FAHAMU

Refugee Legal Aid Newsletter

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A MONTHLY FORUM FOR NEWS AND DISCUSSION ON REFUGEE LEGAL AID

Editorial Team: *Nora Danielson, Themba Lewis, Yara Romariz Maasri, Sara Gonzalez Devant, Darshini Yoganathan*

Web links are marked in blue.

This month's newsletter takes special focus on the Rwandan Cessation Clause and the danger it poses to Rwandans who need protection and refuge. Insisted upon by Rwanda and supported by UNHCR, the Cessation Clause would revoke the refugee status of Rwandans throughout most of Africa at the end of this year, creating a crisis for Rwandan refugees and those who provide them legal aid. In response, please consider lending your support to the call below to urge UNHCR and its Member States to continue to protect Rwandan refugees. – The Editors

Statement for the protection of Rwandan refugees: please sign on, urgent action needed!

On 31 December 2011, the UN High Commissioner for Refugees and several states hosting Rwandan refugees will consider invoking the 'cessation clause' of the 1951 Convention relating to the Status of Refugees. This is a very unusual and dangerous move that could cause revocation of the refugee status of tens of thousands of people who fled ethnic and political persecution in Rwanda, stripping them of basic rights and exposing them to forcible repatriation and possible persecution. Cessation is premature and should be stopped.

But you can do something about it! Send the Fahamu Refugee Programme an email indicating that you endorse the statement below. We will carry your views to the Executive Committee of UNHCR and representatives of its Member States at their annual meeting in Geneva, **3–5 October 2011**. Here's the text:

We, the undersigned, oppose invocation of the 'cessation clause' of the 1951 Convention relating to the Status of Refugees with respect to Rwanda. Thousands of persons fled Rwanda and are currently seeking protection abroad. These are not people escaping retribution from the 1994 genocide; they are those who have been fleeting Rwanda since that event because of the instability, ethnic strife, arbitrary judicial procedures, indiscriminate retaliation, political violence, intolerance of dissent, impunity, and lack of accountability that has followed.

Cessation is a drastic measure that would strip refugees of their legal rights and expose them to forcible repatriation and the risk of further persecution. The Cessation Clause should only be invoked with extreme caution when there has been, according to Guidelines of the UN High Commissioner for Refugees, 1) a fundamental and profound change in country conditions such that they no longer have a well-founded fear of persecution, 2) the change is demonstrably enduring and not merely transitory, and 3) the change enables refugees to enjoy the protection of the government.

Rwanda has made much progress since the genocide but it has not done so through reliable democratic and peaceful means. It remains a fragile, volatile, authoritarian regime with little tolerance for dissent, freedom of speech, or independent human rights reporting. Social and political fissures remain unresolved and the Rwandan government maintains an overtly hostile attitude toward its citizens who have fled. Positive changes need time to consolidate and genuine national reconciliation remains untested. Moreover, since 2009 more Rwandans have been fleeing, not just Hutu, but large numbers of genocide survivors who were never refugees before, as well as officials of the Rwandan government and officers from its army. Now is not the time to revoke protection from Rwandan refugees!

Endorse now! Send your name, title, and organisational affiliation as you wish it to appear, along with your country of residence to The Fahamu Refugee Programme or click on this link to endorse the petition by identifying who you are. Let us know if you are endorsing as an individual or on behalf of your organisation, church, business, union, or other civic group. ●

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Remarks on the cessation of refugee status for Rwandan refugees in Zambia, 31 December 2011, and President Banda's recent comments at Kanyama Catholic Church, 29 June 2011

Abridged from a memo sent to the heads of the three main Christian church mother bodies by Bishop John Osmers, Rector, St John's Anglican Seminary, Mindolo, Kitwe, Zambia.

The 1951 Geneva Convention allows in Article 1C for *the cessation of refugee status* when conditions in a country improve to the extent that exiles may return home in peace, and there is no longer reason for them to retain refugee status. Thus because of the end of hostilities in the Angolan civil war, many thousands of Angolan refugees in Zambia have returned home, and for those who remain, the Zambian Government will have to decide their status in Zambia after the end of this year. It will no longer be refugee status.

The Refugee Cessation Clause allows for exiles to remain who have been long stayers in the country, have married nationals of the country of exile or have what are described as 'other valid reasons'. The cessation clause has been criticised because of its ambiguity, especially over what conditions are needed for a country to be regarded as peaceful, and no longer a threat for the return of exiles.

In 2004 Rwanda, at the urging of its Government, was accepted by the UNHCR to be a peaceful country, and accordingly cessation of refugee status was agreed upon by various governments of countries in Africa accommodating Rwandan refugees, including Zambia. The problem has arisen that whereas most Angolans and D.R. Congolese in Zambia are glad to repatriate, most Rwandans in various countries of Africa are very reluctant to do so.

Why most Rwandan refugees in Zambia oppose cessation of their refugee status in December 2011

Rwandan exiles believe there has yet to be meaningful reconciliation in Rwanda. They see, for example the Rwandan Government's recent angry rebuttal of the 2010 UN Mapping Report on the tens of thousands of Rwandan and some Congolese Hutu, most of them children, women and elderly people, killed by Rwandan forces in the D.R. Congo between 1993 and 2003. The Rwandan Government is perceived to be that of the minority Tutsi, victims of the 1994 genocide in which over 800,000 Tutsi and Hutu sympathisers were killed in a short period of time. The Rwandan Government has passed laws on 'genocide ideology' and 'sectarianism' which are very wide and make dissent from Government a punishable offence. They carry heavy penalties of 10 to 25 years' imprisonment, and are being used to ensure that no effective political opposition should develop opposite the Tutsi dominated government.

The speech by the Chair of the Great Lakes' Women's Refugees' Association of Zambia on International Women's Day in March this year acknowledged 'there can be nothing more exciting than returning to one's own country, and that no refugee would like to remain a refugee for eternity'.

Speaking for most Rwandan refugees, the Chair outlined very clearly why they are reluctant to return home: not because they wish to continue with their small businesses in Lusaka, as some in authority are suggesting, but through their understanding of the *lack of freedom within Rwanda itself, es*pecially for the majority Hutu population. She cites:

- intimidation, segregation, supremacy and oppression of refugees and political opponents
- undemocratic and dictatorial tendencies of the Rwandan government
- creation of laws targeting individuals and political opponents such as genocide ideology
- the continuing and persisting insecurity inside the

Letter to Fahamu from a Rwandan refugee and survivor of eastern DRC refugee massacre

This letter, edited to anonymise the writer, was sent to the Fahamu Refugee Programme by a former refugee and eyewitness to the massacre of refugees under Kagame in eastern Democratic Republic of Congo.

Please can you take this message to the UNHCR representative during that meeting: I am [name withheld], I am a PhD student, I am staying here in South Africa since 2005 when I left my beautiful country after spending six years in jail from 1997–2003. In 1994 me and my whole family left the country and went to a refugee camp in eastern Congo where we were living before the attack of Kagame's army to exterminate the refugees by accusing them of being *interahamwe*. My family was killed in eastern Democratic Republic of Congo by the soldiers of current president of Rwanda Paul Kagame, and I am the only survivor. I have witnessed this with my own eyes. It was not my family alone killed, because there were a lot of people in that equatorial forest of eastern Democratic Republic of Congo. Though innocent, I was thrown in jail for six years when I returned home in 1997 and was released without any accusations against me. Now the mapping report accusing Kagame and his army of massacring our families is out, and we are the only witnesses of those atrocities. Once they are brought to court who will stand as witness for these killings, they know now that us survivors of that tragedy can tell the truth because we are eye witnesses. I want you to ask them on my behalf that, what will happen once all those key witnesses of those killings at Tingi-Tingi, Hombo, Kisangani, Mbandaka, Walikale, Tchimanga, Tebero, Nyasa, will be handed to Kagame who is the mastermind? He will gather them and kill them also so that nobody will explain what happened in that forest, and it can be the end of the justice for our relatives who have been killed mercilessly by Kagame's army. Thank you. I am very happy to hear that there are still people who want to speak on our behalf. ●

A Rwandan refugee in Uganda speaks out against the Cessation Clause

The Fahamu Refugee Programme received the following note of concern from a Rwandan refugee in Uganda. The text has been lightly edited for grammar, and the name has been removed to keep the writer anonymous.

I am 25 years old. I am here in Uganda as a Rwandan refugee since 2006. About the Cessation Clause, I would like to tell you this:

As a Rwandan refugee, I can not and will not go back to Rwanda because I am the one who can feel and who knows the sweetness of my home country, not someone else on my behalf. When Kagame asks for the Cessation Clause for Rwandan refugees, it is not because he loves us, but because he is used to killing innocent people. So let him find us where we are as he did in Congo.

I was born in a family of 10, but now we are only two. My parents and my brothers were killed in front of me by the Rwandan Patriotic Front (RPF) from Rwanda and others from the camps of Congo. So even if you say the Rwanda of Kagame is peaceful, I can't go back unless he brings back my parents with my brothers and sisters.

The other thing, Rwanda nowadays doesn't have stability, security and peace. Imagine the country where the soldiers walk day and night in war uniform with heavy weapons. Why is that, if Rwanda is peaceful?

There are many things to say about Kagame's Rwanda but you also who have enough knowledge about human rights and refugee rights, we are requesting you to let the world to know the truth about the killings by the RPF in Rwanda. ●

country (bombs, explosions, political assassinations, jailing of opponents and journalists)
- increasing wrangles between Kagame and his former close allies, including former army commander, former chief intelligence officer, former prosecutor-general, ministers, parliamentarians and journalists
- mass killings of Rwandans and Congolese Hutu in the D.R. Congo, as recorded in the 2010 UN Mapping report.

The 2010 Amnesty International report 'Safer to Stay Silent' states that because the laws on 'genocide ideology' are not yet repealed, 'they damage efforts to create conditions that will encourage Rwandan refugees to return home' (p.8). Some opponents of the Rwandan Government have been killed in exile, and Rwandan refugees in Lusaka have officially complained of attacks and some suspicious violent deaths of some of their number in the compounds.

Why the Rwandan Government wants the cessation clause implemented

The 2010 Amnesty International Report suggests that 'as the Rwandan Patriotic Front Government has its roots in an insurgent group born in exile, the Government knows that returns are important for political stability' (p.23). It suggests that the Tutsi dominated Rwandan Government is endeavouring to constrain the majority Hutu population internally, using the 'genocide ideology' laws among others, and at the same time it wants to ensure that no Hutu opposition group can form externally. Thus the Rwandan Government is actively promoting the cessation of refugee status clause. This is interpreted by Rwandan refugees as an attempt to bring Hutu intellectuals, skilled workers and successful business people back into the country not primarily to rehabilitate them to develop the country and promote trust and reconciliation, but to control them. They fear that having been in exile for a prolonged period they may be identified as opponents of the Rwandan state having 'genocide ideology', and be marginalised or face possible accusations under the 'genocide ideology' laws.

The official view of the UNHCR and Government of Zambia

The UNHCR and Government of Zambia apparently believe the Rwandan government's claim that Rwanda is now a peaceful and democratic country and there is no reason for Rwandan refugees to remain in Zambia beyond the end of this year. There has been exchange of visits between Zambian and Rwandan government officials, and the Zambian Commissioner of Refugees is reported as saying that Rwandan refugees have no credible excuse for not returning home.

He is showing a disturbing partiality to the Rwandan government as when at a recent meeting of Rwandan government officials and Rwandan refugees in Lusaka he welcomed the Rwandan media to be present, but expelled the Zambian press. He obviously doesn't want the Zambian media to publicise Rwandan refugees' reluctance to return home because of their views of repression in that country. The view of those in authority in the UNHCR and the Government is to support uncritically the cessation of refugee status on 31 December, and to propound that Rwandan refugees are reluctant to return simply because they value their small businesses in Lusaka, and presumably their subsistence farming on government land in Meheba.

In his speech on World Refugee Day, held on 16 June 2011, the Minister of Home Affairs told the large refugee gathering that 'some refugees who in a bid to frustrate efforts aimed at sustaining peace in their country of origin and the subsequent invocation of the cessation clause, have embarked on creating falsehoods and fabricating claims of insecurity'. He said, 'I call upon all refugee communities to desist from engaging in such activities, as such acts are against the government's programme of encouraging all refugees to return home before the cessation clause takes effect' (quoted in *Africa Review,* 16 June 2011).

President Banda's recent comments throw a new light on Rwandan Repatriation
In striking contrast President Banda welcomed Rwandan refugees who were part of the congregation of St Joseph's Catholic Church Kanyama at the celebration of Corpus Christi on 29 June 2011. He stated that refugees were free to choose to return home or remain in this country. This was reported on TV 2 and a shorter clip on the main TV news, and also by the BBC. The statement has given joy to the 3,500 Rwandan refugees in the Meheba refugee settlement, and to the Rwandan refugee community in Lusaka. However, to my knowledge, nothing has been recorded in writing, and I have quoted the President from a transcript of his speech filmed and edited by VGD Video Production.

President Banda's statement appears to open up the possibility of local integration, and encourage dialogue with Rwandan refugees regarding when the cessation clause should be implemented. I believe it needs to be given wide publicity. It will be noted also by other countries who are considering implementation of the cessation clause this and next year. The President shows a more generous attitude towards refugees than we have seen developing in recent years in Government policy, and in recent Government statements. Sadly in recent years refugees' conditions have become progressively more difficult, as shown by:

*The delay to reform the 1970 Zambia Refugee Act, to give refugees freedom of movement and freedom of employment
*The harsh requirement that in order for refugees to obtain a self-employment permit costing K2 million for two years only, they need to be investors, having USD50,000 capital
*The raids of immigration officials on so-called illegal small shops in Lusaka, and the need for bribery to stay out of prison pending removal to Meheba settlement.

It is striking, and telling, that despite these same disadvantages especially affecting refugee small businesses, Rwandan refugees wish to remain in Zambia, rather than return to what they perceive as a life-threatening situation in their own country. I am humbly asking the leaders of the three main church bodies to make an appropriate Press release, being for refugees the 'voice of the voiceless', and support the President in his generous approach to a politically difficult situation. ●

NEW REPORTS

Rapporteurs' report from the 2011 UNHCR-NGO annual consultations
The rapporteurs' report from the annual UNHCR-NGO consultations held from 28–30 June 2011 is now available. This report is based on the 12 thematic and five regional sessions that were held during the consultations and contains many good recommendations that refugee aid practitioners and organisations can follow up on.

HRW says Frontex exposing migrants to inhuman conditions
Human Rights Watch has released a report titled 'The EU's Dirty Hands: Frontex Involvement in Ill-Treatment of Migrant Detainees in Greece'. The report assesses Frontex's role in and responsibility for exposing migrants to inhuman and degrading detention conditions during four months beginning late in 2010 when its first rapid border intervention team (RABIT) apprehended migrants, including members of vulnerable groups such as unaccompanied children, detaining them in police stations and migrant detention centres in Greece's Evros region for weeks or months. The RABIT deployment has been replaced by a permanent Frontex presence. The report is based on interviews with 65 migrants, refugees, and asylum seekers in Greece in November and December 2010 and February 2011, as well as with Frontex and Greek police officials.

Prejudice against LGBTI asylum claims in EU countries
COC Netherlands and VU University Amsterdam have released a report titled 'Fleeing Homophobia', showing that LGBTI asylum claims in the EU are frequently unsuccessful because of decision making on the basis of prejudices and stereotypes. The report is based on an investigation into how EU countries deal with LGBTI asylum seekers who fear persecution because of their sexual orientation or gender identity in their countries of origin. It also offers recommendations to rectify this prejudice.

Migrants and asylum seekers fleeing recent events in North Africa
The United Nations High Commissioner for Human Rights (UNCHR) has presented a report on the situation of migrants and asylum seekers fleeing the recent events in North Africa to the Human Rights Council. The report analyses human rights issues arising from this mass migration, the international responses to it and recommendations to deal with the situation.

Palestinians in Israel
The Mada al-Carmel Arab Centre for Applied Social Research (Mada) has released a publication titled 'The Palestinians in Israel: Readings in History, Politics and Society'. This publication is available online in Arabic, English, and Hebrew.

Italy's treatment of Roma and migrants
Thomas Hammerberg, Commissioner for Human Rights of the Council of Europe, has produced a report following his visit to Italy on 26–27 May 2011. The report examines the protection of the human rights of Roma, Sinti, and migrants in Italy, including asylum seekers. It is based on the Commissioner's meetings with representatives of the Italian authorities and institutions, as well as with the civil society.

Reflections on interviews in Zambia for eligibility of Rwandan refugees to retain UNHCR protection in Zambia after the Cessation Clause is implemented on 31 December 2011

The following was also contributed by Bishop John Osmers, from an open letter to UNHCR. Bishop Omers is the Rector at St John's Anglican Seminary, Mindolo, Kitwe, Zambia.

The advertisement of 12 August for lawyers to interview Rwandan refugees says that under the supervision of the Zambian Commissioner of Refugees' Office Senior Legal Advisor, they are to:

- Conduct eligibility interviews in a thorough manner in order to sufficiently generate accurate and detailed information to assess eligibility
- Analyse the information gathered during each eligibility interview against country of origin information to make a sound assessment of each claim
- Generate internal reports including updates on country of origin information.

About 4,500 Rwandan refugees come under this procedure if they wish to remain in Zambia after 31 December 2011. Most of these were not interviewed individually by the Government of the Republic of Zambia (GRZ) Eligibility Committee to be given refugee status but were accepted under the 1969 OAU Convention, i.e. they were granted refugee status in Zambia to avoid civil conflict or war. This is a more general acceptance than the 1951 Convention that requires credible fear of individual personal persecution.

The Public Announcement on 'the Establishment of Exemption Procedures for Rwandan Refugees' published in the Zambian press on 10 September 2011 states that:

> In October 2009 the UNHCR announced a global strategy aimed at concluding the Rwandan refugee situation based on the fundamental and durable improvements that have taken place in Rwanda since people were forced to flee persecution or war. This is based on the fact that the international community, including UNHCR, considers Rwanda to be safe for the absolute majority.

It continues to say that:

> the ultimate goal of the strategy is to help Rwandans remaining as refugees finally to find durable solutions. In Zambia the strategy includes:
> - facilitation of voluntary repatriation by the UNHCR
> - facilitation by the GRZ for an exemption procedure to decide on applications for continued refugee protection
> - a plan to declare cessation of refugee status of Rwandan refugees on 31 December 2011.

It appears that the UNHCR/GRZ will not accept pleas to retain refugee status because of general fear of discrimination against Hutu refugees or lack of freedom inside Rwanda. They state they recognise 'the fundamental and durable improvements that have taken place in Rwanda since people were forced to flee persecution or war. This is based on the fact that the international community, including UNHCR, considers Rwanda to be safe for the absolute majority.'

What grounds then can Rwandan refugees hope will be acceptable to remain in Zambia? 'The 2011 UNHCR Country Operations Profile–Zambia' suggests the answer. The Profile was written with the cessation of refugee status for Rwandan refugees on 31 December in mind, and states that 'UNHCR will advocate for local integration as a solution, or at least an alternative status for some 500 Rwandan refugees who have work permits, and have achieved a high level of social and economic integration, working in close co-operation with the Zambian authorities.'

These some 500 Rwandan refugees probably are either the very few refugee so-called 'investors' who have qualified to have a self-employment permit, having USD50,000 capital, and paying every two years for the same permit, or are the very few who have professional qualifications and can be employed in Zambia, mostly in the educational and health sectors. These are refugees who have a high level of self-support, and may contribute directly to the Zambian economy.

Notice among the 500 successful applicants those who are *not* being accepted: those who are the most vulnerable, such as widows with children, the handicapped, or elderly; or those who have been in the country for 15 years, i.e. since 1996, which is the normal time to qualify for an Entry Permit or Permanent Residence. In contrast the same Profile states 'the UNHCR is encouraging the Zambian Government to offer local integration opportunities to Angolan refugees who have resided in Zambia for many years.' The same Profile gives these figures for refugees in Zambia in 2011.

Refugees	Start of 2011	End of 2011
Angola	21,300	250
DRC	14,100	12,100
Rwanda	4,500	450
various	4,100	3,600
Asylum seekers		
DRC	10	0
Rwanda	500	3,000

The figures above show that 450 Rwandans will retain refugee status at the end of this year. About 4,000 Rwandan will lose their refugee status, and 3,000 change into 'asylum seekers', i.e. they can no longer claim UNHCR protection, and will be vulnerable to Zambian Immigration regulations. Note that there seems to be little pressure being exerted on the larger number of 14,000 DRC refugees to return, compared to only 4,500 Rwandan refugees. One must assume that this is because, unlike the DRC Government, the Rwandan government is pressuring for Rwandan refugees to be returned.

To conclude, it seems that the interviews are more or less a formality, and the UNHCR and GRZ know already those likely to be given refugee status from their present records. It is pointless for Rwandan refugees to seek a solution in refugee resettlement, as this is not being mentioned, and for a total of 4,500 Rwandan refugees it is simply not going to happen. The solution can only come from the top, i.e. from the Zambian President and Cabinet, to delay the implementation of the Cessation Clause until Rwandans themselves feel it is safe to return. •

JOBS

Opening for lawyer at the International Centre for the Legal Protection of Human Rights (Interights)

Interights seeks a lawyer or a senior lawyer with a wide experience in human rights work especially in relation to Economic and Social Rights (ESR) and a track record of litigating human rights cases on ESR issues. The candidate should have solid experience in litigation using regional and international human rights instruments, with a competent understanding of international and comparative human rights issues. Apply by email by **10 October 2011**.

UNHCR seeks consultant

UNHCR's Policy Development and Evaluation Service seeks a qualified consultant or team to undertake a global review of the mental health services that UNHCR provides to its staff members and beneficiaries.

FUNDS

Human Rights Violations Documentation Fund

The International Lesbian, Gay, Bisexual, Trans and Intersex Association in Europe is calling for proposals within its Human Rights Violations Documentation Fund. The deadline for applications is **15 October 2011.** Please visit this website for more details on the Fund and how to apply.

Scholar Rescue fund

The International Institute of Education's Scholar Rescue Fund is open for applications to threatened academics whose lives or work are in danger in their home countries. This is a useful resource for refugee scholars. Applications are on a rolling basis throughout the year. For more information, visit the SRF website.

HEADLINES

GLOBAL

UNHCR: global trends report says developing countries host most refugees

UNHCR: The Society for Humanitarian Solidarity named 2011 Nansen Award winner

AFRICA

DRC/RWANDA: Former militia member returns to a fragile Rwanda for the first time since 1994

GABON: UNHCR uses incentives to repatriate, but many 'former' refugees are unwilling to return to Congo

KENYA: Mapendo International changes name to RefugePoint

LIBYA: Africans in Libya face continued dangers, US State Department issues a statement

MOZAMBIQUE/TANZANIA: Horn migrants beaten, deported, imprisoned

SOUTH AFRICA: Refugees apply to High Court for clean-up of reception offices

SUDAN: Eritrean refugees arrested

AMERICAS

CANADA: Newspaper highlights case of deportation leading to torture

USA: International practice adhered to as case-by-case review of pending deportations begins

USA: Mexican asylum seekers disproportionately denied

ASIA-PACIFIC

AUSTRALIA: Offshore asylum claim legislation to be amended after the High Court bars third country transfer, voiding Malaysia deal. See last newsletter here and here, and IRIN here

BURMA: Exiles, human rights activists and refugees cautious of return offer

MALAYSIA, THAILAND, PAKISTAN: forcible returns of Uygher people to China, continuing pattern

EUROPE

EU: New research underway into treatment of third country nationals at EU's external borders

EU: EU pushed for change in policy regarding Eritreans

FRANCE: Diplomatic leak shows 'cold' French opposition to LGBT asylum rights

GERMANY: Asylum seekers finally allowed freedom of movement between most regional states

HUNGARY: ECHR rules two Ivoirian asylum seekers held in immigration detention unlawfully for five months

ITALY: New Council of Europe report finds Italy is not meeting its asylum obligations as country increases maximum detention duration from six to 18 months

NETHERLANDS: TV quiz show for asylum seekers awards cash, bulletproof vest

SWITZERLAND: Swiss Refugee Council's Head of Protection Unit speaks about 10,000 ignored asylum applications

UNITED KINGDOM: The end of child immigration detention?: 'pre-departure accommodation centre' for families soon to open, with help of child charity

MIDDLE EAST

EGYPT: Political refugees still detained without evidence, despite Interior Minister's post-revolution promise to release political prisoners, Sinai lawlessness continues to threaten refugees

EGYPT: 93,000 Copts have left Egypt since March

ISRAEL: Ivorian albino child's asylum claim makes history: Israel also recognises parents as refugees

ISRAEL: Israeli High Court of Justice decides on 'Hot Returns' of refugees to Egypt

LEBANON: Beirut Bar Association initiates disciplinary action against two lawyers for criticising a draft association rule that would limit attorneys' ability to speak to the media

LIBYA: Amnesty says Europe is failing Libyan refugees

PALESTINE: Badil asks serious questions about statehood and continued recognition of all Palestinians and their right of return

SYRIA: Syrian army threatens to enter Lebanese territory and 'reclaim' refugees

YEMEN, EGYPT: Yemeni Jewish refugees in Cairo face *refoulement*

Scholarships for Masters in International Human Rights Law

Admissions are now open for scholarships to study for the part time Masters in International Human Rights Law at the University of Oxford, which will commence in September 2012. There are up to five scholarships available for candidates from African Commonwealth countries and details about the scholarships, the eligibility criteria, and applications to apply can be found at this website.

REQUESTS

Equal Rights Trust seeks feedback on new draft guidelines on detention of stateless persons

The Equal Rights Trust (ERT) seeks review and comment on its new draft guidelines on the detention of stateless persons. The draft guidelines, which can be found online in volume 7 of the Equal Rights Review, will be the standard that ERT promotes in its advocacy on the detention of stateless persons both nationally and internationally. After all feedback has been received, ERT will revisit and amend the guidelines and consult with key experts. After finalisation, the guidelines will be proposed for adoption by key intergovernmental and governmental institutions, as well as by human rights and other civil society organisations, and will be disseminated widely. The deadline for the provision of feedback and comments is **7 October 2011**.

Using international law in domestic courts: a new project

As legal aid providers in the global south and beyond, we are often faced with the dilemma of presenting contemporary international law principles and decision of international tribunals in cases before our domestic courts. Depending on the jurisdiction in question, mentioning a decision of a court which is not within the same judicial hierarchy or citing an international treaty which has not been domesticated or formally incorporated into the domestic statutory books can be a herculean task. Added to this nightmare is the fact that many law schools especially in the global south do not prepare advocates for international law-centric practice so very few lawyers in practice possess the skill necessary to prepare legal briefs that incorporate international law principles or decisions of international tribunals.

The International Law in Domestic Courts (ILDC) project, a joint collaboration of the Amsterdam Centre for International Law, Oxford University Press and Centre for Human Rights, University of Pretoria, aims to encourage greater reliance on international law in domestic courts. Under the ILDC Project, the Oxford Law Report is hosting an international law resource base on its subscription-based website.

This online resource on international law contains full text reports of decisions on international law by international courts of general jurisdictions as well as international law decision from domestic courts (listed in alphabetical order of the countries of the world) among others. The resource contains 236 decisions of the International Court of Justice, 96 of the Permanent Court of International Justice, 45 of the Permanent Court of Arbitration, and others. The ILDC page gives access to over 80 decisions from over 80 countries and users can query the page by date of decision or subject matter. There are few cases reported from countries in the global south and the ILDC welcomes more decisions from courts in the global south relying on international law.

As a way of encouraging participation by African law institutions, academics and legal practitioners, the Oxford University Press is offering GBP35 or GBP70 worth of books for every case successfully reported from decisions of domestic courts. Furthermore, Oxford University Press is also offering a free subscription to the International Law online resource to institutions willing to participate in the ILDC project.

It would be great to have refugee cases reported on this portal; Fahamu Refugee Legal Aid Newsletter readers are encouraged to send in decisions from their jurisdictions, especially refugee cases. For further information, please contact Kene Esom. ●

EVENTS

European training, Malta/online

The European Asylum Curriculum (EAC) will be conducting trainer courses on country of origin information, drafting and decision making. The courses are intended for those who will present the EAC modules at national training sessions. The online sessions for both courses will commence on 24 October 2011 and the face to face sessions will be held from 22–25 November 2011 in Malta. The deadline for registration is **3 October 2011.**

International refugee protection course, Portugal

The European Council on Refugees and Exiles will be holding its annual introductory ELENA course from 18–20 November 2011 in Lisbon, Portugal. This year's course, 'The International Protection of Refugees,' aims to equip refugee legal practitioners and advocates from Europe with the legal tools necessary to represent refugees and asylum seekers who are in need of protection. Registration and details are online; deadline is **7 October 2011**.

Harrell-Bond lecture, United Kingdom

The Refugee Studies Centre, University of Oxford will hold its annual Harrell-Bond lecture on **16 November 2011**, 5pm at the Examination Schools (75–81 High Street, Oxford). This year's lecture will be presented by Mr. Filippo Grandi, Commissioner-General of the United Nations Relief and Works Agency and will be titled 'Waiting for solutions in uncertain times: Palestine refugees in the Middle East context'. Interested participants should RSVP via email to Heidi El-Megrisi or Erol Canpunar.

The best interests of children seeking refugee protection and their right to be heard

This article is written by Syd Bolton, Co-Director of The Refugee Rights Project at the Coram Children's Legal Centre in the United Kingdom, and Associate Rapporteur for the Vulnerable Persons Working Group of the International Association of Refugee Law Judges (IARLJ). The views expressed and contents of this article are the personal views of Syd Bolton and do not represent the official position of the IARLJ or the views of any of its other members. It is not in any way intended as a report on the conference described below, about which an official publication from the IARLJ will follow in due course. Papers from the conference are posted here on the IARLJ website.

On 7 to 9 September 2011 the 9th World Conference of the International Association of Refugee Law Judges (IARLJ) in Bled, Slovenia, was attended by over 200 judges, decision-makers, academics, lawyers and international NGOs. Under the theme 'Between Border Control, Security Concerns and International Protection: A Judicial Perspective', delegates heard presentations and attended workshops across a wide variety of contemporary issues facing refugee law judges, including access to justice and the right to legal aid, national security laws, terrorism and criminality, refugee rights to work, detention and exclusion, burden-sharing, statelessness, country information, forced conscription and refugee children's rights. Judges and academics from national and regional systems across the globe presented about their own asylum processes, experiences and current legal issues, including the jurisdictions of Slovenia, South Korea, South Africa, Australia, Canada, USA, United Kingdom, European and African regional courts. International human rights agencies including UNHCR and the European Union Agency for Fundamental Rights also gave their own perspectives.

*The Fahamu Refugee Legal Aid Newsletter is distributed in **Pambazuka News**, the authoritative pan-African electronic weekly newsletter and platform for social justice in Africa. With over 1000 contributors and more than 500,000 readers, Pambazuka News provides cutting edge commentary and in-depth analysis on politics and current affairs, development, human rights, refugees, gender issues and culture in Africa. Visit online or subscribe by email.*

This article draws specifically on issues discussed at the conference workshop held by the Vulnerable Persons Working Group in relation to children. The full paper, which can be accessed online here, explored with participants the questions: Does the asylum seeking child require a special approach to the determination of his/her refugee status? To what extent do the best interests of the child require procedural safeguards in refugee status determination? To what extent does the assessment of persecution and risk of harm on return require a substantive consideration by decision-makers and judges of the rights of children established by the UNCRC?

The starting point for these discussions were the fundamental principles contained in the United Nations Convention on the Rights of the Child (UNCRC):

> In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration (Article 3(1) UNCRC).
> States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child (Article 12 (1) UNCRC).

As the UN Committee on the Rights of the Child has advised in its General Comment No. 12,

> …one establishes the objective of achieving the best interests of the child and the other provides the methodology for reaching the goal of hearing either the child or the children. In fact, there can be no correct application of article 3 if the components of article 12 are not respected. Likewise, article 3 reinforces the functionality of article 12, facilitating the essential role of children in all decisions affecting their lives.

(UNCRC, Fifty-first session Geneva, 25 May–12 June 2009, CRC/C/GC/12 20 July 2009 para 74).

UNICEF, the UN's international agency responsible for children's rights and welfare, in its UNCRC Implementation handbook (3rd edition, September 2007, Hodgkin and Newell, p. 45) states that,

> The Convention is indivisible and its articles interdependent. Article 3(1) has been identified by the Committee on the Rights of the Child as a general principle of relevance to implementation of the whole Convention. Article 3(2) provides States with a general obligation to ensure necessary protection and care for the child's well-being.

Whereas children form a very large percentage of refugee populations across the world, whether unaccompanied or as part of family groups, there is nothing in the 1951 Refugee Convention or its 1967 Protocol that explicitly defines children as a special class of refugee nor does it provide any child appropriate considerations or identify child specific forms of persecution.

It is true, of course that the Refugee Convention is all inclusive in that it does not exclude children and does not differentiate or discriminate between adults and children, but the way in which children experience and fear harm, the degree of ability of children to exit their countries of origin with or without assistance in order to seek refugee protection, the capacity of children on account of their age and maturity to understand risk, the forms of persecution faced by children through family and private individuals and non-state agents, the growing global phenomena of trafficking, sexual and commercial exploitation of children, the lack of country information and expert reports specific to children's situations *et cetera*, all require us to develop a much more child oriented framework for their protection.

Continued on p. 12

Proposal for a new approach to regional cooperation on refugee protection

Contributed by the Asia Pacific Refugee Rights Network (APRRN), following the failure of Australia's 'refugee swap' plan.

APRRN welcomes the ruling by the High Court of Australia in the case of *Plaintiff M70/2011 v Minister for Immigration and Citizenship*. The ruling prevents the Australian government from proceeding with the transfer to Malaysia of up to 800 asylum seekers arriving in Australia by boat as contemplated by the Arrangement between the Government of Australia and the Government of Malaysia on Transfer and Resettlement.

APRRN has consistently opposed the transfer to other states of asylum seekers who have entered Australia's territory or jurisdiction and thus engaged its international obligations. This practice not only undermines protection outcomes for refugees but sends a clear message to the region that Australia does not respect the binding nature of its international human rights obligations towards asylum seekers and refugees. In an environment where most countries in the region are not party to the Refugee Convention, such actions by Australia seriously undermine the potential for regional cooperation on refugee protection. Furthermore, as indicated by the High Court ruling, it is also unlawful under Australia's domestic immigration legislation to implement such transfers unless there are legally-enforceable safeguards guaranteeing fair status determination and effective protection for those transferred.

This ruling provides an opportunity for Australia to embark on a new approach to addressing regional protection issues through constructive engagement with other countries in the Asia-Pacific region. The development through the Bali Process in March this year of the first in-principle regional agreement to act collectively on refugee protection provides a springboard from which this process can begin. The agreement included acknowledgement of the importance of providing access to consistent refugee status determination procedures and working towards securing durable solutions for refugees, including voluntary repatriation, in-country solutions and resettlement.

Given that most states in the region are not party to the Refugee Convention and lack legal and administrative frameworks for refugee protection, the fact that protection issues were even acknowledged in the March agreement represents a significant breakthrough. While we have yet to see concrete outcomes emerge from the agreement, it is clear that dialogue on refugee protection issues among Asia-Pacific states is increasing and opportunities for positive engagement do exist. Australia and Indonesia, as co-chairs of the Bali Process, are well-placed to build on these opportunities and work towards the development of a sustainable regional protection framework in the Asia-Pacific.

The March agreement stipulated that arrangements to address irregular movement should aim to 'undermine the people smuggling model', an aim repeatedly emphasised by the governments of Australia and Malaysia in relation to the transfer deal. This 'people smuggling model' exists because of the fear and uncertainty faced by refugees and asylum seekers residing in Asia, stemming from their lack of legal status and untenable living conditions. The key to undermining the 'people smuggling model', therefore, lies in resolving this uncertainty. This can only be achieved if the Malaysian and other governments in the region implement reforms aimed at broadening protection space and building lasting security for refugees and asylum seekers residing in Asia.

In the short term, these reforms should include granting legal status to refugees and asylum seekers, affording right of stay and protection against arrest, detention and deportation; and providing adequate support to ensure that the basic needs of refugees and asylum seekers are met, through acknowledging their right to work, providing educational opportunities and ensuring access to health care services. In the longer term, governments across the region should also look to developing sound legal and administrative frameworks for status determination and protection and exploring opportunities to provide durable solutions for refugees.

Australia, as a party to the Refugee Convention and a nation with well-established systems for refugee status determination and a strong settlement support sector, is well-positioned to support the implementation of these reforms. Australia can also make a key contribution to providing durable solutions through progressively increasing its resettlement quota and lobbying other resettlement states to consider the needs of refugees residing in Asia. As the third largest resettlement state in the world and the Chair of UNHCR's Working Group on Resettlement for 2011–12, Australia is in a strong position to argue the case for increased resettlement out of Asia.

APRRN calls on each government in the Asia-Pacific region to develop, in collaboration with civil society, a national action plan detailing the progressive steps they will take towards improving refugee protection standards and enhancing engagement with other states on protection issues. In states which have not yet signed the Refugee Convention, initial steps could include granting legal status and permission to work to refugees and asylum seekers. In states with well-established systems for reception, status determination and protection, steps should be taken to reform practices (such as Australia's policy of indefinite mandatory detention) which undermine protection principles.

To facilitate these and other reforms, APRRN supports the proposal to establish a support office to advance the development of the Asia-Pacific Regional Cooperation Framework. The functions of this office could include facilitating the sharing of information, resources and expertise; providing operational and technical support with refugee status determination, case management and resettlement; providing training, capacity-building and mentoring opportunities; and providing a channel for ongoing dialogue on protection issues.

The development of a constructive and sustainable regional protection framework is essential to resolving the complex protection challenges in the Asia-Pacific region. The members of APRRN stand ready to support governments across the region in achieving this crucial objective. Please click here to endorse the joint statement. ●

RESOURCES

Manual on border management in Europe

The UNHCR's Bureau of Europe has launched a manual that aims to educate all stakeholders involved in border management in Europe about the rights of refugees and asylum seekers. The manual, titled 'Protection Training Manual for European Border and Entry Officials', is a useful resource for the European border authorities, UNHCR and its partners, and regional bodies such as Frontex. Balancing the need for border management with genuine protection concerns is an issue of urgent relevance not only in Europe, but also other parts of the world where asylum is sought. For any queries or feedback on the manual, please contact Madeline Garlick, Head of the Policy and Legal Support Unit at UNHCR's Bureau for Europe in Brussels, or Michele Simone, UNHCR's Senior Liaison Officer to Frontex in Warsaw.

Deportations, removals and 'voluntary' returns from the UK

The University of Oxford's Migration Observatory has published a briefing titled 'Deportations, Removals, and Voluntary Departures from the UK'. The briefing examines the number of people deported or removed from the UK and those departing voluntarily after the initiation of enforced removal. It also explores the method, cost, and the grounds for their removal and their nationalities.

Comment on age assessment of migrant children

The Council of Europe's Commissioner for Human Rights has addressed the issue of age assessment methods to determine whether unaccompanied migrant children are above or below 18 years of age in the latest edition of the Human Rights Comment. Age determination is extremely crucial as it determines the level of protection that a migrant is likely to receive and it is a relevant issue for all refugee legal aid practitioners. For more information, see the SRLAN page on Unaccompanied and Separated Children.

Documentary on refugees in Malaysia

A documentary by the Australian SBS Dateline provides a good insight into the abject circumstances faced by refugees who are residing in Malaysia. This is relevant in light of the recent controversy over the refugee swap deal between Australia and Malaysia. An Amnesty International report on judicial caning that mentions the use of this punishment on refugees in Malaysia is a related resource. The European Parliament has also passed a resolution condemning the treatment of refugees in Malaysia.

International Detention Coalition (IDC) legal guide

The IDC has published a new legal guide which covers the human right standards that are applicable to the issue of immigration detention. This is a relevant guide for those working in refugee legal aid especially in places where refugees are detained. Another relevant resource by the IDC is the 'Toolkit for Legal Providers Working with Refugees and Asylum Seekers in Places of Detention'.

Collection on public interest litigation in South Africa

A special issue of the South African Journal on Human Rights on 'Public Interest Litigation in South Africa' is now available online. In this collection, Jeff Handmaker's article titled 'Public Interest Litigation for Refugees in South Africa and the Potential for Structural Change', Roni Amit's article titled 'Winning isn't Everything: Courts, Context, and the Barriers to Effecting Change Through Public Interest Litigation', and David Cote's and Jacob Van Garderen's piece titled 'Challenges to Public Interest Litigation in South Africa: External and Internal Challenges to Determining the Public Interest', deal extensively with litigation on refugee issues.

Updated: handbook on Palestinian refugee protection under the 1951 convention

Few governments, judges, or legal advisors seem to be aware that Palestinians outside the 'host' states are protected under the 1951 Refugee Convention, as specified under Article 1D. The BADIL Resource Centre has released an update of its 2005 *Handbook on Protection of Palestinian Refugees in State Signatories to the 1951 Refugee Convention*, that seeks to document developments of jurisprudence regarding Article 1D between 2005 and 2010. The 2005 Handbook provided a history of the Palestinian exodus and international institutional protection and assistance mechanisms, and explained and made suggestions for bridging the 'protection gaps' that have emerged in national practice. Read together, the 2005 Handbook and its update are an essential source of information for lawyers of Palestinian refugees working in states which are signatories to the 1951 Refugee Convention. The original handbook and its update are available on BADIL's resource page for refugee lawyers; overviews of available protection can be viewed by country. Interested readers can also find information on the Palestinians Who Fall Under the 1951 Convention page of the Southern Refugee Legal Aid Network website.

Refugees in Egypt train in advocacy, prepare for universal periodic review

The Egyptian Foundation for Refugee Rights (EFRR) organised a three-day training, 'Lessons Learned from Civil Society Practices' held in Cairo, Egypt. The first training, part of the Refugee Empowerment and Advocacy Project (REAP) was held from 26–29 September 2011 and was attended by community-based organisations (CBOs) and refugee leaders. REAP started in May 2011 and will continue until March 2012 with the aim of involving refugees as key players in addressing their problems in Egypt. During the first stage of the project, refugee participants are equipped with the skills to allow them to be fully aware of and advocate for their rights under domestic and international law. Through monthly trainings, advocacy issues will be produced by refugees,

highlighting their main challenges and their suggested recommendations. The following stage of the project aims to host round-table discussions with stake-holders in Egypt to discuss ways of addressing the main challenges raised by refugees during the monthly trainings. In February–March 2012 the project will come to an end through submitting a mid-review report to the Human Rights Council in Geneva. At the September training, experts from Europe, Southeast Asia and MENA regions shared with refugee participants their experiences of best practices implemented in advocating for refugee rights. Topics covered include advocacy, good governance and human rights. The activities of the project are expected to continue through the submission of a report for the upcoming Universal Periodic Review in collaboration with refugee leaders and CBOs.

The refugee situation in Korea

Contributed by Hotaeg Lee, president of Refugee P Nan, an NGO providing legal aid to asylum seekers in Korea.

From 1992, the year Korea signed the 1951 Refugee Convention, until the end of 2010, 2,915 people in total applied for asylum in Korea. Among them, 222 were recognised as refugees, 136 received humanitarian status, 1,577 were rejected, 556 withdrew their claim, and 424 cases are still under examination by the Ministry of Justice. The main countries of origin of our clients are Myanmar, Pakistan, Bangladesh, Nigeria, Uganda, Ghana, DRC, Cote d'Ivoire, Liberia, Ethiopia and Iran. Most asylum seekers rejected by the Ministry of Justice are bringing their cases to the Administrative Court with the help of our organisation, but if they fail again and again in the High Court and Supreme Court, they do not have any other choice except to go back to their country, to try to find a way to go to any third country, or to simply stay illegally in Korea. We are struggling for them to find solutions in Korea.

Inauguration of the Canadian Association of Refugee Lawyers (CARL)

The inaugural meeting of the Canadian Association of Refugee Lawyers was held in Toronto on 9 September 2011, with video/audio links to Montreal, Ottawa, Calgary and Vancouver. The association was launched in the aftermath of the recent Federal election in Canada which gave a majority to the Conservatives – and an extremely anti-refugee platform. Amongst the purposes and objectives of the new association are: encouraging and developing legal research on refugee and asylum issues; promoting the development of new socio-legal scholars; holding conferences and meetings for the promotion and discussion of research in law on refugee and asylum issues; advocacy and lobbying policy makers and legislators on refugee law issues as well as other areas of law impacting upon the human rights of migrants. The individuals elected to the new executive include a broad cross-section of the country's leading refugee lawyers and academics. Lorne Waldman is the new President; Mitchell Goldberg is Vice President; Lisa Couillard is Treasurer and Aviva Basman is Secretary. Other Directors are Leslie Stalker, Donald Galloway, Audrey Macklin, Peter Showler, Jennifer Bond, Pia Zambelli, Richard Bennett and Caitlin Maxwell. An Advocacy Committee, a Legal Research Committee and a Legal Resource Committee have been established as committees of the new association. For more information, contact Lorne Waldman or Mitchell Goldberg.

Good practice: asylum seekers in Estonia can now receive free legal assistance

Reprinted with minor revisions from the ECRE weekly bulletin.

Free legal assistance during asylum procedures is now available in Estonia through a European project implemented by the Estonian Human Rights Centre (EHRC). Since January 2011, the EHRC has developed the project, 'Giving Legal Assistance to Asylum Seekers', funded by the European Refugee Fund, and has guaranteed free legal legal support to asylum seekers during first instance procedures and appeal cases. Law students from the Tallinn University of Technology, under the supervision of senior legal experts, provide legal advice at the 'Legal Aid Clinic'. EHRC personnel are also monitoring conditions in the reception and detention centres for asylum seekers. The project lasts until the end of 2011. The European Union's Asylum Procedures Directive currently guarantees free legal assistance only during the appeal procedures, and only some Member States make such assistance available in the first instance procedures.

Irish asylum system needs reform

Reprinted with minor revisions from the ECRE weekly bulletin.

There is an urgent need for a comprehensive reform in the Irish asylum system, Catherine McGuinness, patron of the Irish Refugee Council, said. Writing to the Irish Times, McGuinness, who supports the Irish Refugee Council campaign for reform, highlighted that 'the lack of an effective remedy within the asylum and immigration systems has created a costly over-reliance on the courts and resulted in a strain upon court time and resources'. Ireland has the lowest recognition rates among the European Union Member States, just 1.3 per cent, and the only place to challenge those negative decisions is the appeal court. McGuiness criticises the lack of independence, transparency and the manner of operating of the appeal procedure, and hopes that the Department of Justice will take this into account when revisiting the current Immigration, Residence and Protection Bill 2010. For the Irish Refugee Council, which is part of the campaign, the key priorities for the new law are a single procedure for effectively assessing protection claims, a robust, independent appeals system, and an end to costly and inhumane reception centres and delays.

UN denounces Iraq's treatment of Iranian exiles in Camp Ashraf

On 29 August 2011, the United Nations Assistance Mission for Iraq (UNAMI) and the UN High Commissioner for Human Rights called on the government of Iraq to abide by International Law in dealing with Iraq's Camp Ashraf. The camp lies close to the Iranian border, giving refuge to approximately 3,400 Iranians for the past decade. Many of its residents are affiliated with the Iranian opposition

People's Mujahideeen of Iran group (PMOI). The group gave up its arms in exchange for written assurances from the US government that they would be safe. The Iraqi government opposes their presence and does not abide by the arrangement struck with the US government. The US army ceded control of the camp to Iraqi forces in mid-2009. The camp has been besieged, had its medical supplies cut off by the Iraqi security committee, and been subjected to continuous deafening noise from 140 loudspeakers. Some camp inhabitants have been killed or subjected to violence by both Iraqi and Iranian forces. In July 2009 six Iranian exiles were killed during a raid by the Iraqi security forces. Iraqi authorities have given assurances that 'any actions that they took at Camp Ashraf would be consistent with humane treatment of the individuals there, and that they would not relocate any of the individuals there to a country where they would have a well-founded fear of persecution'. But relations with Iran have improved since 2009 and the Iraqi government has caved into Iranian pressure to close the camp (according to this US diplomatic cable) stating that it intends to close the camp by the end of 2011. Human rights groups are calling on the government to abide by its political and legal commitments under international humanitarian and human rights law. In April 2011, Amnesty International called for an independent investigation into reports of an attack perpetrated by Iraqi troops that killed 33 people and injured 300 in Camp Ashraf. Video footage uploaded onto YouTube by the PMOI appears to show the Iraqi army shooting indiscriminately into a crowd, and vehicles trying to run over people. The US military was denied permission to provide humanitarian assistance to camp residents after that attack. ●

How do you use the Fahamu Refugee Legal Aid Newsletter? Asylum Access Thailand reports

Michael Timmins explains how Asylum Access Thailand uses the Fahamu Refugee Legal Aid Newsletter with its largely volunteer team. How do you or your organisation use the newsletter? Please email us and let us know.

Asylum Access Thailand provides legal aid to the urban refugee population in Bangkok. Because our services generate no income we rely heavily on volunteer legal advocates to provide legal aid. These volunteers come from a variety of countries and sacrifice a considerable amount of time as well as savings to commit to this population. When they arrive, they are often swamped with the volume of casework that is required. So much so that it is often difficult for them to remember that they are part of a critical global movement — that of providing legal aid to asylum seekers and refugees. This movement reminds us of the best traditions of the legal profession: providing access to justice for marginalised communities, genuine protection from *refoulement,* and all at an excellent level of service.

The Fahamu Refugee Legal Aid Newsletter plays an integral role in reminding our staff that they are at the front end of this movement. It makes them feel important and, to some extent, valued. As a manager, when I receive the Newsletter, I circulate it around the staff. I ask all of them to read it so that we can discuss the articles at our next weekly Legal Team Meeting — sometimes I will ask a member of staff to present at the meeting on one of the articles. I want the staff to be informed of issues affecting legal aid beyond Thailand and to be engaged intellectually with the global movement.

We also use the articles to reflect on our own situation — perhaps there is a development in another jurisdiction that we could seek to apply here. Some of the articles also have direct relevance to our casework, whether it be a reference to a new piece of jurisprudence or suggestions for helpful country of origin information sources. In short, then, the Newsletter is something that we all look forward to. It reminds us that we are not alone, that there is real value to the work, it is often an important resource, and it provides us with a level of intellectual engagement allowing us to step outside of the daily grind and dramas of casework. ●

The best interests of children seeking refugee protection by Syd Bolton *continued from p. 8*

Within other papers delivered at the conference, the President of the UK's Upper Tribunal, Immigration and Asylum Chamber and High Court Judge Mr Justice Blake said: 'Underlying these questions is the more general one how far do the principles of the UNCRC create a new class of protected persons whose claims will need to be evaluated by immigration judges?'(see paper online, paragraph 35).

Whether the answer to this is to promote a much more child-oriented implementation of the Refugee Convention, to be read and understood in light of the 1989 Convention on the Rights of the Child or even indeed, as some commentators and academics, for example Professors Guy Goodwin-Gill and Jane MacAdam have called for 'a total realignment of protection, away from the formalities of 1951-style refugee states towards a complete welfare approach … it is vital to view the rights of child asylum seekers not only in the context of the Refugee Convention but also in the specific framework of the [UN]CRC' *(*Jane MacAdam, Complementary Protection in International Refugee Law, Oxford University Press 2007, p.176 et seq.).

The workshop discussions at the conference sought to address this and in so doing considered not just the Refugee Convention and the UNCRC but other regional systems of protection, including the African Charter on the Rights and Welfare of the Child, and the

European Union Charter of Fundamental Rights and EU common asylum directives, which provide for minimum standards for the welfare and protection of children seeking asylum in ways that the Refugee Convention does not prescribe in terms. Notably whilst Article 3 of the UNCRC only provides that the best interests of the child are 'a primary consideration', Article 4 of the African Charter requires that these are treated as ' the primary consideration' and Article 1 that 'Any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the present Charter shall to the extent of such inconsistency be discouraged.'

Such values and progressive standards in African children's human rights instruments offer real possibilities for changing the way that we view and protect children's rights in Africa and in other parts of the world. African states and Africa as a whole face some of the greatest and most enduring challenges in providing protection for large numbers of refugee children and whilst formal status determination and human rights protection processes are at a formative stage in many states the ambitions set by the African children's human rights instruments and by countries whose domestic laws have incorporated the UNCRC and uphold the primacy principle of best interests are ones that can serve to build an effective children's right based protection system.

These interests can only be fully understood and protected by ensuring that children also have meaningful participation rights at all stages of the protection process, both in investigation stages and in judicial oversight of decisions and then in the long term planning for the child's future and a durable solution to their personal development and protection needs. All of which requires access to judicial oversight of their protection claims through free legal advice and representation at the earliest stage, by child specialist legal counsel and supported by guardianship and welfare arrangements where children are left without effective parental care.

The workshop also looked at the content of the fundamental principles of best interests and the right to be heard in the developing body of international case law, legal and welfare practice and guidance. In doing so we referred extensively to the UNHCR's own guidelines on best interests determination (May 2008 revision) and child specific refugee protection (Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, HCR/GIP/09/08, December 2009) and to the authoritative comments of the Committee on the Rights of the Child, especially CRC General Comments 6 – on the treatment of separated children outside their countries of origin and CRC General Comment 12 on the right to be heard. These are all set out in much more detail in the conference workshop paper.

The discussions of the Vulnerable Persons Working Group are in their early stages and continuing with a view to further exploring and then proposing what such a new or enhanced framework for child refugee protection might look like. An invitation is extended to all Fahamu readers who are already thinking around these possibilities or would like to do so. Anyone who is interested in contributing to this discussion can email Syd Bolton. •

NEW! QUESTION BOARD

Do you have any questions you would like to put on our question board? Contact the editors. Thanks to Oktay Durukan for contributing to the answer to this request.

Question:

Our office was recently contacted by a transgender person from an Eastern European EU country. Is it possible to win asylum from an EU country? Or can the asylum office or immigration judge legally conclude that the applicant could relocate to a different EU country that offers stronger protections for transgender people?

Answer:

The question of asylum in an EU country when the person is fleeing from another EU country has often arisen in the context of Roma asylum seekers. Section 3 of the Council of Europe Parliamentary Assembly Report on Roma asylum seekers in Europe (2010) entails a useful summary of the applicable EU law. It is abridged below (for the specific Roma case, please read the original):

'Protocol No 29 annexed to the Treaty establishing the European Community - Protocol (No 29) on asylum for nationals of Member States of the European Union (1997)' sets out specific procedures that are to be applied to the handling of any claim for asylum made by a national of an EU member state. It provides that EU member states shall be regarded as constituting 'safe countries of origin' in respect of each other for all legal and practical purposes in relation to asylum matters. Accordingly, applications for refugee status from EU nationals shall be inadmissible for processing by another EU Member State except in very exceptional circumstances:

(i) 'If the Member State of which the applicant is a national invokes Article 15 of the European Convention on Human Rights, with a view to take measures derogating from its obligations under that Convention.'

(ii) *'If the procedure referred to in Article 7(1) of the Treaty on European Union has been initiated and until the Council takes a decision in respect thereof.'* (Article 7(1) concerns the suspension of the rights of a member state).

(iii) *'If the Council, acting on the basis of Article 7(1) of the Treaty on European Union, has determined, in respect of the Member State which the applicant is a national, the existence of a serious and persistent breach by that Member State of principles in Article 6(1)*

of the Treaty', i.e. of the Charter of Fundamental Rights of the European Union.

(iv) '*If a Member State should so decide unilaterally in respect of the application of a national of another Member State; in that case the Council shall be immediately informed; the application shall be dealt with on the basis of the presumption that it is manifestly unfounded without affecting in any way, whatever the cases may be, the decision-making power of the Member State*'.

EU nationals are not eligible for subsidiary protection under EU Directive 2004/83 ('on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted'). Their last resort might be the Directive 2004/38 'on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States'. Article 6 establishes freedom of movement, but article 7.1 states that the person must be employed or self-employed or otherwise have sufficient resources to remain in the country.

If, as is the case with many of the Roma asylum seekers, none of these options are possible, there are three remaining options: to seek and be granted asylum outside the European Union, to live as irregular migrants or to stay in their home country and face persecution.

EU member states are also state members of the Council of Europe and thus parties to the European Convention on Human Rights. They are not allowed to circumvent the ECHR and the jurisprudence of the Court by referring to EU legislation. In principle, if a person with a well-founded fear of persecution from an EU member state seeks asylum in another EU member state, he or she should not be expelled if there is a risk that his or her rights under Article 3 of the ECHR (the prohibition against torture and inhuman and degrading treatment or punishment) will be breached upon return. Yet the practice of the Court has been one of subsidiarity: it has often declared inadmissible the application by an individual who is about to be sent back from one member state of the Council of Europe to another, even if the applicant invokes a threat of persecution or ill-treatment upon return. Instead the Court has considered that an applicant should rather submit an application against the state in which that threat persists, normally his or her country of origin, than against the returning state. ●

Cultural expertise in English courts: a workshop report

Abridged version of a contribution by Dr Prakash Shah, Senior Lecturer, Department of Law, Queen Mary, University of London. A full version of the text may be found on our blog. For related writings on the importance of cultural expertise in refugee legal aid, please see Prof Diana Jeater's letter about the Fahamu workshop on witchcraft in the January 2011 issue of FRLAN (p. 3), as well as her article on expert testimony in asylum proceedings in the June 2011 issue of FRLAN (pp. 1, 8–9). Those interested in the workshop's issues can also find them discussed in wider comparative context in the new book, Cultural expertise and litigation: patterns, conflicts, narratives, *edited by Livia Holden.*

Eighteen anthropologists and sociologists, legal academics and legal practitioners came together in a one-day workshop on the introduction of 'cultural expertise' in English Courts held on 28 April 2011 at the Institute of Advanced Legal Studies (IALS).

The spur for the workshop was the discussion in early 2011 on the Pluri-Legal e-mail group about the Mbulawa case that was tried in Leicester Crown Court in late 2010–early 2011. The trial led to a young woman of Zimbabwean origin being convicted of malicious wounding under the Offences Against the Person Act 1861. Evidence indicated that, through an act of 'witchcraft', she had been 'instructed' by her grandmother and paternal aunt while in a trance to kill her mother. The trial proceedings had also involved expert evidence submitted by two anthropologists, one of whom attended the workshop. The workshop was intended to address a number of questions about the role of anthropologists and other 'cultural' experts in court proceedings in the UK. The workshop was addressed by two main lectures, by Prof Werner Menski of SOAS and Dr Roger Ballard of the Centre for Applied South Asian Studies (CASAS). Both have been instructed as cultural experts many times in British courts and tribunals.

The cases about which experts are asked to provide their opinions tend to arise in situations of conflict between the often individualistically grounded expectations of the dominant cultural and legal order, and the networks of trust and reciprocity based on kinship and family within minority contexts, although evidently they also arise among contending parties belonging to minority ethnic communities when they evoke different normative bases to ground their claims.

Four case studies were presented during the workshop, shedding light on the range of issues that can potentially arise within the courts — from family matters and the best interests of children, to complex criminal trials involving charges relating to violence or murder. This range of cases, on the one hand, reveals that minority cultural issues crop up in virtually all legal fields and, on the other hand, shows that legal practitioners can potentially request expert evidence in all such fields with their varying procedures, rules of evidence, and expectations on each party to the legal proceedings.

As things stand, experts expressed that they found it worthwhile to be involved in legal proceedings in some way as that represents a way of their being able to apply their skills

and knowledge to a practically useful end. There was a consensus that experts can help the process of justice be pushed further along by providing valuable informational input without which decision makers would often be in the dark about important aspects of a case. It was recognised that there is always a tension in wanting justice to be done while being only one part of a complex legal machine which demands that one restrict oneself to a narrow set of instructions, to the confines of the rules of evidence, and to a role ascribed by the court procedures.

There was a consensus that some kind of ongoing network of experts would be of help in exchanging information and for mutual support. Often cultural experts are working in isolation from one another and having a sounding board could be a useful support mechanism. It was also felt that future meetings would help in the ongoing multilogue in which this workshop was a first step. An e-mail discussion group could, it was suggested, also be set up to facilitate activities and discussions. It was also suggested that ways should be found to interact with the Judicial Studies Board as that body would have a natural interest in the kind of issues being discussed.

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NEW REPORTS

Detention of migrant children in Korea

'Futures detained: Korea's failure to meet the standards required in the Convention on the Rights of the Child in its immigration detention system', was prepared by Advocates for Public Interest Law (APIL), a Seoul-based NGO (+82 2 34780529). The report can be found on the FRLAN blog.

Uyghur asylum applications in Europe

A new report by the Uyghur Human Rights Project (UHRP) documents the challenges faced by Uyghur asylum seekers in Europe, and examines the reasons for their asylum. 'They Can't Send Me Back: Uyghur Asylum Seekers in Europe', based on interviews UHRP researchers conducted with 50 Uyghur asylum seekers in Sweden, Norway and the Netherlands in 2010 and 2011, shows how Uyghurs have in recent years been forced to flee severe political, economic and social repression in East Turkestan, including institutionalised curbs on the freedom of speech and government efforts to criminalise the expression of Uyghurs' religious and cultural identity. While many Uyghurs, in particular those in Norway, are being granted asylum, many more, particularly in Sweden and the Netherlands, are receiving denials and experiencing lengthy appeals processes.

NEWS & INFORMATION LINKS

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