

# FAHAMU

## REFUGEE LEGAL AID NEWSLETTER

ISSUE 16 ❖ JUNE 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](#).

*We are looking for a volunteer intern to help us prepare the newsletter each month. If you are a strong writer and detail-oriented editor interested in gaining publishing and editing experience, and can contribute 5–10 web-based hours a month for six months, please [email us](#).*

*-The Editorial Team*

### Expert advice in asylum cases: Zimbabweans in the United Kingdom

*Diana Jeater, Professor of African History at the University of the West of England, Bristol, United Kingdom, has contributed this discussion on the significance of using country of information (COI) experts in asylum cases, a topic of great importance for legal aid providers in the global south.*

The legal bases on which asylum cases are decided in the UK are the designated Country Guidance (CG) cases. On 10<sup>th</sup> March 2011, a new Country Guidance ruling for Zimbabwe was promulgated. This ruling — known as ‘EM and Others’ — makes it very much harder for Zimbabweans to argue for asylum in the UK. The previous CG case law was ‘RN’, a very permissive 2008 ruling made in response to the political violence during the aborted presidential run-off election that year. ‘RN’ indicated that any Zimbabwean who could not *demonstrate* active support for Zanu-PF might be at risk. ‘EM and Others’ is much more restrictive and specific in defining categories of people who might be at risk, and even specifies categories of people who should *not* be deemed at risk. Whenever a new CG case is agreed, it changes the goalposts for lawyers, civil servants and expert advisers involved in putting together arguments in asylum claims.

This essay outlines how the work of expert advisers working on Zimbabwean asylum cases has changed over the past decade in response to changing CG rulings. It indicates how expert advisers can be used and the range of advice that they can offer. For almost ten years, academics linked to the Britain Zimbabwe Society have been writing expert reports for the Courts in asylum cases. They provide expert information about Zimbabwe and the context for the political violence there.

Except in very specific circumstances, expert advisers are instructed by the lawyers representing the applicant, and are asked to provide information that will assist the court in making a decision. The role of the expert adviser is very tightly constrained: our duty is to the court, not to the lawyer who commissioned the report. We are not being asked to comment on whether the asylum applicant’s claims are credible; merely on whether they are plausible. It is the role of the adjudicator to decide on the credibility of the witness — we just comment on whether the story *might* be true.

In most cases, the hearing is an appeal. The applicant will already have applied for asylum and been refused, receiving notice of refusal alongside a lengthy ‘Reasons for Refusal’. Normally, the lawyer will ask the expert adviser to comment on the Reasons for Refusal, as well as raising specific questions about their client’s claim.

The nature of the reports that are required from Zimbabwe experts has changed noticeably over the years. The first barrage of applications came soon after the 2002 presidential elections. Prior to that point, many of those leaving Zimbabwe had been white farmers and their families, who could claim British citizenship in some way, and so did not need to apply for asylum. The increased political violence during and after the closely-contested 2002 presidential election, combined with worsening economic conditions, led to a steadily and steeply increasing number of Zimbabweans coming to the UK to claim asylum. The Home Office was required to winnow out the economic migrants from those with genuine asylum claims, or human rights grounds to be given leave to remain in the UK. The civil servants working on these cases were under great pressure to refuse as many applications as they could, given growing political hostility towards ‘asylum seekers’ in the popular press — often used as a synonym for ‘illegal immigrant’. Their hastily-judged refusals led to an avalanche of appeals.

*Continued on p. 8*

#### In this issue:

EXPERT ADVICE IN LEGAL CASES	1
AUSTRALIA PLANS ASYLUM ‘SWAP’	2
REQUESTS	2
RWANDA & THE CESSATION CLAUSE	3
EUROPEAN BORDERS	4
HEADLINES	4
UNHCR URBAN REFUGEE POLICY IN BULGARIA	5
ANNOUNCEMENTS	5
NEWS	7
PUBLICATIONS & RESOURCES	9

### Australian plan denies access to Australian territory

On 7<sup>th</sup> May, 2011, the Australian government [announced a plan](#) to 'swap away' asylum seekers, intercepting them before they are able to claim asylum and sending them to Malaysia — a country that [does not officially recognise refugee status](#). The plan acts under the guise of '[battling people smugglers](#)', punishing asylum seekers for their mode of transit, and ignores [Malaysia's appalling record in regards to respecting human rights](#), which, according to the [Refugee Council of Australia](#), includes the arbitrary arrest, detention and caning of asylum seekers. The move also sets dangerous precedent for efforts to block access to asylum procedures for those in need of international protection, and raises very serious risks of indirect *refoulement*. The first boat to be intercepted after the announcement of the plan — carrying asylum seekers from Afghanistan and Pakistan — was redirected to Christmas island '[not for refugee assessment, but for removal from Australia](#)'. Australian Immigration Minister [Chris Bowen](#) declared after the interception that '[\[Australia\] will not be accepting and processing people for asylum claims who arrive in Australia by boat](#)'. Malaysia has thus far [refused the transfer](#), however negotiations with other regional states, including [Papua New Guinea](#), are ongoing. The legality of this Australian action is questionable, and policies to interdict and deny asylum access have been critiqued as '[exploiting the greyer areas of refugee law, international human rights law, and the law of the sea](#)'. [Martin Jones](#), lecturer in [International Human Rights Law](#) at the University of York and head of research and training for the [Fahamu Refugee Programme](#), has distilled a few key points from the proposal's [fact sheet](#):

- The numbers: 800 asylum seekers will be sent to Malaysia in return for 4000 resettled in Australia. Interestingly, the 5:1 ratio seems to be a magic ratio for other governments in the region (e.g. the recent comments of the Thai government).
- UNHCR will perform RSD. There will be no queue-jumping in the RSD.
- Malaysia will not *refoule* refugees but may (forcibly) return, working together with UNHCR and Australia, failed asylum seekers.
- Those who are transferred will be 'treated with dignity and respect and in accordance with human rights standards'. However, there is no mention of how this will be ensured or even which human rights standards will apply (as Malaysia and Australia have divergent treaty commitments).
- There is a suggestion that there will be an 'independent' body to advise on the implementation of the agreement. However, the body will likely only have advisory powers.
- Only those already registered with UNHCR and residing in Malaysia will be eligible for the 'new' resettlement quota. Thus, those individuals and groups who have not been able to register with UNHCR in Malaysia by 7<sup>th</sup> May, 2011 will not be eligible for any of the new resettlement quota.
- Australia specifically flags that it is currently working with Papua New Guinea 'to progress the framework' (e.g. to negotiate a similar agreement).

## REQUESTS

### Request: NGO support for LGBT refugees in Sri Lanka

Vancouver, Canada-based [Rainbow Refugee](#) seek recommendations of Sri Lanka-based NGOs that might be able to assist two people who have fled Pakistan to Sri Lanka due to sexual orientation persecution in finding shelter, food and legal assistance. The two have had their first interviews with UNHCR but are not allowed to work and are in need of support. Anyone with contacts is asked to email [Sharalyn Jordan](#) of Rainbow Refugee.

### APRRN seeks endorsements of joint statement on the Australian-Malaysian refugee swap agreement

The Asia Pacific Refugee Rights Network is concerned about the proposed Australia-Malaysia bilateral agreement under which Australia plans to transfer 800 individuals seeking asylum to Malaysia in return for resettling an additional 4000 refugees from Malaysia over the next four years. Read the statement [here](#), and endorse the joint statement [here](#).

### Take part in the Global Detention Access Mapping Project

The International Detention Coalition (IDC) seeks wide input into its project of mapping access to places of immigration detention in target regions and countries where the IDC and its members are actively working. With limited or non-existent access to detention centres in many countries affecting human rights monitoring and access to asylum and legal, health and social services, the project aims to be a resource to IDC members and its stakeholders. To take part, access the five minute survey [online](#); participant identities will be kept confidential.

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

### Testimony of a Rwandan fearing return

*The following letter was sent to the Southern Refugee Legal Aid Network, and has been edited to remove identifying details.*

Dear Sir/Madam, I am called [name removed]. I have been living in Uganda since the end of 2002, after fleeing my home country of Rwanda because of persecution I faced there.

Before 1994 I was working in my home commune as a deputy in charge of social affairs. When genocide and war came to our commune, I fled to Tanzania where I lived for a couple of years until the Tanzanian government chased us from the country. Then I returned to my commune and when I reached it I was arrested because I was suspected of having committed genocide. I didn't lose hope because I thought justice would solve the matter. But instead of solving my problem in reasonable time I was imprisoned for six years in different prisons and detention houses.

In the early 2000s, I was part of a team tried by a court of law and, by chance, after hearing our case for three weeks, the court found that I was innocent and ordered my immediate release.

I returned to my home village where I lived with my family until the end of 2001, but soon after, early in the morning, a policeman in civilian clothing came to my home and arrested me for a second time. He didn't tell me why I was arrested again. He placed me in the district detention house, where I lived for a month.

During that time I tried to seek assistance from different human rights agents, but only the National Commission for Human Rights in Rwanda responded to my request. They came to see me where I was detained, but when they finished talking with me, the policeman and the district authorities (including the mayor) got angry with me. They called the police commander in [location removed], the headquarters of the province. He came at night and hid me in another police station, located in a different commune, far from my family.

I lived there for four days without any food and on the fifth day the police shifted me with other prisoners to a different police station where I spent one night. At the end they transferred me to a central prison. The National Commission for Human Rights also used to come to visit me in prison and talked with me. Finally, after several months, that commission convinced the prosecution office that I have to be released because they were not presenting any new accusations against me. So they released me, but when I reached my home village again, my wife and my children were not there. The police and the administration of the district were angry with my wife because they suspected her of having transmitted all my correspondences to the Human Rights

### Is Zimbabwe respecting refugee rights in the face of the Rwandan cessation clause?

Zimbabwe has issued an ultimatum to Rwandan refugees ahead of the invocation of the cessation clause. Despite Rwanda's increased restriction on expression, ill-defined laws against opposition, and targeted killings documented by Amnesty International, UNHCR has praised the Rwandan government for its cooperation in repatriating refugees from abroad ahead of the 31<sup>st</sup> December, 2011 date for the cessation clause to come into effect. In one such effort, Rwanda sent Minister of Disaster Management and Refugee Affairs Marcel Gatsinzi to regional refugee camps to convince refugees to return and relay the message that they should not heed the warnings of fellow refugees. In Malawi, Rwandans barricaded themselves in their homes and refused to meet Minister Gatsinzi, who has made similar trips to Zambia, South Africa, Uganda, and Cameroon. Rwandan efforts to undermine resistance abroad have recently garnered wider criticism, as MI5 warned the Rwandan High Commissioner to stop harrassing dissidents in the UK and released a written warning that the 'Rwandan government poses an imminent threat' to some refugees living in the UK. For background on the cessation clause, please see *Cessation Clause, Ugandan Style*, by Dr Barbara Harrell-Bond of the Fahamu Refugee Programme, featured in our April issue (pp. 2-4). Rwandans, who continue to seek asylum from persecution by their government not only urgently need legal aid to argue for their claims to refugee status, but concerted campaigns to lobby for the 'compelling reasons' their status as refugees must continue to be protected. ●

Commission, which disturbed them. They even suggested my wife was supporting one of the opposition parties. So because that threat was very strong, she decided to take the children and flee to Uganda, where I found them when I left my country.

So I am not planning to return back to Rwanda because all the problems I faced, not because I was a criminal but as the consequences of my job before 1994. The new authorities don't need me and they failed to protect me from imprisonments for nothing.

Another thing is the testimonies I gave in the International Criminal Tribunal for Rwanda as a defence witness. Since I finished with that, the threats have multiplied until now so that I could not dare go back home and now living near Rwanda in this situation is also dangerous, the reason why I insist on my idea of requesting for your assistance in resettling me, my wife and our three children from Uganda to another country you choose for us. ●

## European borders: controls, detention and deportation

Contributed by [Eva Ottavy](#), programme manager in charge of eastern countries for the Euro-African network [Migreurop](#). A full report by Migreurop on this topic, published May 2011, is available [online here](#).

The question of the European borders is increasingly more in the headlines, from the Canary Island five years ago and the Eastern border with Greece and Turkey one month ago, to the Southern border with Libya, Tunisia and Egypt today. For years, borders have been one of the most important concerns of the European Union, haggling with neighboring countries. Unfortunately, migrants — human beings — are often the objects of trade.

[Migreurop](#) was created in 2002 as a network of NGOs, activists and researchers from various countries in Europe, Maghreb (North Africa), Sub-Saharan Africa and the Near East. Its goal is to identify and communicate the texts and practices of the European Union (EU) aiming to isolate or keep away from Europe those foreigners considered undesirable, and to oppose those negative policies.

The network developed from the concern among many activists following the closure of the Sangatte centre (northwest France), which from 1999 to 2002 was a symbol of the growing European policy of confining third country nationals in places out of sight, where the rule of law is non-existent or restricted. Sangatte was an open centre which was used as a springboard for three years by tens of thousands of migrants and asylum seekers on their way to the United Kingdom.

Viewed as a ‘camp’ by Migreurop, it seemed to be reflecting the new policy spreading throughout Europe, based on administrative confinement of migrants either when arriving on EU soil, or pending their removal/deportation/expulsion. To Migreurop, the notion of ‘camp’ goes beyond the classic idea of a place surrounded by a wall and barbed wire. Camps of foreigners in the EU can have different forms: real prisons, ‘detention centres’ (i.e. for foreigners pending their removal) which are often removed from any judicial control, or finally places where ‘undesirable’ migrants, experiencing rejection everywhere, are more or less spontaneously brought together as an emergency solution (formal reception centres, transit centres, shelters, but also informal places such as ghettos, jungles, squats and so on). This variety of places share one common characteristic — the occupiers have generally no other choice than to be there.

However, ‘the camp’ can even become the endless moving around, or detention ‘in limbo’, as foreigners are dispersed by authorities on purpose. Harassment by the police, destruction of makeshift shelters, and finally forced invisibility leads to the perpetual movement of these exiles that European societies refuse to even see, much less welcome. Within Europe itself, in accordance with legally dubious bilateral agreements or with the ‘Dublin II’ regulation, migrants in exile find themselves in an endless wandering process with nowhere to go, like on the coasts along the sea that separates Italy and Greece. The situation in France and Belgium, where migrants are constantly chased at England’s gates, is not very different.

Thus, even those persons who cannot be deported on grounds of their age (e.g. minors), their status, their nationality, or due to the activism of NGOs, are forced into orbit at the margins of Europe. ‘At the margins’ and even beyond them, for European governments are now subcontracting detention of foreigners to an increasing number of neighboring countries, if not further.

Since 2003, Migreurop has put this process of ‘externalisation’ at the centre of its concern. Externalisation is a word borrowed from economics, meaning in this context the process by which EU countries have come to outsource the monitoring

*Continued on p. 11*

## NEWS

### ASIA

Kazakh court upholds [refusal of Uzbek Muslim asylum seekers](#)

### AFRICA

BURUNDI: [Refugees arrested, beaten and jailed](#)

UGANDA: Institutions [failing survivors of gender-based violence](#)

SOMALIA: Disquiet over [new NGO law](#)

### MIDDLE EAST

Syria: Iraqi refugee legal aid NGO highlighted in the [New York Times](#), the [National Law Journal](#) and the [BBC](#); UN [preparing for Iraqis to flee Syria](#)

LEBANON: [Syrian refugees rounded up and refouled](#) by Lebanese security forces

IRAQ: Iraq preparing for possible [returnee influx following regional uprisings](#)

EGYPT: [Eritreans being tortured](#) in Sinai for ransom

### AMERICAS

CANADA: [Federal judge rules](#) more than 40 [Eritrean refugees wrongly denied](#) by Embassy official in Egypt

CANADA: Suspicion of Tamil refugees [contradicted as crime rates decrease while immigration rates increase](#)

USA: Obama seeks [reform of US immigration system](#)

USA: Law students helping [resettle Iraqi refugees](#)

### EUROPE

EU: European fears for post-revolution influx from North Africa [unfounded](#), as most of those fleeing have not reached Europe; MSF [open letter](#) calls on EU to protect civilians fleeing Libya

BULGARIA: 210km-long [fence](#) to be built along Turkey border

UK: Evidence of ‘safety’ for returned asylum seekers from DRC [is questioned](#)

ROMANIA: [Eritrean refugees arrive](#) at emergency transit centre

GERMANY: German government [halts returns to Syria](#)

UK: UKBA continues to put LGBTQ asylum seekers at risk of deportation



## Bulgaria and UNHCR's urban refugee policy

*Valeria Ilareva reviews UNHCR's newly published report on its urban refugee policy as implemented in Sofia, Bulgaria. Dr. Ilareva is the coordinator of the [Legal Clinic for Refugees and Immigrants](#), where she is also a practicing lawyer. For more on detention in Bulgaria, see the [Global Detention Project's Bulgaria profile](#).*

In May 2011 the [UNHCR Policy Development and Evaluation Service](#) published 'No Place to Stay: A Review of the Implementation of UNHCR's Urban Refugee Policy in Bulgaria', evaluating the implementation of UNHCR's urban refugee policy in Sofia. The Bulgarian capital was selected along with Kuala Lumpur (Malaysia), Nairobi (Kenya) and San Jose (Costa Rica) for the evaluation. Bulgaria was chosen in order to assess the extent to which the policy is relevant to a European Union Member State (albeit one of the poorest) where there is a UNHCR [Branch Office](#) and Representation, but where the national government has major engagement with the issue of urban refugees. The review was done by an independent consultant and a member of UNHCR's Policy Development and Evaluation Service.

The report outlines the situation facing urban refugees in Bulgaria. Of particular note are the chapters on 'Access to shelter and services' and 'Livelihoods and self reliance', as they highlight the camp-style conditions currently in place in urban Sofia. According to legal regulation in Bulgaria, every asylum seeker who chooses to live outside the camp-like premises of the State Agency for Refugees is deprived of the right to receive the monthly financial assistance of US\$45. At the same time, access to the labour market is not allowed until one year has passed since the registration of the asylum application. Under these circumstances asylum seekers are knowingly exposed to the risk of exploitation and abuse in the informal economy.

The report mentions [the planned inauguration of a 300-capacity transit centre for asylum seekers in Pastrogor](#), the main entry point for asylum seekers on the Turkish-Bulgarian border. This is currently scheduled to take place on 30<sup>th</sup> May, 2011. This news is met with concern by human rights practitioners in Bulgaria. Unlike the 'reception centre' in Sofia, the 'transit centre' is closed, disallowing freedom of movement. It is designed to house people undergoing the Dublin procedure on determining the responsible Member State and for fast-track processing of manifestly unfounded applications of 'illegally staying foreigners' ([Article 47, Paragraph 2.1. of the Law on Asylum and Refugees](#)). The 'transit centre' is where asylum seekers who have crossed the

Turkish-Bulgarian border irregularly will be detained. Until the opening of the 'transit centre' in Pastrogor, the head of the State Agency for Refugees had designated the Busmantsi immigration detention centre in Sofia as a 'transit centre'.

Over the last few years access to the asylum procedure in Bulgaria has been hindered by the discretionary registration of asylum seekers who have crossed the border irregularly ([Ilareva 2007](#)). In a recent case of an Iraqi family who had undergone persecution and ill-treatment, the European Court of Human Rights intervened under Rule 39 in order to stop the family's removal, which amounted to *refoulement*. The State Agency for Refugees had refused to register the asylum applications of the single mother and her two children and — after keeping them detained in the Busmantsi centre for nearly five months — the migration authorities attempted to deport the family as illegal immigrants. On 10<sup>th</sup> May, 2011, the family was boarded for deportation and was stopped just before leaving Bulgarian territory following the urgent action of the Legal Clinic for Refugees and Immigrants (LCRI), the Strasbourg court, and the UNHCR representation in Sofia. Rarely is it possible, however, to achieve such a successful outcome, which in this particular case was due to the fact that LCRI had worked on the case for several months and had sufficient evidence to prove that the family belonged to a vulnerable group and had insistently applied for asylum. In Pastrogor, access to legal aid will hardly be possible in view of the distance from the capital, where NGOs providing legal aid are based, without resources for the journey.

The lack of lawyers in the Pastrogor centre is coupled with another issue of concern. As the UNHCR report highlights, legal assistance in Bulgaria is usually sought only after an asylum seeker is served a decision rejecting protection, while access to the asylum and interviewing procedures receive less attention.

Against this background, the report's recommendation that 'UNHCR should undertake a risk assessment with respect to the notion of resettling refugees in Bulgaria' (para.141) is well-founded at present. ●

## ANNOUNCEMENTS

### REMINDER: Annual meeting of the Southern Refugee Legal Aid Network

The annual meeting of the Southern Refugee Legal Aid Network will take place on Monday, 26<sup>th</sup> June, 2011, 2:00 pm, ICMC building, Salle de conférence rue de Varembe 1-3, followed by the UNHCR/NGO consultations, 27<sup>th</sup>–29<sup>th</sup> June, 2011. Everyone planning to attend the Consultations must register by **3<sup>rd</sup> June, 2011**. If your [NGO is not a member of the International Council of Voluntary Agencies or ECOSOC](#), you must have an invitation from your UNHCR country office or from an NGO that is a member.

## ANNOUNCEMENTS cont'd.

### Call for applications: e-learning courses, September–December 2011

The [Human Rights Education Associates](#) organisation seeks applicants for a variety of upcoming e-learning courses, including 'Use of ICTs and Social Media for Human Rights Work' and courses on programming, advocacy, monitoring and evaluation, development and management in the NGO sector with an application deadlines of **1<sup>st</sup> June and 1<sup>st</sup> September, 2011**. For a listing of all courses, further information or to apply online, visit the [course website](#).

### Kuala Lumpur, Malaysia refugee workshop, 9<sup>th</sup> June, 2011

The [Malaysian Social Research Institute](#) (MSRI) will hold its second refugee workshop, 'Working Together to Support Refugees,' on 9<sup>th</sup> June, 2011 at D'Villa Residence, Kuala Lumpur. The workshop aims to bring together organisations addressing refugee issues in Malaysia, with a special focus on refugees from small, scattered communities and on non-Southeast Asian refugees. Further information is available by phone at +603 4252-8699 or by email to MSRI Executive Director [Mrs. Lia Syed](#). The event is free but space is limited; only those registered will be admitted. Please register by emailing [Yolanda Lopez](#) no later than **2<sup>nd</sup> June, 2011**.

### WRC Livelihoods and Protection Regional Workshop

The [Women's Refugee Commission](#) (WRC) participatory three-day workshop 'Mitigating Risk of Gender-Based Violence: Implementing Economic Programs as a Tool of Protection' is directed at economic, food security, gender-based violence and other interested staff from governments, donor agencies and NGOs working in Jordan, Syria and Iraq. The workshop take place from 20<sup>th</sup>–22<sup>nd</sup> June, 2011, in Amman, Jordan, and there is no fee to attend. Participants are expected to cover their own transportation and lodging costs. Participants will acquire knowledge and hands-on skills necessary to implement and evaluate economic programs aimed at reducing displaced women's vulnerability to gender-based violence, and learn how to develop market-oriented, context-specific strategies for safe, self-reliant livelihood programs. For questions, please contact [Jina Krause-Vilmar](#). The workshop is limited to 25 participants. Please apply [here](#) before **3<sup>rd</sup> June, 2011**.

### Job opportunities, Refugee Law Project, Uganda

The [Refugee Law Project](#), an outreach project based at the law faculty of Makerere University which aims to empower asylum seekers, refugees, deportees, IDPs and host communities in Uganda to enjoy their human rights and lead dignified lives, seeks qualified individuals to fill vacancies in the positions of Senior Researcher in Kitgum; Senior Communications & Media Officer in Kitgum; SGBVP Lawyer in Kotido; SGBVP Legal Researcher in Gulu; SGBVP Social Worker in Kotido; Personal Assistant, two Volunteer Lawyers for Durable Solutions, and Volunteer Lawyer for Access to Justice in Kampala; Volunteer Lawyer for Access to Justice in Gulu; Receptionist in Kitgum; three Security Guards in Kampala and two in Kitgum; and a Driver/Logistician based in Gulu. Further details of the vacancies, requirements and application process are [online](#); the deadline for applications is **5:00 pm, 7<sup>th</sup> June, 2011**.

### Call for book chapters: transitional justice and civil society in the Balkans

A forthcoming book provides the opportunity to highlight refugee legal aid in the Balkans. The book aims to cover both theory and practices of transitional justice in the context of the Balkans. Submissions from scholars at all career levels are welcome, and especially encouraged from Balkan scholars and practitioners. To submit a chapter proposal, please send a tentative title, brief abstract (up to 500 words) and a bio (150 words) to book editors [Olivera Simic](#) and [Zala Volcic](#) by **10<sup>th</sup> June, 2011**.

### Kolkata, India programme on forced migration, 1<sup>st</sup>–15<sup>th</sup> December, 2011

The [Calcutta Research Group](#) (CRG) and UNHCR invite applications to the Ninth Annual Orientation Programme on Forced Migration, encompassing workshops, lectures, interactive exercises and a field visit. The programme is intended for human rights activists, policy makers, other researchers and professionals working in different areas of forced migration; applicants must be proficient in English and either have five years experience in work with displaced people or experience in forced migration research or policy studies. Participants will be required to complete relevant assignments two months in advance. The programme costs US\$150 for participants from South Asia, and US\$700 for all other participants; accommodation and other expenses will be covered by CRG. Application and other details are available by [email](#) and [online](#). Applications for the programme, which must include two recommendation letters and a 1000-word essay on the relevance and benefits of the programme, are due by [email](#) on **15<sup>th</sup> June, 2011**.

## ANNOUNCEMENTS cont'd.

### **Sponsor a refugee or IDP to attend the upcoming International Association for the Study of Forced Migration conference**

The 13<sup>th</sup> [International Association for the Study of Forced Migration \(IASFM\)](#) conference, to be held from 3<sup>rd</sup>–6<sup>th</sup> July, 2011 in Kampala, Uganda, provides a unique platform for refugees and IDPs to raise issues of concern to them with decision-makers, practitioners and academics. The conference will draw together around 350 people to debate recent research findings, policy topics and pressing forced migration-related concerns, and to catalyse the establishment of new research, policy and practice agendas, on the theme 'Governing Migration'. To sponsor a refugee or IDP to attend the conference, please contact Conference Coordinator Ms. Angella Nabwowe Kasule by phone (+256 701 172 772) or [email](#). The total cost of sponsoring one Uganda-based person to join the conference for the full four days will be US\$260, covering accommodation, transport, subsidised registration fees, meals and conference materials; participants based outside Uganda will also require flight tickets, airport transfers, visas and other costs. So far, sponsors include: Professor Barbara Harrell-Bond, Finnish Refugee Council, Refugee Law Project and the Northern Uganda Transitional Justice Working Group; the IASFM encourages others to join them.

### **International Detention Coalition (IDC) Regional Detention Workshops 2011**

The IDC is planning regional member and stakeholder detention workshops in Africa, the Middle East, Asia and the Americas in 2011, to undertake training and advocacy, campaign and network development with IDC members and stakeholders. The workshops will allow relevant civil society groups across the region to explore regional legislation, policy and practice of immigration detention, detention alternatives, and the impact of detention on vulnerable people. Tentative dates and contact details for further information are as follows, by region: Southern and Eastern Africa: Johannesburg, South Africa, 11<sup>th</sup>–14<sup>th</sup> July ([email](#)); MENA: Cairo, Egypt — postponed. Proposed new date 27<sup>th</sup>–30<sup>th</sup> September (tbc) ([email](#)); Asia: Kuala Lumpur, Malaysia, 6<sup>th</sup>–10<sup>th</sup> October ([email](#)); Americas: Mexico City, Mexico, 14<sup>th</sup>–17<sup>th</sup> November ([email](#)).

## NEWS

### **Update: Somali refugees previously stranded in Moscow airport now resettled**

In the [January 2011 issue](#) of this newsletter (p. 4), we called for information about a group of Somali nationals stranded at the Moscow airport, as reported [online](#). The last of the group have been removed from the airport and are now living in Sweden. *We thank Danielle Grigsby, who wrote on refugees in the Russian Federation in [last month's issue](#) (pp. 1–2, 5), for sharing the good news.*

### **Ugandan 'Kill the Gays' bill temporarily dropped**

The Ugandan anti-homosexuality bill, widely referred to as the '[Kill the Gays](#)' bill, has been [dropped from consideration](#) for the time being. However, legal aid providers should be aware that LGBTI-based asylum claims from Uganda continue to have solid merit, as [gay rights advocates continue to be harassed, threatened, and killed](#). The bill, although no longer an immediate threat, is likely to re-emerge, and [LGBT Asylum News](#) has issued instructions on [what people outside of Uganda can do in the instance that the bill succeeds](#). Among other things, the bill penalises legal aid providers if they knowingly assist a homosexual client and do not report that client to the authorities.

### **Libya: need for increased legal pressure to ensure access to asylum**

Refugee legal aid providers need to be aware that Libyans and others fleeing the violence in Libya are facing increased restrictions and abandonment in efforts to flee to country. In early May, Egypt imposed visa restrictions on Libyans entering its territory, requiring '[all Libyans wishing to enter Egypt \[to\] first obtain a visa from any Egyptian embassy](#)' — clearly impossible for those fleeing fighting in Tripoli. While these restrictions have [reportedly been removed](#), people fleeing Libya have continued to raise alarm. [Migreurop](#) has issued [a report detailing the deaths of hundreds](#) who have attempted to cross the Mediterranean, but have been abandoned by assistance vessels. Similar reports have come from the [BBC](#) and [the Associated Press](#), including the documentation of [NATO abandonment of a boat left to drift for 16 days while its passengers slowly died](#). Those that have made it to Europe have not had access to proper procedures as [European states bicker over responsibility](#). Doctors without Borders has criticised the European response to Libyan refugees, accusing European states of '[shirking their obligations, legal and moral](#)'. The [Migrants' Rights Network](#) has furthered this criticism, noting that [bilateral return agreements — particularly between Italy and Libya — have undermined asylum rights](#). Libya has in return used the spectre of [increased migration as a bargaining point](#) against intervention on its soil. Reacting, a spokesman for the Italian foreign ministry recently expressed confidence that [an agreement between Italy and Libya for the repatriation of migrants](#) would be fully restored once stability returned to Libya, foreshadowing potential *refoulement* if proper procedures are not undertaken.

*EXPERT ADVICE IN LEGAL CASES continued from p. 1*

For an expert adviser, this initial spate of appeals in 2002 required a fairly uniform type of response. Appeals revolved around the Reasons for Refusal and the extent and location of the political violence. My expert reports were filled with minutiae of dates and events: was it likely that this person could have been attacked in this way, at that location, at a particular time? Was it possible that a person threatened in Kariba could be traced and attacked in Epworth? Each report required a detailed and expert knowledge of specific constituencies and the patterns of violence associated with them. There was also some entertainment to be derived from shooting down some of the more absurd, barrel-scraping arguments in the Reasons for Refusal. Applicants were questioned about their knowledge of Movement for Democratic Change (MDC) policies and personalities; on many occasions, the applicants' knowledge exceeded that of the Home Office. It was satisfying to explain to the court that an applicant had been refused for giving the 'wrong' answer, when in fact they were in the right.

By the end of 2002, the nature of the appeals and the type of expert report required began to change. David Blunkett bowed to political pressures and promised that no Zimbabwean would be forcibly returned, even if their asylum claim had failed. The Home Office began to argue that most refugees from Zimbabwe were not at 'specific' risk from the political elite and should therefore return home. Part of the work of the expert adviser then was to explain the nature of the Zimbabwean state: not a failed state, but neither a totally dictatorial state in which every individual's fate was determined from the centre.

Gradually, the battle between asylum seekers and the Home Office became more of a formalised contest, in which the ground-rules were clearly established. Asylum seekers were better prepared in interviews. It became known that applicants would be quizzed on their knowledge of the MDC, and that the accuracy of their answers would be assessed by civil servants using the 'Country of Origin' data on the Home Office web site as their guide. Applying for asylum became, like a driving test or a citizenship test, simply a matter of memorising the answers that were deemed to be 'correct' (even where they were not!). At the same time, the Home Office assessors began to recognise that they needed a more sophisticated understanding of Zimbabwe, to avoid being ridiculed in expert advisers' reports.

For several years, certain categories of people were accepted as being at particular risk of political violence. Teachers and MDC activists in rural areas were more likely to be taken seriously than urban businessmen. Claims of MDC activism or police detention had to be supported by documentary evidence. For some time the expert advisers were routinely asked to confirm the authenticity of such documents — something that was, of course, completely impossible for us to do.

In August 2006, a landmark CG case, 'AA', was decided. Prof Terence Ranger of the University of Oxford, who gave extensive expert evidence, noted that 'AA' was chosen as the CG case because the applicant had so little counting in his favour. He had come to the UK on a visitor's visa, overstayed, and, when apprehended, had lied about his identity. He had failed to demonstrate any significant political activism in Zimbabwe, prior to his arrival in the UK. If this man could be granted asylum, then the parameters for eligibility for asylum would be clearly established. The case was difficult to resolve; in the meantime, a further CG case, 'SM', stated that teachers, MDC activists and possibly returnees from the UK might be at greater risk.

The determination from 'AA', when it finally appeared, was extraordinary. It stated that, if a person were deported to Zimbabwe having failed in an asylum application in the UK, the very fact of having been in the UK and having made claims against the Zimbabwean government in pursuance of the asylum claim would, in itself, put that person at risk on return. All that a person needed to do to be eligible for asylum was actually to claim it!

The nature of the work required from expert advisers changed significantly in the light of 'AA'. It was no longer necessary to provide minute details of the location of youth militia camps and the patterns of political violence; nor to authenticate documents. The job now was to show a detailed knowledge of the procedures at all the entry points into Zimbabwe. The assumption was that a person was at greatest risk at the point of entering the country. How likely were they to be identified as a failed asylum seeker? I became familiar with *Jane's Defence Review*, not a publication that I'd previously felt much need to read, which provided insider information about security service and army presence at airports and border posts.

Another interesting area of expertise that came into demand after 'AA' was ethnolinguistic analysis. The Home Office began to suspect that people from other parts of southern Africa were claiming to be Zimbabwean to gain asylum under the liberal 'AA' ruling. Chenjerai Shire, a linguist and BZS member based at SOAS in London, was increasingly called upon to do a Professor Higgins-style analysis of origin, based on vowel sounds, lexical items and praise songs.

The appeals against 'AA' led to a new CG case, 'HS', in November 2007. This rowed back from the very liberal ruling in 'AA' and reasserted that people must be political activists in order to be at risk under the terms of the international asylum conventions. It also indicated that the security service, the Central Intelligence Organisation, was monitoring the Zimbabwean communities in the UK and identifying people who were particularly active in opposition politics. These people, it was suggested, would be at specific risk if returned to Zimbabwe.

*Continued overleaf*



## PUBLICATIONS & RESOURCES

### **Southern Refugee Legal Aid Network website updated**

The Southern Refugee Legal Aid Network has expanded the online resources for refugees and refugee legal aid providers on its [website](#). New content includes [new Brazilian organisations](#) added to the *pro bono* legal aid directory; new resources on age determination; details of organisations working on [separated children](#) in the United Kingdom and on [detention](#) in the United States; [resources for legal aid providers](#) working on gang-based asylum claims; a [compilation of UNHCR Executive Committee conclusions](#), organised by theme; and a link to the International Organization for Migration glossary of migration, an invaluable resource that ensures greater clarity on a range of migration, asylum and legal terms, especially helpful to those legal advisers whose first language is not English, on the [SRLAN page of useful libraries](#).

### **Launch of first international handbook on preventing immigration detention**

The [International Detention Coalition](#) (IDC) and [La Trobe University](#) have launched a new [handbook](#) on alternatives to unnecessary immigration detention. A short video summary is available [here](#). Two years of global research found cheaper alternatives that work effectively in the interests of government, communities and the individuals. The research also resulted in the development of a [Community Assessment and Placement model](#) that reduces the financial and human cost of immigration detention, avoids wrongful and unnecessary detention and maximises management and case resolution in the community.

### **Report on the 2011 ASEAN Civil Society Conference**

A report from last month's [ASEAN Civil Society Conference](#) (ACSC) in Jakarta, a significant step forward in Asia, is now available [online](#). The paper includes a report of the [Asia Pacific Refugee Rights Network's](#) workshop on refugees and statelessness (pp. 5–6), where participants came up with a number of recommendations for the ACSC drafting committee to consider, some of which were incorporated in the conference's final statement.

### **Tool to connect refugees with their families now tailored to mobile phones**

In light of the widespread use of mobile technology throughout Africa, [Refugees United](#), an organisation that aims to enable refugees to reconnect with their families around the world, has launched a mobile version of their application, <http://m.refunite.org>. The mobile site allows users to easily access the application via mobile phones and low-bandwidth internet; four short video tutorials, available through the [Refugees United website](#), explain how to use the service.

### *EXPERT ADVICE IN LEGAL CASES continued from p. 8*

Once again, the expert advisers were swung into action by the lawyers. A whole new area of expertise was required: could it be demonstrated that the applicant was active in the MDC in the UK? The attention moved away from defence reviews and ethnolinguistic analysis, and moved towards the myriad of websites, publications, schisms and meetings generated by MDC and MDC-linked organisations in the UK.

Meanwhile, spiralling inflation, declining health services and the collapse of essential infrastructure allowed some lawyers to claim human rights (rather than asylum) grounds for applicants to remain in the UK. I found that I had to enhance my knowledge of Bill Gates' Global Fund; the sewerage systems in the high-density suburbs; and the workings of international exchange rates. For one case, I had to research into successful businessmen who were also prominent MDC supporters, in order to expose a particularly mean-spirited refusal to a Bulawayo businessman. I ended up with an unexpectedly detailed knowledge of the dirty world of high-end schisms and betrayals around the boardrooms of Zimbabwe's electronics and internet sectors.

In early 2008, everyone held their breath, waiting to see what changes the election might bring. Expert advisers were gearing up for the possibility of being asked to give advice in appeals from Zanu-PF refugees coming to the UK to escape retribution following an MDC victory. As we now know, the presidential election, the subsequent run-off election campaign and the eventual Global Political Agreement dominated most of the year. The extremity of violence during the run-off campaign was incontrovertible and widely documented. By November 2008, a new Country Guidance case, 'RN', had been established in the UK, responding to the 'How did you vote?' campaign. As noted above, 'RN' states that anyone who cannot demonstrate active support for Zanu-PF may be at risk on return.

The 'RN' CG has led to relatively straightforward cases and appeals. I have noticed, however, that many of the cases referred to me now involve people who have been convicted of a crime while in the UK. These people — many of whom committed crimes linked to their need to earn a living without appropriate papers — can be deported as criminals, rather than as failed asylum seekers. Often, the lawyers are simply trying to assert that the claim for asylum should be heard at all, rather than appealing against a refusal.

We wait to see what the new CG case will bring. It seems certain that it will throw up new challenges in the ongoing battles between lawyers and the Home Office. Expert advisers will once again have to move with the times, providing the detailed information that delineates the specific features of the board upon which the game takes place. Lawyers with Zimbabwean clients are urged to make full use of the advice on offer. ●

## PUBLICATIONS & RESOURCES cont'd.

### Refugee caselaw website expanded and updated

The excellent [Forced Migration Current Awareness Blog](#) has alerted us to the growth and updating of [Refugee Caselaw](#), a web resource maintained by the University of Michigan Law School, including a guided search function, personalisation, area to ask for and give advice, the ability to save searches and set up alerts for new content, and free full-text access to James Hathaway's *The Law of Refugee Status*. Both [Refugee Caselaw](#) and the larger [Refworld](#) are amongst the databases gathered and listed at the Southern Refugee Legal Aid Network's [Case Law site](#).

### Article on psychological distress symptoms of asylum seekers in the UK

The [International Journal of Migration, Health and Social Care](#) has made available, free of charge, a [mixed-methods study investigating the symptoms of psychological distress of asylum seekers](#) — rather than people with refugee status — of 13 nationalities in the United Kingdom. The article examines asylum seekers' subjective experiences of the UK asylum process, its potential impacts on their mental health, and participants' suggestions for tackling mental health needs through questionnaires and interviews. The study revealed that both psychological distress and post-migratory living difficulties are common among asylum seekers, who report mixed experiences of health and social care services — results that suggest that asylum seekers' unique social position may affect their mental health. The article includes implications for practice that may be useful to refugee legal aid practitioners everywhere.

### Study: EU responsibility-sharing on immigration and asylum policies

The European Parliament has published a study by [Eurasylum](#), 'The Implementation of Article 80 TFEU on the Principle of Solidarity and Fair Sharing of Responsibility, Including its Financial Implications, between the Member States in the Field of Border Checks, Asylum and Immigration'. The study analyses primary and secondary sources of European law in order to identify the implications of Article 80 TFEU in terms of obligations and jurisdiction, and discusses the results of a questionnaire of senior public officials in the EU on the scope and possible mode of implementation of Article 80 TFEU, concluding with some practical solutions for the implementation of new solidarity mechanisms in the field of EU immigration and asylum policies.

### UNHCR update on refugee protection and mixed migration

UNHCR's [Refugee Protection and Mixed Migration: The 10-Point Plan in Action](#), provisionally released in June 2009, has been updated this year with significant further information. Notably, the report highlights [The Asia Pacific Refugee Rights Network](#) as an example of regional cooperation (pp. 31–2). It

may also give readers ideas for how the Regional Cooperation Framework set out in the [30<sup>th</sup> March, 2011 Final Co-Chairs' Statement](#) can be operationalised in a protection-enhancing manner in your country and subregion. *We thank Dr. Savitri Taylor of [La Trobe University](#) for drawing our attention to this report.*

### Practitioners guide on migration and human rights law

The [International Commission of Jurists](#) has published its sixth Practitioners Guide, '[Migration and International Human Rights Law](#)'. The guide analyses the protection afforded to migrants by international law, and the means to implement it at national and international levels, synthesising and clarifying international standards on key issues: the rights and procedures connected to how migrants enter a country and their status in the country of destination; human rights and refugee law constraints on expulsion; the human rights and refugee law rights linked to expulsion procedures; the rights and guarantees for administrative detention of migrants; rights connected to work and labour; and rights to education, to the highest attainable standard of health, to adequate housing, to water, to food and to social security.

### Two reports on the condition of asylum seekers in Italy

The [Swiss Refugee Council](#) and [Juss-Buss](#), a student-run refugee legal aid clinic at the University of Oslo, Norway, have written a report called '[Asylum Procedure and Reception Conditions in Italy: Report on the Situation of Asylum Seekers, Refugees, and Persons under Subsidiary or Humanitarian Protection, with Focus on Dublin Returnees](#)'. The report was written based on research done during two visits by the NGOs to Italy in the second half of 2010, and was contributed to by [The Norwegian Organisation for Asylum Seekers \(NOAS\)](#). NOAS, who also had representatives on the same two trips to Italy in 2010, additionally published their own report, '[The Italian Approach to Asylum: System and Core Problems](#)'.

### New Frontex report on ethics and border security

Frontex has published a [new report](#), '[Study on the Ethics of Border Security](#)'. The study, commissioned by Frontex and carried out by the Centre for Global Ethics of the University of Birmingham (UK), aims to help the EU border guard community by providing information on the ethical standards laid out by EU Border Guard services via an analysis of national Codes of Conduct; the ethical standards expected at EU level (as expressed in the relevant EU legislation and policies) in regard to the numerous sensitive tasks carried out by border guards; and the ethical challenges posed by some of the current and planned technologies employed by border guard services in the EU as part of their daily tasks.

*EUROPEAN BORDERS continued from p. 4*

(read controlling), of migration flows to 'third states'. This involves stopping migrants from leaving their territory and re-admitting those who arrived in Europe having crossed their territory. Refugees and migrants may find themselves trapped in countries from which they do not originate as these 'buffers' set up additional borders to serve Europe's xenophobia.

Migreurop has begun to document this process. We have produced a map called 'The encampment of foreigners in Europe', which is regularly updated and has led to further publications as well as to an [Atlas of Migrants in Europe](#) and an Annual Report on violation of human rights of migrants at borders.

Based on evidence from field surveys, the second annual report is a criticism of the externalisation of migration policies implemented by the now enlarged 27-member-state European Union. In the framework of a containment strategy to keep migrants away from European borders, 'externalisation' by the EU here signifies, on the one hand, the outsourcing to third states of the responsibility for stopping departures to Europe and, on the other hand, obliging these states to take back all those considered as undesirable people (failed asylum seekers, undocumented migrants, and so on).

This twofold injunction is now exerted further and further on, away from the EU. It is financially bargained and negotiated with third states, as proved in the case study on Sahelian and Saharan countries presented in the annual report. The externalisation keeps weighing down heavily on the inner border countries of the EU, which are challenged as first transit destinations, and requested by the Union to stop the so-called 'illegal' migrants on their soil. Thus Poland, Romania, Greece (for a long time) but also Ceuta, all countries located at the frontline of the war waged against migrants, are now in charge of dealing with asylum claims through rejection, detention or indefinite pending periods.

Before such a stream of distress, wandering, and too often deaths caused by European anti-migrant policies, Migreurop recalls that the first and foremost goal is to ensure the respect of the imprescriptible right of the people, such as recognised by international treaties, to leave one's country and to seek protection elsewhere, even in Europe. •

## 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](#)

[international association of refugee law judges](#)

[fahamu refugee legal aid newsletter: past issues, facebook, blog](#)

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).