

Amnesty International USA's



REFUGEE ACTION



UA Office • POBox 1270 Nederland CO 80466 • ph 303 258 1170 • fax 303 258 7881 • e-mail sharriso@aiusa.org • <http://www.amnesty-usa.org/urgact/>

NS 4/00 Fear Of Refoulement: Gender-based Asylum Claim

February 11, 2000

USA/JORDAN

Ms. A, a national of Jordan

Amnesty International is concerned about US decisions in the asylum case of a Jordanian national, who alleges she fled her country in fear of being subjected to an "honor killing" at the hands of the male members of her family. An Immigration Judge (IJ) denied her asylum claim and the Board of Immigration Appeals (BIA) affirmed that denial. The case is currently on appeal to US courts. Amnesty International is concerned that US officials' actions both fail to recognize conditions in Jordan and violate several standards for the protection of refugees, including standards set by the United States itself.

BACKGROUND

The term "honor killing" refers to the practice in Jordan and other Middle Eastern and South Asian countries in which male members of a family consider themselves duty-bound to kill a female family member who they think has brought them dishonor and shame. The notions of what defiles honor may include alleged sexual transgressions, and/or the desire of women to choose a marriage partner or to seek divorce.

Ms. A. believes that she faces death at the hands of the male members of her family in Jordan because of her actions. In the summer of 1991, she and her male companion, H., began to spend time together in secret. In August, they had sex together and shortly afterwards H. proposed marriage. A.'s father apparently forbade the marriage because H. is Palestinian and had a low paying job. Fearing that A. would be killed if her family found out she had lost her virginity and had premarital sex, the couple fled (separately) from Jordan in late 1991.

A.'s fears have apparently been confirmed through letters from her sister. A.'s sister warns her that her father has ordered male family members to kill her on sight. The sister describes her father as enraged by A.'s actions and as believing that the shame she has brought on the family can only be removed by "blood." The letters state that A.'s father has demanded that male relatives kill her at any place or time that they find her. The most recent of the letters, sent in September 1997, reports that her father said that should he die before he can kill her, he will only rest in peace if her male relatives carry out the job.

Honor killings are prevalent in Jordan and are inadequately dealt with by the Jordanian government. The 1998 U.S. State Department Report on Human Rights Practices in Jordan states that more than 20 "honor killings" were reported for that year. The report states that most honor killings go unreported and the actual number is believed to be four times as high. One estimate in the report states that "honor killings" represent 25% of the murders in Jordan.. The only form of protection offered by the Jordanian government for women who fear becoming victims of honor crimes is imprisonment. In 1998, there were up to 50 women involuntarily detained in this form of "protective custody." Amnesty International's assessment of the problem conforms to that of the US Department of State, including the assessment that reported incidents understate the extent of the problem.

Article 340 of the Jordanian Penal Code provides that men accused of these killings are not to be prosecuted for murder but for "crimes of honor," which carry lenient sentences, averaging three months to a year. (In comparison, death is the penalty for murder under the Jordanian Penal Code.)¹ There was a recent proposal to abolish Article 340, which was supported by a worldwide campaign, endorsed by King 'Abdullah and Princess Basma, his spouse, and the Jordanian cabinet, and presented to Parliament. The proposal was defeated by the Parliament in November of 1999. The only change in the law which emerged was a proposal by the Senate Legal Committee to mandate reduced sentences for women who commit "honor killings."

¹ The law allows a defendant to invoke a "crime of honor" defense. Women may not invoke this defense, nor may they use it for killing men who attempt rape or sexual harassment.

According to a Human Rights Watch report, the Lower Parliament again failed to change the law in January 2000.

US OFFICIALS' ACTIONS

A US Immigration Judge (IJ) denied A.'s asylum claim in January 1998. The IJ found A. credible, but ruled that she did not have a well-founded fear of persecution because her father had not been violent towards her in the past and because she had not directly spoken with her father to confirm his threats. The IJ apparently ignored the 3 letters received by A. from her sister over a 5-year period, letters which make explicit reference to her father's orders to the male members of the family to kill A. The IJ acknowledged honor killings occur in Jordan, but stated that they are violent episodes in specific families and they are not pattern or a practice against Jordanian women in general. The IJ rejected the claim that A.'s fear of persecution was on account her membership in a "particular social group" defined in part by her gender or circumstances, whose members have "immutable characteristics or common traits such as... shared past experiences."

While acknowledging that the law might not prevent A. from being killed in Jordan, the IJ stated in her decision that "the protection offered in this country [the United States] differs little from what is provided in Jordan." Though the IJ acknowledges A.'s father's request for male members to harm her "if they meet her again...[t]here is no call for the men to search out the respondent." This means, according to the IJ, that A. could apparently settle in Jordan, since "the Court doubts that that her family would have the resources to search, find and kill" A. Finally the IJ suggested that since A. has had children, her father's might feel less hostile towards her.

The Immigration and Naturalization Service (INS) Assistant District Counsel adopted "the rationale of the Immigration Judge's decision" in its brief on appeal of the case to the BIA.

The BIA upheld the judge's decision on August 20, 1999, ruling that that A.'s fear of being the victim of an honor killing was speculative, and that such harm would not be persecution on account of social group membership, but, rather the unfortunate consequences of a "personal family dispute."

AMNESTY INTERNATIONAL'S CONCERNS:

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

Amnesty International believes that if returned to Jordan, A. would have to remain in hiding indefinitely or be put in jail to protect her. Conditions in Jordan and the actions of the Jordanian Parliament indicate that the Jordanian government is unable or unwilling to protect A. and women like her. The threats to A. are apparent attempts to punish her for her resistance to, or failure to accept, the role women are forced to play in Jordanian society. This can easily be seen as a political position. Moreover, A. meets the legal qualifications for membership in a "social group" defined by women who have acted as she did. She and at least 25% of the murder victims in Jordan are a clearly distinguishable group of women who face severe consequences for violation of social norms and who cannot change their histories.

In Amnesty International's view, the reasoning of both the IJ and the BIA replace evidence about conditions in Jordan, the bias of its laws against women, and A.'s personal history with speculative and undue optimism about what might happen should she return to her country. The dismal record of "honor killings" is cast in the most positive light possible in order to justify the denial of protection to A. The IJ's comparing of the United States and Jordan appears groundless and unreasonable. Laws in the United States, however imperfectly enforced, would provide for severe punishment for perpetrators of such killings, should they occur.

Amnesty International believes that this case is one of many examples where various INS and Department of Justice officials have for years tried to "narrow" the definition of a refugee under US law, rather than to use that definition, which is based on international standards, as a method to grant protection to persons who merit it. The decision further indicates the Justice Department's indifference to its own principles, that is, the "Considerations for Asylum Officers Adjudicating Asylum Claims from Women" ("Gender Guidelines"), published in 1995.² The

² See Urgent Action NSA 6/99 [and follow-up actions], issued May 25, 1999, concerning the case of Ms. Rodi Adali Alvarado Pena.

Gender Guidelines reflect international standards, including the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, the 1994 United Nations General Assembly Declaration on the Elimination of Violence Against Women, and United Nations High Commissioner for Refugees (UNHCR) Executive Committee Conclusions 39 & 73.

The Gender Guidelines recognize that laws and customs may contain gender-discriminatory provisions and that breaching social mores, including marrying outside of an arranged marriage "may result in harm, abuse or harsh treatment that is distinguishable from the treatment given to the general population, frequently without meaningful recourse to state protection." Therefore, "women asylum seekers who face harsh or inhuman treatment due to their having transgressed the social mores of the society in which they live may be considered as 'particular social group.'" Given US and international standards, Amnesty International believes the Immigration Judge and the BIA erred in ruling that A. does not meet the definition of a refugee and merit political asylum. Of perhaps greater concern is that INS legal counsel, whose agency published the "Gender Guidelines," formally adopted the rationale of the IJ's decision.³

SUGGESTED ACTION:

Please send letters to the INS Commissioner:

1. Express concern about the denial of asylum to A.
2. Ask why the INS has opposed a grant of asylum in light of the Agency's Gender Guidelines. Suggest that all INS actors involved in evaluating and adjudicating asylum claims be required to address those claims in light of Gender Guidelines.
3. Urge the Commissioner to have the INS not oppose a grant of asylum before the US 9th Circuit Court of Appeals.

Doris Meissner
Commissioner, INS
425 I Street, NW
Washington, DC 20536

Please send letters to the Attorney General:

1. State that given that this most recent decision, together with the decision in the Matter of Rodi Adali Alvarado Pena currently pending before her, demonstrates the INS's misunderstanding of and apparent disregard for women's rights in the asylum process, despite the US commitment to and leadership role in protecting women's human rights internationally.
2. Urge that the principles set forth in the Considerations for Asylum Officers Adjudicating Asylum Claims from Women be incorporated into the Department of Justice regulations. This would govern how gender-related asylum claims are handled by INS Counsel, Immigration Judges and the BIA as well as by Asylum Officers.

Attorney General Janet Reno
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

Please send appeals immediately. Check with the Colorado Office Between 9:00 am and 6:00 pm, Mountain Time, weekdays only, if sending appeals after March 31, 200.

³ Immigration Judges and the Board of Immigration Appeals are not part of the INS, but of the Executive Office of Immigration Review. All of the agencies belong to the US Department of Justice.