

Amnesty International USA's **REFUGEE ACTION**

sent for the Refugee office • Amnesty International USA 500 Sansome Street #615 • San Francisco CA 94111 •

May 18, 2000

NSA 6/00 Refugee Concern (Fear of Refoulement)

UNITED STATES OF AMERICA:

Ms. M-, a national of China

Ms. O-, a national of the Former Soviet Republic

SUMMARY

Amnesty International is concerned about US decisions in asylum cases involving women fleeing forced prostitution. Ms. M and Ms. O fled forced prostitution in China and the Former Soviet Union respectively. Ms. O was denied asylum in the United States. Ms. M was granted asylum by an immigration judge (IJ) and the Immigration and Naturalization Service (INS) has appealed. Amnesty International is concerned that US officials' denial of protection for women fleeing forced prostitution violates the spirit of US obligations under the Refugee Protocol. Moreover, it is inconsistent with the agency's own Gender Guidelines released in 1995.

IMPORTANT NOTE: Amnesty International does not attest to the validity of the stories summarized here nor of the country conditions described. Our concerns are how refugee law is being applied.

Ms. M is a young woman from China who was made to enter a brothel and managed to escape before she was forced to engage in sexual relations with the brothel's customers. While working in a hotel, she had to deal with sexual advances from its manager. One night he touched her inappropriately and then grabbed her. In a desperate attempt to defend herself, and afraid that she was about to be raped, she grabbed a pair of scissors and stabbed him in the thigh. She then broke free and ran away. Hotel guards caught her and the police arrested her. The police held her for a month and told her she was facing three years in jail for assaulting the manager. When she told the police about the manager's unwanted and forced advances, they did not investigate. One police officer replied that she should be happy to have the attention of a man with wealth and status and that she should have cooperated with him.

When Ms. M was unable to pay money to the hotel manager so that he would drop the charges, the manager said that Ms. M could work off the debt by working in a hair salon. The salon turned out to be a front for a brothel run with the cooperation of the police. The young women at the salon were ordered to have sexual relations with the brothel's customers. If they resisted they would be drugged and forced to service the clients. Ms. M observed that women who resisted were also beaten. Neither she nor any of the women working there were allowed to leave. Persons in charge told her to watch and learn how to be nice to the clients.

Ms. M alleges that because she was young and a virgin, the other women working at the brothel helped her to escape before she was forced to service anyone. She fled to the United States via Hong Kong. Since fleeing the brothel, she claims that the police have come looking for her at her parents' house.

In a decision in December of 1996, an Immigration Judge (IJ) found Ms. M credible and referred to the corroborating evidence that she had submitted in support of her case, including documentation regarding the pervasive existence of forced prostitution in China. The IJ stated that even if Ms. M had been found guilty of assault, being sent to a brothel and forced to have sex is an inappropriate punishment and as such constituted persecution. The IJ compared the case to the Board of Immigration Appeal's (BIA) decision in Kasinga where asylum was granted to a woman from Togo who feared forcible female genital mutilation.

The INS has appealed the grant of asylum. Amnesty International believes that the IJ's decision granting asylum was appropriate and in keeping with U.S. and international asylum standards. The case is still pending before the Board of Immigration Appeals.

Ms. O is a 21-year-old ethnic Russian woman living in a former Soviet Republic who was abducted by a local "Mafia" leader, who wanted her to engage in sexual relations with him. When she refused, she was raped by this man and then gang-raped by three or four of his friends. Ms. O was then forced to have sex nightly with her abductor's friends and guests in

his home. He told her that "you're now working for me, and you're my property." He also told her that "once you're here, the only way out of here is being carried out feet first." Three regular visitors observed by Ms. O were the local district attorney, police chief, and mayor. On more than one occasion, Ms. O was raped by the mayor and the chief of police. If Ms. O was uncooperative or tried to escape, she was beaten. Ms. O's parents went to the police and reported her missing, but she claims they were unable to gain any cooperation from them.

Ms. O's abductor later "lost" her in a card game with another "Mafia" leader from Moscow. Her new abductor apparently planned to send her to Israel or Turkey for forced prostitution. The driver who was transporting her helped Ms. O to escape. When she reached safety, she tried to telephone him to say that she was safe. Her original abductor answered and told her that the driver had been murdered for helping her. He said that he knew where she was and that "his people" would find her. Ms. O fled to the United States and applied for asylum. She is seeking counseling from a rape crisis center.

At her February 7, 2000, hearing, the Immigration Judge (IJ) found Ms. O to be credible, and accepted as true all facts in her case, including the opinion of a country expert that, if returned, "she would either be abducted again and again subject to torture and forced prostitution ..., or, more likely, be targeted for ritualized execution." The IJ nevertheless denied asylum, as he did not find that the persecution Ms. O endured to be "on account of" one of the five grounds for asylum.¹ Ms. O's attorney has appealed from the denial of asylum, and her case is currently pending before the Board of Immigration Appeals.

AMNESTY INTERNATIONAL'S CONCERNS:

Amnesty International (AI) is concerned with these examples of resistance by U.S. decision-makers to asylum claims from women who suffer gender-based persecution. AI has issued previous actions in cases involving denials of asylum to a woman fleeing domestic violence in Guatemala (See NSA 6/99) and a woman fleeing an honor killing in Jordan (see NSA 4/00).

A refugee is defined in law as a person who is unable or unwilling to avail himself or herself of the protection of his or her government due to a well-founded fear of persecution on account of race, religion, nationality, political opinion, or membership in a particular social group. The persecution can come from either the government or from a person or group that the government is unwilling or unable to control.

Assuming the validity of their stories, it is eminently clear that both Ms. M and Ms. O cannot count on the protection or their respective governments. Indeed, government authorities appear complicit in enforcing their servitude or in refusing to act to save them from it. Ms. M and Ms. O face persecution in their home countries, both as women abducted to be prostitutes and as persons who do not willingly accept this forced servitude. They both meet the definition of a refugee, in AI's opinion. AI questions why INS officials would consider contesting such claims, assuming that they accepted the facts as reported to our organization and summarized here.

AI believes that these decisions indicate indifference to the Considerations for Asylum Officers Adjudicating Asylum Claims from Women ("Gender Guidelines"), which were published by the INS in 1995 to guide the decisions of Asylum Officers. The Gender Guidelines recognize that women often experience types of persecution that are particular to gender, including rape, and that such abuses can be the basis for asylum claims. Forced prostitution is sexual slavery and constitutes rape, which is itself a form of torture. International legal instruments have condemned forced prostitution and trafficking of women since 1904. In 1950, the United Nations consolidated various anti-trafficking agreements and adopted the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

The Gender Guidelines also state that an asylum applicant who can demonstrate a well-founded fear of persecution on account of her beliefs about the role and status of women in society may be eligible for refugee status on account of political opinion. The actions of the two women discussed above, as evidenced by their escapes, clearly indicate their belief in their right to be free from forced prostitution. The Gender Guidelines instruct that a particular social group can be defined as based on a "shared characteristic" such as gender.

AI is concerned that asylum adjudicators are failing to provide protection in gender-related asylum cases, even where persons have fled recognized human right violations and, as in these cases, are members of a recognizable group of

¹ Although the IJ denied asylum, he did grant a form of temporary relief under article 3 of the Convention Against Torture (CAT). In order to grant this relief, the IJ had to have found that Ms. O would face torture upon return with at least the acquiescence, if not the direct involvement, of government officials; Ms. O was eligible because she had been raped by local officials. While relief under the CAT prevents her removal to her home country, it is a more restrictive form of protection. CAT relief does not provide her with any permanent status in the United States and restricts her ability to travel.

resisters to such treatment and thus meet the refugee definition. This is inconsistent with UNHCR guidance, the INS's own guidelines, and its earlier jurisprudence as demonstrated by cases such as Kasinga.

AI believes that all persons connected with asylum adjudication in the United States Department of Justice should be guided in their decisions by the Gender Guidelines. AI is concerned that in the cases above and in others US officials have ignored the emerging international consensus on gender-based asylum claims, a consensus the INS appeared to have endorsed through its Gender Guidelines.

SUGGESTED ACTION:

Please send letters to the officials listed below. Please include the following in your letters:

1. Make reference to the above cases.
2. Express concern about INS contesting asylum protection in these cases. Stress their importance for the protection of persons throughout the world from sexual and other forms of forced servitude, and in particular for those who flee such practices where there is an absence of state protection.
3. Note that recent government decisions since the BIA's decision in Kasinga are withdrawing the protection that decision provided. Ask that the **Attorney General** promptly reverse the BIA decision in Matter of R-A² and instruct the Board to follow its decision in Kasinga recognizing gender-based asylum claims.
4. Ask the **INS Commissioner** to support the reversal of Matter of R-A.

LETTERS TO:

The Hon. Janet Reno
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20536

Ms. Doris Meissner
Commissioner
Immigration and Naturalization Service
425 I Street, NW
Washington, DC 20536

Copies to: your Senators and Congressperson

STOP ACTION: Please send no letters after July 31, 2000

² This was a decision by the BIA discussed in previous Urgent Actions. The excessively broad interpretation of Matter of R-A has led to the denial of asylum claims from several women fleeing gender-based persecution.