

# FAHAMU

## REFUGEE LEGAL AID NEWSLETTER

ISSUE 11 ❖ JANUARY 2011

ISSN 2049-2650  
A MONTHLY FORUM  
FOR NEWS AND  
REFLECTION ON THE  
PROVISION OF  
REFUGEE LEGAL AID

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

Links are marked in [blue](#).

*As this is the last Newsletter for 2010, we wish a pleasant holiday to all those taking one. We hope that all legal advisors receiving the Newsletter will consider writing articles for it and sharing successful cases or challenges facing you in the field that others may have recommendations for resolving. Our plan in 2011 is to submit articles for refereeing so that you can include your publication on your curriculum vitae. - The [Editorial Team](#)*

### A new approach to age assessment of unaccompanied and separated children: current practices and challenges in the UK

Last month, Syd Bolton's article 'Age disputed asylum seeking children in the UK' ([FRLAN December 2010](#), pp. 5-11) provided a detailed description of the current United Kingdom legal landscape with regards to asylum age dispute, advising lawyers on how to navigate it and concluding that the high number of age disputed claims points to their serving as a 'barrier to children receiving timely, appropriate care services and fair asylum decision making processes.' The following article, by [Christine Mougne](#) and [Amanda Gray](#), outlines a proposal for best practice in age assessment in terms of both methodology and procedure, based on the shortcomings in current practices. We thank the authors for these contributions to the navigation and improvement of age assessment in asylum claims – an important and under-researched area in international refugee law.

Unaccompanied and separated asylum seeking children (hereafter 'UASC') present one of the greatest challenges facing governments in the realm of international protection. Many UASC arrive without identity documents, birth certificates or travel documents and lack any satisfactory evidence of their age. This poses an additional challenge in cases of children approaching the age of 18.

An incorrect age assessment can have grave consequences by denying vulnerable UASC the services that they are entitled to and putting them at risk. The case of 'Miss T' (real name unavailable for legal reasons), a young Cameroonian girl, claimed asylum as a child in Liverpool. After an age assessment was requested, the Local Authority [wrongly assessed](#) her to be 23 when she was 15 years old and thus she was denied adequate protection which resulted in her being sexually abused. This case demonstrates the potential human cost of inadequate practice.

#### In this issue:

<b>UK AGE ASSESSMENT: A NEW APPROACH</b>	<b>1</b>
<b>ARGUMENTS FOR A LEGAL ASYLUM SYSTEM IN JORDAN</b>	<b>2</b>
<b>WITCHCRAFT ALLEGATIONS &amp; REFUGEE PROTECTION</b>	<b>3</b>
<b>EGYPT SINAI: REFUGEES TAKEN HOSTAGE</b>	<b>4</b>
<b>COMMENTARY: UNHCR'S ROLE IN ISRAEL-SUDAN RETURNS</b>	<b>6</b>
<b>TRANSGENDERED WOMEN ALLOWED TO REMAIN IN US</b>	<b>9</b>
<b>SOUTH AFRICA TO RETURN ZIMBABWEANS IN 2011</b>	<b>16</b>

### QUICK NEWS

#### MIDDLE EAST

Persons seeking asylum [dying on Saudi/Yemeni border](#)

[Number of Afghan asylum seekers increasing](#), while protection options decreasing

[Israel succumbs to refugee warehousing](#) with new desert detention center

Asylum seekers [taken by surprise](#) as Israel denies permission to work

[Iraqi Christians](#) seek asylum in Jordan; UNHCR releases [latest statistical info](#), [reports increase](#), and [condemns continued forced repatriations](#)

[Israel deports 150 Sudanese on secret flight to Sudan](#)

[Lebanese fighting arbitrary refugee detention shut out of process](#) as Minister claims 'no say' in issue

#### AFRICA

In violation of international law, Kenya continues [refoulement of Somalis](#)

Europe [stays true to 'murderer' Kagame](#)

Dutch end Rwanda support 'because freedom of expression and political space are insufficiently guaranteed'

Amnesty International [condemns EU-Libya cooperation](#)

[CNN airs story about refugees at Cairo Psycho-Social Training Institute](#)

[David Bahati](#), author of Ugandan 'Kill The Gays' Bill [interviewed on MSNBC](#)

[Kakuma News Reflector \(KANERE\)](#) approved for registration as national NGO

[LGBTI persecution intensifying across Africa](#)

On the other hand, there have been cases when young adults have falsely put forward a lower age to authorities in order to access more beneficial services and protections designed for children. There have been [reports](#) including high profile cases of applicants claiming to be children and being supported by Social Services as children later discovered on social networking sites to be adults, with reports of some

*Continued on page 7*

## Towards adopting a legal system for asylum in Jordan

Throughout the world, refugee legal aid NGOs are struggling to convince their governments to ratify the 1951 Geneva Convention. In Jordan, UNHCR and the National Center for Human Rights sponsored research into this very possibility: how a legal system dealing with refugee protection might be developed. A full report of the research was released in Arabic in July 2009; what follows is an English-language overview the study, prepared by its author, Jordanian lawyer *Khair Smadi*. Because this overview is but a summary of an extensive report, much is excluded: more than 120 references, detailed accounts of interviews and a wide range of statistics drawn from published and unpublished official Jordanian sources. The overview follows in three parts: first, comments on the research; second, a summary of research findings; and third, recommendations to the Government of Jordan.

### About the research

This study aimed to convince the Government of the Hashemite Kingdom of Jordan (GoJ) to adopt a legal mechanism for asylum, either through ratification of the 1951 Convention, or by enacting a national law that responds to the international standards set out by the 1951 Convention. The Arabic-language report is not typical; it is a kind of argumental or dialectical dialogue with the GoJ, designed to investigate and deconstruct the concerns that stand behind its negative attitude towards the 1951 Convention and towards refugees in general.

The study is unique for a number of reasons. It is the first study in its domain in Jordan and in the region, to my knowledge. Because I received a letter from the Jordanian Prime Minister ordering the different governmental bodies to cooperate with my research, this is the first study that talks to the GoJ directly; as a result, the concerns mentioned are not imposed or suggested but rather those directly stated to us by representatives of the government of Jordan. This is, indeed, the first time the Jordanian government has talked about these issues directly and clearly. The study used a comprehensive, holistic approach, so that the problem was studied from all its dimensions: legal, political (including demographic and geopolitical issues) and socio-economic (including crime).

In legal terms, the study uncovered gaps in the Jordanian national legal system, highlighting its lack of provisions to organise the relationship between the government and the refugees on its territory – a very strange gap, considering that Jordan hosts and, since its early beginnings, has hosted a large number of refugees in its territory. The research report examines, in a detailed, 20-page analysis table, the comparison between the 1951 Convention on one hand and the international, regional and nation human rights instruments and laws on the other hand. This analysis showed that that given Jordan's publication and endorsement of the main international human rights instruments ([International Covenant on Civil and Political Rights \(ICCPR\)](#), [International Covenant on Economic, Cultural and Social Rights \(ICECSR\)](#), [Convention Against Torture \(CAT\)](#), and [Convention on the Rights of the Child \(CRC\)](#)), the Jordanian legal system in fact contains full binding legal provisions that should grant refugees inside its borders the same rights and privileges granted by the 1951 Convention – and maybe more, in terms of range and

*Continued on page 11*

## QUICK NEWS *continued*

### ASIA PACIFIC

[UNHCR comments](#) on New Zealand Legal Aid Quality Framework  
 Mobile consular services provide [birth certificates to Sri Lankan Tamils](#) in refugee camps in India  
 For HIV-infected displaced on Thai-Burma border, ARV treatment is [running out](#)  
 Less than 10 percent of those who file for [refugee status in Korea](#) get accepted  
 Amnesty International goes [inside Australia's detention centres](#)  
 At least 30 asylum seekers [drown while trying to reach Australia](#), prompting [debate](#)  
 Cambodian government [orders closing of UN site](#) hosting Montagnard refugees; [more than 10 may be deported](#)

### AMERICAS

Uniting Families Acts proposes [same-sex family reunion in United States](#)  
[Brazil](#) and [Argentina](#) recognise Palestinian State on pre-1967 borders  
 WikiLeaks: Pentagon requested [Pakistan refugee camp information for potential air strikes](#)  
[Detention a prominent topic at this year's Global Forum for Migration and Development](#), held in Mexico  
 Canadian Opposition [unites against human smuggling bill](#)  
 US pursues pathway to [legal status for certain unauthorised immigrant youth](#)

### EUROPE

[UN urges European Union](#) to ensure asylum seekers not shut out by tighter border controls  
 After around 53 percent of Swiss voters back a proposal to [automatically deport foreigners convicted of crimes](#), UN cautions that [refugees should not be returned to countries where they are at risk](#)  
 António Guterres interviewed by Eurasyllum on '[key asylum policy developments in the European Union](#)'  
 In Greece, where more than [52,000 asylum claims](#) have yet to be examined, the Filakio detention centre is '[no place for humans](#)'; [HRW comments](#) on the situation  
 UK to [end 'shameful' detention of children](#) by May 2011  
 Germany should stop [forced returns to Kosovo](#)

## Witchcraft allegations, refugee protection and human rights: reflections on a course for lawyers and legal advisers

*Contemporary accusations of witchcraft occur in communities around the globe. Startling accounts of torture, starvation, abandonment and death of those accused of witchcraft have been documented. Victims are often from vulnerable groups: the elderly, the disabled and increasingly over the past two decades, children. Refugee legal aid practitioners throughout the world may encounter clients seeking asylum on the basis of witchcraft accusations. In the field of refugee protection, however, specialised knowledge and training on witchcraft allegations has not been well-developed.*

*In September 2010, UNHCR and the Fahamu Refugee Programme co-hosted a course in Oxford, United Kingdom that aimed to arm lawyers and legal advisers with information, networks and resources to better represent those whose claims for asylum are based upon accusations of witchcraft. The two-day course brought together legal and NGO practitioners, academic experts and staff from UNHCR and other international organisations to discuss practical strategies, issues and challenges in the provision of legal representation to those accused of witchcraft. One of the course participants, [Professor Diana Jeater](#) of the University of the West of England, Bristol, contributed the following reflection, which reviews some of the highlights of the course on this emerging area of refugee law.*

I have in the past written expert reports for Zimbabwean asylum seekers in which witchcraft accusation was a material consideration, and I am also in contact with a colleague who has recently written a 47-page report on African witchcraft for a court hearing. When I summarised the workshop to him, he deeply regretted that he had missed it, as he thought that it would have saved him and the lawyer with whom he was working a lot of wasted time. So clearly [the course was] something valuable, and I thought you might find it useful to know what I found particularly helpful in the workshop.

One of the most important outcomes of the workshop for me was that it helped us all to identify and understand the different uses of terminology and different understandings of witchcraft between the lawyers on the one hand, and the academic experts on witchcraft on the other. It was quickly apparent that the lawyers and the academics have very different agendas and very different needs in defining and understanding witchcraft. Both constituencies need precision and clarity in the use of their words in some contexts but not in others.

It was very clearly explained that lawyers have to be able to make a case for their client within the terms laid down by the relevant international asylum and human rights legislation. This has significant consequences: for example, it is likely to lead them to use a wide definition of the 'social group' affected by witchcraft. Academics, on the other hand, need to develop a specific and nuanced taxonomy of witchcraft and other forms of maleficence

and healing. This makes them very uncomfortable with imprecise definitions of 'social group' and similar categories. The workshop helped us all to identify these differences and, more importantly, begin to think about strategies that would assist in effective, but also accurate, representation of people involved in human rights abuses linked to witchcraft accusation.

Another important outcome of the workshop, for me, was that I became better informed about how witchcraft accusations are conceptualised by intelligent non-specialists. It became clear that understandable assumptions were being made about the likely profile of the victims of such accusations.

The victims were conceived as likely to be either females in conflict with established gender norms, or children, particularly from West Africa. The first of these models derives from a widely-known interpretation of the witch hunts of central Europe in the early modern period; the second from well-publicised cases in UK and elsewhere. However, the academics [present] pointed out that these models have limited purchase in understanding contemporary witchcraft accusations in Africa and Asia. Isak Niehaus's anthropological presentation showed clearly that the categories of people accused of witchcraft changed constantly in response to changing social and economic tensions, and that wealthy senior men were just as likely to be vulnerable to such accusations as children or rebellious women, in certain circumstances. This was evidently a revelation to most of the non-anthropologists present.

The workshop additionally introduced a deeper understanding of the varieties of maleficence that are not, strictly-speaking, 'witchcraft', but which might legitimately be deemed to come under that umbrella for asylum or [human rights] convention reasons.

I now feel much better able to understand the questions and concerns of the lawyers who approach me for expert advice, and I am certain that the legal people on the workshop will now have a better understanding of what lies behind the caveats and lengthy expositions from those to whom they turn for expert advice. This should enable all concerned to provide more effective, targeted and useful submissions to the courts – which, in turn, should lead to greater justice for those suffering extreme sexual and physical abuse as a result of witchcraft accusations.

*Readers interested in further information and resources on the course content are encouraged to email [Dr. Barbara Harrell-Bond](#), Director of the Fahamu Refugee Programme. For a bibliography of resources related to this topic, please see the '[Victims of accusations of witchcraft](#)' page of the Special Issues in Refugee Status Determination section of the [SRLAN website](#).*

## REQUESTS

### CALL FOR INFORMATION: Somali refugees in Moscow airport

Fahamu Refugee Legal Aid Newsletter continues to seek information on the current situation of a group of Somali nationals stranded at Moscow airport, reported in the [blogosphere](#). Please send any recent information from the press, local NGOs, or first-hand testimony by [email](#). Translated information from Russian-language press would be especially appreciated.

### DOCUMENTARY EVIDENCE IN SUPPORT OF ASYLUM CLAIMS?

After some discussion on the [Southern Refugee Legal Aid Network \(SRLAN\)](#) list-serv, the Fahamu Refugee Legal Aid Newsletter would like to solicit a short piece on documentary evidence in support of asylum claims. Please [email the newsletter](#) if you are willing to contribute.

### UK PROPOSES CUTS TO LEGAL AID

United Kingdom Justice Secretary Kenneth Clarke recently unveiled a [programme](#) of wide-ranging reform to legal aid and civil litigation costs as part of new government plans to reduce public funding costs. The programme would involve a shocking level of cuts in public funding for the provision of legal advice, including the removal of all Legal Help and Controlled Legal Representation for immigration matters, other than for persons seeking release from detention or proceedings before the Special Immigration Appeal Commission. The paper proposes to remove all welfare-related issues from the scope of legal aid, and claims by detainees that do not relate directly to their detention or asylum, deportation matters and issues related to private and family rights are not to be covered. [Migrant & Refugee Communities Forum](#), a user-led, community forum working to promote the rights of migrants and refugees in London, encourages anyone concerned about these changes to participate in the public consultation on the programme, either by responding to an [online survey](#) or by sending a response via [email](#) or by post to Annette Cowell (Legal Aid Reform, Ministry of Justice, 102 Petty France, London, SW1H, United Kingdom). Feedback is due by 12:00 noon on 14<sup>th</sup> February, 2011.

### Refugees from the Horn of Africa taken hostage in Egyptian Sinai: reports of torture, rape and killings

*Sara Gonzalez Devant*

The Pope's [call](#) for prayer for African hostages in the hands of traffickers in the Egyptian Sinai followed a joint [appeal](#) to international authorities by a group of NGOs. UNHCR has urged Egyptian authorities to [intervene](#) to secure their release. Up to [300](#) Eritreans fleeing severe religious and political repression are among the hostages. The migrants and asylum seekers are at the mercy of a Bedouin network operating on the border with Israel that holds people in purpose-built containers for over a month – some for longer. They demand payments of up to US\$ 8,000 per person. UNHCR estimates that in recent months about [85 percent](#) of those entering Israel through Sinai have been Eritrean asylum seekers.

### Accounts from Sinai reach Israeli media, NGOs

A clinic run by [Physicians for Human Rights - Israel \(PHR\)](#) initiated a survey of 167 patients after observing a growing demand for abortions and increased numbers of sexual assault victims. The clinic is a first stop for refugees and asylum seekers released from detention centres. PHR's [survey revealed](#) how those in the hands of Sinai traffickers are subjected to torture, [slavery](#), systematic rape, extortion, violence including branding, and forced labour. Another NGO, [Hotline for Migrant Workers](#), has also been gathering hundreds of testimonies from Sinai captives that speak of a systematic method in which women are separated from men and exposed to the worst forms of abuse. There are also reports of [killings](#) by traffickers. An in-depth [feature](#) in the most widely circulated daily newspaper in Israel recounted the conditions of institutionalised torture and abuse endured by Ethiopian and Eritrean refugees in the Sinai. Italian human rights group [Agenzia Habeshia](#) reported the killing of two deacons who were singled out in retribution for alerting human rights groups to the situation of a group of 250 refugees and asylum seekers remaining in Sinai under Bedouin captivity. The same NGO claimed that the captives were suffering from violence and torture, including electric shocks. There are also reports of organ harvesting and systematic rape resulting in forced abortions. Another NGO, [Christian Solidarity Worldwide](#), [warned](#) of the urgent need for Egyptian authorities to act decisively in order to prevent more torture, violence, rapes and killings in the Sinai. Several NGOs are in contact with captive asylum seekers, refugees and other migrants whose situation is critical, and some of who are at risk of [taking their own lives](#). Agenzia Habeshia and EveryOne Group have [reportedly](#) filed a lawsuit against named traffickers in Cairo. Several NGOs [called](#) for the European Parliament to 'request intervention' from the international community to prevent the killing of more innocent people. In a press release on 16 December, the [European Parliament urged Egyptian authorities](#) to take 'all necessary measures' to secure the release of Eritreans held hostage in Sinai, and 'to avoid the use of lethal force against illegal migrants crossing the borders of the country'.

### Reports 'a fabrication' according to Egyptian officials

The Egyptian authorities have issued contradictory statements on the Sinai hostages. According to UNHCR spokesperson Adrian Edwards, the agency received [assurances](#) in early December from

the Ministry of Interior that efforts were underway to locate and release the hostages. More recently, the Foreign Ministry described media reports of the situation in the Sinai as [‘imprecise and inaccurate’](#). [Reports](#) quote Foreign Ministry spokesperson Hossam Zaki stating more recently that the ‘fabrications’ are spread by ‘dubious organisations’ that aim to stir up public opinion in Europe and to discredit Egypt's methods of dealing with migration and human trafficking. Egypt has denied knowing the whereabouts of the detention camps and some reports suggest that the area is under effective Bedouin [control](#). But in a [damning statement](#), the [EveryOne Group](#) claims to have provided the Egyptian government with detailed information of the whereabouts of a prison near a government building in the suburbs of Rafah. The NGOs feared for the safety of their key witness, who could no longer be reached after the NGOs shared his number with UNHCR, the minister of Interior, the prime minister and the president.

### **Refoulement, torture, killings on the Israeli border**

Asylum seekers crossing the Sinai are not only at risk of falling into the hands of Bedouin hostage-takers. Thousands of asylum seekers and migrants have been [prosecuted](#) before Egyptian military tribunals for unauthorised entry into the restricted military zone bordering Israel. Asylum seekers are detained and reportedly subjected to [torture](#) in Egyptian detention centres to which UNHCR is denied access. Egyptian authorities [do not attempt to identify](#) asylum seekers among the groups. Instead, Egypt has entered agreements with refugee-producing countries, such as Sudan or Eritrea, and arranges deportations, barring asylum seekers from accessing assistance and from lodging an asylum claim with UNHCR. In an [open letter](#) in October 2010, UNHCR urged Egypt to put an end to the *refoulement* of registered asylum seekers and recognised refugees.

### **Sinai ‘a death zone’ but ‘hot returns’ continue**

Crossing the Sinai into Israel has become increasingly difficult and dangerous since the two countries entered into an [agreement](#) in 2007 whereby Egypt committed to clamping down on its side of the border. The Sinai border has become ‘a death zone’: at least [85 people](#) have been shot and killed by Egyptian border guards since 2007. In November 2010 Israel began the construction of a 60-kilometre [wall](#) along the Egyptian border. The number of people known to have been forcibly returned to Egypt without a meaningful opportunity to lodge refugee claims in Israel is [136](#). PHR – Israel claims to have reliable testimony that numbers of so-called ‘hot returns’ are much [higher](#). Refugee advocates [argue](#) that Israeli authorities’ recognition that torture, rape and killings are systematically carried out in Sinai camps should trigger an immediate halt of so-called ‘hot returns’. Meanwhile, the risk of torture in Egyptian detention, the shooting of asylum seekers attempting to cross into Israel, as well as Egypt’s practice of *refouling* refugees to their countries of origin are sufficient for Israel to stop the practice. ‘Hot returns’ – *refoulement* under another name – have been carried out since 2007 but the Israeli Supreme Court has yet to rule on the legality of the practice. A recent [article](#) in the Israeli press reported the first disciplinary hearing for refusing to carry out an order of ‘hot return’ by an Israeli officer.

### **Pambazuka News**

*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 an estimated 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](#).*

### **Israeli Legal Aid more sensitive to the situation**

In the in-depth feature titled [‘Desert Hell’](#), Physicians for Human Rights - Israel denounces Israeli detention centres that fail to screen the Sinai victims for torture and trafficking. These failures by Israeli authorities are compounded by difficulties in obtaining protection – it is not clear what status an Eritrean asylum seeker who is also a trafficking victim is entitled to, for example. Israel’s Legal Aid Department is aware of the conditions of the new arrivals crossing the Sinai. One [attorney](#) from the Ministry of Justice explains: ‘evidence shows that the more we allow this to go on, the worse it gets. Since December [2009], I see that the torture is becoming more severe’. The Legal Aid Department of the Israeli government has agreed to lend assistance to victims of human trafficking, although it is not formally required to provide assistance to asylum seekers. Many Sinai victims have nowhere to turn to, argues one UNHCR official quoted in the in-depth feature, because the definition of trafficking victims is very narrow: ‘People can undergo severe and traumatic tortures without meeting the precise definition of enslavement’. Meanwhile, refugees seeking asylum face slim chances of obtaining statutory recognition in Israel: less than [190 people](#) have been granted refugee status in the past 56 years. Instead, other forms of temporary stay permits are available but do not amount to statutory protection.

*See the [December](#) newsletter for recent refugee protection developments in Israel.*



## Commentary: UNHCR's assistance in Israel's return of Sudanese: repatriation or *refoulement*?

On 13<sup>th</sup> December, 2010, Reuters *reported* the following:

Israel has been quietly repatriating scores of Sudanese migrants with the help of a non-governmental organisation that routes them through a third country, an official involved in the transfer said on Monday. As Sudan is technically at war with Israel, the migrants go to another country from which they travel separately to their native land, the official said. Their travel is handled by a foreign NGO and coordinated with the United Nations High Commissioner for Refugees (UNHCR).

Jordanian lawyer *Khair Smadi*, whose article on asylum in Jordan starts on p. 2 of this issue, wrote this comments on the news.

The most important question about this news, from a refugee protection view, is that of the legal status of those returned: are they recognised refugees, asylum seekers or economic migrants? I believe that they are most likely recognised refugees, for two reasons. First, they are registered with UNHCR, as confirmed by William Tall, UNHCR representative in Israel, in this [statement](#) to the media: 'We know about the repatriation efforts enacted by the Israeli government and have met and interviewed every one of the returning Sudanese nationals to make sure that they weren't coerced in any way'. Second, it is well known that most of those who fled Sudan to Israel are from Darfur and more specifically of 'non-Arab' ethnic background. According to UNHCR, 'states provide international protection to Sudanese asylum-seekers from Darfur of "non-Arab" ethnic background, through according them recognition as refugees under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol' (from [UNHCR's Position on Sudanese asylum-seekers from Darfur](#), February 2006).

If the analysis above is correct, the question of the legality and legitimacy of these repatriation activities is raised, especially if we consider the following text from the above-mentioned UNHCR document: 'No non-Arab Sudanese originating from Darfur should be forcibly returned until such time as there is a significant improvement in the security situation in Darfur'. According to my knowledge, UNHCR has not issued any documents stating that such an improvement has taken place.

What will happen to the returnees if the Government of Sudan (GoS) becomes aware of their time in Israel and their attempt to get refuge there? Who will guarantee their safety from possible and indeed likely persecution upon return to Sudan? I think that, despite precautions taken, it is likely that the GoS will still be able to discover that the returnees came from Israel. The results of such a discovery could be deadly for the returnees; indeed, Sudanese citizens have been executed for visiting Israel, such as [this instance](#) documented by the Israeli Human Rights Committee: 'Two Sudanese citizens, Nelson Nebio and Joseph Tomba, were reported executed in Khartoum for visiting Israel. The two were deported from Israel to Jordan, who handed them over to the Sudanese authorities.'

News on the recent 'repatriation' emphasises that the returnees were not coerced. In the context of possible *refoulement*, however, I think that the term 'coercion' should be reconsidered to include factors which may have pressured the returnees to agree to their travel. The money often paid to 'voluntary' repatriates by UNHCR or the host country can be a temptation, especially when no significant change has happened in the country of origin. Furthermore, according to my modest experience in this field, refugees rarely consider the option of 'voluntary' return to the place where they experienced persecution or insecurity without the added coercion of bad living conditions in their host country (including a lack of access to work) and the lack of effective protection and assistance by UNHCR. ●●●

## ANNOUNCEMENTS

### VACANCY: Oxford Refugee Studies Centre Director

The University of Oxford seeks a Director of the Refugee Studies Centre, also the Leopold Muller Lecturer in Refugee Studies, to start October 2011. The position is open to applicants with a doctorate in any social scientific discipline, including anthropology, economics, international relations, law, politics, geography or sociology; a distinguished research record in refugee studies, forced migration and/or humanitarian studies; established leadership abilities and management skills with reference to human and financial resources, demonstrated through past successful management experience; significant university teaching experience in forced migration studies and related areas, including experience of graduate teaching and research student supervision; experience in leading and managing research teams; a record of securing funds for research; experience of successful engagement with policy and practice in the fields of forced migration and refugee studies. Full details are [online](#).

### INTERIGHTS statement: African Commission on Human and Peoples' Rights (ACPHR)

In a public [statement](#) at the ACPHR's 48th session, INTERIGHTS raised two issues: the implementation of judgments and the refusal of the Commission to grant observer status to the [Coalition of African Lesbians \(CAL\)](#). [Pambazuka News](#)

has published a special [issue](#) on the refusal to grant CAL observer status. Several contributors to the [recent issue](#) of South Africa's [Heinrich Böll Foundation](#) publication [Perspectives](#) also explore LGBTI, gender identity and Human Rights in Africa. [Sibongile Ndashe](#), Equality Lawyer at INTERIGHTS has published '[The battle for the recognition of LGBTI rights as human rights](#)'.

### **IRAQ ratifies the International Convention for the Protection of all Persons From Enforced Disappearances**

On 23<sup>rd</sup> November 2010, the Republic of Iraq deposited the 20<sup>th</sup> instrument of ratification for the [International Convention for the Protection of All Persons from Enforced Disappearances](#) to the Secretary General of the United Nations. Iraq becomes the 20<sup>th</sup> State to ratify this treaty. Its historic accession means that the Convention will enter into force on 23<sup>rd</sup> December 2010, 30 days after the 20<sup>th</sup> accession or ratification. This development has profound meaning for all families of the disappeared and the [International Coalition Against Enforced Disappearances](#) (ICAED) and all other organisations and individuals who have worked so hard to make this possible. The Committee Against Disappearances to be established to monitor the compliance by State-parties of the provisions of this Convention is expected to be a powerful international means of protection against enforced disappearances in the near future.

### **CONFERENCE: 16th International Humanitarian Conference in Geneva**

[Webster University Geneva](#)'s International Relations Department will hold its 16th International Humanitarian Conference on 27th-28th January, 2011, at the International Conference Centre in Geneva. The conference aims to bring together practitioners and scholars, representatives and diplomats, and address today and tomorrow's challenges. English-French simultaneous interpretation will be provided throughout the conference. For more information, [click here](#) or send an [email](#).

#### *A NEW APPROACH TO AGE ASSESSMENT IN THE UK – Continued from page 1*

even married with children. This puts pressure on already limited resources and results in governments and local authorities becoming skeptical and reluctant to apply benefit of the doubt in borderline cases.

This paper seeks to provide the reader with a fresh approach to age assessment. While it does not propose a specific model in terms of methodologies, it is intended to identify the overarching framework to be upheld in age assessment cases and underpinned by the principle of the best interest of the child. By looking at the challenges faced in the UK asylum system, the paper demonstrates the need for upholding the best interest of the child as the overriding principle in devising and implementing an effective age assessment process. It argues that an improved age assessment process would combine methodologies to narrow down the margin of error, resulting in speedy and fairer conclusions to cases.

#### **Current UK practice on age assessment of UASC**

In the UK, an asylum-seeking child under the age of 18 and not accompanied by a close relative, is defined as a UASC. Children are entitled to a considerably more favourable treatment than adults in the asylum process. They are entitled to full child services provided by the local authority. Even if found not to be in need of international protection they are nevertheless entitled to discretionary leave to remain until the age of seventeen and a half, or for three years, whichever is sooner, unless there are 'safe and adequate reception arrangements' in their country of origin.<sup>1</sup> Furthermore, unaccompanied children are not subject to detention for immigration purposes.

The current practice in the UK in determining whether a

presenting individual is the age he or she claims to be remains extremely problematic.<sup>2</sup> It has been developed through an evolving process of social services practice and legal challenges.<sup>3</sup>

In the vast majority of cases, age is disputed at the time of the asylum screening interview.<sup>4</sup> An immigration official, having carried out an initial preliminary assessment based on the physical appearance and demeanour of the child will then refer the disputed case to an on-site social work team for an age assessment.<sup>5</sup> Where no on-site social work teams exist, the burden is on the applicant to present themselves to social services for an age assessment. In these cases they will be informed that their claimed date of birth has not been accepted and that they should go to social services for an age assessment should they wish to contest that finding.<sup>6</sup>

The local social services authority will carry out an age assessment in accordance with the Merton guidelines.<sup>7</sup> The guidelines were devised by Judge Stanley Burnton in the case of *B v Merton LBC*. They state that in a case where age is not clear, and no reliable documentary evidence exists, the credibility of the applicant, physical appearance and behaviour must be assessed. The assessment must also include general background of the applicant, including ethnic and cultural considerations, family circumstances, education and history over the past few years. The Court in *B v Merton* found that a medical report was not necessary.

The Merton standard has drawn various criticisms. First of all, the differing capacity of local authorities to make such assessments inevitably results in a variation in the quality

of age assessment. Given its largely subjective nature, the process depends entirely on the ability of the local authority and individual social worker charged with the task. Secondly, the Merton standard encourages disproportionate weight being given by social workers to the perceived credibility of the individual, a factor that also has serious consequences for the asylum claim.<sup>8</sup>

In the case of Miss T, apparent inconsistencies in her story appear to have influenced the judgment on her age without her having the opportunity to clarify matters. The assessors were also found by the ombudsman to have speculated about matters without having asked Miss T for further information. Miss T suffered for 18 months the injustice of loss of care services that she needed and was entitled to receive, as well as suffering stress and uncertainty while still a child, in making appeals against decisions to deport her.

Due to the limitations of the Merton standard, legal practitioners commonly rely upon paediatric reports to improve accuracy of age assessments. In *A v Croydon*,<sup>9</sup> however, the UK Supreme Court clarified that since these medical reports have a margin of error of two years, they cannot be considered as conclusive evidence of age, and should only be taken into consideration with all evidence presented.

The example of the shortcomings of the UK asylum system in handling borderline UASC cases demonstrates the urgent need for a balanced framework that not only upholds the norms set by international human rights law but also practically and effectively implements them. In order to do so, we now return to the rights of the child in international law before providing a policy proposal for improving the current system.

#### **Legal and normative framework for assessing age of UASC**

The rights of the child are set out in the [Convention on the Rights of the Child](#) (hereafter 'CRC'). The UK ratified the CRC in 1989 and on 18<sup>th</sup> November, 2008 removed its reservation to Article 22, which demands that asylum seeking children, unaccompanied or accompanied, shall receive appropriate protection and humanitarian assistance in the enjoyment of all the rights under the CRC and shall be afforded the same protection as any other child permanently or temporarily deprived of his or her family environment. The UK must therefore ensure that the CRC rights of unaccompanied asylum-seeking children are upheld in exactly the same way as those of a UK-born child.

While the rights are dependent on the individual being a child<sup>10</sup> and not upon the legal status of that child, UASC remain particularly vulnerable to violations of their rights under the CRC due to their marginalisation and uncertain situation. They are particularly at risk during and after the

age assessment process on a number of levels. Firstly, as explained above, the current practice is inadequate and places them under intense pressure. Secondly, they may be denied CRC rights during the time their age remains in dispute.<sup>11</sup> Thirdly, if the conclusion of the assessment is incorrect, then they may be denied the protection and services to which they are entitled.

These shortcomings conflict with the overriding principle of the CRC, which is enshrined in Article 3. The article sets out the principle of the 'best interests' of the child and states that '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.' The principle is to be a primary consideration with regard to all decisions and must be mainstreamed into the procedural operations of every stage of displacement.

The guidelines set out by the [UN Committee on the Rights of the Child in General Comment 6](#) for displaced UASC, have clear implications for the current age determination systems.<sup>12</sup> The views of the Committee on the Rights of the Child in its General Comment interpret and develop the core principles of the CRC. While not legally binding, the Committee's views hold great weight in terms of interpreting what States are expected to do at any stage of the UASC asylum process. Article 3 of the CRC places a positive obligation upon states to ensure that the age assessment process for UASC is conducted in the best interests of the child. The Committee on the Rights of the Child has made clear that this requires taking positive steps to ensure it is as efficient, timely, accurate and safe as possible and that where a margin of error does prevail in borderline cases, the benefit of the doubt is automatically applied.<sup>13</sup>

In addition to positive obligations signatory states have to protect, respect and fulfill under the CRC – in themselves enough to advocate for change – this paper argues that the best interests principle under Article 3 of the CRC holds the key to improving the effectiveness and accuracy of age assessment. The principle strengthens states' ability to offer protection to those who need it, including borderline cases where the benefit of the doubt will apply (within the plus and minus one year margin of error), while at the same time identifying those who are clearly over the age of 18. This will ensure that those who are not entitled are swiftly removed from the process so that limited resources can be focused on those who are entitled.

The remaining part of the paper sets out how the UK can meet this positive obligation by proposing a methodology and age assessment process that is underpinned by the principle of best interests of the child in accordance with Articles 3 and 22 of the CRC.

## Transgendered women from Latin America granted right to remain in United States after being slated for removal

Yara Romariz Maasri

A recent win by the [University of Houston Immigration Clinic](#) in the US Board of Immigration Appeals has resulted in the dismissal of an appeal by the Department of Homeland Security (DHS) in the case of a transgendered woman from El Salvador. The woman, who had been found removable and then applied for and was granted withholding of the removal, had been considered by the DHS to not have demonstrated that the [persecution of LGBT individuals in El Salvador](#) is a pattern or practice, or tolerated or supported by the authorities. The woman herself had experienced psychological abuse and violence – including rape, attempted rape with a deadly weapon, and a stabbing in the stomach – but did not report the violence to the police as she feared they would take no action and might even harass and assault her themselves. A 100-page report by Central American expert Professor Thomas M. Davies, Jr, admitted as evidence in the proceedings and contained in the record, specifies that police and government officials commonly harass, detain, and physically and sexually abuse transgender and effeminate individuals or fail to investigate crimes committed against them. The Board ruled that the respondent established a pattern or practice of persecution of transgendered females in El Salvador, and dismissed the DHS appeal.

In another development on this same issue, a transgendered woman also from El Salvador, who was initially granted [deferral of removal under the Convention Against Torture](#) by a San Diego immigration judge, has been [released](#) by the Immigration and Customs Enforcement and had her status in the country legalised, after having spent 2.5 years in detention. Her case was taken on *pro bono* by [Feldman & Feldman Associates, APC](#). According to the US State Department's [2009 Human Rights Report on El Salvador](#), the number of killings of members from the LGBT community increased from 11 in 2008 to 23 in 2009. In a third recent case, a Mexican transgendered woman – who spent 11 months in detention with male inmates and was to be deported – was granted asylum after the [BIA determined that 'the Mexican government would not protect her from abuse if she was deported'](#). According to her lawyer, who also took the case *pro bono* after being alerted by the [Rocky Mountain Immigrant Advocacy Network](#), it is rare for a Mexican national to be granted asylum on this basis 'because some immigration judges think there is tolerance for the lesbian, gay, bisexual and transgender community in Mexico', where same-sex unions are legal in Mexico City. Discrimination and hate crimes, however, still occur; 76.4% of LGBT persons have been subjected to physical violence because of their sexual orientation or gender identity, and 53.3% have been assaulted in public spaces (statistics quoted in [this March 2010 report](#)). ●●●

## A proposal for 'best practice'

### *Methodological best practice*

The shortcomings of the current practices in age assessment can only be addressed by a more robust and multi-faceted methodology. Given the complexities surrounding age assessment in borderline cases, the assessment must take into account a range of factors including physiological, psychological, cultural, linguistic, etc, carried out by specialists in those disciplines. Such a multi-disciplinary methodology must abide by scientific principles in order to ensure coherent and consistent outcomes, regardless of the capacity of the local authority and the complexities of each individual case.<sup>14</sup> Medical (or scientific) assessments should only be used in cases when a young person's age is in doubt and must take into account both the physical and psychological maturity of the individual. As stated by the Committee on the Rights of the Child:

The (age) assessment must be conducted in a *scientific, safe, child and gender-sensitive and fair manner*, avoiding any risk of violation of the physical integrity of the child, giving due respect to human dignity, and, in the event of remaining uncertainty, should accord the individual the benefit of the doubt. (Emphasis added)<sup>15</sup>

Best practice must also take into account that certain tests used for age assessment might require a greater application of weight in some cases than in others. For example, in the case of a marginally obese 15-year-old boy, more weight might be given to a psycho-social assessment than to a physical assessment. Thus, rather than a rigid and linear check list, what is needed is a flexible yet at the same time robust and dependable toolkit, which can utilise a variety of tests tailored to a particular case. For example, while physiological laboratory tests for age assessment can be effective in some cases, with a margin of an error of plus or minus two years, they cannot be solely relied on for borderline cases.<sup>16</sup> No single test should be used in isolation. Yet, at the same time, each test can be an integral additional procedure used alongside other tools.

The state should therefore employ a multi-faceted approach with various disciplines and methodologies engaged. This includes objective methods that are thorough and scientific in their assessment of age where it will aid or ensure safer and more accurate decisions. Rather than see medical assessments as invasive, provided there is strict adherence to the safeguards set out above, their use in borderline cases will ensure genuine children receive the protection they are entitled to, upholding the overriding principle of best interests. Unless proven to be harmful, their use in such cases may therefore be considered proportionate and necessary.<sup>17</sup>

This means that the states must actively involve cultural, psycho-social and medical expertise and information sources in the decision making process. Without such a broad analytical awareness, the cultural and biological assumptions of social workers are likely to result in misplaced judgments. For example, in the case of Miss T cited above, her 'age' was assessed to be 23 when she was merely 15. In reviewing the case, the Ombudsman found faults in the way the Council conducted the assessment making clear that the failure arose from the fact that no consideration was given to whether other professional input was needed. If a multi-disciplinary approach had been used in Miss T's case, the tragedy could have been avoided.

While it is clear that such an approach is more effective and fair than those used currently, it is also deeply grounded in international law. By making the best interest of the child its corner stone, the proposed approach would minimize the potential for error in the age assessment process. Because the state would be in a more confident position to apply the benefit of the doubt in borderline cases, it would uphold all CRC rights and avoid the risk of violating the Convention. This would in turn ensure that vulnerable children, who had already suffered uncertainty, hardship and pressure, are not put through unnecessary processes.

#### *Procedural best practice*

The methodological sophistication argued for above has tangible outcomes for day-to-day practice, starting from the point a UASC is identified in the country until the case for asylum/BID reaches a conclusion.

Keeping the best interest of the child as the ultimate quality standard for the process means that in the case of an age dispute, the case is referred for an immediate age assessment if it is an issue. It is in the best interests of the child for any age dispute to be resolved as early as possible in the asylum process. An asylum case cannot be fairly concluded without the age of the UASC, where it is in dispute, being established at the outset. The assessment should obviously be completed before the substantive asylum process begins and

any decision is made. Age assessment must therefore begin and be concluded in a timely fashion.<sup>18</sup>

The best interest principle also affects how and where the age assessment is undertaken. The assessment must take into account the vulnerabilities of UASC and their individual needs.<sup>19</sup> An age assessment performed in the child's best interests would allow the child to express him/herself, be given due weight in accordance with their age and maturity as set out in Article 12 of the CRC,<sup>20</sup> as well as allowing the child an opportunity to respond to issues that are identified in the assessment process.

The assessments should not be undertaken at screening units and ports of entry, unless such facilities have the required means, expertise and child-friendly environment.<sup>21</sup> The United Kingdom Border Agency's current screening facilities do not always meet these criteria. While commenting on assessment process during displacement, General Comment 6 clearly states in paragraph 20 that 'the assessment process should be carried out in a friendly and safe atmosphere by qualified professionals who are trained in age and gender-sensitive interviewing techniques.'

A key implication of the best interest principle in practice would be the appointment of a guardian for every UASC, as set out in paragraphs 21 and 33 of General Comment 6. The Committee on the Rights of the Child has stated that the appointment of a competent guardian, as expeditiously as possible, serves as a key procedural safeguard to ensure respect for the best interests of a UASC throughout the stages of the asylum process.<sup>22</sup> The role of the guardian in such an administrative procedure is to ensure that the minor is properly represented, that his or her views are expressed, and best interests upheld, thus safeguarding the UASC's rights in a foreign and unfamiliar process. In addition, involving a person who is known and trusted by the child and who is independent can facilitate the process and thereby contribute to a successful outcome.<sup>23</sup>

The best interest principle also requires that all disputed cases be governed by an independent review process.<sup>24</sup> This has been clarified in *A v Croydon*, where the Supreme Court held it was the role of the court to make its own decision on the age of the individual rather than merely check that social services have properly considered the case and reached a reasonable decision. The difference is considerable. While previously the only remedy was judicial review, which required the courts to determine whether social services had considered all the evidence in deciding the case, now it is for the court to examine the evidence for itself and reach its own decision. In **other words**, 'if the court considers that the asylum seeker is a child, the court must make that finding – even if the court also considers that it was reasonable, on the evidence, for social services to have concluded that the asylum seeker is an adult.'

#### **Conclusion**

A brief survey of the current weaknesses in the treatment of UASC cases in the UK reveals that an age determination process that respects the overriding principle of the best interests of the child is the only legitimate means of assessment. While from a legal position this would ensure governments comply with their obligations under international law, it would also facilitate more accurate and fair results and avoid potential pitfalls of the current system.

While objections might be made that the establishment of a robust age assessment process that methodologically and practically builds on the best interest of the child might put further financial constraints on the system, this has to be offset against the **current mounting costs of legal challenges, ongoing disputes and age assessments** currently conducted by individual local authorities. Finally it should be noted that a reliable age assessment process, as a key first step in expedited procedures that reach a conclusion on the status and future of a UASC with the minimum delay, thereby limiting the period of uncertainty and stress, is clearly in the child's best interest. ●●●

*For endnotes, see page 20.*

## PUBLICATIONS &amp; RESOURCES

**NEW REPORT: 'PHALLOMETRIC TESTING' IN CZECH ASYLUM DETERMINATION CONTRAVENES ART 3 OF EUROPEAN CONVENTION ON HUMAN RIGHTS**

The [Organization for Refuge, Asylum and Migration](#) has published a [report](#) on phallometric testing and its use on asylum applicants. The report is an exhaustive legal and scientific analysis of the effectiveness of 'phallometry', which attempts to scientifically quantify male sexual arousal by measuring physiological responses to pornographic material through the attachment of electrodes to the penis. The report finds the test scientifically unreliable, resulting in its rejection as evidence in both United States and Canadian courts. It also finds that phallometry is unacceptably invasive and contravenes Article 3 of the European Convention on Human Rights – the right to be free from inhuman or degrading treatment. The European Union Fundamental Rights Agency has [criticised the Czech Republic's reliance on this form of testing](#) to verify asylum claims based on sexual orientation. Applicants who refused to undergo the procedure in the Czech Republic have been denied refugee protection.

**UNHCR WORKING PAPER ON REPATRIATION**

Lucy Hovil, senior researcher for [International Refugee Rights Initiative](#), has written a working paper for UNHCR on the repatriation of Southern Sudanese refugees in Uganda. '[Hoping for Peace, Afraid of War: The Dilemmas of Repatriation and Belonging on the Borders of Uganda and South Sudan](#)', explores the durable solutions that refugees are creating for themselves throughout the official repatriation process.

**KENYA'S TREATMENT OF SOMALI REFUGEES**

Amnesty International's report '[From Life Without Peace to Peace Without Life](#)' describes how thousands fleeing violence in Somalia are unable to find refuge. Since the border closed, Kenya continued the *refoulement* of refugees. Kenyan security forces demand bribes and arbitrarily arrest and detain them. Human Rights Watch has published a news item, '[Kenya: Stop Deportations to War-Torn Somalia](#)', calling for the Kenyan government to clarify policy on Somalis fleeing violence and persecution. In November alone, the Kenyan authorities have deported almost 300 Somalis to south-central Somalia, many of them women and children.

**ADDITIONAL RESOURCES ON AGE ASSESSMENT**

The Southern Refugee Legal Aid Network (SRLAN) has added two resources to its [Unaccompanied and Separated Children page](#): Syd Bolton's article on age assessment of asylum seeking children in the UK (published in our [December issue](#) pp. 5-11) and '[A New Approach to Age Assessment of Unaccompanied and Separated Children: Current Practices and Challenges in the UK](#)', by Christine Mougne & Amanda Gray, published in this issue of the newsletter. The [Unaccompanied and Separated Children page](#) is one of several special issues in refugee status determination addressed by the [SRLAN website](#), which includes contact information for resource people on the issues. For more on age assessment see also Anna Verley Kvittingen's '[Negotiating Childhood: Age Assessment in the UK Asylum System](#)', just published as part of the University of Oxford's [Refugee Studies Centre Working Paper Series](#).

**TOWARDS A LEGAL ASYLUM SYSTEM IN JORDAN**

*Continued from page 2*

effectiveness. So the statement that refugees in Jordan are not eligible for the rights granted by the 1951 Convention because Jordan is not a signatory member turns out not to be true at all, because these rights are guaranteed by other, stronger international instruments that Jordan has ratified. Despite that fact, however, such rights still need to be codified.

In political terms, the study was the first to challenge the government's argument on Palestinian refugees and the risk of considering Jordan a substitute homeland for Palestinian refugees. The research addressed additional sensitive political concerns, such as the demographic balance in Jordan and the unstable geopolitical neighborhood.

In socio-economic terms, the study laid out data, statistics and charts that had never before been published in Jordan, such as statistics on the participation of Iraqis in crimes in Jordan. Although the study was not mainly about Iraqis, while categorizing GoJ concerns, I found that most of them focused on the negative socio-economic impacts of Iraqis' existence in Jordan, as well as political concerns. Indeed, because the prevailing belief is that Iraqis have a hugely negative socio-economic impact in Jordan I was obliged to devote a large part of the study to deconstructing this myth. To do so effectively, I concentrated on the use of official Jordanian statistics and sources, covering a wide range of indicators, from population and crimes through agriculture, water, energy, labor and inflation. Although the data was not designed to show the impact of Iraqis in Jordan, it could be analysed and synthesised to be useful in this regard. The findings clearly contradict prevailing popular and governmental beliefs.

The recommendations outlined above include the possibility of Jordan placing reservations on the 1951 Convention. Since this is a controversial recommendation, I should note that I included it for purely pragmatic ends, in order to deny the government its argument against signing based on national interest. Instead, I argued that if any Convention text contradicts national interest, Jordan could use the

reservation mechanism – so it need not have any worries in this regard. Both within the broad Jordanian context and within the context of this research project, directed as it was towards the GoJ and sponsored as it was by UNHCR-Amman and the National Center for Human Rights, a national/governmental body, the acknowledgement of the possibility of placing reservations on the Convention seemed a necessary evil. For although refugee rights can be advocated for through use of the human rights instruments that Jordan has ratified (ICCPR, ICESCR and CRC), the 1951 Convention remains a crucial legal tool for the recognition of refugees – even with reservations placed upon it.

### **Summary of research findings: Jordan's needs and concerns**

The research study was premised upon two questions. Why should Jordan adopt a legal system for asylum based on the 1951 Geneva Refugee Convention and its protocol? And why has the Government of Jordan so far refrained from doing so? To answer the first question, the research identified two sets of reasons – of national interest and of international obligations – that point to the need for a legal asylum system in the country. To answer the second, the research examined the reasons (or 'interdictions', as the government calls them) given by the GoJ for its avoidance, so far, of signing the 1951 Convention, presenting evidence to reassure the government on each point that these interdictions are unfounded.

### **Necessities**

For Jordan, national interests and international obligations go hand in hand to suggest the value of a legal system for asylum based on the 1951 Convention.

### **National interests**

*The need to preserve the international image of Jordan:* Due to its non-accession to the 1951 Geneva Refugee Convention and to the absence of a legal regime that regulates the situations of refugees, Jordan has suffered strong criticisms from legal and research organisations as well as from human rights activists. This situation has been detrimental to Jordan's international reputation. Because of this, the country has received little international and civil society acknowledgement for the considerable protection and assistance it has provided to refugees, even though it is one of the primary hosts to refugees in the world. Accessing the 1951 Convention or adopting a national legislation based on the Convention would be one way to improve Jordan's international image regarding the treatment of refugees.

*The need to avoid gaps in national legislation:* Although Jordan hosts large numbers of refugees in its territory, the country's legislation does not include a framework that regulates the relations between Jordan and refugees in a manner consistent with relevant and recognised international standards. Existing provisions in Jordanian legislation are either of a general nature (such as article 21/1 of the Jordanian Constitution and articles 6 and 8 of the Law of Extradition of Runaway Criminals), or deal with state relations with foreigners in general, failing to consider the particulars of the foreigner as a refugee (such as the Law of Residence and Foreigners' Affairs), or do not add anything to existing legislations (such as the Memorandum of Understanding signed between the UNHCR and the Government of Jordan). Here again, one solution to filling these gaps lies in accessing the 1951

### **AMNESTY INTERNATIONAL CONDEMNS EU OVER PARTNERSHIP WITH LIBYA**

The new Amnesty International report '[Seeking Safety, Finding Fear: Refugees, Asylum Seekers and Migrants in Libya and Malta](#)' highlights the plight of those attempting to reach the EU – many in search of refuge and protection – and the human rights abuses they face in Libya and Malta. The report is damning of EU-Libyan cooperation: in October the EU signed a cooperation agenda with Libyan authorities over the management of migration flows and border control until 2013. The terms of a new Framework Agreement, which includes the readmission of third-country nationals who enter the EU after transiting through Libya, are currently being negotiated.

### **RETURN IN POST-REFERENDUM SUDAN: NORWEGIAN REFUGEE COUNCIL REPORT**

The Norwegian Refugee Council (NRC) has published '[Between a Rock and a Hard Place: Displacement and Reintegration in Post-referendum Southern Sudan](#)'. The report looks at the challenges to return and reintegration in post-election Sudan. While steps are being taken to facilitate returns, more is required to support reintegration needs. UN figures estimate the numbers of returnees to be between hundreds of thousands to millions. The NRC calls on the Government of National Unity (GoNU) of Sudan and the Government of Southern Sudan (GoSS) to urgently agree on the future citizenship arrangement for Southerners in the north and Northerners in the south to remove a key area of uncertainty and avoid statelessness for certain groups in the event of secession. The report recommends a common and holistic reintegration strategy, including a grace period of at least 18-24 months where donors, in collaboration with the GoSS, support NGO service providers, whilst considering funding mechanisms that provide flexible responses to fluctuating needs and a rapidly changing context. It also calls for strengthened humanitarian access through enforceable guarantees by the GoNU and GoSS during this period.

Convention or in adopting a national legislation based on the Convention.

*The need to translate the royal vision:* The issuance of a Royal Decree (via publication in the Jordanian Official Gazette) that put into force a series of international conventions – now the backbone of international human rights law in Jordan – makes it clear that the royal orientation is towards greater commitments to human rights, as guaranteed by the published international standards, which, in turn, assure a large part of the rights of refugees. Accordingly, the recognition of the human rights of refugees, through accessing the 1951 Convention, would further this royal vision.

*The need to mobilise the international community:* Although Jordan has not acceded to the 1951 Convention, refugees have come to the country in large numbers, with the result that Jordan has been left with the responsibility of carrying alone the burden of their stay in its national territory. The 1951 Convention, recognising as it does the principles of international solidarity and burden-sharing, is a legal instrument that would mobilise the international community and compel it to shoulder its responsibilities, especially when some of its members bear a specific responsibility vis-à-vis regional crises.

### **International obligations**

The fact that Jordan is not a party to the 1951 Convention does not imply the absence of commitments towards the refugees in the country's territory. By publishing four of the basic human rights conventions in its official gazette from mid-2006, Jordan has taken the necessary procedural steps to enforce these conventions in its legal system. These conventions – which I argue are relevant to refugees in both their application and enforcement – guarantee rights for refugees that approximate or even exceed those contained in the 1951 Convention. Accordingly, Jordan is obliged under these conventions to guarantee the civil, economic, social and cultural rights of the refugees in its territory. Since Jordan has in fact already acceded to conventions that bear commitments to refugees stronger than those imposed by the 1951 Refugee Convention, any objection to actual accession to the Convention is unfounded.

### **Jordan's concerns, and evidence addressing them**

To discover why Jordan has so far abstained from adopting asylum legislation or from acceding to the 1951 Convention, the researcher conducted interviews with relevant officials from the Jordanian ministries concerned. In these interviews, the opinions and interpretations of government officials tended to be unfounded apprehensions and avoidance rather than legitimate concerns, based in potential dangers that the government hoped to exorcise by refraining from adopting a legal system for asylum based on relevant international

instruments. Two major sets of apprehensions were expressed: political, and socio-economic. However, project research into these concerns – drawing from legal information and official statistics – demonstrate that they are largely unfounded. The following paragraphs outline the research findings, addressing the political and socio-economic concerns expressed by government officials in turn.

### **Political concerns**

*Palestinian refugees – the right of return and the fear that Jordan might be a 'substitute homeland':* Because the 1951 Convention excludes Palestinian refugees from its provisions as long as they receive assistance from the United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA), this fear is unfounded. In fact, so as to ensure that Jordan does not stand alone in shouldering responsibility for Palestinian refugees, it is in its legal interest to accede to the 1951 Convention as soon as possible, in case UNRWA should cease its operations before the settlement of the Palestinian refugee issue in a manner satisfactory to Jordan. As an active legal instrument, the 1951 Convention would guarantee Jordan's ability to involve the international community in shouldering responsibility for Palestinian refugees.

*Geopolitical – the fear of mass influxes of war refugees from neighbouring countries:* In general, the 1951 Convention does not concern itself with mass influxes or with war refugees. In practice, Jordan already takes considerable responsibility for such refugee influxes due to the prolonged length of stay of refugees in its territory. Accession to the 1951 Convention constitutes an important legal instrument to demand that the international community takes more responsibility for such large scale influxes and assists Jordan in this respect.

*Demographic-political – concern about integration in Jordanian society and naturalisation of refugees:* There is no stipulation in the 1951 Convention that imposes upon Jordan the naturalisation or the integration of refugees into its society. Article 34 of the Convention on the naturalisation of refugees is interpreted in practice and legal terms as voluntary, not as obligatory. Furthermore, it can be the object of a reservation on the part of the signatory. Accordingly, it can be excluded from being applied to refugees in Jordan.

### **Economic and social concerns**

In order to find the actual economic impact of refugees upon Jordan, the researcher took Iraqi refugees as example, both because they are the largest group of non-Palestinian refugees in Jordan and because of widespread rumours regarding their negative impact on the Jordanian economy. It was found that such rumours are based on two pillars: the large number of Iraqis in Jordan, and the

### INTERNAL DISPLACEMENT AS GROUNDS FOR REFUGEE STATUS

The trend of IDPs leaving their country and applying for asylum abroad is reportedly on the rise in sub-Saharan Africa. An [article](#) by the [Brookings Institution's Khalid Koser](#) calls for a better understanding of internal displacement in Refugee Status Determination (RSD), even in states with significant experience and well-developed laws and procedures for assessing asylum claims. The article explores two intersections that manifest the basic lack of understanding of internal displacement in the RSD process: first, a risk of persecution can arise as a result of having been internally displaced – that is, because IDPs have relocated within their own country, and not necessarily because of their religion, or ethnicity, or political group. A second intersection relates to return. A growing number of states invoke the 'internal flight alternative' (IFA) when conducting RSD, which may effectively return the asylum seeker to a situation of internal displacement in their state of origin. The article gives recent examples of how these intersections matter to RSD: women and girls displaced in Eastern Chad, or asylum seekers returned under the IFA principle to Pakistan and Iraq. The article suggests immediate steps for properly integrating an understanding of internal displacement in RSD procedures: training case officers; ensuring that the Country of Origin Information includes adequate coverage of internal displacement; and incorporating UNHCR IFA guidelines into RSD.

difficulties faced by the Jordanian economy. However, the research advances strong evidence that the number in circulation – 500,000 people – is inaccurate. The research also found, through its examination of relevant official reports, the Jordanian economy to be in better stead than most believe and that it is in fact, according to the International Monetary Fund, progressing steadily. Each socio-economic concern can be addressed by research findings as follows:

*Iraqi labour competes with Jordanian labour and causes unemployment:* Competition is not actually legally possible, due to restraints imposed by labour law and provisions on the acquisition of labour permits by Iraqis; in 2007, Iraqis held less than one percent of all labour permits. Employment without permits is very unlikely to result in serious competition, due to the efficient activities of the Inspection Directorate at the Ministry of Labour; almost two million workers were inspected in 2007. Since Iraqis do not compete with Jordanian workers, it is unreasonable to expect them to be the cause of unemployment. Indeed, should Iraqis play a role in Jordanian unemployment, the unemployment rate in Amman – where most of the Iraqis are concentrated – would be the highest. However, statistics show the opposite to be true, and that unemployment has been on the decline since 2002.

*The presence of Iraqis causes increase in demand, prices and inflation:* Existing specialised studies of demand increase attribute the problem to the diminishing of local supply, with derogation in agricultural production and exporting playing a large role. Thus the disequilibrium between supply and demand in Jordan emanates from the diminished supply rather than unusual demand. Price increase and inflation have resulted from causes unrelated to the presence of Iraqis in Jordan. In fact, inflation rates in Amman – where most Iraqis reside – are among the lowest in the Kingdom.

*The presence of Iraqis increases the price of real estate:* The volume of Iraqi expenditure in Jordan's property market in 2005 was less than three percent, whereas it did not exceed 0.27 percent by the end of September 2008.

*The presence of Iraqis increases the consumption and import of energy:* The consumption of petroleum derivatives for domestic use in Jordan has decreased – in the case of kerosene – and did not increase significantly – in the case of liquefied gas. A reliable Jordanian study has attributed the rise in the demand for electricity to changing heating habits of Jordanian families. Rather surprisingly, not only did energy imports not rise noticeably during the years 2003 and 2004, they decreased in 2006 and 2007 to levels lower than

that of 2003, when the influx of Iraqis began.

*The presence of Iraqis causes pressure on water resources:* Whereas per capita ration/supply should have been decreased if demographic pressure was important, per capita supply/ration has in fact increased, including in Amman where the majority of Iraqis reside.

*The Iraqi presence puts pressure on education and health infrastructures:* Jordanian infrastructures indicators have been stable since 2002. Education and health facilities have not been affected: they were unavailable to Iraqis before the second half of 2007, and when they became available, additional costs were covered by international assistance. The researcher praises the fruitful cooperation between the Government of Jordan and the international community – represented by UNHCR – in helping make health and education facilities available to Iraqis in Jordan. This helped alleviate Jordan's burden with regards the refugees within its borders and contributed to improving the situation of the refugees themselves.

*General security:* Statistics show that the average crime rate in Jordan has decreased steadily, from 11.7 per 1000 people in 2001 to 5.1 in 2006. The participation of Iraqis in criminal activities was less than one percent in 2006 and 2007.

**Recommendations: a roadmap to Jordan's adoption of a legal asylum system**

The findings and arguments of this study are aimed towards recommending that the Government of Jordan adopt a legal system for asylum in accordance with recognised international standards. Three approaches are proposed to the government:

1. Accession to the 1951 Convention.
2. Adoption of a national legislation on asylum.
3. Amendment of the Memorandum of Understanding signed between UNHCR and the Government of Jordan.

A summary of the advantages and shortcomings of each approach follows.

***Accession to the 1951 Convention***

This approach is considered the best and most direct way to achieve the desired goal for several reasons. First, accession to the 1951 Convention fulfills international standards for dealing with refugees, since it constitutes in itself the point of reference in setting these standards. Accession will eliminate criticisms of Jordan in matters of refugee treatment, preserve Jordan's international image and bind the international community to support Jordan in dealing with the refugees on its soil. Second, the Convention contains mechanisms that establish a balance between the requirements of international standards and Jordan's national interests, should there be conflict between them. Under article 42 of the Convention, governments can make reservations on 30 out of 46 of its articles, which covers any text that might be viewed as being against Jordan's legitimate national interests. Third, accession to and abiding by the Convention would not differ markedly from the intentions of the Government of Jordan expressed in the 1998 Memorandum of Understanding (MoU) it signed with UNHCR. The terms of

this Memorandum commit Jordan to treating refugees according to 'recognised international standards' (Article 5); since the 1951 Convention is the point of reference for such standards, accession to it is not just a logical progression but an international obligation.

***Adoption of national legislation on asylum***

Should the GoJ have concerns regarding accession to the 1951 Convention, but still find it necessary to regulate its relations with the large numbers of refugees in its territory, it could enact national legislation that regulates these relations while preserving its legitimate national interests. This would be close to the Government's intentions as expressed in the MoU with UNHCR (Article 14): 'In order to safeguard the asylum institution the Government of the Hashemite Kingdom of Jordan would consider the establishment of a national mechanism for status determination.' It must be emphasised that any national legislation enacted for this purpose must meet both Jordan's national interests and international obligations that are, at a minimum, imposed by the four international conventions on international human rights the country has already acceded to. Failing this, criticisms from the international community are unlikely to end.

***Amendment of the 1998 Memorandum of Understanding between the Government of Jordan and UNHCR***

As with the adoption of national legislation on asylum, any amendment to the Memorandum of Understanding must elevate it to the level of obligatory international standards embodied in the 1951 Convention. Failing this, the existing status quo will be maintained, international commitments will be overlooked, the national interest will remain in question, and international criticism of Jordan will persist.

•••

**WORLD MIGRATION REPORT 2010, BACKGROUND PAPERS AND INTERVIEW SERIES**

The world will be taken by surprise by the relentless pace of migration unless states, international organisations and civil society make a concerted effort to invest in how they respond to it, says the World Migration Report 2010 of the [International Organization for Migration](#). If the number of international migrants, estimated at 214 million in 2010, continues to grow at the same pace as during the last 20 years, it could reach 405 million by 2050. The report, '[The Future of Migration: Building Capacities for Change](#)', argues that although hundreds of millions of dollars are spent each year to strengthen the ability of States to effectively manage migration, responses to current and emerging migration challenges and opportunities are often short-term, piecemeal and fragmented. The result is a profound effect on human mobility and economic and social development, with nearly every country affected in some way. This publication draws upon the findings of [19 background papers](#) by distinguished migration experts on a range of different policy themes and geographical regions, as well as a [series of interviews](#) with senior public policy officials, senior academics and civil society representatives worldwide.

**GLOBAL DETENTION PROJECT PUBLICATION: DETENTION ON THE BORDERS OF EUROPE**

The report '[Detention on the Borders of Europe](#)' has just been released. In October, the Global Detention Project (GDP) held a workshop with representatives of non-governmental organisations from 12 countries in Europe and neighbouring areas to highlight pressing issues in the region and develop techniques for improving documentation of immigration detention practices and policies. The workshop was held at the Graduate Institute of International and Development Studies in Geneva, jointly organised by the [International Detention Coalition](#) and the [Programme for the Study of Global Migration](#), with the support of [Zennstrom Philanthropies](#).

## South Africa to return Zimbabweans in 2011: rights groups fear risk to asylum seekers

Sara Gonzalez Devant

Reacting to a [complaint](#) by a collective of South African civil society and refugee rights organisations, South Africa's Department of Home Affairs (DHA) has [agreed](#) to receive incomplete applications for the Zimbabwean Dispensation Process (ZDP), but refused to move the application deadline of 31<sup>st</sup> December 2010. Rights groups fear refugees seeking regularisation under the ZDP may lose their status. It is unclear whether persons who give up their asylum permits and whose applications to the ZDP are subsequently rejected will be able to return to the asylum process.

Between 20<sup>th</sup> September and 1<sup>st</sup> December [99,435 applications](#) were accepted by the DHA. But the number of applications is estimated to range between [100,000 and 300,000](#) in December alone, based on the conservative estimate of between 1 and 1,5 million Zimbabweans living in South Africa. NGOs warned that many Zimbabweans whose status is irregular are afraid to approach South African authorities, having suffered abuse and [rape](#) by members of the South African police. [Zimbabwe Exiles Forum](#) is working around the clock to persuade Zimbabweans and employers to issue documents and file applications by the deadline. [People Against Suffering, Suppression, Oppression and Poverty \(PASSOP\)](#), who is [informing](#) Zimbabweans at the grassroots level, has [criticised](#) DHA for failing to inform the public 'as they have not placed any single advert in any daily newspaper'. The University of Witwatersrand's [Forced Migration Studies Program \(FMSP\)](#) issued a [press release](#) earlier this month alerting that many individuals will be unable to access ZDP before the deadline due to an onerous and inefficient application process.

In its response to the [complaint](#) submitted to the Office of the Public Protector, the DHA has refused to extend the moratorium on returns of irregular Zimbabwean nationals (31<sup>st</sup> December 2010), but it announced that it would not begin deportations immediately after the deadline. [Lawyers for Human Rights \(LHR\)](#) is scheduled to discuss the complaint with DHA, and has already asked the DHA to issue instructions to South African Police Service to prevent unlawful arrests and deportations from occurring. The DHA [stated](#) that Zimbabweans whose applications are rejected will not be deported until they exhaust the appeals process. The situation remains very unclear and precarious for Zimbabwean refugees who are seeking to regularise their status in South Africa: one of the points of the complaint to the Public Protector that the DHA [did not address](#) was the position of asylum seekers who give up their asylum permits to apply for ZDP permits. If they are rejected they will have no status and it is unclear whether they may return to the asylum process. While describing the move to regularise Zimbabweans living in South Africa as very positive, in a [news report](#) Tara Polzer of the FMSP alerts that 'this could become a very big human rights issue', adding that mass deportations of Zimbabweans may become an 'unintended consequence' of the South African regularisation drive. ●●●

### COUNTRY OF ORIGIN INFORMATION ON SOMALIA

'No Redress: Somalia's Forgotten Minorities', written by Martin Hill, a specialist on Somali human rights who worked as researcher for Amnesty International for over 30 years, has been published by [Minority Rights Group International](#). Covering the current situation in three regions of Somalia – Somaliland, Puntland and south-central Somalia – the report documents severe human rights violations against internally displaced minorities, particularly women; accounts of hate speech, displacement and religious persecution, particularly of Christians; and the significant barriers in the political, educational and social spheres faced by minorities in the relatively peaceful self-declared Republic of Somaliland in north-western Somalia.

### FORCED MIGRATION REVIEW: DRC

*Forced Migration Review* issue 36, entitled '[Democratic Republic of Congo: Past. Present. Future?](#)' is now online. Authors come from Congolese civil society, UN agencies and NGOs, Congolese and donor governments, and international research – and include the former UN Relief Coordinator John Holmes and the former Humanitarian Coordinator in DRC Ross Mountain. This issue also contains a further seven articles on other forced migration-related subjects. It is published in English, French and Spanish, with a slightly shorter edition in Arabic. If you would like a hard copy of FMR issue 36 for your organisation, or multiple copies for distribution to partners and policy/decision-makers or for use at conferences/workshops, please contact the [FMR Editors](#).

### 2010 THREAT INDEX

Refugee legal aid is critically needed in much of the world, despite limited resources. The 2010 [Peoples Under Threat](#) index, created by [Minority Rights Group International](#), identifies situations where communities are at risk of mass killing, pointing to potential future refugee flows. Based on statistical analysis of 10 indicators known as antecedents to mass violence, the list identifies Somalia, Sudan, Iraq, Afghanistan, Burma/Myanmar, Pakistan, Democratic Republic of Congo, Ethiopia, Nigeria and Chad as countries where people face the greatest risk. The index also highlights increased threats to communities in Sudan, Russian Federation, Philippines, Yemen, Equatorial Guinea, Georgia, Thailand, China, Venezuela and Mauritania – highlighting the continuing need for refugee legal aid in all regions of the world.

## NEWS

### **SOUTH AFRICAN SUPREME COURT ORDERS RELEASE OF SOMALI NATIONALS FROM AIRPORT DETENTION CENTRE**

The South African Supreme Court of Appeal ordered the immediate release of two Somali nationals detained at a private facility located at OR Thambo airport. The detention centre's conditions did not meet minimum standards and access to medical care was reportedly [obstructed by Home Affairs](#). An urgent court application requested their re-entry into South Africa, where they were previously granted protection – one as a refugee and the other under temporary protection as an asylum seeker. South Africa's Department of Home Affairs refused to act, arguing that it could not interfere with Namibia's deportation order. Although the judgment will be delivered at a later date, according to [Lawyers for Human Rights \(LHR\)](#) the Court stated that allowing deportation would violate domestic and international obligations against *non-refoulement*, and affirmed that a positive obligation exists on the part of Home Affairs to protect asylum seekers against *refoulement*. The Somali nationals were en route to Somalia, where they were being [deported](#) apparently due to informal entry into Namibia. LHR [reports](#) that Namibia routinely departs Somali nationals to Somalia. According to LHR, the Court stated that people held in the international area of the airport do not fall outside the scope of the Constitution's protection. The case draws attention to a growing international trend in using extraordinary detention facilities in order to avoid international obligations and domestic laws.

### **REPORTS ON IRAQIS IN TURKEY AND THOSE TO BE RESETTLED IN THE US**

Turkish Center for Middle Eastern Strategic Studies ([ORSAM](#)) has published a report on Iraqi migration, '[Away from Iraq: Post 2003 Iraqi Migration to Neighboring Countries and to Turkey](#)'. The report covers different periods as well as volume and patterns of Iraqi migration, with a focus on the limited but continuous migration flow into Turkey (estimated by UNHCR in 2007 to only host 10,000 Iraqis). It also looks at the situation in Turkey – where Iraqis are the 'largest group among the irregular migrants arrested by Turkish security forces' in the last ten years, listing different institutions dealing with Iraqis in the country. [Human Right First](#), whose website has a section devoted to the [Iraqi refugee crisis](#), has a new report out on Iraqis waiting to be resettled in the US. '[Living in Limbo: Iraqi Refugees and US Resettlement](#)' suggests that serious reforms are needed in the US resettlement program to remove unnecessarily processing delays which now leave many Iraqis refugees and US-affiliated Iraqis vulnerable and stranded in difficult and sometimes dangerous situations, while they wait for their clearance to travel to the US.

### **REFUGEES IN HUNGARY, SLOVAKIA AND UKRAINE**

Two new reports on the situation of refugees in the area that includes Ukraine, Hungary and Slovakia are now available. The first, '[Access to Protection Denied: Refoulement of Refugees and Minors on the Eastern Borders of the EU – the case of Hungary, Slovakia and Ukraine](#)', published by the [Border Monitoring Project Ukraine \(BMPU\)](#), is based on interviews the BMPU conducted with refugees and other vulnerable migrants in 2009 and 2010. The report also includes a summary of the project carried out by human rights NGO [Hungarian Helsinki Committee \(HHC\)](#) since early 2007: the monitoring of Hungary's land borders and Budapest International Airport, with the aim of identifying persons in need of international protection who may be affected by *refoulement*, and providing them with legal assistance. In the second report, Human Rights Watch's '[Buffeted in the Borderland: The Treatment of Asylum Seekers and Migrants in the Ukraine](#)', 50 out of 161 refugees, migrants and asylum seekers interviewed state that they were returned from Slovakia and Hungary to Ukraine. This is due to a readmission agreement that came into force on 1<sup>st</sup> January 1, 2010 between the European Union and Ukraine, providing for the return of third-country nationals who enter the EU from Ukraine. HRW claims some migrants returned from neighboring EU countries are subjected to torture and other inhuman and degrading treatment in Ukraine.

### **NEW UNHCR PROTECTION POLICY PAPERS: MARITIME INTERCEPTION OPERATIONS and RETURN OF PERSONS FOUND NOT TO BE IN NEED OF INTERNATIONAL PROTECTION**

'[Maritime Interception Operations and the Processing of International Protection Claims: Legal Standards and Policy Considerations with Respect to Extraterritorial Processing](#)' outlines UNHCR's views on extraterritorial processing of claims for international protection made by people who are intercepted at sea. It provides an overview of the applicable standards under international human rights and refugee law as well as key policy parameters relating to four models for extraterritorial processing: 'Third State', 'Out of country', regional, and processing onboard maritime vessels. Meanwhile, '[The Return of Persons Found Not to Be in Need of International Protection to Their Countries of Origin: UNHCR's Role](#)' reviews the rationale and criteria for UNHCR's involvement in the return of persons found not to be in need of international protection to their country of origin. The paper also sets out parameters for engagement of the Office and indicates a range of activities UNHCR could pursue, depending on the specific caseload and protection environment in a given host country.

**GLARING GAPS IN REFUGEE PROTECTION IN MULTIPLE ASEAN COUNTRIES**

Countries in Southeast Asia are the origin, transit routes, and destinations for an increasing number of refugees, asylum seekers and other forcibly displaced people from the region and other parts of the world. While regulating the inflows of migrants, governments of popular destination countries lack mechanisms for identifying refugees in need of protection, instead criminalising them along with other undocumented migrants. [People's Empowerment Foundation's](#) new report titled '[Refugee Protection in ASEAN: National Failures, Regional Responsibilities](#)' aims to highlight key issues and concerns related to refugee protection, or lack thereof, in Southeast Asia by outlining three refugee case studies – the Rohingya, Khmer Krom, and Lao Hmong – that reveal several glaring gaps in refugee protection in multiple Association of Southeast Asian Nations (ASEAN) countries. The report considers ASEAN's recent responses to refugee problems and urges the bloc to affirm refugee rights and strengthen protection throughout the region.

**RESOURCE: SRLAN CURRENT AWARENESS BIBLIOGRAPHY**

Independent Information Specialist Elisa Mason has made a valuable contribution to the Southern Refugee Legal Aid Network (SRLAN) [website](#) in the form of the [Current Awareness Bibliography](#). This new resource, to which pages are added daily, is available via the sidebar on the right side of the website and was set up to supplement SRLAN's Library and resource pages by providing access to online information that relates to the work of refugee legal aid providers. Because the bibliography highlights new resources, it serves as a current awareness or alerting service, rather than as a compendium or comprehensive inventory of background information on a particular subject. The structure of the bibliography essentially mirrors that of the SRLAN website. It is divided into two overall parts: 1) Law and Policy, which is further sub-divided into a general law section and specific legal issues including detention, resettlement and social/economic rights; 2) Refugee Status Determination, which is broken down into the following sections: general, evidence/country of origin information, legal assistance, and special issues.

**EU FREQUENTLY VIOLATES RIGHTS OF ASYLUM-SEEKING CHILDREN**

A new [Fundamental Rights Agency](#) (FRA) report on asylum-seeking children was presented at the 2010 [Fundamental Rights Conference](#) in Brussels. For the report, '[Separated, Asylum-seeking Children in European Union Member States](#)', the FRA interviewed more than 300 asylum-seeking children in 12 EU Member States. The interviews reveal that the fundamental rights of these children are frequently violated. Separated, asylum-seeking children, who are under State care, often live in accommodation that is unsuitable for them – including in detention, even if they have not committed a crime. They are frequently unable to access quality medical care and education or training opportunities. Many of these children do not understand the legal procedures they are going through, and their views are rarely taken into consideration.

**RESOURCE: CHILD DETENTION IN THE UK OVER THE PAST FIVE YEARS**

The [End Child Detention Now Campaign](#) has gathered and published 'compelling research that the Home Office has variously ignored, misrepresented and buried' in the past five years, in '[Five Years of Denial: Reckless Pursuit of a Punitive Asylum Policy – Never Mind the Evidence of Harm](#)'. According to the publication, 'the UK government has knowingly harmed between 1000 and 2000 children of asylum seekers every year, sending down hit squads to raid family homes, search children in their beds and lock them up (sometimes for weeks and months) in places known to harm their mental and physical health'. It contains the links to a series of reports by Professor Sir Al Aynsley-Green, first Child's Commissioner for England from 2005-2010, as well as research by other authors.

**NEW UNHCR ELIGIBILITY GUIDELINES ON ASYLUM SEEKERS FROM AFGHANISTAN**

The latest '[UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan](#)' (17<sup>th</sup> December 2010) supersede and replace the previous such guidelines published in July 2009. They are issued against a backdrop of a worsening security situation in parts of Afghanistan and sustained conflict-related human rights violations as well as contain information on the particular profiles for which international protection needs may arise in the current context in Afghanistan.

**182 FORMER IRAQI PILOTS ASSASSINATED BY IRAN; ANOTHER 800 HAVE FLED IRAQ**

One of the [cables made public by WikiLeaks](#) reveals that [182 Iraqi pilots who participated in the Iraq-Iran war have been assassinated by Iran](#). The war, which lasted from 1980-1988, resulted in the deaths of around 500,000 Iraqis and Iranians and caused great economic damage. During the rule of Saddam Hussein, military service was mandatory for Iraqi males, and military deserters, if caught, could be imprisoned, [have an ear cut off, or be executed](#). The assassination campaign carried out by Iranian agents who infiltrated Iraq, which reached its peak during the month of Ramadan in 2005 when 36 former pilots were gunned down in the Baghdad neighbourhood of Karradah, has also caused 800 pilots to flee the country, according to the Iraqi Defence Ministry. Unfortunately for them, membership in Iraq's armed forces during the Baathist regime could be grounds for exclusion under Article 1F of the 1951 Refugee Convention; the April 2009 '[UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers](#)' states that 'exclusion considerations may be of particular relevance in the cases of Iraqis with certain backgrounds and profiles. In particular, careful attention should be given' to certain categories, which include the armed forces of the previous regime. Where such individuals are not found excludable by UNHCR, they may still be found inadmissible when applying for refugee status directly from a specific government; membership in the Baath Party and Iraqi military may affect applications for refugee status in the US, as this [memorandum](#) explains. For confidential advice/help on cases involving exclusion, consult [Frances Webber](#), and see the [Southern Refugee Legal Aid Network's resource page on exclusion causes](#).

## NEWS &amp; INFORMATION LINKS

southern refugee legal aid network [website & email list](#)

forced migration current awareness [blog](#)

[rsdwatch](#): information on unhcr's refugee decisions

kanere: kakuma refugee [free press](#)

UN palestinian rights division's [ngo action news](#)

refugees international [regional and issue-based e-updates](#)

international detention coalition [news and resources](#)

euromediterranean migration and asylum [blog](#)

european council on refugees and exiles [weekly bulletin](#)

news and developments on human rights in [forum-asia](#)

iraqi refugee [assistance project](#)

women's asylum news [monthly newsletter](#)

pan-african [legal aid ngo](#)

[past issues](#) of the fahamu refugee legal aid newsletter

*Endnotes for A NEW APPROACH TO AGE ASSESSMENT IN THE UK, pages 1-10.*

<sup>1</sup> At the time of writing, the definition of ‘safe and adequate reception arrangements’ remains to be clarified and few minors have been returned from the UK unless they were willing to go and their parents had been traced. However this is likely to change in the near future with the proposed returns of Afghan minors to reception centres in Kabul.

<sup>2</sup> According to research carried out by the Nuffield Foundation in 2005, 45 per cent of all asylum applicants presenting as separated children, were age disputed and treated as adults. Many of these disputes remain unresolved with implications for the Home Office, social services departments, legal representatives, voluntary sector practitioners and, most importantly, separated asylum-seeking children themselves. Cited [here](#).

<sup>3</sup> The key UK Border Agency policy document in this area is the [asylum process guidance on ‘Assessing Age’](#).

<sup>4</sup> If the applicant is claiming to be under the age of 18 years and their physical appearance/demeanour very strongly suggests that they are significantly over the age of 18 years the applicant is treated as an adult and the case progresses as such. These cases do not fall within the age dispute process.

<sup>5</sup> On-site Social Work teams are currently available in Dover, Gatwick, Heathrow and Croydon (Asylum Screening Unit).

<sup>6</sup> See footnote 5.

<sup>7</sup> *B v Merton London Borough Council* [2003] EWHC 1689; See the procedural guidance given by Stanley Burnton J in *R (B) v Merton London Borough Council* (2003) EWHC 1689 (Admin), [2003] 4 All ER 280. In March 2003 practice guidelines were published by the London Borough of Hillingdon and Croydon that were thereafter approved by the High Court, resulting in the legal standard for formal assessments known as the Merton compliant age assessment.

<sup>8</sup> UNHCR has, for example, observed that information gleaned from the age assessment interview can be used inappropriately to discredit the child’s credibility in their asylum claim (see UNHCR Quality Initiative Project, Sixth Report to the Minister, April 2009: section 3.4.10)

<sup>9</sup> *R (on the application of A) (FC) (Appellant) v London Borough of Croydon (Rev 1)* (2009) UKSC 8 (26 November 2009)

<sup>10</sup> The CRC defines a child as every person below the age of 18 years unless under the law applicable to the child, majority is attained earlier. UK law provides for all persons under 18 years to be deemed a child.

<sup>11</sup> For example UKBA detention figures for age disputed cases revealed that between April and September 2010, there was one Type 1 case where an applicant was held in detention as an adult on the basis of appearance). In this case, the UASC claimed asylum at a Local Immigration Team (LIT) and presented a passport as documentary evidence that he was a child. The applicant was detained on the basis of an initial assessment by the local authority. UKBA considered the passport was not his and that his appearance demonstrated that he was an adult. The applicant was detained until the local authority could attend the Immigration Removal Centre to conduct a Merton Compliant Age Assessment. As the local authority was unable to attend the Applicant was released from detention into care of the local authority and later assessed as a child. This occurred despite current UKBA policy that requires an applicant be given the benefit of the doubt until satisfactory evidence of age is received or until a decision is made on the asylum application.

<sup>12</sup> See General Comment No. 6 (2005) Treatment of Unaccompanied and Separated Children outside their Country of Origin, in particular para. 19 and 20 setting out the centrality of the best interest principle ‘during all stages of the displacement cycle’.

<sup>13</sup> See [EXCOM Conclusion, Children at Risk](#), 5 October 2007, No. 107 (LVII) – 2007.

<sup>14</sup> See *Ibid.*, which advocates for the use of scientific means.

<sup>15</sup> Para 31 (a) of General Comment No. 6 (2005)

<sup>16</sup> See for example, *A, R (on the application of) v Liverpool City Council*, EWHC 1477 (Admin) (26 June 2007) where the Government were criticized for not having regard to varied sources of information, stating ‘*The letter of 6 November 2006 simply shuts out anything other than dental matters*’ (para 40)... ‘*what needs to be done is to examine matters other than dental age, in order to see what light they shed on the question whether the claimant falls into that part of the group that is under the age of 18*’ (para 41).

<sup>17</sup> See Article 8 of the European Convention on Human Rights – an interference of the right to privacy is lawful if in accordance with the law, proportionate and necessary.

<sup>18</sup> See Heaven Crawley, ‘[When is a child not a child, Asylum, Age Disputes and the Process of Age Assessment](#)’, p.130, where she recommends a suitable period of 7 days.

<sup>19</sup> UNHCR has pointed to the importance of establishing and considering carefully the child’s age and stage of development when assessing the asylum claim (see UNHCR Quality Initiative Project Sixth Report to the Minister, April 2009: section 3.4.3).

<sup>20</sup> The relevance of ensuring that age is clearly established is in addition because of the fact that a child’s views must be “given due weight in accordance with the age and maturity of the child” and this can not be done without knowing the child’s age.

<sup>21</sup> Further research and discussion is needed on the development of regional age assessment centers, which would provide facilities that ensure a confidential, trustworthy and professional environment that adheres to the best interest principle.

<sup>22</sup> See [CRC General Comment No. 6](#) (2005), Treatment of Unaccompanied and Separated Children outside their County of Origin at Para 21 and 33.

<sup>23</sup> The role of a guardian in the asylum process for UASC is the focus of a pilot project currently being conducted in Glasgow. The Guardian Pilot Project is still in its early days and it may be too premature to make definitive findings. However a successful outcome would ensure the guardian maintains independence and objectivity throughout the assessment for facilitating a successful and accurate result. For more information on the pilot project in Glasgow is online [here](#).

<sup>24</sup> While we are aware of the need for an independent review process to form the part of the wider age assessment process at second instance or in the case of dispute, a full consideration of judicial oversight is beyond the scope of this paper, which focuses on establishing a UKBA age assessment effective procedure at first instance.

Fahamu Refugee Legal Aid Newsletter is published by Fahamu Trust and Fahamu Ltd., 2nd floor, 51 Cornmarket Street, Oxford OX1 3HA, UK. Tel +44 (0)1865 727006, fax +44 (0)1865 727909, email [info\[at\]fahamu.org](mailto:info[at]fahamu.org). Fahamu Ltd was established in the UK in 1997. Fahamu Ltd was registered and incorporated as a not-for-profit company limited by guarantee in 2001 (no. 4241054). Fahamu has offices in Oxford, UK; Nairobi, Kenya; Dakar, Senegal; and Cape Town, South Africa. Fahamu Ltd is registered in Kenya as F15/2006. Board of directors: Belinda Allan, Paddy Coulter OBE, Shereen Karmali, Hakima Abbas. Fahamu Trust was registered as a charity in the UK (no. 1100304) in July 2003, with the following objectives: ‘the advancement of education of the public world wide by the publication of electronic newsletters, courses and disseminating of information on human rights’. Fahamu SA is registered as a trust in South Africa IT 37201. Board of trustees: Belinda Allan, Paddy Coulter OBE, Patricia O. Daley, Maina Kiai, Onyekachi Wambu, Rob Wells. Executive director: Hakima Abbas. Fahamu’s website is [www.fahamu.org](http://www.fahamu.org).