



## *Asylum and FGM* *Part 1: U.S. Asylum Policy*

**By Rebecca Salonen**

“A Victory for Women” was declared by a *New York Times* editorial on June 22, citing the unanimous decision of the U.S. Court of Appeals for the Second Circuit in remanding an FGM-asylum case to the Board of Immigration Appeals (BIA), which had denied it. The case at hand concerned three Guinean women who had sought to avoid being returned to their home country due to a “well-founded fear of persecution.”

The Appeals Court’s opinion noted “significant errors” in the BIA’s decision. The BIA denied asylum because it said the women were free from persecution since they had already been cut. According to the *Times*, the BIA “had likened the women’s injuries to the loss of a limb – a bad thing but not something that happens more than once.” In rebuttal, one of the appellate judges noted that FGM is a “perpetual injury.” The court held that FGM-practicing societies are places where women may also be persecuted by beatings, rape, forced marriage, and sex trafficking. One judge wrote that she was “deeply disturbed” that the women’s cases “did not receive the type of careful analysis they were due.” Another called FGM “a horrendous act of persecution.”

A similar case, concerning a Malian woman whose asylum was denied by the BIA on the same grounds, is pending review by the Fourth Circuit. A number of FGM-asylum cases denied by the BIA have been recently remanded by appeals courts, reflecting the federal courts’ criticism of the BIA, which was reorganized in 2003 under Attorney General John Ashcroft.

***Asylum ins and outs.*** The U.S. Immigration and Nationality Act (INA) reflects the basic principle that a foreign national will not be returned to a country where his or her life or freedom is at risk. Under this law and those that have followed and amended it, asylum seekers must show a well-founded fear of persecution on account of their race,

religion, nationality, membership in a particular social group, or political opinion. Those who are granted asylum,<sup>1</sup> along with their spouses and children, receive permanent resident status in the United States after one year and certain social services for 5 years. However, the number of those claiming refugee/asylum status has grown along with the worldwide causes of migration, and U.S. asylum policy has become increasingly restrictive as legislation and regulations have attempted to respond to political considerations.

People want asylum in the U.S. for different reasons, but the one that is not acceptable is poverty. Aliens will not be admitted to the U.S. as economic refugees but must claim persecution on the grounds enumerated in the law. To discourage frivolous or fraudulent claims, in a departure from the past, the 1996 Illegal Immigrant Reform and Immigrant Responsibility Act (IIRIRA) prohibits aliens from receiving work permits for 150 days after filing their asylum applications, even if paroled into the United States while awaiting a hearing before an immigration judge. The IIRIRA’s “expedited removal policy” turns away those arriving without proper documentation if they do not apply for asylum or do not express a “credible fear” of persecution. Those who arrive with false documents or none but claim asylum are kept in detention until their cases are heard. As intended, trying to win asylum in the U.S. has become much less “inviting.”

Expedited removal is often criticized because a low-level immigration officer at the port of entry has authority to order anyone removed. Many people with valid claims reportedly have been turned away or denied an asylum application. However,

<sup>1</sup> A “refugee” is someone who seeks U.S. residence by applying abroad and will arrive with a grant of asylum and proper documents for resettlement. An “asylee” is someone residing, legally or illegally, in the U.S. or arriving at a U.S. port of entry who meets the definition of a refugee. The only difference is the location where they submit their application.

according to government figures, during FY2003, 5,367 people without proper documents arrived at U.S. ports of entry and requested asylum, and 99 percent were found by asylum officers to have “credible fear” of persecution and, we may assume, were scheduled for a hearing with an immigration judge. In 2003, 42,114 asylum claims were also filed from aliens residing in the United States. No one knows how many people may have been turned away or failed to apply for asylum because of intimidation, and we do not know how many claims were, or might have been, related to FGM.

***FGM as persecution.*** A woman claiming asylum based on fear of FGM must offer proof that she belongs to a particular ethnic group that widely practices FGM. Following the first successful FGM-asylum cases, such as that of Fauziya Kassindja in 1996,<sup>2</sup> most U.S. courts and the BIA began to accept FGM as a legitimate form of persecution. The burden, however, remains on the claimant to show support for her fear of persecution based on FGM.

Some asylum claimants ask for protection based on a fear that their daughters would suffer FGM if they were deported. The BIA has been reluctant to agree in these cases unless the mother shows a well-founded fear of persecution in her own right.

Several years ago I testified in immigration court on behalf of a Ugandan woman who had fled her country with her daughter. She was not from a Ugandan cultural group that practiced FGM, but her husband was. She avoided FGM (though not abuse) at the hands of her husband’s family for many years, but once she overheard them planning her daughter’s circumcision, she knew she had to escape. She had never heard of asylum but managed to obtain a visitor’s visa, entered the U.S. with her daughter, and overstayed. About to be deported, she was told by a co-worker about asylum and filed an application. In due course her hearing came up before the immigration judge. Because of her threatened removal, the woman was placed in “defensive,” that is, adversarial, asylum proceedings and had to face a government witness opposing her asylum. In particular, he cited the State Department country reports.

The woman had amassed an impressive amount of dramatic documentation of her case, including copies of Ugandan newspaper advertisements her husband’s family had used to try to find her, and

affidavits that her own family had been attacked with machetes to try to elicit information about her whereabouts. Incredibly (to me), the woman’s claim was denied by the judge, simply because he did not believe her documents and preferred the country reports. He ruled narrowly in her case because she was not a member of an ethnic group practicing FGM. Once she was denied asylum, her daughter’s claim also collapsed.

A few years later, however, in February 2006, the Ninth Circuit ruled in support of a couple who feared their American citizen daughter (born in the U.S.) would suffer FGM if they were returned to Ethiopia. In August 2007, the Seventh Circuit ruled that an adult Nigerian woman was denied a fair hearing for asylum by the BIA.<sup>3</sup> Both cases were remanded because they relied primarily on “illogical consideration of State Department country reports,”<sup>4</sup> rather than on individual circumstances which the appeals court found sufficient to support the asylum claim. The country reports, which I have often found inaccurate and misleading, are almost always, in my experience, used to support the government’s rebuttal of FGM-asylum claimants’ stories. Now the courts say the BIA must listen to the women.

***FGM as past persecution.*** Women may win asylum if they can show they are threatened with FGM, but the BIA has rejected the persecution claim if the women have already been cut. The federal appeals courts are now changing this, as noted by the *Times* editorial. The “well-founded fear” claim must demonstrate (1) a past incident that qualifies as persecution, (2) that the persecution is because of the claimant’s race, religion, nationality, membership in a social group, or political opinion, and “(3) is committed by the government or by forces the government is either unable or unwilling to control.”<sup>5</sup> The third clause is the one that allows asylum based on *past* FGM. Having once suffered violence (i.e., FGM) that was not prevented by the government in her home country, a woman may claim a well-founded fear of future violence and persecution. The BIA has been rebutting this argument for years but is now being overruled by the federal courts. ☺

<sup>3</sup> Her husband’s family had tried to cut her after the birth of her first son, when she was 39. The BIA denied her claim because the country reports included information on FGM involving girls, not adult women.

<sup>4</sup> See <http://www.immigrantjustice.org>.

<sup>5</sup> See Yule Kim, “CRS Report for Congress: Asylum Law and Female Genital Mutilation: Recent Developments,” February 15, 2008.

<sup>2</sup> See Kassindja’s own account of her long struggle, *Do They Hear You When You Cry*, Delacorte Press, 1998

# Information and News

## Parents Arrested for FGM

The BBC reported on June 13 that parents of Sudanese origin living in Denmark had been arrested for taking their two daughters to Sudan to undergo female genital mutilation. FGM is illegal in Denmark.

The couple, a 49-year-old husband and his 40-year-old wife, were suspected of having taken their two girls, now 9 and 11, to Sudan in 2003. Danish social services alerted the police after a medical examination revealed their infibulation. The parents were also accused of planning to take third daughter, 5, to Sudan. A Danish judge put the couple in custody for 8 days, pending an investigation. If they are found guilty, they face a possible penalty of 6 years in prison. ☺

## World Health Assembly

On May 24, the 61<sup>st</sup> World Health Assembly, meeting in Geneva, announced its commitment to accelerating action toward eradicating FGM through legislation and educational and community-based efforts. The Assembly, which this year included 2,704 participants from 190 nations, responded to the report from its committee on female genital mutilation, which recalled the many past resolutions and international agreements, including the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (known as the Maputo Declaration), that consistently advocated against FGM and bound member-states to oppose it. The final report noted the Assembly's deep concern about the serious health consequences of FGM and also the increasing medicalization of the practice.

Member-states were urged to accelerate activities leading to the elimination of FGM; to enact and enforce legislation against it; to support community-based efforts, emphasizing men's and local leaders' participation; to formulate guidelines for the care, particularly during childbirth, of girls and women who have undergone FGM; and to develop and reinforce social and psychological support services for "women and girls who are subjected to this violence."

The assembly also requested the director-general of WHO to increase support for member-states' anti-FGM activities. Significantly, WHO was asked to increase support for research on FGM in order to facilitate its elimination. Research of all kinds has long been needed to improve understanding of the

persistence of FGM, means of culture change that might eliminate the practice, the psychological trauma inflicted by the physical event, and many aspects of the threat to the health and well-being of girls and women in FGM-practicing cultures. Without understanding, anti-FGM advocacy is at best a blunt instrument that has not been shown to be very effective.

The assembly addressed many important global health issues in addition to FGM, including promotion of pharmaceutical R&D and access to medicines for diseases affecting developing countries. They announced a 6-year action plan to tackle non-communicable diseases such as cardiovascular disease, diabetes, cancers, and chronic respiratory diseases, which were responsible for 60 percent of all deaths globally in 2005, an estimated 35 million. WHO was also asked to intensify efforts to curb harmful use of alcohol, to take action to protect health from the effects of climate change, and to continue commitments to polio eradication and preparation for an influenza pandemic. In other actions, delegates directed WHO to fulfill its global immunization goals and assess the health aspects of global migration. ☺

## “Hitting the Ground Running!”

The National Council for Research on Women held its annual conference at the Center for the Study of Gender and Sexuality at New York University June 5-7. This year's theme was “Hitting the Ground Running: Research, Activism, and Leadership for a New Era.” Dr. Tobe Levin, collegiate professor at the University of Maryland in Europe and at the University of Frankfurt, moderated a session, “Does the Community Divide Exist? Working and Researching across Communities for Social and Political Change.” Dr. Levin is also president of FORWARD-Germany and a member of the Godparents Association. Guiding session participants to a better understanding of FGM as a mutilation of women, Tobe introduced Rebecca Salonen, who gave a presentation on the Godparents Association's experiences with local communities in Uganda and the development of our quiet work “under the radar” in supporting the education of girls trying to escape forced FGM. ☺

**THE GODPARENTS ASSOCIATION** is an independent, non-sectarian, 501(c)(3) organization whose mission is to nurture and support the education of young people at risk, particularly young women subject to FGM and others deprived of education because they are orphans, physically handicapped, traumatized by war, or marginalized by poverty. Girls who choose to resist FGM will need the life options education can provide. If they remain dependent in village life, they will eventually be obliged to submit to genital cutting. To foster the education of these young women and their emergence into the life of their nation and the world, the Godparents Association works with their parents and community and civic leaders and raises the funds to pay the girls' secondary-school fees. We are grateful for the contributions and support of all individuals and organizations that wish to join in our efforts, without regard to their religious, political, or cultural background. Their participation, however, is strictly limited to their support of our stated purpose and does not necessarily imply any endorsement by the Godparents Association.

**TO JOIN** the Godparents Association, please send \$25 to Godparents Association, Inc., 409 Waldemere Ave., Bridgeport, CT 06604-5633 USA. Additional unrestricted contributions will be added to the Education Fund. A contribution of \$575 will pay school fees for a girl for one year.

### *This month's picture*

A circumcision procession comes to town. The candidate is the boy whose face is painted white.



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