

# FAHAMU

## REFUGEE LEGAL AID NEWSLETTER

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A MONTHLY FORUM  
FOR NEWS AND  
REFLECTION ON THE  
PROVISION OF  
REFUGEE LEGAL AID

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### New Israel-Egypt border barrier

Israel’s attempts to prevent African refugees from entering via Egypt’s Sinai desert have resulted in many deaths; this year’s toll is 25 and counting. Israel is signatory to the 1951 Geneva Convention, and Egypt has just become chair of the UNHCR executive committee. Yet Egypt continues to shoot and kill unarmed people attempting to leave its borders, and Israel continues to refuse to review the asylum claims of those who survive the journey. Now Israel has launched a US\$1.35 billion project to build 60 kilometres of barrier along the border of Egypt and Israel, near Eilat and the Gaza strip (with plans to build a wall along the Israel-Lebanon border as well). Prime Minister Netanyahu is taking personal responsibility for negotiating with African leaders to accept the *refoulement* of their nationals; this may involve the offering of millions of dollars in exchange. Israel’s leadership continues to justify such tactics by smearing those seeking refuge and speaking of them as an abstract menace: a ‘flood of illegal workers’, ‘infiltrators’ and ‘a concrete threat to the Jewish character of the country’ [Prime Minister Netanyahu]. The prime minister has even characterised the asylum seekers as a threat to Israel’s ‘democratic character’. But the great number of democratic countries enriched by the presence of refugees might question his logic – not to mention the ethics, morality and legality of his country’s tactics. The situation is discussed in a new article, [Solving Israel’s African Refugee Crisis](#), published in the

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*Blue text denotes links to websites.*

The Fahamu Refugee Legal Aid Newsletter seeks your input, feedback and submissions for upcoming issues. Please email the editors.

*The editors thank Tom Barratt and Magnaminous Traboulsi for their assistance with this issue.*

*Virginia Journal of International Law* and brought to our attention by the [Forced Migration Current Awareness Blog](#) in its latest [round-up of recent resources on asylum in Israel](#).

### **Ugandan judge orders newspaper to stop publishing 'gay' list**

As reported on page 2 of [last month's issue](#), Pambazuka News released a [call for action](#) following the publication in October of a list of Uganda's 'top gays' in local newspaper *Rolling Stone*, which bears [no relation to the US publication of the same name](#). The article resulted in [direct attacks on several people](#), and was followed by a second one of the same nature, called 'Men of Shame Part II', published in November. After a coalition of Ugandan civil society organisations filed a lawsuit against *Rolling Stone*, a high court judge ordered [that the newspaper stop publishing names and photos of people it claims are gay](#), a campaign characterised by the judge as being an 'invasion of the right to privacy'. A full hearing was scheduled for 23<sup>rd</sup> November; if the judge rules against *Rolling Stone*, [Sexual Minorities Uganda](#) plans to seek damages.

### **Thousands of refugees flee fighting in Myanmar**

Legal aid providers in the Asia-Pacific region should be aware of post-election fighting around Myanmar that sent what [UNHCR reports to be 15,000 Karen refugees](#) across the Thai border. [Others have put the number at 30,000](#), and Thai authorities were [sheltering the refugees](#). According to UNHCR, many have returned, but there is no evidence that all feel comfortable doing so, and [renewed fighting](#) will only exacerbate the situation. We recommend checking the [Asia Pacific Refugee Rights Network \(APRRN\)](#) and [this blog](#) for updates.

### **Australian refugee law case trumps government policy**

The Australian High Court has [rebuked the country's refugee policy](#), unanimously ruling that two Sri Lankan asylum seekers had been [denied procedural fairness before facing deportation by being held in offshore detention centers](#) and being barred access to appeal, effectively removing the asylum seekers from the benefit of the law. While the case [calls into question the fairness of the entire process](#), the Gillard government has responded that [offshore processing will continue](#), despite the high court ruling. The government has been [ordered to pay the legal costs](#) suffered by the claimants. The full text of the decision can be read [online](#).

### **Witnesses thrown off British Airways flight after killing of deportee**

Two students who tried to voice concern over violence used during a deportation from the UK were told to 'sit down and be quiet' before being [removed from the flight and questioned by armed guards](#). This is not the first time [passengers attempt to protest a deportation taking place on a British Airways flight](#). *The Guardian* newspaper reports 'concern about the treatment of deportees since the death earlier this month of [Jimmy Mubenga](#)', an Angolan failed asylum seeker who died while heavily restrained by G4S guards and complaining that he could not breathe on a British Airways plane at Heathrow. Shortly following the death, the newspaper released [footage of another deportation](#), in which screaming and other sounds of discomfort are clearly audible, and an article about a Colombian deportee who reports being [mistreated by G4S guards in a stairwell 'where there were no cameras'](#) during his deportation, before being hospitalized for his injuries. British charity [Medical Justice](#) has subsequently published [a list of deportation deaths in the UK](#). While G4S has [lost their deportation contract](#), the Home Office insists the decision is due to the cost of the contract, not the treatment of deportees. G4S describes itself as [the second largest private employer in the world](#).

### **Young refugee in Lebanon forcibly returned to Iraq**

Despite the deterioration of the security situation in Iraq, which has caused the European Court of Human Rights to [suspend all deportations there immediately](#), a 24-year-old Iraqi refugee has allegedly been forcibly repatriated from Lebanon, after two years of [arbitrary detention](#). The young man was escorted to the airport by General Security officers on the 10<sup>th</sup> November, 2010. After refusing to sign a 'voluntary repatriation' document, [he was beaten by security personnel and forced to board the plane while barely conscious](#). Lebanese security forces often [attempt to deport refugees](#), and succeed in doing so, although in violation of Article 3 of the Convention Against Torture, of which the country is signatory. [Refugees in Lebanon are frequently subjected to arbitrary detention](#), as highlighted in the [2007 Human Rights Watch report](#) aptly titled *Rot Here or Die There*. The issue recently received media coverage due to the [16-day hunger strike of a Sudanese refugee and community leader](#), who demanded, among other things, the release of arbitrarily detained Sudanese in Lebanon.

## Refugee protection in Israel: recent developments

*Contributed by Lisa Matthews, a refugee practitioner and researcher currently working in Cairo, and Lisa Feinberg, a University of Ottawa law student on exchange at Tel Aviv University, where she assists at its Refugee Rights Clinic.*

Whilst migration and refugee issues are at the heart of the state of Israel, the large numbers of migrants fleeing war and persecution and seeking refuge in Israel is a relatively recent phenomenon. Since 2005, significant numbers of mainly African asylum seekers have entered the country. More than **6,000 asylum seekers** had arrived by March 2008, and recent figures estimate there are now approximately 30,000 asylum seekers in Israel, around 85 percent of which are from Sudan and Eritrea.

The most common way of entering Israel is by land, across the border with Egypt. This brings with it considerable risks, and there are frequent reports of **Egyptian soldiers shooting asylum seekers** on sight, or detaining them. It has been alleged that some of those detained in Egypt are subsequently **tortured**. Israel has **deported over 270 asylum seekers** to Egypt in spite of this treatment (known as ‘Hot Return’), breaking its international obligations of non-*refoulement*. Whilst today asylum seekers picked up after they have crossed the border are generally detained at Ketziot prison, there are reports that Hot Return still occurs.

Recently proposed legal changes further threaten both asylum seekers in Israel and those working with them. Considerable power to detain asylum seekers already exists under the 1953 Law of Entry, but the proposed **Anti-Infiltration Law** would allow the immediate expulsion of anyone entering Israel illegally, and prolonged, arbitrary and indefinite detention of asylum seekers and children. The first reading of the bill was passed in the **Knesset**, but following a co-ordinated campaign by the Refugee Rights’ Forum of awareness-raising events and a collection of signatures, the **bill was dropped** in August this year. The relief at this development is tempered by concerns that the government will circumvent the civil rights organisations’ success by adapting already existing Anti-Infiltration legislation (dating from 1954).

The language of the proposed bill is echoed by certain hostile sectors of Israeli society, as seen in the petition signed by **landlords in Tel Aviv**, refusing to rent to African asylum seekers, referred to as ‘infiltrators’. The term ‘infiltrator’ is also adopted in some newspapers when reporting crimes committed by immigrants, and is commonly used in debates in the Knesset, as shown in Shai Carmeli-Pollak’s documentary film *Ha-Plitim*.

A further worrying initiative has just been announced: the construction of a **60km barrier** along Israel’s southern border with Egypt to keep asylum seekers from crossing into the country. The barrier, due to be completed in 2013, will be built at two locations – near the Gaza Strip and Eilat – and is thought to be costing US\$1.35 billion. *[See also story on p. 1]*

For those who make it across the border, more challenges await. Although Israel is signatory to the 1951 Refugee Convention, less than 190 asylum seekers have been granted refugee status since 1954, when Israel ratified the Convention. At the same time, 498 Darfuris have been granted status without going through the Refugee Status Determination process, according to the **African Refugee Development Centre**. Currently, if asylum seekers can prove they come from Sudan or Eritrea, they are granted group protection, known as Conditional Release or a S2A5 visa. This is based on the risk posed by being from an ‘enemy state’ and having entered Israel,

### REQUESTS

#### **REQUEST FOR INFORMATION: refugee policy development and the cost of citizenship**

*Audrey Bernard seeks information to help the government of Papua New Guinea develop a refugee policy, as none currently exists. She seeks suggestions of resources that provide comparisons of the cost of a grant of citizenship in different countries, and different refugee legislation and administration models in current operation around the world. Please send suggestions by email.*

#### **REQUEST FOR INFORMATION: education opportunities for refugees**

*The recent Refugee Education Initiative and the Fahamu Refugee Programme seek information on any scholarships, distance learning programmes, university or other educational opportunities, and sponsorships available for refugees. They also seek any useful online resources that clearly explain refugee rights with respect to education. Please send all replies to Laura-Ashley Wright and Robyn Plasterer, Co-directors, Refugee Education Initiative.*

not on individual cases of persecution. The risk is clear – as the 1994 case in which two Sudanese men were executed in Sudan for having entered the ‘enemy state’ of Israel – and Conditional Release protects the recipient from being detained or deported. Working on this visa alone (without an additional B1 work visa – granted to around 2000 Eritreans given Conditional Release prior to 25th December, 2007, but not to those granted status after) is technically illegal, but there is an informal policy of not enforcing this. The policy is also subject to review, and group protection does not bring with it auxiliary rights such as family reunion and travel

documents that refugee status accords under the Convention. Those recognised as refugees in Israel are given a Temporary Resident Visa, which has to be renewed every one to three years. There is also no route to Israeli citizenship (contravening the Refugee Convention) if the individual is not Jewish or married to an Israeli.

Voluntary organisations and *pro bono* lawyers are shouldering the difficult task of assisting asylum seekers through the opaque asylum process in Israel. With no clearly defined asylum law or policies, asylum seekers are often unaware of their rights and the correct procedures. In an attempt to redress this situation, in 2008 attorneys Anat-Ben Dor and Dr Yuval Livnat of the Refugee Rights Programme, Tel Aviv University, submitted a petition to the High Court of Justice on behalf of three NGOs working with refugees and immigrants. The petition aimed to compel the Ministry of the Interior and the Attorney General to allow representation for asylum seekers at all stages in their asylum claim process. Specifically, the petition requested an order that would allow representatives, both lawyers and non-lawyers, to be present at asylum seekers’ interviews with immigration officials.

After the petition was launched, the government began a pilot project on representation for asylum seekers. This pilot programme only allowed lawyers to be present at asylum claim interviews. Since most of the volunteers working with asylum seekers are not lawyers, this pilot programme did not sufficiently address the concerns of the three petitioners. This crucial element of the petition was set to be heard in the case *The African Refugee Development Centre, the Hotline for Migrant Workers, and the Association for Civil Rights in Israel v the Ministry of the Interior and the Attorney General* (Case Number HCJ 8993/09. Supreme Court of Israel, Sitting as the High Court of Justice, 3<sup>rd</sup> November, 2010).

At the November hearing, counsel for the Attorney General argued to the Israeli High Court of Justice that the petition should be dismissed on procedural grounds. The counsel submitted that the Court should not adjudicate on the petition, because the Israeli government was developing a policy document that would address the issue at stake in the petition (representation for asylum seekers). Attorney Anat Ben-Dor countered that the Israeli government had had two years to properly address the issue at stake in the petition (since the initial 2008 petition). However, the Court deferred to the government counsel and held that the petition was dismissed and the three petitioners could bring a new petition after the new policy document was released if they were not satisfied with the results.

Until this policy document is issued, the situation continues that only lawyers can be present in asylum claim interviews. With very limited *pro bono* representation available, many asylum seekers in Israel are forced to navigate the bewildering asylum system on their own, or seek private legal help which in some cases makes them vulnerable to exploitation. It remains to be seen whether the policy document will address the concerns of the petition, or will indeed retract the advances of the pilot project, and leave asylum seekers entirely unrepresented.

In a new addition to asylum seekers’ visas, [reported by Haaretz on Sunday 21st November](#), the Israeli authorities have implemented a clear departure from their previous policy of not enforcing the laws preventing asylum seekers from working.

### **REFUGEE WRITERS: Human Rights Watch/Hellman-Hammett Grants**

*Human Rights Watch administers the Hellman/Hammett grant programme for writers all around the world who have been victims of political persecution and are in financial need. The programme is financed by the estate of the playwright Lillian Hellman with grants given in her name and that of her long-time companion, the novelist Dashiell Hammett. The grants are awarded annually after nominations have been reviewed. Nominations should be sent to the New York office of Human Rights Watch. The form for making nominations can be downloaded here. For further information, please email. Hellman/Hammett grants typically range from US\$1,000 to a maximum of US\$10,000. The grants focus attention on repression of free speech and censorship by publicising the persecution that the grant recipients endured. Nominations for the grants to be awarded in the spring of 2011 must be submitted by 10<sup>th</sup> December, 2010. Emergency nominations are accepted throughout the year.*

## Age disputed asylum seeking children in the UK

*Syd Bolton, policy officer at the Migrant Children's Project at the UK-based Children's Legal Centre provided this article about the problems of age determination of asylum seeking children in the United Kingdom. This article updates the 2009 Children's Legal Centre publication Seeking Support – A Guide to the Rights and Entitlements of Separated Refugee and Asylum Seeking Children, 3rd Edition, written by the Migrant Children's Project's Kamena Dorling, Alison East and Syd Bolton.*

A significant number of young asylum seekers arrive in the United Kingdom claiming to be children but without documentation to prove their age, or with false documentation. Many have their age questioned by either the UK Border Agency, or the local authority to which they have turned for support. The question of age is a crucial one, as it will not only affect how they might be cared for by children's services, and their access to education, but it will also affect how their asylum application is processed. Adult asylum seekers are entitled to support from central government, which can include accommodation and essential living needs. Many asylum seekers will be dispersed throughout the United Kingdom, and limited financial asylum support is provided to those who are destitute or likely to become destitute within a limited time. The current rate for a single person aged 18 to 24 is £35.52 per week.

For child asylum seekers, support should be provided by the local authority in which they are physically present. Section 17 of the [Children Act 1989](#) imposes a general duty upon a local authority to safeguard and promote the welfare of children within their area who are in need. This includes a requirement to provide accommodation if he or she is unaccompanied. If a young asylum seeker is a child and alone in the UK, without a parent or carer, he or she

will invariably be owed a duty by the local authority under section 20 of the Children Act 1989. This provides:

Every local authority shall provide accommodation for any child in need within their area who appears to them to require accommodation as a result of:

There being no person who has parental responsibility for him;

His being lost or having been abandoned; or

The person who has been caring for him being prevented (whether or not permanently, and for whatever reasons) for providing him with suitable accommodation or care.

In addition, a local authority must fulfill the parental obligation under section 7 of the [Education Act 1996](#) to ensure a child is educated, that duty being enforced by [Article 2, Protocol 1](#) of the European Convention on Human Rights.

The very process of determining a person's refugee status is different depending on whether a person is a child or an adult. Children are inherently seen to be more vulnerable than adults, and historically there have been different, more favourable policies in relation to asylum seekers who are under 18. Moreover, since November 2009, a duty has been placed on the UK Border Agency under [section 55 of the Borders, Citizen and Immigration Act 2009](#), to safeguard and promote the welfare of children. The Secretary of State will not detain a child under her administrative immigration powers, save in exceptional circumstances and then only overnight. By comparison, a significant proportion of age disputed young people have been detained and then subsequently found to be children. In one study conducted in 2005, nearly 50 percent of age dispute cases were found to be children.<sup>1</sup> This number has gone down, but the problem remains.

The Royal College of Paediatrics and Child Health acknowledges that age determination is an inexact

## ANNOUNCEMENTS

### **CMRS Winter Short Courses**

*The Center for Migration and Refugee Studies (CMRS) at the American University in Cairo is offering three winter short courses in January 2011. Courses are offered in: International Refugee Law; Migration/Displacement, Gender, and Development; and Community Interpretation for Refugee Aid Settings (offered for the first time as a CMRS short course in Winter 2011). The courses are offered for graduate level students, researchers and practitioners in the field of migration and refugees. Courses are conducted in English and no translation facilities are provided. See the [CMRS Short Course web page](#) for more information and full course descriptions. To apply for the courses, please fill out the [online application](#). The deadline for submitting course applications is 30<sup>th</sup> November, 2010, and the deadline to apply for scholarships has passed.*

### **UNDEF accepting proposals to support NGOs for promotion of democracy and human rights**

*The United Nations Democracy Fund (UNDEF) is accepting applications for grant support to projects that strengthen the voice of civil society, promote human rights, and encourage the participation of all groups in democratic processes. UNDEF provides grants ranging from US\$50,000 to US\$500,000 for a two-year project in one or more of six main areas of community development, rule of law and human rights, tools for*  
(continued p. 7)

science, and the margin of error can sometimes be as much as five years either side, especially around the time of puberty.<sup>2</sup> In 2007 the college stated:

We accept the need for some form of age assessment in some circumstances, but there is no single reliable method for making precise estimates. The most appropriate approach is to use a holistic evaluation, incorporating narrative accounts, physical assessment of puberty and growth, and cognitive, behavioural and emotional assessments. Such assessments will provide the most useful information on which to plan appropriate management.<sup>3</sup>

A number of factors make age assessments difficult, including:

- Young people may look and act older than they are because of their experience in their country of origin and their long and difficult journeys to the UK
- Young people may have given different ages to different professionals/authorities, particularly on their journey to the UK, where to be identified as a child may have been perceived to place them in greater danger
- Boys in some parts of the world grow facial hair earlier than boys in Europe. For example, in some parts of Afghanistan it is common to grow a beard at the age of 13 or 14
- Within ethnic and national groups there are wide variations in young people's sizes, ages of puberty and so on – just as in the UK
- A young person may not know their date of birth. In some places date of birth is not important and birthdays are not celebrated. In some places calendars are not used
- Different calendars are used in some countries. Converting from one calendar to the other can be difficult – mistakes can be made and the wrong date of birth provided
- There can be a lack of awareness as to what is required to conduct a lawful and fair assessment and what weight to give different, sometimes conflicting, indicators of age/maturity. Many assessors report feeling that they do not have the specialist skills required, sometimes due to having to learn 'on the job' from fellow professionals
- The expectations/false presumptions brought by children and adults to the age assessment process – e.g. children may be led to believe that they should claim certainty about their age when this is not possible because they simply do not know. Social workers have considered a child to be over a certain age simply because they have made the journey alone.

### **Decision by the UK Border Agency**

At present, where 'there is little or no evidence to support a person's claimed age', UKBA policy is as follows:

1. If the claimant's physical appearance/demeanour *'very strongly'* suggests that they are *significantly* over 18 years of age' they should be treated as *adults*
2. All other cases should be processed to begin with as if children, but this does not indicate final acceptance of their claimed age. Instead, their *age will be disputed*; further evidence will be collected, including the view of the local authority to which the individuals should be referred. The individual should be informed that the local authority will make an assessment of their age and communicate the result to UKBA. Doubtful age cases should also be given an IS.97M form stating that their age is disputed.

This initial decision is made based on appearance and a short asylum screening interview. In many cases, a detailed assessment subsequently undertaken by a local authority's assessment will be the primary source of evidence for the UKBA about a person's age and their assessment 'will normally be accepted as the decisive evidence of the person's age'. The UKBA may separately conclude that an applicant is a child or an adult. Further documentary evidence may be provided after a young person has first gone to the UKBA in order to prove their age, such as identity documents and birth certificates. The UKBA may wish to verify the authenticity of these. It is generally considered the responsibility of UKBA and the child's legal representative to get these documents verified but in practice this is often not possible.

There are often arrangements in place for the local authority social work department to be present at ports of entry and UKBA screening unit to conduct an assessment. In practice age assessments can start to happen as soon as a child explains that they want to claim asylum. This is far from ideal as young people may be tired, confused or frightened by

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new surroundings and unsure of the different roles of immigration officers and social workers. Interpreting facilities for the child will often be inadequate or non-existent. Arrangements for referring age disputed young people will therefore vary across local authority areas; some young people will already have been assessed prior to claiming asylum, some will be referred according to where they stated they live at the time of asylum application.

### **Local authority age assessment**

Anyone claiming to be a child has the right to approach children's services for support, and, even if the UKBA is treating someone as an adult, if a referral is made to children's services (either self-referral or by an agency supporting the young person), the local authority must make their own assessment of a young person's age, as a 'gateway decision' for the purposes of deciding whether they then might be a child in need under part 3 of the Children Act 1989.

A local authority's assessment must be as full and comprehensive as necessary, and conducted in a clear, transparent and fair manner. There is currently no statutory procedure or guidance issued to local authorities on how to conduct an age assessment. Instead the current approach has evolved through practice by local authorities and legal challenges to the process.

Some local authorities investigate the age of separated asylum seekers by making enquiries in their country of origin. Extreme caution should be exercised when making any enquiries in the country of origin, particularly – though not exclusively – in relation to state actors (those acting on behalf of the government).

There is no statutory guidance on how to conduct an age assessment, and instead a body of case law has developed which gives guidance on the process required. The leading case in this area was the case of *R(B) v Merton*<sup>4</sup> in which the judge set down broad guidelines in respect of how age ought to be assessed in respect of unaccompanied minors who arrive in the UK without documentary evidence to prove their age. He confirmed that the local authority 'cannot simply adopt a decision made by the Home Office' (para 39), and outlined the following points, many of which have been reiterated in subsequent cases:

- An assessment cannot be made solely on the basis of appearance, and should be a holistic one taking account of the young person's appearance, demeanour, background and credibility
- Any assessment should take into account relevant factors from the child's medical, family and social history,<sup>5</sup> and the decision maker should seek to elicit the general background of the application, including his family circumstances and history, his educational background and his activities during the previous few years. Ethnic and cultural information may also be important<sup>6</sup>

## **ANNOUNCEMENTS (cont.)**

*democratisation, women, youth and media. Applications have to be submitted online (either in English or French) through the Online Project Proposal System available at the [UNDEF website](#). The deadline to submit the applications is 31<sup>st</sup> December, 2010. For an unofficial guide outlining application tips and guidance, [click here](#).*

### **FUNDING OPPORTUNITY: capacity building for organisations in developing countries**

*Funded by the Ministry of Foreign Affairs and managed by the Netherlands Organisations for International Cooperation in Higher Education, the Netherlands Fellowship Programme is an opportunity for mid-career professionals from NGOs and governmental and private organisations in developing countries to improve the capacity of their employing organisations. Candidates from Sub-Saharan Africa, women, and members of priority groups and/or marginalised regions are specifically invited to apply for an NFP fellowship.*

### **CALL FOR APPLICATIONS: Justice Initiative Fellows Programme on human rights**

*Applications are currently being accepted for the Justice Initiative Fellows Programme at Central European University, two years of study and practical work experience for lawyers and activists working on human rights issues internationally. Fellows spend their first year in a degree programme at the Legal Studies Department of the Central European University in Budapest, Hungary, with required coursework on human rights. They also participate in a three-month internship with a leading European non-governmental organisation from January until March. Fellows then spend their second year in their home country, working in human rights advocacy with their nominating organisation. Up to 10 applicants will be selected to participate in the programme beginning in fall 2011. Applicants from the following regions and countries are eligible: Central and Eastern Europe, the former Soviet Union, Africa, Asia, the Middle East and Central/South America. Applications must be received by 24<sup>th</sup> January, 2011, midnight (PST). For more information see the [Wavuti website](#).*

## ANNOUNCEMENTS (cont.)

**SUMMER COURSE: refugee and forced migration issues at York University**

For the fifteenth consecutive year, the *Centre for Refugee Studies at York University*, Toronto, Canada is offering a Summer Course on Refugee and Forced Migration Issues, 8<sup>th</sup>-15<sup>th</sup> May, 2011. The course is open to academics and practitioners from all over the world who seek to expand their knowledge of contemporary critical elements of forced migration/refugee issues. Full details are on the *course website* and available by *email*; early bird registration, for CDN\$975, closes 30<sup>th</sup> December, 2010.

**SUMMER SCHOOL: University of Oxford Refugee Studies Centre**

Online applications are now being accepted for the *International Summer School in Forced Migration*, to be held in Oxford, United Kingdom, 11<sup>th</sup>-29<sup>th</sup> July, 2011. The summer school aims to enable policy makers, practitioners and researchers to reflect critically on the forces and institutions that dominate the world of the displaced. The deadline for early registration, for a reduced fee of £2,950, is 31<sup>st</sup> March, 2011. Some bursaries are offered, on a competitive basis.

- There was a duty on the decision makers to give reasons for a decision that an applicant claiming to be a child is not a child<sup>7</sup>
- The young person should be given an opportunity during the assessment to answer any adverse points the decision maker was minded to hold against him<sup>8</sup>
- Age assessments must be conducted by experienced trained social workers and all the safeguards to ensure fairness must be in place.<sup>9</sup>

In *R(NA) v Croydon*,<sup>10</sup> it was also established that a young person had a right to be accompanied during the assessment by an appropriate adult.<sup>11</sup>

There have been cases where the Asylum and Immigration Tribunal – now the First Tier Tribunal (Immigration and Asylum) – has made its own findings about a young person's age as part of an asylum appeal judgement. In these cases, it has been held that a local authority cannot simply accept the tribunal's finding and deny or withdraw services. Neither the Tribunal's decision nor the evidential basis on which it was reached have any weight outside those proceedings. The local authority must instead make its own decision on its own age assessment on all the available facts. The High Court has recently held that

... it is for the [local] authority to reassess the age of the applicant (including evidence before the tribunal that was not previously seen before then) and give due respect to the basis and reasoning of the tribunal's finding, whilst taking into account of the fact that they may have different evidence available to them.<sup>12</sup>

Although it was not addressed in the Merton judgement, Collins J said in the *A v Croydon, WK v Kent*<sup>13</sup> cases that

... since there is no scientific proof available and the final decision involves the exercise of a judgement, it is never possible to be sure that the decision in a given case, particularly where an individual is close to 18, is factually correct. But perfection is unattainable and the approach adopted by the Secretary of State that, if the decision maker is left in doubt, the claimant should receive the benefit of that doubt is undoubtedly proper.

**Paediatric assessments**

The views of other social workers and significant individuals such as foster carers and teachers are also relevant. Paediatric reports can also be used to assess the physical and mental development of age disputed asylum seekers, and in past cases these reports have been used to challenge the assessment of local authorities.<sup>14</sup> Medical reports will usually contain material evidence, due to the expertise of those drafting them,<sup>15</sup> and must be considered by the local authority. In *Merton* it was held that this type of medical evidence can be helpful but only to a 'limited degree'.<sup>16</sup> Subsequent cases found that they do not 'attract any greater weight than the observation of an experienced social worker'.<sup>17</sup> This is, of course, conditional on the social worker having properly considered the evidence given by a medical practitioner and having the relevant training and expertise to conduct the assessment and analyse information. If a medical assessment is deemed necessary, it should be carried out with the child's consent and by a practitioner with the appropriate expertise.

**Challenging age assessment**

Until November 2009, it was only possible to get a local authority's decision on age changed by using judicial review, based on the argument that the assessment had not been conducted properly in light of the relevant

## PUBLICATIONS & RESOURCES

### **WORK PROGRAMME: UNHCR**

*UNHCR's Policy Development and Evaluation Service has issued a [new work programme](#), focusing on urban refugees, protracted refugee situations, mixed migratory movements, humanitarian space and natural disasters.*

### **POLICY PAPER: UNHCR's response to LGBTI refugees**

*A new policy paper, '[Persistent Needs and Gaps: the Protection of Lesbian, Gay, Bisexual, Transgender and Intersex Refugees: An Overview of UNHCR's Response to LGBTI Refugees and Recommendations to Enhance Protection](#),' has been published by [Human Rights First](#). The paper highlights the particular challenges that lesbian, gay, bisexual, transgender and intersex (LGBTI) refugees face in accessing assistance and asylum procedures.*

### **PUBLICATION: Palestinian refugees in Arab host countries**

*The [Badil Resource Center for Palestinian Residency and Refugee Rights](#) has just released the Summer–Autumn 2010 issue of *al-Majdal*, entitled [Forced Secondary Displacement: Palestinian Refugees in Arab Host Countries](#). The issue is part of a two-part series on the forced secondary displacement of Palestinian refugees; it starts with poetry and prose from around the world on colonialism and forced displacement and includes an overview of secondary forced displacement in host countries as well as more in-depth case studies from Lebanon and Kuwait. See also [Fahamu's Southern Refugee Legal Aid Network](#) for information on [Palestinians who fall under the 1951 Convention](#).*

### **NEW REPORT: restrictions on freedom of movement in Lebanon refugee camp**

*The [Palestinian Human Rights Organisation](#) has published a report documenting the status of freedom of movement in and around the [Naher al Bared Camp](#) in Lebanon. The report, titled [Lebanese Restrictions on Freedom of Movement: Case of Naher el Bared Camp](#), seeks to highlight issues of legality concerning the [Lebanese Armed Forces'](#) access and permit regime around the camp; it proposes recommendations and mechanisms that, if implemented, will advance the human rights situation of the camp, as well as enhance Lebanon's compliance with its international human rights obligations.*

### **PUBLICATION: Asylum Access quarterly newsletter**

*[Asylum Access](#) has released the [autumn issue of its newsletter](#). It discusses the work of the organisation's [Volunteer Legal Advocates](#), and includes a field report from [Thailand](#), quarterly highlights and staff news. Also announced is a [Google grant](#) which will help [Asylum Access](#) launch a [Refugee Rights Toolkit](#), a replicable, sustainable model of refugee rights advocacy that can be implemented by activists in first countries of refuge worldwide.*

### **PUBLICATION: comparative survey of refugee legal aid provision in Europe**

*The [European Council on Refugees and Exiles](#) and the [European Legal Network on Asylum](#) have published a [Survey on Legal Aid for Asylum Seekers in Europe](#). The survey provides a comparative overview of the provision of legal aid for asylum seekers in 19 countries across Europe, including information not only on the role and tasks of those advising, assisting and representing asylum seekers but also on related aspects of the asylum procedure. The research reveals positive developments in the provision of legal aid as well as restrictions on access to legal advice and representation in practice, and concludes with recommendations to improve the provision of legal aid for asylum seekers in Europe.*

### **RESOURCE: international refugee terminology thesaurus now online**

*Available in English, French and Spanish, the [International Thesaurus of Refugee Terminology](#), in print since 1988, is now available as an interactive and searchable online tool. Thesaurus editors hope that the online version will serve as a more efficient medium for identifying relevant indexing terminology and as a value-added mechanism for managing refugee- and forced migration-related information.*

### **RESOURCE: childhood records of Sudanese 'Lost Boys' now online**

*[Records](#) collected by the Swedish branch of [Save the Children International](#) to document the histories of orphaned Sudanese children at a refugee camp in Ethiopia have been unearthed from a warehouse, digitised, and are now [searchable online](#).*

*Discovered by a Duke University research scholar, the roughly 13,000 documents include family histories, the names of people [that Lost Boys] travelled with on their flight from war, the names of those who died along the way, medical information and observations about their well-being and photographs of themselves.' Four hundred of the personal histories have already been requested and sent out to surviving refugees. Creative use of these records might help in the reunification of families.*

### **USA: new report shows thousands of refugees denied protection due to filing deadline**

*The Heartland Alliance's National Immigrant Justice Center, Human Rights First and the Pennsylvania State University Center for Immigrants' Rights have released a new report, titled *The One-Year Asylum Deadline and the BIA: No Protection, No Process*. The report examines how the United States Board of Immigration Appeals, the highest level of administrative appeal available to asylum seekers, handles the one-year deadline for asylum applications, first enacted by US Congress in 1996. Based on the study of over 3,000 cases, the report shows how the deadline has resulted in the arbitrary denial of protection to refugees. The report comes as the immigration case backlog in the US continues to grow.*

### **KENYA refugee news**

*The Refugee Consortium of Kenya, set up in 1998 in response to the increasing complex and deteriorating refugee situation in Kenya, has released a new issue of its newsletter *Refugee Insights*. This issue highlights the Kenyan government's refugee registration processes, and introduces an initiative to reunite refugees with their loved ones.*

case law. If this was found to be the case, the same local authority would have to conduct a re-assessment. However, this was changed by the judgement of the Supreme Court in *R(A) v Croydon* and *R(M) v Lambeth*<sup>18</sup> which held that although age assessment remained the responsibility of local authorities, in the event of a challenge by judicial review, it would be for the High Court itself to determine, as a matter of judicial fact, whether the person is a child and how old he or she is.

Local authorities should still carry out *Merton*-compliant assessments of age, and indeed in this case Lady Hale outlined that 'the better the quality of initial decision making, the less likely it is that the court will come to any different decision upon the evidence'.<sup>19</sup> But where there is a dispute between the young person and the local authority following an age assessment, it falls to be determined by the High Court.

### **How will these cases work?**

To date there have been very few full age assessment hearings. In *R (F and Ors) v Lewisham and Ors*<sup>20</sup> Mr Justice Holman gave the following guidance:

- The question is not just whether the person is a child, but how old he is. Therefore, a challenge can still be brought against a decision that a person is a child who is older than he claims
- The case will go ahead if there is a realistic prospect that, at a fact finding hearing, the court will conclude that the person is younger than assessed by the local authority
- If paediatric evidence is adduced in an age dispute fact finding hearing, it may be tested by cross-examination. So too, social workers and doctors can be cross-examined
- Whether the claimant should be subject to cross-examination and whether any special measures (such as evidence by video link) should be put in place should be left to the trial judge.

### **Child witnesses in court**

Following the Supreme Court's judgement in *R(M)* and *R(A)*<sup>21</sup> and Holman J's guidance in *R(F and Ors)*<sup>22</sup> mentioned earlier, more age disputed children will undoubtedly now be required to give oral evidence in age assessment proceedings, cross-examined and subjected to challenges to their

evidence. This is potentially harmful to the child and care needs to be taken by lawyers to ensure that procedurally the claimant is treated as a child throughout such hearings. Until such time as the court finds the claimant to be a child or not, the presumption procedurally must be that the witness is treated as a child. As such, the claimant should be well prepared by their lawyer in advance of the hearing, accompanied by a responsible adult, always legally represented at court and only questioned by the parties and the court in a child-appropriate and sensitive way. General attacks on the claimant's personal testimony in order to undermine their credibility are inappropriate. Whilst a child should always be enabled to participate in proceedings concerning decisions about their lives, alternatives to the child giving oral evidence should always be fully considered and if these cannot be avoided, examination and cross-examination kept to a necessary minimum.

In the recent landmark (non-age assessment) Supreme Court judgement in the care proceedings case of *W (Children)*<sup>23</sup> which held that there cannot be an automatic

presumption against children giving evidence, Hale LJ in the *W (Children)* case said,

When the court is considering whether a particular child should be called as a witness, the court will have to weigh two considerations: the advantages that that will bring to the determination of the truth and the damage it may do to the welfare of this or any other child.<sup>24</sup>

Nor does it assume that an 'Old Bailey style' cross examination is the best way of testing that evidence. It may be the best way of casting doubt upon it in the eyes of a jury but that is another matter. A family court would have to be astute both to protect the child from the harmful and destructive effects of questioning and also to evaluate the answers in the light of the child's stage of development.<sup>25</sup>

It is important to remember that the underlying statutory basis of age assessment proceedings is s.17 of the Children Act 1989 and as such this is a civil, not criminal, law matter and the welfare of the child is paramount. Children must not be subjected to examination and court procedures akin to criminal trial.

#### **After the age assessment**

If a local authority decides that a young person claiming to be a child is over 18, they will not house or support the young person and he or she will be referred to the UKBA for support.

If it is decided that the young person is under 18, they will be provided with support under the Children Act 1989. Social workers should contact the UKBA if they want them to alter the accepted age to under or over 18. The UKBA will not house people as adults whose papers say that they are under 18 unless they also have written notification from the local authority to say that they have been assessed as being over 18.

Currently, there is confusion within the UKBA and within local authorities over what, precisely,

needs to be provided to establish that a 'Merton compliant' age assessment has been conducted. Both local authorities and UKBA need to review their current guidance on this issue, but informed consent should be obtained from the individual who has been assessed before any disclosure of personal information is made on the part of the local authority.

#### **Which local authority is responsible for conducting an age assessment?**

Local authority responsibility is tied to geographical boundaries. It is therefore possible that a separated child who has moved across these boundaries may seek age assessments from more than one local authority. In some cases assessments may not agree.

- A local authority approached for an age assessment should check whether any previous assessment has been carried out by another local authority. The host local authority should request a copy of the age assessment from the original local authority and base further action on its content
- In the event that no new evidence has been brought forward that was not considered at the original assessment, the issue should be treated as a complaint about the original assessment and referred to the local authority responsible for it
- In the event that new evidence has been brought forward, the host local authority should continue to reassess the age of the applicant, taking full account of all sources of information.<sup>26</sup>

#### **Conclusions**

The legal landscape has shifted significantly since the *Merton* judgement, with recent case law bringing the requirement for a judicial finding of fact about the age of a disputed child, and putting the child claimant centre stage in such

proceedings in a way which requires child-appropriate procedures and sensitive treatment of the individual claimant. The number of age disputed claims continues at a very high level (around 40 percent of all child asylum claims annually) and begs the question, to what extent are the difficulties of undocumented children in providing proof of their identity being deliberately used as a barrier to welfare and support services, as an exercise in casting doubt on the credibility of the child's asylum claim, increasing the removability of children wrongly treated as adults and acting as a deterrence measure to discourage the arrival of others? S.11 of the Children Act 2004 and s.55 of the Borders Citizenship and Immigration Act 2009 require local authorities and the UKBA to safeguard and promote the welfare of the child in carrying out their functions. Age assessments must be conducted in that light and not be used as an unnecessary obstruction or barrier to children receiving timely, appropriate care services and fair asylum decision making processes. In all cases the benefit of the doubt must be exercised wherever possible rather than subjecting a child to unnecessary and intrusive questioning and assessment processes. Social workers must consider that their professional obligation and primary duty is to the safety and the welfare of the child.

Lawyers must be robust in their challenges to age disputes, rigorously test local authority and UKBA procedures and the quality of evidence obtained in assessment processes in accordance with the developing case-law and guidance, recognise the severe limitations of an inaccurate 'science' of age assessment and always demand that the benefit of the doubt be given to the child client.

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References for this article are on p. 15.

## COMMENTARY: India's constitutional right to life for 'all persons' – a hope for refugees?

Page 3 of the May 2010 edition of this newsletter discussed a remarkable statement by Judge Markandey Katju of the Supreme Court of India: that although India has not ratified the Geneva Convention, his court has given refugees recognition under Article 21 of the Indian Constitution, which guarantees the right to life of 'all persons'. We asked *Bhairav Archarya*, independent advocate in India's Supreme Court and High Court on issues concerning refugee protection and author of last month's article '[The law, policy and practice of refugee protection in India](#)', for his thoughts on this statement, which would seem to offer a hope for all refugees in India. His comments follow.

Article 21 of the Indian Constitution does indeed protect the life and liberty of all persons on Indian territory, including foreigners and refugees, and disallows the deprivation of life and liberty without due process of law.

From around 1977, the Supreme Court began reinterpreting and expanding the scope of 'life' in Article 21. Hence, for example, in *Olga Tellis v Bombay Municipal Corporation (1985) 2 Supp SCC 51*, the Court held that evicting squatters without providing them adequate housing close to their place of livelihoods violated the right to life guaranteed by Article 21. Similarly, 'life' in Article 21 has been expanded to include the right to government-provided healthcare, government-provided primary education, the right to food, the right to clean air, the right to work and so on. Further, in *Vishaka v State of Rajasthan (1997) 6 SCC 241*, Chief Justice Verma further enhanced the scope of Article 21 by establishing that any international human rights instruments that are not specifically inconsistent with India's Fundamental Rights (Part III of the Constitution) must be read into Article 21 'to promote the object of the constitutional guarantee'.

### RESOURCES (Cont'd.)

#### **2009 Statistical Yearbook is published**

*Human Rights Education Associates (HREA)* is pleased to announce that the 2009 Statistical Yearbook has been published and is available for download on the [UNHCR statistics website](#). A chapter on specific conditions of refugees and internally displaced persons has been added to the yearbook, introducing case studies on selected protection and assistance-related activities. The yearbook also includes a special profile of Somali refugees and asylum seekers.

#### **International Religious Freedom Report 2010**

The United States State Department has published its *International Religious Freedom Report 2010*. The report could be helpful for refugee legal aid practitioners arguing cases on the grounds of religious persecution. Take a look at *Fahamu's Southern Refugee Legal Aid Network* for information on [apostacy or conversion](#).

#### **Resource for sexual orientation and gender identity for asylum claims in Canada**

The *Refugee Law Project* is available as a resource to refugee lawyers in the Toronto area who are handling Legal Aid, Refugee Law Office, or pro bono cases. The main qualifying criterion is that the cases must involve individuals seeking protection in Canada on [grounds related to their sexual orientation/gender identity](#). Especially compelling requests for assistance from outside Toronto will be considered on a case-by-case basis.

Since Article 21 equally applies to refugees, the expanded protections of Article 21 are theoretically available to refugees. I am not aware of any case where the Supreme Court has enforced Article 21 to direct the State to provide jobs or housing to refugees, although I am aware of a number of cases where the Court has enforced Article 21 for the benefit of Indian citizens. However, in the Chakma refugees case (*National Human Rights Commission v State of Arunachal Pradesh (1996) 1 SCC 742*) the Supreme Court held that despite local opposition, the State was bound to provide food and medicines to rehabilitation camps that housed Chakma refugees from Bangladesh.

So, in sum, Justice Katju is not wrong when he states that Article 21 will protect basic 'socio-economic rights' of refugees, but no such claim has been made so far in the Supreme Court that I am aware of. This is an area that is yet to be tested. However, past experience reveals that socio-economic assistance is only provided in mass influx situations, such as the Tibetan influx starting 1959, the Bangladesh influx in 1971 and the Sri Lankan influx through the 1990s. Finally, Justice Katju is right when he says that Article 21 will protect the 'physical right to life and liberty' of refugees on Indian territory. This is an absolute and non-derogable right.

## JAPAN: judgement on Rohingya disregards international human rights and refugee law norms

*This statement is reprinted from the Equal Rights Trust (ERT), which has also posted a translated transcript of the case. We thank the ERT and the Lawyers Group for Burmese Asylum Seekers in Japan for bringing the matter to our attention. For more information, contact Amal de Chickera, Head of Statelessness and Nationality Projects at the ERT.*

On 29<sup>th</sup> October, 2010, the Tokyo District Court, 38<sup>th</sup> Civil Division upheld the decisions of the Japanese Ministry of Justice and the Japanese Immigration Bureau to refuse the granting of refugee status to 18 Rohingya applicants and to issue them with deportation orders to Burma. The Court revoked the decisions of the Japanese Ministry of Justice and the Japanese Immigration Bureau with regard to two other Rohingya applicants. This is the first case the Equal Rights Trust has come across of a court of law in a democratic country ordering the deportation of Rohingya to Burma.

Rohingya are one of the most vulnerable, discriminated against and persecuted minorities in the world today. They have been arbitrarily stripped of their nationality by the Burmese government and are consequently stateless. In Burma, they face severe restrictions of movement (they require travel passes to move from one village to the next), marriage (they require state permission to marry), education and employment and are

particularly vulnerable to extortion, arbitrary arrest, imprisonment and forced labour.

The Court failed to recognise the strong evidence produced before it, which established that Rohingya as a social group are at heightened risk of persecution in Myanmar. The justification of the Court in ruling that 18 of the 20 applicants were not refugees demonstrates a lack of sensitivity to the ground realities suffered by Rohingya in Burma, and is a regressive step in refugee protection. The reasons given by the Court include:

1. During the mass exodus in 1992 when 250,000 Rohingya fled Burma, approximately 500,000 Rohingya remained in the country, indicating that the entire population did not suffer persecution.
2. Some of the applicants had not previously experienced forced labour in Burma, and had families who were living relatively peaceful lives in Burma.

This was despite evidence being submitted to establish that once returned to Burma, according to Burmese law, the 18 Rohingya would be imprisoned and subjected to forced hard labour in shackles. ERT research also demonstrates that Rohingya prisoners in Burma are likely to be targeted and beaten by prison guards and other prisoners.

The Court refuted the argument that the intended deportation of Rohingya back to Burma would be a violation of Japan's non-*refoulement* obligations under the 1951 Refugee Convention and Article 3 of the Convention Against Torture and Other

Cruel, Inhuman or Degrading Treatment or Punishment. Furthermore, the Court did not take into consideration Japan's obligations under Article 7 of the International Covenant on Civil and Political Rights. The UN Human Rights Committee in its General Comment 20 has stated that 'states parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or *refoulement*'.

The Court also rejected the argument that arbitrary deprivation of nationality constitutes persecution, despite growing international consensus in this regard. See for example, *EB (Ethiopia) v Secretary of State for the Home Department* [2007] EWCA Civ 809. See also Guy Goodwin-Gill, *The Refugee and International Law* [2nd edition 1996], page 70.

ERT understands that the 18 failed Rohingya applicants will be appealing this decision to a higher court in Japan. It is hoped that this regressive judgement will be overruled by Japan's higher courts.

### **Migration Policy Institute launches asylum information center**

*The Migration Policy Institute has launched a data centre for quickly getting numbers relating to asylum applications by country of destination and country of origin. The information centre can be found [here](#).*

## MALAYSIA: Combating human trafficking must not be at the expense of human rights

*This month Suara Rakyat Malaysia (SUARAM) released the following statement welcoming the affirmation of the pledge to combat human trafficking by the Australian and Malaysian governments during the visit of Australian Prime Minister Julia Gillard. Here SUARAM argues that though human trafficking must be dealt with in a comprehensive manner, too often such efforts result in the sidelining of the human rights of not just trafficking victims but also stateless persons, asylum seekers and refugees.*

SUARAM is concerned that the rights of the trafficked victims, asylum seekers, refugees and stateless persons are not respected in the Malaysian government's bid to counter human trafficking and smuggling. Some asylum seekers and refugees are forced to rely on smuggling networks in order to seek safety, because of their inability to leave their country legally or obtain a visa to enter a country to seek asylum. Some victims of trafficking are also refugees or stateless persons. However, their status as refugees and/or stateless persons are not always recognised and as such, they are subject to deportation back to their home country even when they have been temporarily protected in the Malaysian government's shelters for trafficked persons.

In the past year, however, increased crackdown on human traffickers has seen the detention of trafficked victims, some of whom are also asylum seekers and refugees. Most of these asylum seekers and refugees are

detained en route to Indonesia and Australia. Unfortunately, many victims of trafficking who were rescued are placed in immigration detention depots. Conditions of the Malaysian immigration detention depots are deplorable and completely unsuitable to house detainees, much less rescued victims of trafficking.

There is also evidence indicating that immigration officers are themselves complicit in human trafficking activities. Nine individuals, including seven immigration officers, were recently detained for their involvement in human trafficking. Astonishingly, the nine individuals were detained under the Internal Security Act 1960 (ISA) which provides for detention without trial, **instead of being charged** under the Anti-Trafficking in Persons Act 2007. SUARAM has repeatedly called for the abolition of the ISA and for those detained under the Act to be charged in an open court.

Any concerted effort to counter human trafficking and smuggling must not trample over the rights of those involved. As such, SUARAM calls for the following:

### *To the Malaysian Government:*

1. To respect the rights of trafficked victims by providing more safe houses for men, women and children instead of detaining them at detention centres. The cases of victims of trafficking should also be processed in a time efficient manner to prevent prolonging the stay of trafficked victims in safe houses
2. To provide UNHCR access to victims of trafficking who may be

asylum seekers, refugees and/or stateless persons

3. To ratify the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol

4. To release the nine individuals detained under the Internal Security Act 1960 immediately and charge them under the Anti-Trafficking in Persons Act 2007 according to due process.

### *To the Australian Government:*

Pay due attention to the need to respect human rights of victims of trafficking, asylum seekers, refugees and stateless persons even as it bids Southeast Asian countries to cooperate in tackling human trafficking and smuggling.

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| NEWS & INFORMATION LINKS   |
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| <a href="#">past newsletters: southern refugee legal aid network</a> |
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## SOUTH AFRICA: Refugees, asylum seekers can again access bank accounts

From 9<sup>th</sup> November, 2010, refugees and asylum seekers in South Africa are again able to access their bank accounts using their refugee and asylum seeker permits issued by the Department of Home Affairs. [Lawyers for Human Rights \(LHR\)](#) sought an order by consent in the South Gauteng High Court directing that such permits should be accepted.

In May 2010, the Financial Intelligence Service (FIC) issued a communication which had the effect of directing banks to no longer accept permits issued to refugees and asylum seekers under the Refugees Act. This led to a number of refugees being denied access to their previously existing accounts and their money being withheld by the bank. It also prevented many from opening new bank accounts. This policy had the danger of driving even more people into informal banking structures, contradicting the very objective and

purpose of the legislation. LHR brought this application on behalf of the [Consortium for Refugees and Migrants in South Africa \(CORMSA\)](#) and a number of individual clients to the High Court in Johannesburg in September. An interim order was granted on 9<sup>th</sup> September, 2010 which allowed their clients to access their accounts pending the outcome of the main application.

After negotiations, a settlement agreement was reached, including: possible amendment to the Financial Intelligence Control Regulations which will allow the use of refugee and asylum seeker permits when conducting banking transactions; a new FIC communication which will explain to banks that refugee and asylum seeker permits may be used for financial transactions and how to conduct verification of their authenticity; and a verification process to be created by the Department of Home Affairs with the requirement that authorisation may not take longer than two business days.

A similar application is pending in the Cape High Court through the [University of Cape Town Law Clinic](#). LHR is pleased with the results of this application which showed willingness on the part of government to appreciate the vulnerable position in which refugees and asylum seekers find themselves and to not deny them the tools they need to integrate and support themselves. For more information, please contact [Lawyers for Human Rights](#).

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4. [2003] 4 All ER 280.
5. *Merton*, para 28.
6. *Merton*, para 21.
7. *Merton*, para 37.
8. *Merton*, para 45. Also *A v London Borough of Croydon, WK v Kent Borough Council* [2009] EWHC 939 (Admin), para 81 and *R(on the application of NA) v London Borough of Croydon*, [2009]. EWHC 2357 (Admin), para 52.
9. *Merton*, para 56 and *R(on the application of NA) v London Borough of Croydon*, [2009] EWHC 2357 (Admin), para 52.
10. See *A v London Borough of Croydon, WK v Kent Borough Council* 2009 EWHC 939 (Admin), 8 May 2009, para 44.
11. [2009] EWHC 2357.
12. Para 50.
13. *R(PM) v Hertfordshire County Council*, [2010] EWHC 2056 (Admin), para 88.
14. See 10 above para 9.
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16. See *R(I and O) v SSHD* [2005] EWHC 1025.
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18. See *A v London Borough of Croydon, WK v Kent Borough Council* 2009 EWHC 939 (Admin), 8 May 2009.
19. [2009] 1 WLR 2557.
20. Para 33.
21. [2010] 1 FLR 1463.
22. See 19 above.
23. See 21 above.
24. *Re W (Children)* [2010] UKSC 12.
25. *Re W* at para 24.
26. *Re W* at para 27.
27. *Joint Working Protocol on age assessment* between Immigration and Nationality Directorate of the Home Office (IND) and Association of Directors of Social Services (ADSS), 2006.