**SELF-HELP TOOL 2:**

**Claiming the right to stay in the UK as a victim of rape and other sexual violence, including domestic violence.**

Victim of rape or domestic violence, like other victims of torture and persecution, can make a claim to stay in the UK on a number of grounds. Black Women’s Rape Action Project (BWRAP) and Women Against Rape (WAR) have helped women win on the grounds listed below.

**You can seek asylum using:**

* **Refugee Convention** (1951). You have to show that you have a well-founded fear of persecution if you are sent back to your home country, and that you are unable to seek protection from the police and others in authority. Persecution is “serious harm” directed against you because of your race, religion, nationality, political opinion or membership of a particular social group.

**EXAMPLE:** Two women won their case because they showed that as victims of domestic violence in Pakistan, they were members of a “social group” facing persecution because they could not get any help or protection from the authorities there.(Shah & Islam (A.P.) v. Secretary of State 1999).

**You can apply for Humanitarian Protection using:**

* **European Convention on Human Rights** (ECHR) **Article 3** – the right not to suffer torture and cruel or degrading treatment.

**EXAMPLE:** A rape survivor won her case because she showed that she would have no means of supporting herself back in Uganda, except through prostitution. (AA (Uganda) v. Secretary of State, 2008). This contravened her rights under Article 3.

You can get legal aid for an asylum claim.

**You can also apply to stay in the UK on the basis of:**

* **ECHR Article 8**

Right to respect for your family and private life (and, if you have a partner or children who have the right to be here, their right to a family life with you in the UK.)

* **Right to a family life**

You have to show that this would be breached if you were sent back to your country of origin. You should say if you have no family in the country you fled from, who you have a family and community life with in the UK, why you all can’t return to your country of origin and what “unjustifiably harsh consequences” you would all suffer if you were sent back.

**EXAMPLE:** An older woman from Sierra Leone had been raped in the civil war and then fled. She had no family members that she knew of left in the country. The judge

at her appeal accepted that she was particularly dependent on her family in the UK because of the rape she had suffered and agreed that she could stay here.

* **Right to a private life**

You would have to show that this would be breached if you were sent back to your country of origin. For example, that your ability to live a “full and fulfilling life” and your sense of self-worth, dignity and general enthusiasm for life is dependent on support in the UK, informal and/or professional, (e.g. counselling for rape survivors from a particular person or care from a particular relative). Psychiatric evidence about the impact that being denied this support would have on you is particularly important along with statements from others about your life here and how this support isn’t available in your country of origin.

**EXAMPLE:** A woman from Cameroon came to the UK in 2001 and then due to illness was granted leave to remain until 2007 to seek medical treatment. After attending the self-help meetings that BWRAP helps co-ordinate, she felt able to speak about witnessing severe domestic violence over many years against her mother as well as two incidents where she suffered attempted rape. In 2013 she made an application to stay in the UK and at appeal won because the Judge accepted that: *“The appellant has established her private life in the UK through her social support from BWRAP. Her mental health stability is dependent on that support.”*

**Claims under Article 8 are not easy** **because**:

1. There is no legal aid unless your case is “exceptional”
2. You have to pay a hefty fee
3. Your rights are weighed against the government’s right to enforce immigration controls and “the public good”.

So the judge may agree that your rights would be affected if you were sent back, but rule that this is OK because, for example, you have a criminal conviction, and it is not in the “public good” to allow you to stay.

**Delay in reporting rape**

Legal Action for Women’s Self-help Guide (Section 4, p28) lists what can count as new information for a fresh claim such as: “*Torture or persecution which you could not speak about before*” including “*experiences like rape and domestic violence . . .*”

If you haven’t spoken about your experience of rape because of trauma or embarrassment or fear of stigma and discrimination there is useful legal precedent which you and/or your lawyer can use to explain the delay:

**EXAMPLE:** In 1989 a woman from Uganda claimed asylum on the grounds that she feared persecution because her father had been active against the government. Her application was refused. In July 1996 she reported that she had been the victim of multiple rapes by Ugandan soldiers. WAR along with others confirmed she was suffering from Rape Trauma Syndrome but her application was refused because the Home Office said she should have spoken about the rape before. Finally, in 1998 the court decided that she had been *“unable not unwilling”* to report rape because of trauma and she won her right to stay (R v. Secretary of State, Ex parte Ejon, 1998).