

FAHAMU

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*This newsletter contains web
and email links, marked in blue.*

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| Africa LGBTQ under threat in Kenya • Another Sudanese death at Egypt-Israel border • Western Tanzania community radio broadcasts to refugees • UK lifts ban on removals to Zimbabwe | Asia Thailand may repatriate Burmese refugees after November election • Five countries sign UN human rights conventions | Middle East Yemen detains 29 Ethiopians, Saudi Arabia deports 725 • Text of Jordan's King Abdullah II on refugee issue online | Europe Detention company punishes asylum seekers after UK rooftop protest • UK judge condemns treatment of torture victim • UK deports asylum seekers to Iraq • Greek border to be patrolled by FRONTEX • Amnesty condemns removal of Roma | Americas US boasts record-breaking deportation numbers • New report on Dominican Republic • UN makes rare criticism of US, while immigration enforcement info is withheld • US citizen detained, deported to Mexico, denied re-entry |
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Egypt appointed Chair of the UNHCR Executive Committee

Egypt has been appointed the new chair of the UN refugee agency's governing body, and 'should immediately end its policy of shooting foreign nationals trying to cross from Egypt into Israel, [and] stop impeding the refugee agency's access to foreign nationals detained in Egypt who want to claim asylum' according to a letter sent to the Egyptian authorities by Human Rights Watch. The country, which has no refugee status determination procedure in place but has signed the relevant instruments, routinely deports refugees (link 1, link 2) and has maintained the use of lethal force against refugees in the Sinai. Egypt has received significant condemnation in the previous years for killing protesting Sudanese refugees and shooting refugees along the Israeli border, and has recently become host to a protest by Eritrean refugees challenging violations of their rights, as the Egyptian Initiative for Personal Rights reports religious targeting by Egyptian officials, particularly threatening to Iraqi Shia Muslims.

North Africa: human rights litigation initiative launched

The Egyptian Initiative for Personal Rights has launched the North Africa Litigation Initiative (NALI) to encourage and nurture human rights activities in North Africa, with a focus on human rights litigation. The initiative, which covers Algeria, Egypt, Libya, Mauritania, Sudan, and Tunisia, will provide technical and financial assistance and capacity building to North African NGOs, human rights defenders and lawyers who wish to litigate using the African human rights system, especially the African Commission on Human and Peoples' Rights. The NALI webpage is under construction, but further information and application forms are available by email.

Ethiopian refugees forcibly recruited in Kenya and sent to volatile Ethiopian region

Ethiopian refugees in Kenya say they are being tricked into joining a government security force in a violent region of Ethiopia, and that their families face retaliation if they refuse. The Ethiopian government denies any knowledge of coercive return or forcible recruitment into the new security force.

The Fahamu Refugee Legal Aid Newsletter seeks your input, feedback and submissions for upcoming issues. Please email editors [Themba Lewis](#) & [Nora Danielson](#).

Saudi Arabia rescues, then promises to deport 203 refugees; Somalis forcibly deported

‘The refugees will eventually be repatriated in coordination with their embassies,’ a Saudi spokesman said, after his country rescued 203 refugees of various nationalities in the Red Sea. This news comes at the same time as the country is vowing to deport sixteen Chinese migrants who ‘instigated their colleagues to stop work to demand higher wages because of the hot weather’ and participated in a subsequent riot. Additionally, legal advisers should be increasingly aware of the deportation of Somali asylum seekers, as UNHCR and the media have stressed the unacceptability of this practice, and the United Kingdom has released a new Somali Country of Origin Report detailing extensive human rights abuses. In this climate, Saudi Arabia has deported at least 63 Somali asylum seekers, amid direct calls by the United Nations High Commissioner for Refugees for Saudi Arabia to halt. According to the recent reporting, the Saudi Arabian government is ‘constantly deporting Somalis and other refugees seeking asylum’.

Angolan killed during deportation from UK

Southern refugee legal aid organizations should be prepared for the return of failed asylum seekers from Europe through highly abusive practice, as recently demonstrated by video released by a passenger on a flight involving a deportation from the UK. The video was released shortly after reports of the death of another deportee, Jimmy Mubenga, at the hands of private security firm G4S while deporting him to Angola. The deportation killing gained significant press in the UK (article 1, article 2) including some consideration of the role of private organizations in the ‘deportation business’. This news comes as a report is released documenting the deaths of at least 77 asylum seekers and migrants and another reports that millions of pounds are paid in compensation as a result of asylum seeker mistreatment at the hands of the UK Border Agency.

Ugandan press releases names and addresses of ‘top gays,’ calls for their deaths

Pambazuka News has released a call for action after Ugandan newspaper Rolling Stone published an article entitled ‘100 Pictures of Uganda’s Top Homos Leak’ calling for the ‘hanging of homos’ in Uganda. The article comes on the one year anniversary of the Ugandan Anti-Homosexuality Bill, which stipulates the death penalty for same-sex relations and life imprisonment for all other homosexual acts and that a person in authority who fails to report an offender to the police within twenty-four hours will face three years in jail. Likewise, the promotion of homosexuality carries a sentence of five to seven years in jail.

Israeli anti-infiltration bill remains a threat

Legal advisers in Israel, after meeting with the Ministry of Defense, report that after meeting with significant opposition, the Israeli anti-infiltration bill is being substituted by a new ‘temporary instruction’ – valid for three years (similar to other ‘temporary instructions’, usually effecting Palestinians, and extended one time after another) – to be circulated for remarks in October 2010. This news comes as the Euromediterranean Human Rights Network has released a report on the bill.

REQUESTS***Refugee Week Coalition seeks academic or policy research***

The Refugee Week Coalition is looking for academic or policy research, either recent or research in progress exploring UK public opinions on providing protection and sanctuary to asylum seekers and refugees, and/or any research around the 50th or 60th anniversaries of the 1951 United Nations Convention relating to the Status of Refugees. The coalition is loosely exploring the idea of using relevant research to highlight some of the key messages in a media campaign around ideas of refugees’ protection, contribution and courage. Anyone involved in relevant research and interested should email [Cathy Baldwin](mailto:Cathy.Baldwin@refugeecouncil.org). Participating organisations includes: Refugee Council, Amnesty International UK, British Red Cross, United Nations High Commission for Refugees (UNHCR), the Children’s Society, the Home Office, Oxfam, Refugee Action, Refugee Council, City of Sanctuary, Scottish Refugee Council, STAR (Student Action for Refugees) and Welsh Refugee Council.

Egypt: first steps taken in creation of National Network of Refugee Lawyers

In Egypt, a new National Network of Refugee Lawyers aims to link together pro bono refugee lawyers who are qualified and willing to provide legal services to refugees. The network will allow an increased number of refugees to access legal services in Cairo and will provide, for the first time, consistent legal services to refugees outside of Cairo – in Alexandria and Aswan.

The network was launched by Cairo-based [Egyptian Foundation for Refugee Rights \(EFRR\)](#). EFRR recently succeeded in obtaining the acquittal of a Sudanese refugee living in Alexandria falsely accused of trafficking narcotic tablets by a police officer attempting to extort a bribe.



The national network will hold its first meeting in December 2010 in Cairo. Lawyers, law firms and non-governmental organisations willing to provide legal services to refugees will meet to coordinate and to discuss expanding their services in Cairo, Aswan and Alexandria. Refugee community leaders will also participate in the discussions. After the meeting, the members of the network will conduct a

publicity campaign to ensure that refugees throughout Egypt are aware of the pro bono legal assistance which is available to them.

The first training session on legal assistance for refugees in Alexandria was held last month, attended by thirty-five lawyers who took part in group sessions and viewed two documentaries on the situation of refugees in Egypt. A similar training session is planned for Aswan. Trainings cover the definition of refugee, domestic and international agreements as well as related aspects of human rights and refugee law.

REQUESTS (Cont'd.)

Treatment of gay men in the Philippines?

Stephen Silvais is looking for an expert who can prepare an affidavit or testify in court with respect to country conditions for gay men in the Philippines to assist a client with an individual hearing in June 2011. Please contact [via email](#).

Rights in Albania, Ecuador, Mexico and Senegal

The United Nations Committee on Migrant Workers is looking at the situation of migrants – including refugees and asylum seekers – in or from Albania, Ecuador, Mexico and Senegal, and the extent to which their rights are respected. The Committee welcomes input from NGOs, labour groups and other civil society actors and we were thinking that your organization may be interested in contributing your input on one or more of those countries. Submissions to the Committee can be made in two forms. They can be comments on the report that the governments of Albania, Ecuador, Mexico and Senegal have themselves submitted (see below) or narratives and/or general concerns about the rights of migrants and refugees from or in one of those countries. (For example, your organization may already have a statement or report with perspectives for the Committee to consider.) The reports that the governments of Albania, Ecuador or Senegal submitted to the Committee are available [online](#), as is Mexico's report. Questions can be submitted [by email](#).

The law, policy and practice of refugee protection in India

We thank Bhairav Archarya for permission to include this unpublished article in this month's newsletter. It was produced in 2004, while he was the Assistant Director of the Public Interest Legal Support and Research Centre in New Delhi. Since Indian law remains unchanged, the paper remains highly relevant. He is now an independent advocate in the Supreme Court and High Court and continues to work on issues concerning refugee protection and migration, representing refugees and asylum seekers in various Indian courts. A PDF of this article containing complete footnotes and citations is [available online](#).

There are no authoritative statistics on the number of people who have fled persecution or violence in their countries of origin to seek safety in India. However, because of India's porous borders and accommodative policies, it was estimated that India hosted approximately 330,000 such people in 2004. In addition, India's documented refugees are allegedly outnumbered by hundreds of thousands of unregistered persons who have entered the country from Nepal and Bhutan to escape violence and persecution in their countries. It is estimated that over 20 lakh Nepalis fleeing from civil conflict have entered India undetected over the open border. There are also an unknown but large number of people displaced from Bhutan because of their ethnic-Nepali origins. This article is only concerned with the protection of refugees and asylum seekers in India, rather than other kinds of migrants.

The legal framework for refugee protection in India

After the Second World War and the shared European experience of massive displacement, the Refugee Convention was adopted with restricted geographical and temporal conditions to apply to post-War Europe. In 1967, in an effort to give the Convention universal application, a Protocol Relating to the Status of Refugees ['1967 Protocol'] that removed the restrictions of the Convention was added. Together, these two key legal documents provide the basic framework for refugee protection across the world. As of February 2006, 146 countries were States Parties to either the Convention or its Protocol or both.

However, India has repeatedly declined to join either the Refugee Convention or its 1967 Protocol. In addition, India has resisted demands for a national legislation to govern the protection of refugees. In doing so, India has met the many refugee influxes into its territory through an ad hoc system of executive action which is determined by the government's policy towards the country of origin. The relative success that India has had with this approach, which is guided by political instinct free from legal obligation, has led to an institutional complacency towards legal rights-enabling obligations to refugees. There has also been a hardening of attitudes about foreigners in recent years in light of heightened security concerns. This has resulted in genuine refugees paying an unfortunate price in a

country that otherwise has an impressive history of protecting refugees.

The Foreigners Act and its application to refugees

In the absence of a specialised statutory framework, India relies on the Foreigners Act, 1946 to govern the entry, stay and exit of foreigners in India. However, the Foreigners Act is an archaic legislation that was enacted by a colonial government in response to the needs of the Second World War. Its continued application in independent India for more than sixty years after the end of the war can only be seen as an indication of the government's desire to retain almost absolute powers to deal with foreigners. Section 2(a) of the Act defines a 'foreigner' as 'a person who is not a citizen of India', thus covering all refugees within its ambit as well. Without a specialised governance regime for refugees they are usually treated on par with foreigners and illegal migrants, without any special protection being accorded to them. However, it is necessary to draw a distinction between foreigners as a general class and refugees as a special subset of that class.

Section 3 of the Foreigners Act vests the Central Government with the power to issue orders to control foreigners in India. There are a number of such Orders in force that restrict the movement, activity and residence of foreigners; and, require their proof of identity and regular appearance before the police. In addition, Section 5 of this Act prevents foreigners from changing their name while in India; Section 6 requires masters of ships and pilots of aircraft to maintain records of traveling foreigners; Section 7 obliges hotel-keepers to maintain records of the stay of foreigners; Section 9 places the burden of proving that a person is not a foreigner on that person; Section 12 provides for the delegation of these powers; and, Sections 14, 14A and 14B penalise foreigners and abettors found in contravention of the Act or any Order made there under.

The Foreigners Act gives the executive wide powers to remove foreigners from India that have generally been exercised free from judicial review. This power is given to the Central Government by Section 3(2)(c) of the Foreigners Act, 1946.

Continued on page 6.

Update from Japan: Asia's only resettlement program continues

We thank Kōrin Kalia, editor of the Migration Information Source, for permission to re-publish this update from Japan. The article first appeared in the 15th October, 2010 issue of the Migration Information Source. The Source's website includes a collection of refugee-related resources.



With more than \$1.1 billion given since 2000 to the United Nations High Commissioner for Refugees (UNHCR), Japan has **long supported refugees** -- as long as most do not expect to actually live in **Japan**, which cherishes its homogeneity.

While the country accepted about 11,000 Indo-Chinese refugees between 1978 and 2006 and acceded to the UN Refugee Convention and Protocol in the early 1980s, it receives few asylum applications per year compared to other industrialized countries (1,380 in **2009** versus 27,650 in Germany, for example) and historically has recognized just a handful of them as convention refugees. Those awaiting decisions on their asylum applications struggle as they are not permitted government financial aid or allowed to work (see this **2009 BBC report**).

But Japan changed course in December 2008 when it **announced a pilot resettlement program**, making it the first Asian country to resettle refugees. Japan decided to start slowly, however. It pledged to accept ninety Burmese refugees from northern Thailand's **Mae La camp** over three years. Burmese from that camp also have been resettled in other countries

including Australia, Canada, and the United States. In February 2010, the Japanese government selected thirty-two refugees, all ethnic Karen farming families. Some had lived in the Mae La camp for as long as twenty-five years; nearly all of their children were born there. In preparation, the refugees received basic Japanese-language and cultural lessons.

On September 28th, eighteen refugees arrived at Narita International Airport in Tokyo, the Japanese media documenting their every step. (Two families had postponed their departure because they came down with the flu.) Upon arrival, they began a government-sponsored, six-month assistance program.

The new refugees will not be alone: Japan already is home to a small Burmese community, and the majority of on shore asylum applicants in recent years have come from Burma. But their successful integration is far from guaranteed.

When these resettled refugees complete the assistance program, they will need to find housing and work, though jobs may well be hard to find given Japan's recession. As a lawyer at the Japan Lawyers Network for Refugees told *Kyodo News*, "The question is whether Japanese society is open and prepared enough to accept the refugees as their neighbors" (this quote and more on the refugees' integration challenges **here**).

Given the desperate need for resettlement places, UNHCR is hoping other Asian countries will follow Japan's lead. Let us hope it will be a lead worth following.

J O B S

Hong Kong Refugee Advice Centre seeks Head of Clinical Programmes

*The Hong Kong Refugee Advice Centre (HKRAC), the only dedicated provider of pro bono legal aid to refugees making claims for asylum before UNHCR in Hong Kong, seeks a dedicated, experienced and passionate lawyer to coordinate and manage all aspects of HKRAC's Clinical Programmes. The Head of Clinical Programmes position provides the opportunity to combine direct services practice with academic instruction in the field of international law. For the complete job description and list of desired qualifications, email HKRAC with the subject line 'Head of Clinical Programmes.' The position is full-time for at least eighteen months, and starts 1st December, 2010. Applications will be accepted **until the position is filled.***

Ireland's leading refugee protection NGO seeks solicitor

*The Irish Refugee Council, Ireland's leading NGO in the field of refugee protection, is seeking to appoint a solicitor to establish and manage an independent law centre specialising in the promotion and protection of the rights of people in need of international protection. Minimum of five years experience in refugee law required, (three years experience post-qualification) together with a minimum of two years management or supervision experience. For further details and an application form (CVs alone will not be considered) [please email](mailto:IRRC). **Closing date: 3rd November, 2010.***

Continued from page 4.

This is in addition to the power to refuse entry for non-fulfillment of entry conditions that invites instant deportation. The unrestricted power of the executive to remove foreigners was first confirmed by the Supreme Court in 1955, where it held that:

'The Foreigners Act confers the power to expel foreigners from India. It vests the Central Government with absolute and unfettered discretion and, as there is no provision fettering this discretion in the Constitution, an unrestricted right to expel remains.

The untrammelled right of the executive to remove foreigners from India has been upheld by the Supreme Court in a number of subsequent decisions. Furthermore, while exercising this vast executive discretion, any foreigner may be deported without the executive being burdened to give a reason for the deportation. Thus, there is no need for the executive to comply with any form of extended due process or for giving a hearing to the person to be deported.

Limited constitutional protection

However, foreigners are entitled to some degree of constitutional protection while in India. These include the protection of the equality clause [Article 14] and the life, liberty and due process provisions [Article 21] of the Indian Constitution.

While Article 14 guarantees equality before the law and the equal treatment of the law, classifications of persons into separate and distinct classes based on intelligible differentia with a nexus to the object of the classification are allowed. Thus, the executive may distinguish between classes or descriptions of foreigners and deal with them differently. It follows that a foreigner discriminated by state action as against another foreigner of the same class or description has a valid constitutional cause of action.

Article 21 protects any person from the deprivation of his life or personal liberty except according to procedure established by law. From a rather staid interpretation of this provision, the Supreme Court has radically reinterpreted Article 21 to include a substantive due process of law to be followed for any state action impinging on life and personal liberty. Foreigners enjoy the protection of Article 21 in two ways: (a) they are equally entitled to the right against deprivation of life or bodily integrity and dignity, and (b) to a certain extent, the right against executive action sans procedural due process accrues to them. However, cases which suggest a due process for deportation have to be confined to their own facts. Indian courts have generally upheld deportation orders passed in contravention of the audi alteram partem principle.

In addition, foreigners are also entitled to the protection of some of the rights recognised in Article 20 [the right against prosecution under retrospective penal law; the right against double jeopardy; and, the right against self-incrimination]; Article 22 [rights upon arrest or detention]; Articles 25 – 28 [the right to freedom of conscience and the free practice and propagation of religion]; and, Article 32 [the right to move the Supreme Court for enforcement of the rights listed above].

Indian practice regarding refugee protection

Even though Indian law does not treat refugees as a special class distinct from foreigners, there have been a number of special legislative measures to deal with refugee influxes. Special laws to deal with refugees have been used primarily by the various State Governments. Through a series of executive and administrative orders, both the Central and State Governments have distinguished refugees from foreigners while responding to various refugee-related crises. This approach, however, is an ad hoc one and recognises refugees as special class only when faced with mass influxes of people into India.

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The practice of the Indian Government has been to deal with refugees in three main ways: (a) refugees in mass influx situations are received in camps and accorded temporary protection by the Indian Government including, sometimes, a certain measure of socio-economic protection; (b) asylum seekers from South Asian countries, or any other country with which the government has a sensitive relationship, apply to the government for political asylum which is usually granted without an extensive refugee status determination subject, of course, to political exigencies; and (c) citizens of other countries apply to the Office of the United Nations High Commissioner for Refugees (UNHCR) for individual refugee status determination in accordance with the terms of the UNHCR Statute and the Refugee Convention.

Indian refugee policy is often guided by political compulsions, not rights enabling legal obligations. The first mass influx following the Partition of the country in 1947 was met with a number of legal, executive and administrative mechanisms designed to assist and eventually integrate the incoming Hindus and Sikhs into the national mainstream. The first 'foreign' influx of refugees occurred in 1959 from Tibet when the government, politically uncomfortable with China, set up transit camps, provided food and medical supplies, issued identity documents and even transferred land for exclusive Tibetan enclaves across the country for cultivation and occupation along with government-provided housing, healthcare and educational facilities. The Sri Lankan Tamil refugees, having arrived in India in three waves beginning in 1983, have also been relatively well received in the geographically and ethnically contiguous State of Tamil Nadu where a large degree of local integration has occurred. In comparison, the Chakma influxes of 1964 and 1968 saw a subdued and reluctant government response.

Perhaps the largest mass influx in post-Partition history occurred in 1971 when approximately 16 million refugees from erstwhile East Pakistan sought safety in India. Enormous amounts of socio-economic and other resources were expended by the both the Central Government and the governments of the neighbouring States to deal with the crisis. Although most of the refugees returned within a year, the experience left the Indian government both bitter at the non-responsiveness of international organisations and complacent in the confidence of being able to deal with future mass influxes.

Refugees who are not extended direct assistance by the Indian Government are free to apply to the UNHCR

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ANNOUNCEMENTS

Call for papers: Canadian Association for Refugee and Forced Migration Studies

*Papers are sought for the 4th Annual Conference of the Canadian Association for Refugee and Forced Migration Studies (CARFMS), to be held at McGill University, Montreal, 11th-13th May, 2011, on the theme 'Forced Migration: Human Rights Challenges'. The conference is open to researchers, policymakers, displaced persons and advocates from diverse disciplinary and regional backgrounds to discuss the human rights of migrants in the context of national and international security policies. Proposals for individual papers and organized panels are sought based on the following broad themes: current trends and challenges in human rights protection of forced migrants; human rights and durable solutions to forced migration; and new approaches and theories in forced migration studies. Individuals wishing to present a paper at the conference must submit a 250-word abstract and 100-word biography **by 1st December, 2010**. Conference organizers welcome submissions of both individual papers and proposals for panels. Either can be submitted via the [conference website](#); more information is also available via [email](#).*

United States integration program prizes

*The 2011 application period for the Migration Policy Institute's National Center on Immigrant Integration Policy **E Pluribus Unum Prizes** is now open. The awards program provides four \$50,000 prizes annually to exceptionally successful United States-based immigrant and refugee integration initiatives. The program highlights and rewards outstanding efforts that help refugees, immigrants and their children join the mainstream of US society or that bring immigrants and the native born together to build stronger, more cohesive communities. The application is open to individuals, nonprofit and community organizations, businesses, religious groups, and government entities, agencies, or officials operating in the United States. **The deadline to apply is 15th December, 2010**. Application rules and procedures can [downloaded](#), and questions can be submitted via [email](#).*

ANNOUNCEMENTS (Cont'd.)

London, UK: free public seminar series on International Refugee Law

Coinciding with the 60th anniversaries of the adoption of the UNHCR Statute and the Refugee Convention, a new seminar series on international refugee law is being held in London, United Kingdom. Launched by UNHCR, Institute of Commonwealth Studies and Institute of Advanced Legal Studies, the series' objective is to provide a focal point for scholars and practitioners working in the field to reflect on the state of the art, to present and receive helpful feedback on their current work, and to develop research and policy agendas for the future. The course runs once a month, through July 2011; an RSVP is requested but all are welcome. Details and the full schedule are [online](#).

American University in Cairo offers refugee short courses

The Center for Migration and Refugee Studies (CMRS) at the American University in Cairo (AUC) is offering the following three winter short courses in January 2011: Introduction to Refugee Law (9th-13th January); Migration/Displacement, Development and Gender (16th-20th January); and Community Interpretation for Refugee Aid Settings – CCIP Interpreter Training Short Course (23th-27th January). Please [email](#) for more information.

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for recognition of their asylum claims and other assistance. To this end, the UNHCR is mandated by its parent Statute to conduct individual refugee status determination tests and issue certificates of refugee status to those who fulfill the criteria of the Refugee Convention. The Refugee Certificates issued by the UNHCR are not formally recognised by the Indian Government, making them legally unenforceable in India. However, the authorities have, in general practice, taken cognisance of the UNHCR's Refugee Certificates to allow most refugees an extended stay in India in the absence of political opposition. Therefore, while a de jure system of refugee protection in India does not exist, there is a system of procedures and practices that serve to create a de facto refugee protection regime in India.

The ambivalence of India's refugee policy is sharply brought out in relation to its treatment of the UNHCR. While no formal arrangement exists between the Indian government and the UNHCR, India continues to sit on the UNHCR's Executive Committee in Geneva. Furthermore, India has not signed or ratified the Refugee Convention. This creates a paradoxical and rather baffling situation regarding the UNHCR where India sits on its Executive Committee and allows the UNHCR to operate on its territory, but refuses to sign the legal instrument that brought the organisation into existence.

Judicial treatment of refugees in India

Indian courts, while generally strictly interpreting the stringent legislation on foreigners by refusing to interfere with the powers of the executive, have, on occasion, evolved a wider and more humane approach to protect

the rights of refugees in India. However, since this approach is unsystematic and dependent upon the exigencies of the situation, it must be seen as an exception to the normal rule.

In 1996, the Supreme Court in *National Human Rights Commission v. State of Arunachal Pradesh* intervened with a liberal interpretation of the law to suggest that refugees are a class apart from foreigners deserving of the protection of Article 21 of the Constitution. The Court held at pr. 20,

'We are a country governed by the Rule of Law. Our Constitution confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty except according to procedure established by law. Thus the State is bound to protect the life and liberty of every human being, be he a citizen or otherwise, and it cannot permit anybody or group of persons, e.g., the AAPSU, to threaten the Chakmas to leave the State, failing which they would be forced to do so.'

While there is no real and specific recognition of the right against *nonrefoulement*, courts have, on rare occasions, accorded to individual refugees the right against forced repatriation. Courts have also provided a certain measure of socio-economic protection in special circumstances. The role of the UNHCR in India has also been given a limited recognition by the judiciary. Courts have enjoined deportation proceedings and ordered the release of individual refugees in order to provide an opportunity to approach the UNHCR for refugee status determination or to allow resettlement to take place. However, it is not possible to reconcile these rare instances of judicial liberalism with the traditionally stringent judicial approach to foreigners. Therefore, such cases must be confined to their special facts.

Continued on page 10.

PUBLICATIONS & RESOURCES

Article on lawyers and social workers working with asylum seekers

A *'Marriage of convenience' or a 'match made in heaven': lawyers and social workers working with asylum seekers* by Lucy Fiske and Mary Anne Kenny is an article which might interest newsletter readers, now available online by the [Australian Human Rights Centre \(AHRC\)](#). The article presents a model which utilises the knowledge and skills that lawyers and social workers are able to bring to working with asylum seekers and assists asylum seekers to present a comprehensive case with a focus both on supporting their credibility and maximising their ability to actively engage in the process. The paper provides a brief overview of the process of applying for a protection visa in Australia. This is followed by a discussion of some of the problems asylum seekers encounter during the process. The second half of the paper is a step-by-step presentation of the model. A composite case study is used throughout the paper to act as an illustration of a typical case. This paper was published sometime ago, but we believe this important work deserves the attention of legal advisors who may not have seen it earlier.

New fact sheets on European Court of Human Rights case law

New fact sheets on European Court of Human Rights case law have been released regarding *'Dublin Cases'*, those in which an asylum seeker is returned to the country of EU entry, and *expulsion and extradition*, including cases on conditions of detention before removal.

University of New South Wales releases film on Refugee Law

The University of New South Wales has released a Q&A film on Refugee Law. The panel discussion includes international refugee law experts Professor Guy Goodwin-Gill (Oxford), Professor Geoff Gilbert (Essex), Professor Kate Jastram (Berkeley) and Associate Professor Jane McAdam (UNSW). The film is available for viewing [online](#).

Interview: 'Recent and unfolding developments on EU immigration and asylum policy, with special emphasis on the Stockholm Action Plan 2010-2014'

[Eurasylum](#) has just released its new monthly policy interview, featuring Ms. Cecilia Malmström, EU Commissioner for Home Affairs. The interview is on: *'Recent and unfolding developments on EU immigration and asylum policy, with special emphasis on the Stockholm Action Plan 2010-2014.'* Eurasylum's interviews may be reproduced freely on condition that both the original source and the URL are explicitly acknowledged.

FMO hosts two new podcasts

Professor Saskia Sassen – Robert S. Lynd Professor of Sociology and member of the Committee on Global Thought, Columbia University – gave this year's Elizabeth Colson lecture on the subject of *The complexity of Powerlessness: What makes human rights law perform?* António Guterres, the 10th UN High Commissioner for Refugees, gave the Annual Harrell-Bond lecture, entitled, *Restoring rights: forced displacement, protection and humanitarian action*. These lectures mark two new additions to [Forced Migration Online's](#) podcast collection.

Immigration Detention and the Law: U.S. Policy and Legal Framework

A new Global Detention Project working paper, *'Immigration Detention and the Law: U.S. Policy and Legal Framework,'* is intended to assist scholars, activists, practitioners, and concerned members of the public in taking stock of the current state of U.S. immigration detention policies and practices. The paper covers everything from the country's relevant international legal commitments and the grounds for detention provided in domestic law, to recent court rulings on the rights of detainees and the increasing trend in criminalizing immigration violations, particularly at the state and local levels. The working paper is available [online](#). Please send comments to: [Michael Flynn](#), Global Detention Project, Programme for the Study of Global Migration, Graduate Institute of International and Development Studies, Geneva, Switzerland.

Visualizing global refugee movements

A new website, *'Flight and Expulsion,'* based on the annual UNHCR Refugee Report, allows users to visualise the number of people who fled and entered countries across the globe, by year, and through different views (map, wheel). Rachael Gavarotto, who alerted us to the site, notes, *'As you might imagine, Australia's reduced intake of African humanitarian entrants from 2003 to 2008 looks quite dramatic on this website.'*

PUBLICATIONS & RESOURCES (Cont'd.)

New refugee education website

*The **Refugee Education Initiative (REI)**, a new website, has been launched. The REI is an international forum which aims to link together researchers, academics, professionals and the general public on issues related to refugee studies and forced migration. While there are many existing blogs, networks, websites and initiatives focused on these topics, the REI wishes to act as a knowledge hub, providing individuals to a convenient place to obtain information on: current events and policy issues; relevant websites, blogs, mailing lists and listservs; non-academic resources (films, books, art, music; academic resources (journals, publications); work and volunteer opportunities; academic programs and scholarship opportunities. The REI hope to link students to other established networks existing in Canada and abroad. If you know of NGOs with internship/work opportunities, have research/resources to share or would like more information, please [contact the REI](#).*

UN training and study modules available online

The UN's High Commissioner for Refugees and Office of the High Commissioner for Human Rights both have online self-study training and education publications that may be useful to refugee legal aid practitioners. The UNHCR site includes modules on a [Resettlement Learning Programme](#), an [Introduction to International Protection](#), [Refugee Status Determination](#), [Interpreting in a Refugee Context](#), and [Human Rights and Refugee Protection \(Volume I & Volume II\)](#). The OHCHR publications, [on their website](#), are available in multiple languages.

Continued from page 8.

India's international commitments to refugee protection

India refuses to join the Refugee Convention, which it first found too 'Eurocentric' and then saw as a Cold War tool to criticise communist countries by accepting refugees from the eastern bloc into what was declared to be the 'free world'. Together with the obligations of non-alignment, these reasons led India to abstain from voting on United Nations General Assembly Resolution 319(IV) of 1949 that resulted in the creation of the Refugee Convention and the UNHCR. In fact, in the early 1950s, the UNHCR's representative was summoned by New Delhi and told of India's specific unease with the Refugee Convention and the UNHCR.

With the addition of the 1967 Protocol giving the Refugee Convention a global appeal and with the collapse of the Cold War's eastern bloc, India's real and current reasons for not joining the Convention are more apparent. Bound by the compulsions of realpolitik and the constant fear for national security, India does not want to be tied down by an international legal obligation that impinges upon its discretion to regulate the entry of foreigners into its territory. This concern must be understood in the context of South Asia's unstable geopolitics, not to mention its volatile ethnicities.

Indian and other commentators from developing countries also call attention to the current state of flux in international refugee law. In a statement to the Executive Committee of the UNHCR in October 2003, the Indian Permanent Representative pointed out that the situation of

refugee and migratory movements in the world today are vastly different from what they were when the UNHCR was created and this had to be reflected in practice to enhance the UNHCR's ability to play a meaningful role.

However, India has signed a number of international conventions that impinge upon its obligations towards refugees. These include the Universal Declaration of Human Rights, 1948 [UDHR]; the International Convention on Civil and Political Rights, 1966 [ICCPR]; the International Convention on Economic, Social and Cultural Rights, 1966 [ICESCR]; the International Convention on the Elimination of all Forms of Racial Discrimination, 1966 ['CERD']; the Convention Against Torture and Cruel, Inhuman or Degrading Treatment or Punishment, 1984 ['CAT']; and, the Convention for the Elimination of all Forms of Discrimination Against Women, 1979 ['CEDAW']. India's international law obligations must be considered in the light of these commitments.

The traditional view of the Indian judiciary on the application of general norms of international law as well as India's treaty obligations on the Fundamental Rights chapter of the Indian Constitution was that treaties do not create rights in municipal law unless they are specifically incorporated. However, India's jurisprudence on treaties has evolved to now require the general norms of international law be respected and incorporated into the Fundamental Rights chapter of the Indian Constitution even if not ratified by India, where the principles or norms are such that they are deserving of universal application; especially in relation to human rights-enhancing provisions of international conventions even where they have not

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Continued from previous page.

been specifically incorporated into Indian law by legislation. It is now generally well settled that treaty obligations which are rights-enhancing are to be read as part of the life, liberty and due process provision.

Significant pressure to accede to the Refugee Convention and enact refugee protection legislation for the country is exerted on the Indian Government by the National Human Rights Commission (NHRC). The NHRC is a statutory body established under the Protection of Human Rights Act, 1993, and is mandated by Section 12(f) of that Act to 'study treaties and other international instruments on human rights and make recommendations for their effective implementation'.

The NHRC was instrumental in ensuring that the Indian Government signed the CAT on 14th October 1997. In its Fifth, Seventh, Eighth, Ninth and Tenth Annual Reports, the NHRC consistently highlights the need for an effective Indian refugee protection regime, by joining the Refugee Convention and enacting protective national legislation. Within the NHRC, a committee of experts examines matters of Indian refugee law and policy. In its Seventh Report, the NHRC addressed the need for domestic refugee protection law, which was repeated in its Eighth and Ninth Reports. The NHRC's Tenth Report, its latest, continues to push the Indian Government and chastises it for failing to meet its international law responsibilities.

The future of refugee protection in India

The need for a stable and secure guarantee of refugee protection in India led to the establishment of an Eminent Persons Group (EPG), chaired by former Chief Justice P. N. Bhagwati, to suggest a model law for refugee protection. However, the process of drafting appropriate refugee protection legislation began earlier at the Third South Asian Informal Regional Consultation on Refugee Migratory Movements, where a five-member working group was constituted to draft a model refugee protection law for the South Asian region. The first draft of this proposed law was presented at the 1997 SAARCLAW Seminar in New Delhi, modified and then adopted by the Fourth Annual Meeting of the Regional Consultation at Dhaka in 1997. The India-specific model law was born out of this regional consultative process to provide statutory protection to refugees in the diverse South Asian region. Despite technical or specific misgivings about the model law, there has been unanimity about its necessity and widespread acceptance of its use as a framework for future protection.

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