

**Welcome to the
Fahamu Refugee
Legal Aid
Newsletter**

*a monthly forum for relevant
news and wider reflection on the
provision of refugee legal aid.*

FAHAMU

= Refugee Legal Aid =
NEWSLETTER

M A Y 2 0 1 0

Africa	Europe	Asia
<i>Sierra Leonean and Liberian refugees feel abandoned in Guinea</i>	<i>New United Kingdom government pledges end to immigration detention of children, addresses refoulement on sexual orientation or gender-based refugee claims</i>	<i>Sri Lankans on week-long hunger strike in Japanese immigration detention as others found stranded at sea near Indonesia</i>

Tanzania has granted 162,000 Burundians citizenship, perhaps ‘the most generous naturalisation of refugees anywhere.’ This good news comes while fears increase over the treatment of Ethiopians, as the Tanzanian police continue to [arrest and detain](#) Ethiopian migrants transiting to South Africa. Meanwhile, refugees in Burundi continue to live in fear as targets for [violence and killing](#).

Deportation to and from Uganda is featured in a [Pambazuka News](#) article by Bernadette Iyodu of the [Refugee Law Project](#). Describing the outlook for those deported to Uganda as ‘grim at best’, the report details rape, family separation and ‘disappearing’ upon arrival at Entebbe Airport. The article also documents refoulement in cases where asylum seekers are blocked from presenting their cases by the issuance of a deportation order.

Repeated media characterization of Ethiopians and Somalis, fleeing insecurity and war for safer shores across the Gulf of Aden, as ‘illegal African migrants’ rather than the more appropriate ‘refugees’ or ‘asylum-seekers’ is alarming, particularly in light of UNHCR’s new [guidelines](#) for Somali refugees. This is not, of course, a new trend (see demeaning and inaccurate articles such as [this one](#) about refugees entering ‘illegally’) but ignores fundamental refugee rights of non-penalization under Article 31 of the [1951 Convention](#) and stigmatizes those fleeing for protection.

Circumventing expensive internet cafés, the [Refugee Law Project](#) in Kampala, Uganda, has opened an internet and computer facility where their clients can surf the web, chat with family and friends, and prepare documents free of charge. Seed money for the internet café was raised through a fundraising drive by a couple who asked guests at their wedding ceremony to donate generously to the cause, and ongoing costs are supported by Christian Aid under the ‘Power to the People: making governance work for the marginalized groups’ programme, funded by the United Kingdom Department for International Development. An article on the facility with photos and comments from its users can be viewed [online](#).

‘No one cares for the dead corpses of the Sudanese refugees’ in Cairo, reports the Contemporary Sudanese Centre in a recent [Pambazuka News](#) feature on [torture in Egyptian detention centres](#) that documents killings at the hands of security officers, and the Sudanese Embassy’s response. The report documents the cooperation between the two entities ‘in the campaigns of arrest, torture and deportation of refugees to Sudan’. A ‘modern exodus’ across the Sinai towards Israel does not come as a surprise, but Egypt’s campaign of [killing migrants at the border](#) and Israel’s practice of sending those who survive back across the border make it a desperate journey. Back in Egypt, [deportation of refugees](#) has attracted attention from [Human Rights Watch](#).

The circumstances facing refugees in Botswana’s camps, detailed in a [recent article](#) by Gowenius Toka, suggest the need for the creation of an active refugee legal aid organisation in the country – both to help prepare refugee claims and to mount a case against the state in constitutional court to require Botswana to reform its laws in line with its international obligations.

Cases of countries where civil society groups have been lobbying for domestic refugee legislation, whether or not their governments have signed the Refugee Convention, are being sought by the [Asia Pacific Refugee Rights Network](#) (APRRN). APRRN will hold a side session at the UNHCR Annual Consultations with NGOs on 30th June – ‘Advocacy for the Rights of Refugees through Domestic Legislation’ – to highlight such cases in Asia – India, Nepal, South Korea, Thailand – in hopes of encouraging greater collaboration and ideas for advocacy between civil society and UNHCR in the region. The session will be held 13:00 to 14:00 in Room 4, International Conference Center Geneva. *See more on the UNHCR NGO consultations on page 5.*

The Fahamu Refugee Legal Aid Newsletter seeks your input, feedback and submissions.
Contact editors Themba Lewis & Nora Danielson by email: [refugeenewseditor\[at\]fahamu.org](mailto:refugeenewseditor[at]fahamu.org).

Uganda & Malawi: Africa's LGBTI Rights Under Attack

By Eddie Bruce-Jones, visiting lecturer at King's College London School of Law and LGBTI Resource Co-ordinator for the Fahamu Refugee Programme's Southern Refugee Legal Aid Network website.

This month has marked a significant step backwards for lesbian, gay, bisexual, transgender and intersex (LGBTI) people in Africa. Ugandan policy makers have proposed a set of bills that human rights activists criticise as an attack on LGBTI people in Uganda. Some fear that Uganda's slippage on LGBTI rights will speed the trend of peeling back LGBTI rights in other parts of Africa as well, as new support of the bills in Uganda coincided this week with the sentencing of a same-sex Malawi couple, Steven Monjeza and Twonge Chimbalanga, to fourteen years in prison for holding a public commitment ceremony.

The Ugandan HIV and AIDS Prevention and Control Bill 2009, currently being debated among Ugandan legislators, was drafted with the intention of decreasing discrimination and increasing protection for people living with HIV/AIDS. However, human rights activists have criticised the bill, arguing that some of its provisions actually disadvantage people living with HIV/AIDS. For instance, the bill calls for mandatory HIV testing for certain vulnerable groups and authorises medical practitioners to inform those at risk of contracting the virus, threatening general privacy and medical confidentiality.

Though Uganda's State Minister for Health in charge of General Duties, Richard Nduhura, shared this criticism, recently he seems to have changed position. At a meeting of the parliamentary committee on HIV, Nduhura stated that he now supports the controversial 2009 HIV Bill as it stands. Stella Kentutsi, of the National Forum of People Living with AIDS Network in Uganda, criticised Nduhura's views as politically influenced, stating: 'the biggest problem we have with this bill is lack of awareness; we think [Nduhura's] comments were biased and influenced by parliament. He needs to sit and think carefully, then make a decision that will balance both sides.'

The Ugandan Anti-Homosexuality Bill is a virulent attack on LGBTI people, calling for the strict enforcement of laws criminalising public statement of homosexual identity and homosexual acts. The law even requires that third parties report those known to be homosexual to the authorities. International response against the Bill has been fervent. The US government has passed a resolution denouncing the Bill, and President Barack Obama called it odious and told political and religious leaders in Washington that 'it is unconscionable to target lesbians and gays for who they are.' The Bill's sponsor, David Bahati, argues that the bill protects important features of Ugandan culture. This assertion disenfranchises Uganda's LGBTI people from being able to determine what protection their state should afford them as Ugandans.

The conviction and sentencing of Steven and Tiwonge in Malawi came after months of protesting and press coverage. According to the presiding judge, the couple was given the maximum sentence of 14 years to serve as an example for the cultural intolerance of homosexuality. While some Malawians, like some Ugandans, regard the crackdown on homosexuality as an issue of cultural consensus, others argue that the criminalisation of homosexuality is a measure left behind by former British colonial powers. 'These are not African laws,' human rights activist Peter Tatchell stated.

Uganda and Malawi are not alone in having anti-homosexuality laws. While many countries are currently debating laws on gay marriage and civil partnership, 85 countries have bans on homosexual acts or public pronouncement of sexual identity. While South Africa is championing LGBTI rights in Africa with anti-discrimination legislation and same-sex marriage equality, Uganda and Malawi seem to be setting a different trend, moving toward even worse treatment of LGBTI people than existed previously. Many ask what this negative trend could mean for Africa in the near future. *CONTINUED on page 4.*

On 15th November 1951, UNHCR issued a Memorandum by the High Commissioner on certain problems relating to the eligibility of refugees: the first authorization for UNHCR to conduct status determination on behalf of governments, tasking itself with what would become a massive responsibility beyond its mandate. The memorandum will be of interest to anyone working in RSD for UNHCR and anyone interested in the history of the development of RSD practice.

The Consortium for Refugees and Migrants in South Africa seek applications for three Johannesburg-based positions: Executive Director, Communications and Media Officer, and Regional Advocacy Officer. Full details online; closing date: 7th June 2010.

The Humanitarian Information Group for the Democratic Republic of the Congo (DRC) publishes a weekly inter-agency information bulletin on humanitarian needs and response in country. This week's issue highlights UNHCR's mass registration of DRC refugees in the Republic of Congo, with 11,000 people registered in a single week this month, and 91,000 registered this year so far.

Based on more than 300 interviews in 12 European Union member states, a new summary report, to be published in full in June by the European Union Agency for Fundamental Rights, documents shortcomings and deficiencies in accommodation, medical care, access to education, religious practice, legal procedures and treatment of separated, asylum-seeking children in Europe.

New UNHCR guidelines on Somali asylum claims

Jordanian refugee lawyer Khair Samadi, analysing the UNHCR's new [Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Somalia](#), states: 'It is clear from the content that this document is meant to serve as COI [Country of Origin information] more than policy paper or guidelines.' He notes that only a few lines talk about UNHCR policy and attitude toward Somali Asylum seekers, highlighting these relevant paragraphs:

Application of Prima Facie

'UNHCR encourages the adoption of a group-based protection approach. Group-based approaches include the application of prima facie group recognition, applied by UNHCR and States to situations of mass influx, and temporary protection granted by States.'

Application of Exclusion Clauses (Article 1F)

'Due to reported violations of international humanitarian law and human rights law by various actors, some of the claims lodged by Somali asylum-seekers may give rise to concerns regarding possible exclusion from refugee status...Group-based protection approaches thus need to include appropriate screening mechanisms to identify potentially excludable claims.'

Application of Internal flight Alternative (Asylum seekers from the south and center)

'UNHCR considers that no internal flight (or relocation) alternative (IFA/IRA) is available inside southern and central Somalia. Where recognition as a refugee is based on the refugee criteria under Article I(2) of the OAU Convention, the IFA/IRA test is not applicable.'

Application of Internal flight Alternative (Asylum seekers from from Puntland or Somaliland)

'Whether an IFA/IRA exists in Puntland or Somaliland will depend on the circumstances of the individual case...The conflict between Puntland and Somaliland over Sool and Sanaag, the frequent eruption of violence along Puntland's southern border (with southern and central Somalia), the

insufficiency of traditional, clan-based protection and the generally poor living conditions of displaced persons in Puntland and Somaliland suggest that an IFA/IRA is generally not available.'

Claims based on generalised violence

'Somalis from southern and central Somalia seeking asylum and protection due to the situation of generalized violence and armed conflict in their places of origin or habitual residence and whose claims are considered as not meeting the refugee criteria...should be granted international protection under the extended refugee definition in Article I(2) of the OAU Convention. In States in which the OAU Convention does not apply, a complementary/subsidiary form of protection should be granted under relevant national and regional legal frameworks.'

Rejected claims from Puntland and Somaliland

'With respect to persons originating from Puntland or Somaliland who are found not to be in need of international protection following a determination of their claims in fair and efficient procedures, UNHCR recommends that States exercise caution when considering their return.'

Already recognized refugees

'Individuals already recognized as refugees, whether on a group-based protection approach or following individual status determination procedures, should retain this status. The refugee status of such persons should be reviewed only if there are indications, in

an individual case, that there are grounds for cancellation of refugee status which was wrongly granted in the first instance; revocation of refugee status on the grounds of Article 1F of the 1951 Convention and Article I(5) of the OAU Convention.'

India's right to life for 'all persons' – a hope for refugees?

At the May conference at York University, Toronto, 'Forced Displacement, Protection Standards and the Supervision of the 1951 Convention and 1967 Protocol and other International Instruments', one speaker, Judge Markandey Katju of the Supreme Court of India, Tilak Marg, New Delhi, India, talked about how despite the fact that India has not ratified the Convention, his court has given refugees recognition under Article 22 of the Indian Constitution, which guarantees the right to life of 'all persons'. He went on to say that this would guarantee the right to work and all other rights associated with a life of dignity. He indicated that, when presented with an application, his practice is to refer the case on to the UNHCR country office for confirmation that the claimant is a 'genuine' refugee. He was asking UNHCR and NGOs to help him by sending cases to his court. Individuals are allowed to bring cases to the Supreme Court. He spoke with Volker Turk, head of Protection at UNHCR Geneva, about the need for UNHCR India, to send cases to his court. He gave participants his [email address](#). He also gave the opportunity for NGOs in India to present refugees' testimonies to the Supreme Court, prepared in terms of the grounds of their fear of return. Khail Samadi, a Jordanian lawyer, responded to this announcement on the [Fahamu SRLAN list serve](#): 'This is very interesting – it proves my idea about the origin of the right to seek asylum as a manifestation [of the] right to life and freedom which means it is not derogable right!' How many other countries that have not ratified the Convention have such provisions in their Constitution for 'all persons'?

Contributed by Dr. Barbara Harrell-Bond.

Pambazuka News
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Call for Refugee Legal Aid in Nepal

Contributed by Rajendra Ghimire, Chairperson, Forum for Protection of People's Rights Nepal

Nepal has more than one hundred thousand refugees – from Bhutan, Tibet, Pakistan, Somalia, Burma and other countries. But Nepal, which has not ratified the 1951 Refugee Convention, has no specific laws or policies for regulating refugee issues, and no government body for dealing with refugee issues. And, despite these numbers, there are no government institutions or I/NGOs that provide legal aid or other necessary services to refugees in the country.

Only 288 refugees are registered as ‘urban refugees’ in Kathmandu by UNHCR Nepal. According to available records, of these, 165 are from Pakistan, 85 are from Somalia, 18 are from Burma and 22 are from other countries including Bangladesh and Sri Lanka. In March 2007, Nepal’s government requested that UNHCR Nepal cease to register refugees. Because of this, many asylum seekers remain without

registration, and are treated as illegal immigrants by Nepal’s government authorities, without support or assistance. It is estimated that the number of urban refugees (including Tibetan refugees) is around 5000, but without any governmental or I/NGO database of statistics it is difficult to know exact numbers with certainty. Nepal’s government, in line with the one China policy, does not recognize Tibetans as refugees; instead they are considered illegal immigrants.

Problems faced by refugees

UNHCR provides medical and subsistence allowances to Kathmandu’s 288 registered refugees. However both these and undocumented refugees are without legal aid/services, psychosocial counseling or the service of interpreters. Some refugees have been arrested, detained, and even tortured by police and immigration officers but there is no organization to provide them legal services and to defend their rights. Thus refugees in Nepal are in critical need of legal aid and legal services, psychosocial counseling and support, and interpreter services.

Intervention Strategy

In this context, the [Forum for Protection of People's Rights](#) (PPR Nepal) would like to take the following two strategies to address the situation of refugees in Nepal:

1. Advocacy and lobbying for the promulgation of national law and policy regarding refugee issues and pressuring on the government to become state party to the Refugee Convention and its protocol.
2. Providing legal aid, paralegal services, and psychosocial counseling services to the refugees in need.

To implement these strategies, PPR Nepal is actively seeking an international refugee law expert, a local lawyer, a psychosocial counselor, and part-time interpreters (for Pakistani, Somali and other refugees) to help build a refugee legal aid project in Nepal based in PPR Nepal’s office, which is well located to serve local refugees.

The First International Conference on Human Rights in Southeast Asia, to be held in Bangkok, 14th-15th October, seeks submissions of abstracts for panel presentations, deadline 30th June. Full details can be found on the conference website.

Africa’s LGBTI Rights Under Attack *CONTINUED from page 2*

I spoke with Reverend Rowland Jide Macaulay, organiser of the House of Rainbow Metropolitan Church, a congregation open to LGBTI people in Nigeria. Jide stated, ‘the Uganda [Anti-Homosexuality] Bill and the Malawi conviction of Steven and Tiwonge will create fear on the continent and will also raise the bar for hatred against LGBTI people, our families and friends. There is also the possibility of backlash for many LGBTI people. This will increase secrecy, sexual health providers will be alienated and human rights defenders are likely to be caught in the web of these atrocities. Whilst the claim for these bills and convictions are hinged on protecting culture, religion and state, these attempts no doubt infringe on the liberty and human rights of LGBTI people to live their lives without fear and prejudice.’

According to the [International Lesbian and Gay Association](#), the following countries have laws that ban homosexual sex:

Afghanistan, Algeria, Angola, Antigua and Barbuda, Bangladesh, Barbados, Belize, Bhutan, Botswana, Brunei, Burundi, Cameroon, the Cook Islands, Djibouti, Dominica, Eritrea, Ethiopia, Gambia, Gaza, Ghana, Grenada, Guinea, Guyana, India, Iran, Iraq, Jamaica, Kenya, Kiribati, Kuwait, Lebanon, Lesotho, Liberia, Libya, Malawi, Malaysia, Maldives, Mauritania, Mauritius, Morocco, Mozambique, Myanmar, Namibia, Nauru, Nicaragua, Nigeria, Oman, Pakistan, Palau, Papua New Guinea, Qatar, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Solomon Islands, Somalia, Sri Lanka, Sudan, Swaziland, Syria, Tanzania, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkish Republic of Northern Cyprus, Turkmenistan, Tuvalu, Uganda, United Arab Emirates, Uzbekistan, Western Samoa, Yemen, Zambia and Zimbabwe.

The international community surely has a role to play in securing human rights for LGBTI people in Africa. London-based human rights activist Godwyn Onwuchekwa remarks, ‘It is a pity that developing countries continue to engage with [Malawi and Uganda] without stressing and making it clear that human rights are basic to any relationship.’ To this, Reverend Jide adds, ‘we strongly believe that this is the time that every LGBTI African at home and abroad, including our friends, families and supporting human rights organisations, need to stand up and speak out. Also, we should contact our local government officials to condemn these actions.’

In the UK, Peter Tatchell is organising relief efforts for Steven and Tiwonge through [Outrage!](#), a London-based international LGBTI human rights organisation. Alternatively, if you live in the UK, [write your MP and all your MEPs](#) to ask them to protest the Malawian President via the Malawi High Commission in London, and (for MPs) to sign Early Day Motion 564, which protests against the persecution of Steven and Tiwonge.

More news: UNHCR NGO consultations, recent activities in Nepal, Malaysia, Korea

UNHCR's Annual Consultations with NGOs will take place from 29th June to 1st July 2010. UNHCR's [website dedicated to the consultations](#) includes the registration page (deadline 5th June), a detailed information note, an agenda, a guide for NGOs, maps, and hotel recommendations. Persons not members of [International Council of Voluntary Agencies](#) and who have difficulty getting an invitation from UNHCR so need an invitation to the meeting should contact [Dr. Barbara Harrell-Bond](#). If you have already used this facility through the SRLAN list-serve, be sure to notify Barbara as she must inform UNHCR who is coming as a Fahamu invitee.

The day before UNHCR/NGO Consultations begin, meetings of the [International Detention Coalition](#), the [Southern Refugee Legal Aid Network](#), and the [Asia Pacific Refugee Rights Network \(APRRN\)](#) will be held in Geneva, 09:00 to 18:30, Monday, 28th June, at 1, Rue de Varembe, ground floor – directly across from UNHCR, next to an Italian restaurant. Coffee and tea will be served throughout the day, and lunch – compliments of IDC – will be served. Please confirm attendance [by email](#) by mid-June. Agendas will be sent to network lists.

Bhutanese refugees held a conference on their situation in Nepal, as an extension of April's 'Peoples South Asian Association for Regional Cooperation' (SAARC) meeting in New Delhi. More than 110,000 registered Bhutanese refugees have been living in camps in Nepal since 1990. Many more live without registration in Nepal and across the border in India. [INHURED International](#), a Nepal human rights NGO, reports that most hope for a prompt return to their homeland, though nearly 30,000 have been resettled to the United States or other Western countries. The organizing refugee group, from camps in Jhapa and Morang, Nepal, asked attendees – including members of the SAARC, the media, and civil society – for moral support and solidarity in their struggle for the right to return to their homeland in a manner that is dignified, honorable, and prompt. The 25th April session took place in Birtamod, near the Indian border followed by a press meeting and rally the next day.

The situation in Malaysia is highlighted by [Suara Rakyat Malaysia \(SUARAM\)](#), a human rights NGO, who have put out an urgent call to halt to a deportation from Malaysia. A young Afghan refugee who was arrested (though not convicted) for alleged human smuggling and detained at an Immigration Department lock-up at Putrajaya is at risk. Though Malaysian law does not recognize refugee status, the Malaysian Government is obliged to respect the international customary law (and basic right) of non-refoulement, which prohibits the return of people, including asylum seekers and refugees, to places where they may face persecution or threats to their life or freedom. This is especially the case in light of Malaysia's intention to be elected as a member of the United Nations Human Rights Council. Further information on the situation of refugees in Malaysia can be found on the [refugee section of SUARAM's website](#).

A tripartite meeting of governments, UNHCR, and NGOs was organized for the East Asia sub-region by the Korean government and UNHCR on 26-7 April 2010 in Seoul, Korea. The meeting, Alternatives to Detention of Asylum Seekers and Refugees, created a unique opportunity for dialogue for governments and civil society about refugee protection systems which will be followed up in their own countries. This meeting was followed by the [East Asia Symposium](#) on 28 April, organized by the [Japan Association for Refugees](#), [Refugee Pnan](#), and the [Institute for Legal Studies, Yonsei University](#), attended by more than 100 persons and funded by the [Japan Foundation](#). Presentations were made by [UNHCR](#), the [Asia Pacific Refugee Rights Network](#), the [Refugee Pnan](#), [Gonggam](#), [Japan Lawyer's Network for Refugees](#), [Hong Kong Refugee Advice Centre](#), the [International Detention Coalition](#), [Law Firm Somyung](#), the [La Trobe Refugee Research Centre](#), [NANCEN](#), [International Social Service Hong Kong](#), and [Japan Association for Refugees](#).

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