Civil Legal

Services Clinic, Washinton Square Legal Services, Inc. through the Lawyers Committee’s asylum program.

⁸ Beatrice was represented *pro bono* by attorneys at Lowenstein Sandler, through the Lawyers Committee’s Asylum Program.

⁹ For confidentiality reasons, “Mina’s” real name has not be used in this profile. Mina was represented *pro bono* by attorneys at the law firm Debevoise & Plimpton, through the Lawyers Committee’s Asylum Program.

¹⁰ Hua Zhen Chen was represented *pro bono* by the International Human Rights Law Clinic at American University’s Washington College of Law.

¹¹ Yudaya was interviewed by the Women’s Commission on July 22, 1998. *See, Forgotten Prisoners, supra* note 35. *See also*, Alisa Solomon, *A Dream Detained*, *The Village Voice*, March 30, 1999, (profiling Nanyonga’s case); Elizabeth Llorente, *A Young Woman’s Search for Safety Put Her in Chains*, *The Bergen Record*, February 13, 2000.

¹² For confidentiality reasons, “Sameera’s” real name has not been used in this profile. She was represented *pro bono* by a volunteer attorney through the Midwest Immigrants Rights Center.

¹³ For confidentiality reasons, “Wu’s” real name has not been used in this profile. The information in the profile is based on an interview with Wu by a member of the Lawyers Committee’s staff.

¹⁴ For confidentiality reasons, “Oumou’s” real name has not been used in this case. Oumou was represented *pro bono* by attorneys at the Tahirih Justice Center.

¹⁵ For confidentiality reasons, “Suhaila’s” real name has not been used in this case. Suhaila was represented *pro bono* by attorneys at the Tahirih Justice Center.

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.



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