

Woman's Plea for Asylum Puts Tribal Ritual on Trial

RIGHT INTO DETENTION
special report.

By CELIA W. DUGGER

YORK, Pa. — Fauziya Kasinga says she fled her homeland of Togo at age 17 to avoid the tribal rite of female genital mutilation and an arranged marriage as the fourth wife of a man nearly three times her age. When she arrived at Newark International Airport, she felt sure that she would find sanctuary in a country that "believed in justice."

Instead, she has passed her 18th and 19th birthdays behind bars. First, immigration officials took her to the Esmor detention center in Elizabeth, N.J., where, she describes being shackled in chains at times, denied sanitary napkins and put in an isolation cell.

Last June, she says, she was tear-gassed and beaten during a melee at the Esmor detention center, where immigration authorities later concluded that guards had abused detainees.

After the Esmor uprising, she and many other asylum seekers who entered this country illegally in the New York area were sent to prisons in Pennsylvania, where she has been strip-searched and locked in a maximum security cell with an American convict — an account confirmed by the York County Prison warden, Thomas H. Hogan.

"I feel empty, mute," Ms. Kasinga said Friday in a barely audible whisper, as she sat in her prison blues at the York prison. "I keep asking myself, 'What did I do to deserve such punishment? What did I do?'"

Ms. Kasinga's two-year ordeal will reach a critical juncture on May 2, when the Board of Immigration Appeals, the highest administrative tribunal in the nation's immigration system, is to consider her asylum request.

Immigration officials and advocates for refugees say her case is likely to set an important precedent that could influence

the handling of a broad array of claims from women who have suffered because of discriminatory cultural practices in their home countries.

"It's the first case in which the board will directly take on the issue of female genital mutilation as the basis for an asylum claim," said Karen Musalo, the lead lawyer for Ms. Kasinga at the International Human Rights Clinic, American University, Washington College of Law.

By law, people can win asylum if they are found to have a well-founded fear of persecution because of their race, religion, nationality, political opinions or membership in a social group. The statute does not mention gender. Ms. Kasinga's lawyers contend that she is a member of a social group: young women of the Tchamba Kunsuntu tribe who resist genital mutilation.

The rite is widespread in 26 African nations. Typically, a tribal elder cuts off the clitoris and sometimes other portions of a woman's genitals without anesthesia. It often leads to serious health problems or even death, which, according to Ms. Kasinga, was the fate of her maternal aunt. The World Health Organization estimates that 85 million to 114 million girls and women have been mutilated.

The board's ruling in the Kasinga case will be binding on the nation's 179 immigration judges, who have been divided in their handling of such cases, still a rarity.

Paul A. Nejeleski, a judge in Arlington, Va., granted asylum to a woman from Sierra Leone last August because he said the rite violated her basic human rights. But John F. Gossart Jr., a judge in Baltimore, denied asylum to another woman from Sierra Leone last April. He said the woman could not change her gender, but she could choose whether or not to submit to her tribe's customary genital mutilation.

At the appeal hearing on the Kasinga case, lawyers for the U.S. Immigration and Naturalization Service will argue for a new legal framework that would allow genital mutilation to be a reason for granting asylum in carefully defined circumstances.

Beyond the issue of asylum, human rights advocates say Ms. Kasinga's case illustrates the injustice of the U.S. Immigration and Naturalization Service's practice of detain-

ing asylum seekers in prisons that are far from lawyers and families and inadequately supervised by the agency.

Immigration officials said the asylum seekers were detained in part because of a quirk in the law that treats people entering the country illegally at an airport more severely than those who are caught within the nation's borders. They said they released those who appeared to have credible claims and family ties in United States.

Ms. Kasinga said she believed that immigration authorities were just heartless. She said the prospect of being deported to Togo terrified her.

Merrick Polansky, an anthropology professor emeritus at the University of California, Los Angeles, who has testified on her behalf, says she is right to be afraid. The professor, who has done research in Togo since 1979, said women in Ms. Kasinga's tribe were sometimes forced into polygamous marriages and forced to undergo genital mutilation.

Her story is highly believable, he said. And if she is deported, the police, demoralized and underpaid, would almost certainly return her to her husband for a bribe, the professor said.

Tribal Rule

Defying a Custom, Paying a Price

The following is Ms. Kasinga's account, pieced together from court records, her sworn affidavit, an interview with her at the prison and the bits of documentary evidence she has from Togo:

Hers was a charmed childhood of privilege. Her father owned a successful trucking business. The close-knit, devoutly Muslim family — five daughters, two sons and parents — lived in a suburb of Kpalime, Togo in an eight-bedroom house.

Unlike most family patriarchs in their tribe, her father, Muhammad Kasinga, opposed polygamous marriage and the ritual mutilation of girls at age 15. When he was a boy he had seen his sister tied up and mutilated. "She was screaming and he swore he would never allow any of his daughters to have it done," Ms. Kasinga said.

He was able to defy tribal customs because his wealth made him independent. He sent Ms. Kasinga to a private boarding school in neighboring Ghana to be educated. All four of



Steven M. Palk for The New York Times

Fauziya Kasinga says she fled Togo to avoid mutilation and an arranged marriage; she has been held in detention since.

his elder daughters married men of their own choosing outside the tribe, and none were mutilated. He himself married a woman who had never been mutilated because her own sister had died of a tetanus infection after the ritual.

But in 1993, when Ms. Kasinga was 16, her father died suddenly after a severe asthma attack — and everything changed.

In accordance with the tribe's patriarchal customs, Ms. Kasinga's mother was banished from their home, and the father's only sibling, a sister, Haja-Mammud, moved in and took control of the finances. She was the fourth wife of a man who had died the year before, and no longer wanted to live with the other wives.

She disapproved of the freedom her brother gave his wife and daughters. That summer, Ms. Kasinga was pulled out of school because her aunt believed it was a waste to spend money on the education of a girl who would only marry anyway. The next year, a well-to-do, middle-age man, Ibrahim Isaka, who already had three wives, began visiting their home.

Ms. Kasinga was horrified when her aunt told her that she had negotiated a "marr" or payment of money from the man toward a marriage with Ms. Kasinga.

One morning, Ms. Kasinga said, "I saw the wedding clothes on the bed, the jewels, the shoes and the bag. 'This is from your husband,' she told me. 'He wants you today.' I said 'No, please, I don't want to marry. Please.' She said it was already arranged."

The marriage took place that very day, Oct. 17, 1994, with the bride and groom in separate locations as custom dictates. A wedding photograph of Ms. Kasinga shows her dressed in lavish tribal garb, but her eyes are downcast, her expression unutterably sad.

One of the few bits of documentary evidence of Ms. Kasinga's story is her marriage contract, which bears Mr. Isaka's signature and year of birth, 1950. In defiance, Ms. Kasinga refused to sign.

A few days later, a tribal woman was supposed to come "to scrape my woman parts off," Ms. Kasinga said. By custom, 40 days after the wounds had healed, her husband was to consummate the marriage.

"I was afraid," she said. "I didn't know how I could get away."

The day after the marriage, Ms. Kasinga's eldest sister, 32-year-old Ayisha, came to visit. While their

aunt visited with company, the sisters slipped out of the house to Ayisha's car and drove pell-mell to the airport in Accra, Ghana. Her sister gave her \$3,000 and put her on the first plane out, a midnight flight to Germany.

For two months, Ms. Kasinga lived in Düsseldorf with a woman she met at the airport, in exchange for cooking and cleaning for her. For \$800, she bought a passport from a Nigerian man who told her she could ask for asylum in America, where she had a cousin in the Washington area.

Behind Bars

Stripped and Alone In a Cold Room

She arrived at Newark airport on Dec. 17, 1994. She said she immediately told the customs officer that the passport was not hers and asked for asylum.

To her shock, she was transported to the Esmor detention center where she was put in a large, cold room with no windows except for a small one in the metal door. A guard told her to take off her clothes. It was the first time Ms. Kasinga, then 17 years old, had undressed in front of a stranger. She was menstruating and asked to keep her underwear, but she said the guard refused.

Freezing and scared, she sat on a toilet in the room shivering. When she looked up at one point, she saw a male guard looking at her through the door.

The humiliations of life at Esmor, a jail that was privately run under a contract with the Immigration and Naturalization Service, had only begun. She was given a pair of sandals, both for the right foot, and stained underwear that fell down unless she tucked it under a belt.

At one point, she was put in a small isolation cell for five days because she washed her hands before sunrise in a ritual before her morning prayers, breaking a rule that no one was to use the showers before 6 A.M.

Then she lived through the melee that swept through Esmor last June.

The Immigration and Naturalization Service issued a report after the melee that documented many of the abuses Ms. Kasinga said she had endured. The agency concluded that the poorly paid guards had treated the inmates with capricious cruelty.

Ms. Kasinga and other asylum seekers were moved to prisons in Pennsylvania that had contracted with the immigration service. First she went to the York County prison, then was moved to the Lehigh County prison last August.

The Judge

'This Alien Is Not Credible'

On Aug. 25, Ms. Kasinga's case went before Donald V. Ferlise, an immigration judge in Philadelphia.

But her lawyer Eric Bowman, hired by her cousin, had not submitted a sworn affidavit from Ms. Kasinga providing a narrative of her experience, as is often done in asylum cases. And Layli Miller Bashir, a 23-year-old law student at American University who had researched the case for Mr. Bowman, conducted the direct examination of Ms. Kasinga, crucial for establishing her story in the absence of an affidavit. Ms. Miller Bashir said she had never met Ms. Kasinga in person until that morning, nor had she ever examined a witness in court before. They had only spoken a few times on the phone. The law student said she felt she quickly lost control of the hearing.

At the hearing's conclusion, the judge said he found several elements of Ms. Kasinga's story unbelievable: that her aunt would have consulted with the banished mother about the marriage she was arranging for the girl; that Ms. Kasinga had met a woman at the airport in Germany who let her move in right away, and that Ms. Kasinga had met a man on a train who sold her a passport.

He also said it did not make sense that Ms. Kasinga claimed she would be forced to undergo mutilation since her sisters had avoided it and Ms. Kasinga herself had delayed it until after her marriage.

"The court wonders then how absolute can this tribal law be with so many exceptions being allowed for that rule," the judge said at the hearing.

In a withering comment, the judge said, "I have taken into account the lack of rationality, the lack of internal consistency and the lack of inherent persuasiveness in her testimony, and have determined that this alien is not credible."

Mr. Bowman said he believed that the judge was not open to this kind of asylum claim.

After announcing that asylum was denied, Judge Ferlise asked Ms. Kasinga if she understood his ruling. Devastated, she whispered inaudibly.

"Hello," the judge said, repeating his question. Again she could not be heard. "Hello," he said again, until finally she answered with a "yes" that the transcriber could hear.

Her feet were then shackled in chains, she was handcuffed and led out of the courtroom.

Dreams

In Deep Despair, Imagining Togo

Ms. Miller Bashir, distraught by the outcome of the case, returned to law school that fall and convinced Professor Musalo, who heads the international human rights clinic there, to take the case on appeal, pro bono.

In January, Ms. Kasinga was moved back to the York County prison and placed in maximum security because minimum security was full, the warden, Mr. Hogan, said in an interview.

Ms. Kasinga said she was often strip-searched. "What I hate is when they put 20 or 30 people in a room," she said. "They strip all of us together. They tell us to turn around, open your legs, squat. They stand there looking at you. Sometimes they laugh."

Asked how many times she had been strip-searched, Ms. Kasinga said, "I can't count. Plenty, plenty times."

"I don't know how high she can count," the warden replied angrily, when asked about her assertion, saying that she was strip-searched once when guards mistook her for an American and perhaps on other occasions when she left the prison for a meeting or hearing.

The warden said the asylum seekers and other immigrant detainees were intermingled with the American convicts in the prison, who range from drug users to murderers, without any problem until the Women's Commission for Refugee Women and Children issued a scathing report in September, denouncing the prison conditions for immigrants in Pennsylvania.

Mr. Hogan said the I.N.S. detainees were given separate sleeping quarters sometime after the report was released. Ms. Kasinga, who has been shifted to minimum security, said that happened only two weeks ago.

"The I.N.S. has very little control once they contract for the space," Mary Diaz, the commission's director, said. "They allow the jailers to run the show."

At York, the days drag on monotonously, and Ms. Kasinga says she often feels despair. Sometimes, she said, she dreams she is back in Togo in her family's big house with the flowers blooming in profusion at the front porch and green fish darting in the courtyard pond. In the dream, her father is always alive.

Then she wakes up on a prison pallet. "All my spirit is gone," she said. "I just want to leave the prison. Why am I here?"