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# Women's Asylum News

## Women's Project at Asylum Aid

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## Women's Asylum Charter: Two years on

*Debora Singer, Policy and Research Manager at Asylum Aid, writes:*

*Two years after the launch of the Charter of Rights of Women Seeking Asylum, a new report shows how much progress has been made towards a gender-sensitive asylum system, but also how much work remains to be done.*

The *Charter of Rights of Women Seeking Asylum 2 years on: impacts and actions* was published at the beginning of July to mark the 2<sup>nd</sup> anniversary of the *Charter* being launched.

The *Charter* provides a framework for work on women's asylum issues across the UK. Specifically it calls on the UK Border Agency (UKBA) to commit to treating women seeking asylum with fairness, dignity and respect. It has now been endorsed by more than 200 organisations, including Liberty, Amnesty International, and Oxfam.

The new impact report brings together many of the *Charter's* actions and impacts in one place to take stock of current progress. It is through the work of many individuals and organisations that progress

is being made and the report demonstrates the power of working together. It is hoped that this will further motivate current and future *Charter* supporters. In addition it is hoped that the UKBA will use it to encourage the developments that are beginning to emerge in their work to create a gender-sensitive culture.

## Actions

The *Charter* provides a unique model of partnership working. As a network of organisations with a common interest, it works informally rather than as a formal coalition. Although it is coordinated by the Women's Project at Asylum Aid, endorsers are free to banner their work under the *Charter* as they see fit. The *Charter* has a clear individual brand and *Charter* endorsers can use the Women's Asylum Charter logo without seeking permission. Despite the looseness of this arrangement, it is the framework that the *Charter* provides that makes the work for a gender sensitive asylum system so effective. It also makes it possible to involve organisations in the *Charter* processes within a very short timeframe.

Actions from all over the UK which are cited in the report include:

- projects that support women seeking asylum
- projects that enable women to contribute to policy discussions and have a voice in policy developments
- tailoring advice services to women's particular needs
- producing reports and policy briefings setting out women's needs
- advocacy in different regions, for example for childcare and for female interviewers
- advocacy to obtain earlier financial support for women who are pregnant

The overview of the actions detailed in the new report demonstrates that the *Charter* has enthused and motivated a wide range of people across the whole of the UK.

## Every Single Woman campaign

On 30<sup>th</sup> November 2009 the Every Single Woman campaign was launched as part of the *Charter*. Its aim was to bring ministerial pressure to bear on the UKBA as *Charter* supporters were concerned at the lack of progress being made.

The Every Single Woman campaign focuses on the disparity in the treatment of women who are seeking asylum compared with women settled in the UK. For example, there is a marked disparity between the experiences of female victims of sexual and domestic violence going through the criminal justice process in the UK and that of women asylum seekers who have experienced the same crimes abroad and are going through the asylum process in the UK. Whilst the purposes of the two processes are not the same – one is to investigate a crime and the other is to determine refugee status – the sensitivities required are similar. To rectify this disparity, the campaign argues, the lessons learned by the criminal justice system needs to be transferred into the asylum system.

The Every Single Woman campaign was launched just after the cross-governmental strategy on violence against women was published. "Together We Can End Violence Against Women and Girls" listed the many reforms brought in through the criminal justice system.<sup>1</sup> Although the new

<sup>1</sup><http://webarchive.nationalarchives.gov.uk/20100418065544/http://www.homeoffice.gov.uk/documents/vawg-strategy-2009/index.html>.

policies are still not implemented consistently, there has clearly been progress as nearly 100 pages are devoted to these reforms. Meanwhile the section on women asylum seekers covers less than a page and includes no plans for future action.

A similar disparity has been identified in new research by Rights of Women which concludes “*Of all the public authorities [including the police and Crown Prosecution Service] we have greatest concern about the UKBA ... [which] has not adopted a gender-sensitive approach in its responses to women at risk of or experiencing violence*”.<sup>2</sup>

To overcome this disparity, the Every Single Woman campaign stated that a change of culture designed to produce a genuinely gender sensitive asylum system is urgently needed to ensure that women seeking asylum receive a comparable standard of treatment to women in similar situations settled in the UK.

## Impact

The key practical impact of the *Charter*, which follows a campaign which had already been in progress in advance of the *Charter's* launch, is one that has an immediate benefit for women seeking asylum. This is the fact that UKBA is now providing childcare during asylum interviews in three of its seven regions. This prevents women having to choose between telling of their traumatic experiences in front of their children or withholding information that could be relevant to their asylum claim. *Charter* endorsers continue to lobby UKBA on this issue at both a national and a regional level.

Six weeks after the Every Single Woman campaign was launched, two major national developments regarding gender issues took place within the UKBA.

The first recommendation in the *Charter* states that the UKBA should appoint a member of the senior management team as a Gender Champion to ensure that there is a strategic overview on women's issues. In January 2010, Lin Homer, Chief Executive of the UKBA agreed to do this and appointed the Head of Immigration, Matthew Coats to this role.

Also in January 2010 terms of reference were agreed for a process of engagement between UKBA officials and *Charter* endorsers focusing on operational issues relating to women seeking asylum. It involves a three-pronged approach covering the asylum determination system, support and detention. Active engagement is underway with meetings being held between appropriate UKBA staff and *Charter* endorsers with relevant expertise.

It is easy to attribute a campaign's influence when the wording of a new initiative comes directly from the campaign material. This was the case with a motion passed unanimously at the TUC Women's Conference.<sup>3</sup> There was no liaison about this motion until just before the conference. The way is now open for us to work with the TUC Women's Section to help progress their resolution calling for UKBA to provide a gender sensitive asylum system.

<sup>2</sup> [http://www.row.org.uk/pdfs/Measuring\\_up\\_A\\_report\\_by\\_Rights\\_of\\_Women.pdf](http://www.row.org.uk/pdfs/Measuring_up_A_report_by_Rights_of_Women.pdf).

<sup>3</sup> See Women's Asylum News, Issue 91, April 2010, page 18, [http://www.asylumaid.org.uk/data/files/publications/128/WAN\\_AprilFinal.pdf](http://www.asylumaid.org.uk/data/files/publications/128/WAN_AprilFinal.pdf).

## Key impacts

UKBA introduces childcare facility in Cardiff, Leeds and Glasgow
UKBA creates role of Gender Champion
UKBA and <i>Charter</i> endorsers agree terms of reference for engagement process on operational issues

## What next for the *Charter*?

Given these developments, *Charter of Rights of Women Seeking Asylum 2 years on: impacts and actions* concludes that now is a good time to look back to see how we have got to this point, and to renew our efforts to ensure that the progress made so far is capitalised upon. The UKBA has shown that it does take an interest in the *Charter's* aim of a gender sensitive asylum system. This provides an opportunity for women seeking asylum and those of us who work alongside them, to ensure that the current enthusiasm and good intentions are not just rhetoric. Instead they must be converted into both strategic and practical changes that move towards providing an asylum system that is genuinely gender sensitive. Surely every single woman deserves this.

*Charter of Rights of Women Seeking Asylum 2 years on: impacts and actions*

<http://www.asylumaid.org.uk/data/files/publications/133/WomensAsylumCharter2Yearson.pdf>.

For more information and to endorse the *Charter* go to: [www.asylumaid.org.uk/charter](http://www.asylumaid.org.uk/charter).

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## Legal Issues

### Claims for Asylum Based on Sexual Orientation: Reasonably Tolerable and Discretion Test No Longer Applicable

*HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department*, [2010] UKSC 31, 7 July 2010, Supreme Court<sup>4</sup>

This case concerns the appeals of two homosexual men from Iran and Cameroon. They had claimed asylum in the UK on the basis that they had a well-founded fear of persecution on account of their sexual orientation. Both men had been refused asylum by the Secretary of State for the Home Department (SSHD) and their subsequent appeals before the Tribunal and the Court of Appeal were refused. Before the Court of Appeal, the SSHD accepted that practising homosexuals are a particular social group under the Refugee Convention. However, the SSHD also argued that the gay men could reasonably be expected to tolerate the need to be discreet on return to their country of origin and therefore were not in need of international protection. The Court of Appeal applied the test of “whether discretion was something that the applicant could reasonably be expected to tolerate, not only in the context of random sexual activity but in relation to matters following from, and relevant to, sexual identity in the wider sense”. HJ and HT both argued that importing this test into the Refugee Convention was wrong and that they should not be required to suppress or surrender their protected identity to avoid persecution. Although the appeals of HJ and HT were brought by two gay men, Lord Rodger specified that the approach set out in this ruling was equally applicable to lesbians.

The Supreme Court unanimously held that to pretend that one’s sexual orientation or sexuality does not exist or that the behavior by which it manifests itself can be suppressed is to deny that person’s fundamental right to be who they are. Lord Hope said that the Court of Appeal in the case of *J v Secretary of State for the Home Department* should have considered that it was “wrong to say that an applicant for protection was “expected” to live discreetly if it was intended as a statement of what the applicant must do”. Lord Hope clearly stated that it was a fundamental error to refuse asylum to an applicant on the basis that it would be reasonable to expect him to be discreet even if he is unwilling or unable to do so. The Lords accepted the proposition put forward by the appellants that what should be considered is not what the applicant could do if returned but what he would do. The Supreme Court thereby rejected the ‘reasonably tolerable’ test established by the Court of Appeal in *J v Secretary of State for the Home Department*.

The Lords considered jurisprudence from New Zealand, Australia, Canada and the USA and found that what was missing in the UK was clear and consistent guidance as to the way in which the fact-finding Tribunals should consider claims for asylum based on sexual orientation. Lord Rodger and Lord Hope set out a two stage process for decision-makers to consider such claims.

The first stage is to consider whether the applicant is gay. The second stage includes a series of questions related to what the situation will be on return. The questions in the second stage relate to how the applicant will behave if returned and how others will react to that behaviour.

More specifically:

- 1) Is there a risk of persecution for gays who live openly in the country of origin?
- 2) What would the applicant do if returned to his country of origin? In assessing how the applicant will behave on return, “he cannot and must not be expected to conceal aspects of his sexual orientation which he is unwilling to conceal, even from those whom he knows may

<sup>4</sup> <http://www.supremecourt.gov.uk/news/judgments.html>.

disapprove of it". What is reasonably tolerable to conceal is not part of this test. If the applicant would live openly and thereby be exposed to a real risk of persecution, s/he has a well-founded fear of persecution.

- 3) If the applicant would in fact live discreetly, the decision-maker must consider *why* he would do so.
- 4) If the applicant chooses to conceal part of his sexual identity on return in response to social pressures or for cultural or religious reasons and not due to a fear of persecution then s/he will not be granted asylum. Lord Hope expressly stated that the applicant should not expect to live a life as openly as s/he does in the UK as the purpose of the Refugee Convention is not to guarantee to everyone the same human rights standards as in the country of refuge.
- 5) If the applicant is likely to conceal his/her sexual identity due to a fear of persecution, or because the fear of persecution is a material reason for living discreetly, it will be necessary to assess whether the fear is well-founded and if it is, asylum must be granted.

The Supreme Court concluded that the Tribunal would have come to a different determination in the cases of HJ and HT had they applied the test as set out above. The appeals have therefore been remitted for reconsideration by the Tribunal in light of the guidance given above.

Lord Rodger, in agreement with Lord Hope accepted the appellants' submissions that the test of discretion and reasonably tolerable as devised in the case of *J v Secretary of State for the Home Department* and adopted by the Court of Appeal in the appellants' cases was incompatible with the definition of "refugee" in the UN Refugee Convention and that the test was based on a misunderstanding of the decision in the High Court of Australia in *Appellant S395/2002 v Minister for Immigration*. The High Court of Australia clearly stated in that case that "persecution does not cease to be persecution for the purpose of the Convention because those persecuted can eliminate the harm by taking avoiding action within the country of nationality" and that "it would undermine the object of the Convention if the signatory countries required them to modify their beliefs or opinions or to hide their race, nationality or membership of particular social groups before those countries would give them protection under the Convention".

Lord Rodger underlined the fact that by refusing asylum to a gay person on the basis that the person could live discreetly in his/her country of origin gave the person no real choice on whether to act discreetly or not but compelled them to do so. Lord Rodger was also concerned about distinguishing between persons who would choose to be discreet on account of social pressure who should not be granted asylum if they did not have a well-founded fear of persecution due to their sexual identity and those who chose to be discreet because they had a well-founded fear of persecution. Lord Rodger specified however that an applicant, who chose to live discreetly on return to his country of origin due to multiple factors, including a wish to avoid social pressure but also due to a fear of persecution, would still be entitled to refugee protection. He also said that "so far as the social group of gay people is concerned, the underlying rationale of the Convention is that they should be able to live freely and openly as gay men and lesbian women, without fearing that they may suffer harm of the requisite intensity or duration because they are gay or lesbian".

The need for applicants to behave discreetly if returned home is according to Lord Rodger "prima facie, an indication that there is indeed a threat of persecution to gay people who live openly". It is therefore necessary for decision-makers to consider why an applicant would act discreetly if s/he was returned home. By assuming that a person could reasonably tolerate living discreetly in his/her home country, decision-makers failed to consider whether there was a real risk of persecution to those who did not live discreetly. The Court of Appeal was wrong to adopt an approach to claims for asylum based on sexual identity which considered whether the requirement to live discreetly amounted to persecution as opposed to considering whether the sexual orientation of the applicant would place him/her at risk of persecution. The requirement to live discreetly is further unacceptable because it is

inconsistent with the purpose of the Refugee Convention because it requires the applicants to deny or hide precisely the innate characteristic which forms the basis of their claim for persecution.

Looking at all the aspects of life a gay person would have to give up in order to live discreetly to avoid persecution, Lord Rodger stated that it is not necessary for an applicant to show that his/her homosexuality plays a particularly prominent part of his/her life if s/he has a well-founded fear of persecution because of a particular characteristic that s/he cannot or should not be required to change. The test was also found to be unworkable because there was no benchmark against which to establish whether living discreetly was reasonably tolerable.

Sir John Dyson SJC reasoned that even if an applicant returns home and conceals his sexual orientation by living discreetly “the threat of serious harm and the fear of it will remain despite the avoiding behaviour”.

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## Women in the Ivory Coast: Particular Social Group, State protection and Internal Relocation

*MD (Women) Ivory Coast CG* [2010] UKUT 215 (IAC), July 2010, Upper Tribunal, Immigration and Asylum Chamber<sup>5</sup>

MD, a 22 year old woman from the Ivory Coast, appealed against the decision of the UK Border Agency and the Tribunal to refuse her claim for asylum. The appellant asserted that she feared persecution by her family, her tribe and the authorities because of her adultery.

The Tribunal found that women in the Ivory Coast are capable of being members of a particular social group and that the risks they may suffer from FGM, domestic violence and forced marriage are sufficiently serious to amount to persecution in the absence of state protection. The Tribunal considered, however, that the risk was not present throughout the country and much less likely in urban areas such as Abidjan.

In assessing the appellant's situation, the Tribunal took as a starting point that she was from Abidjan where she had spent most of her life before coming to the UK and that Odienne, where she was circumcised and forcibly married, was not her home area. Although the appellant had already been the subject of FGM, the Tribunal found that her opposition to the practice and to her arranged marriage was likely “to have aroused the antipathy of the community as a whole but only in the locality where these actions took place”. The Tribunal also found that if she returned to Odienne and was subjected to domestic violence she would be unlikely to receive police protection but only if they saw the physical violence as such. In other words, if the police did not consider the “offending conduct” as domestic violence, the Tribunal saw no reason why she would not receive protection. This would not be the case in Abidjan where domestic violence is much less prevalent and less tolerated.

The Tribunal was cautious in accepting the expert witness's evidence as it concluded that her “direct knowledge of matters relating to the Ivory Coast was in fact limited”. The Tribunal considered that much of the information provided in the report was second-hand information and that she had misled her source as to the purpose for which the information was sought and that this had “prejudiced the integrity of the information provided”. The Tribunal also considered that the two reports she had produced were inconsistent and further undermined the reliability of her evidence. The Tribunal, on

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<sup>5</sup> <http://www.tribunals.gov.uk/ImmigrationAsylum/utiac/CaseLaw/CaseLaw.htm>.

the other hand, placed significant weight on the evidence provided in two letters from an anonymous Political Officer at the British Embassy in Abidjan.

The Tribunal did not accept that the appellant could be prosecuted by the authorities for adultery because she had been forced into a customary marriage and not marriage by ordinance. The Tribunal therefore found that under the national legislation of the Ivory Coast, she could not be the subject of penalties under the Penal Code. The Tribunal also found that although her family forced her into a customary marriage whilst she was a minor, they could not prevent her from repudiating the marriage. The claim that the appellant would be persecuted by her Dioula tribe was not accepted by the Tribunal either because the evidence provided by the appellant and the expert on customary punishments of adulterous women was rejected. On the basis of the FCO letter and the US Department of State, the Tribunal concluded that there were no reported incidents of physical punishments of adulterous women. Further, the Tribunal did not consider that a single woman with an illegitimate child would be at risk of persecution in the Ivory Coast. The Tribunal concluded that “the risk faced by the appellant is limited to the personal animosity felt by her husband and his family towards the appellant’s conduct in Odienne, a place where she would not have others to support or protect. We are not satisfied this ill-will will result in violence but we do consider that it is likely to result in ostracism and marginalisation”.

On the country conditions, the Tribunal found that the “overall picture is one of continuing stability” in the Ivory Coast. On the consideration of the country of origin information before it, the Tribunal asserted that the Operational Guidance Notes (OGNs) prepared by the UK Border Agency should not be regarded as country information because they are not produced by the Country of Information Service and are in essence policy statements. The Tribunal specified that where the OGN cites background material it should be evaluated in the normal way and where the contents of the OGN are a statement of policy it should not be regarded as country information.

The Tribunal found that FGM was almost universal in some areas of the Ivory Coast but that it cannot be said that all women in urban areas face FGM. Further, where the parents of a child oppose the practice there was no evidence before the Tribunal of physical coercion against the wishes of the parents in order to enforce FGM on their daughters. The Tribunal found that the State was unable or reluctant to enforce the laws protecting women against discrimination and harm and many aspects of life such as domestic violence, education, within the legal system and employment.

In terms of internal relocation, the Tribunal found that single women may be confronted with some difficulties when relocating to Abidjan or other urban centres but that this would not as such create a risk of persecution or serious harm. Single women with a child may find that problems are greater but the Tribunal concluded that Abidjan could provide an environment where those without a network of male or family support would be able to lead a relatively normal life without a risk of destitution or being forced into beggary or prostitution. The Tribunal emphasised the wide variation in attitudes towards women in different parts of the country, in particular between the traditional rural communities in the North and Central regions and Abidjan and other urban cities. This attitude impacts upon the risk faced by women of FGM, forced marriage, domestic violence, the effects of adultery and discrimination. The Tribunal therefore concluded that if a woman faces one of those risks in a particular area, the state is unlikely to offer her protection but internal relocation may be possible without “undue hardship”. The Tribunal said that due to the wide variation in different areas of the country, decision makers must consider applications on a case-by-case basis. In any case, the Tribunal did not consider that the appellant in this appeal was relocating because they considered that Abidjan is the area she came from. The Tribunal did find however, that the appellant “would suffer isolation and stigmatisation to render her life [in Odienne] intolerable such as to amount to serious harm” and thereby a breach of her Article 3 ECHR rights.

The Tribunal did not accept that there was a risk that her father who lives in Abidjan would become aware of her whereabouts. Assuming that her father was able to trace her if she returned to Abidjan, the Tribunal was not satisfied that he would be able to produce enough evidence for her to be prosecuted for adultery in the event that she could legally be prosecuted as she had had a customary



marriage and there was insufficient evidence to demonstrate that there was customary punishment for adultery in the area around Odienne or in Abidjan. There was no evidence either of a system of "honour killings" and even less evidence that her father or her husband had the means to kill her. The Tribunal therefore concluded that the appellant did not have a well-founded fear of persecution in the Ivory Coast.

The Tribunal did not consider that her return to Abidjan with her four year old son would be in breach her family life under Article 8 ECHR as they would be returning together. The Tribunal also considered that although her removal to the Ivory Coast would be in breach of her right to private life under Article 8 ECHR, her removal was proportionate to the legitimate aim of maintaining effective immigration control. Her appeal was dismissed on asylum, humanitarian protection and human rights grounds.

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## European Court of Human Rights: Breach of Article 3 ECHR on return to Iran

*Ahmadpour v. Turkey* (no. 12717/08), 15 June 2010<sup>6</sup>

The applicant, Latife Ahmadpour (Derya Neverdi), is an Iranian national who lives in Turkey. Mrs Ahmadpour's children were placed in the custody of her ex-husband when she divorced him in Iran. In October 2005 she came to Turkey with her children without the consent of her ex-husband. She had fled Iran because of the violence her husband was subjecting her and her children to. In September 2006, Mrs Ahmadpour married an Iranian national who had converted to Christianity and she also converted. The applicant had applied to the national authorities and the UNHCR for asylum. Both UNHCR and the Turkish authorities refused her claim for asylum.

However, in March 2008, the UNHCR decided to re-open her case. The UNHCR found her credible and accepted that her children had been sexually and physically abused by their father, that she had been the victim of domestic violence and that she had escaped Iran to protect herself and her children. The UNHCR's report also emphasised that her actions were punishable under Iranian law. The fact that she had converted to Christianity and that she had given birth to a daughter that had been baptised were all relevant factors in finding that she came within the definition of a refugee. The UNHCR found that she had a well-founded fear of persecution on the grounds of her political opinion, her membership of a particular social group and her religion.

Mrs Ahmadpour and her children were granted six months residence permits by the Turkish authorities to allow the children to continue their education. The residence permits expired on 7 April 2010. The applicant's deportation proceedings before the Ankara Administrative Court and her request for renewal of her residence permit were still pending when the case was heard before the European Court of Human Rights. The Court however agreed to consider her application because it considered there was still a risk of removal to Iran even if her application for a renewed residence permit was still pending.

The Court gave due weight to the findings of the UNHCR regarding the risks the applicant may face if returned to Iran because the UNHCR had the opportunity to assess her credibility and the veracity of her account when the Agency interviewed her. In light of the UNHCR's decision the Court found that Turkey would be in breach of Article 3 ECHR if the applicant was returned with her children to Iran.

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<sup>6</sup> <http://www.echr.coe.int/ECHR/EN/Header/Case-Law/HUDOC/HUDOC+database/>.

The Court also found Turkey to be in breach of Article 5 ECHR on account of the applicant's unlawful detention in the Kirklareli Foreigners' Admission and Accommodation Centre between February 2008 and October 2009 "in the absence of clear legal provisions establishing the procedure for ordering and extending detention with a view to deportation and setting time-limits for such detention".

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## Court of Justice of the European Union: Protection for Stateless Palestinian Refugees under the Qualification Directive

*Nawras Bolbol v Bevándorlási és Állampolgársági Hivatal*, 17 June 2010 (Case C-31/09)<sup>7</sup>

In June 2007, Ms Bolbol applied for asylum in Hungary on the basis of the unsafe situation in the Gaza Strip as a result of the daily clashes between Fatah and Hamas. She also relied on the fact that she was a Palestinian residing outside of the United Nations Relief and Works Agency for Palestine Refugees in the Near East - UNRWA's area of operations. The Office for Immigration and Citizenship (BAH) had refused her application for asylum on the basis that the second paragraph of Article 1D of the Refugee Convention did not confer automatic protection and subsequently found, after examination, that she did not meet the refugee definition and was therefore not entitled to refugee status.

The Budapest Municipal Court in Hungary made a reference for a preliminary ruling to the Court of Justice of the European Union on the interpretation of Article 12(1)(a) of the Qualification Directive<sup>8</sup> after the Office for Immigration and Citizenship (BAH) had refused refugee status to Ms Bolbol, a stateless person of Palestinian origin. The reference related to the interpretation of an article in the Qualification Directive which is based on Article 1D of the 1951 UN Refugee Convention that provides:

*This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.*

*When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.*

Article 12(1)(a) of the Qualification Directive seeks to implement this provision and provides, mirroring Article 1D, that if such protection or assistance ceases without definitive settlement a person shall, *ipso facto*, be entitled to the benefits of this Directive.

The Budapest Municipal Court made a reference to the Court of Justice of the European Union requesting clarification on the meaning of receiving protection or assistance and cessation and whether a person falling within the provision was automatically entitled to international protection or merely fell within the scope of the Qualification Directive and was to be the subject of an examination for refugee status or subsidiary protection.

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<sup>7</sup> [http://curia.europa.eu/jcms/jcms/j\\_6/](http://curia.europa.eu/jcms/jcms/j_6/).

<sup>8</sup> Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

Ms Bolbol argued that a person who was registered with or entitled to be registered with UNRWA, who resided outside UNRWA's area of operation and who could not be expected to return there must automatically be entitled to the benefits of the Directive and recognised as a refugee.

The Court of Justice of the European Union reiterated that the UN Refugee Convention forms the cornerstone of the international legal regime for the protection of refugees and that the Qualification Directive was adopted as guidance for EU member states in the application of the Refugee Convention.<sup>9</sup> The Court also emphasized that the Qualification Directive must be interpreted in light of its general scheme and purpose while respecting the Refugee Convention and other relevant treaties, in particular the Charter of Fundamental Rights of the European Union.<sup>10</sup>

The Court of Justice of the European Union found that Ms Bolbol could in principle come within the provision of Article 1D of the Refugee Convention and therefore Article 12(1)(a) of the Qualification Directive because she was eligible to receive protection or assistance from UNRWA as a "non-registered person displaced as a result of the 1967 and subsequent hostilities". The Court therefore stated that the UK is wrong in only applying Article 1D Refugee Convention/Article 12(1)(a) Qualification Directive to Palestinians displaced as a result of the 1948 conflict because they were receiving UNRWA assistance and protection at the time when the Refugee Convention was adopted in 1951. As the Refugee Convention was amended by the 1967 Protocol to include new categories of refugees other than those who became refugees due to "events occurring before 1 January 1951", Palestinians who have been displaced after 1948 may still be covered by the provisions.

However, the Court ruled that in light of the clear wording of Article 1D of the Refugee Convention only those persons who have actually availed themselves of the protection or assistance of UNRWA are covered by the provision. The Court found that it is not sufficient for a person to be eligible for such protection or assistance. Receiving protection or assistance can be demonstrated through registration with the Agency but registration is not a condition as such assistance may be provided without registration. The court specified that persons who had not actually availed themselves of protection or assistance from UNRWA may still have their claim for asylum examined under the Qualification Directive, in the conventional manner.

As Ms Bolbol had not actually availed herself of protection or assistance from UNRWA, the court did not find it necessary to consider the other questions referred by the Budapest Municipal Court. Therefore, it is presently unclear whether and in what circumstances, as a matter of law, a Palestinian who was previously in receipt of UNRWA assistance and who is in an EU member state to which the Directive applies,<sup>11</sup> is entitled to the benefits of the Qualification Directive or whether the person must first establish that they are entitled to refugee status or subsidiary protection as reflected in Article 2(c) or (e) of the Directive.

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<sup>9</sup> See Judgment of the Court of Justice of the European Union (Grand Chamber) of 2 March 2010 (references for a preliminary ruling from the Bundesverwaltungsgericht - Germany) - *Aydin Salahadin Abdulla (C-175/08)*, *Kamil Hasan (C-176/08)*, *Ahmed Adem, Hamrin Mosa Rashi (C-178/08)*, *Dler Jamal (C-179/08) v Bundesrepublik Deutschland*.

<sup>10</sup> Ibid.

<sup>11</sup> The Qualification Directive does not apply in Denmark.

## National News

### Ministers' responses to parliamentary questions asked by Lords and women's claims for asylum

#### Nationality, Immigration and Asylum Act 2002

Question asked by Lord Avebury:

To ask Her Majesty's Government whether the expression "any other attribute or circumstance that the Secretary of State thinks appropriate" in Section 94(5C)(h) of the Nationality, Immigration and Asylum Act 2002 covers sexual orientation.[HL167]

Response by Minister of State, Home Office (Baroness Neville-Jones):

The powers in Section 94(5C) of the 2002 Act to certify an asylum or human rights claim as clearly unfounded have to date been used only in respect of gender. The Government have no plans to use the powers in Section 94(5C) to designate any state or part of a state in respect of people whose asylum or human rights claims are based on their sexual orientation.

To access the question see:

<http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/100614w0005.htm#1006144000829>

#### Asylum Seekers

Question asked by Lord Hylton:

To ask Her Majesty's Government whether they will request the UK Border Agency to take account of the report by the Centre for the Study of Emotion and Law when considering the experiences in this country of asylum applicants; and whether they will change the rules for assessing applicants who have suffered torture or sexual abuse.[HL587]

Response by the Minister of State, Home Office (Baroness Neville-Jones):

The UK Border Agency is aware of the work of the Centre for the Study of Emotion and Law and that it has published a number of reports, most recently *The Psychology of Seeking Protection* in 2009. This report focused on existing psychological models that might be of relevance to the proceedings of refugee law and asylum decision-making.

This report will not lead directly to any rules changes concerning victims of torture or sexual abuse within the asylum system being made by UKBA since it was, on the centre's own admission, tentative and pending further research. UKBA nevertheless remains open to suggestions for improvements.

To access the question see:

<http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/100712w0001.htm#10071230000830>.

## International News

### Asia: Human trafficking on the rise

Thailand, Vietnam and Laos have all been added to the US Department of State human trafficking watch list. They have now been added to the Tier 2 Watch List together with Afghanistan, Bangladesh, the Philippines and Sri Lanka. The countries on the list are not making enough effort to prosecute and convict traffickers.

To read full article: [Http://www.irinnews.org/report.aspx?ReportID=89515](http://www.irinnews.org/report.aspx?ReportID=89515).

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### Indonesia: Discriminatory laws against women

Rights activists say that laws on decency in Aceh, Indonesia discriminate against women. Aceh is the most conservative region of Indonesia where most women must wear the veil and clothing that covers arms and legs. The government recently banned shops from selling tight dresses and were distributing long skirts to women wearing tight trousers or denim jeans. Islamic courts in Aceh deal with family and criminal cases and lawmakers have recently proposed a law that provides for adulterers to be stoned to death. There have been serious concerns about the vice and virtue patrol empowered to ensure compliance with Sharia law. Three laws prohibiting alcohol, gambling and illicit relations between men and women with punishments by caning and fining are reported to be applied arbitrarily. Women are disproportionately the target of these laws and their application in practice.

To read full article: [Http://www.irinnews.org/report.aspx?ReportID=89383](http://www.irinnews.org/report.aspx?ReportID=89383).

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### Kenya: Women with HIV are disproportionately stigmatised

A report recently published has shown that people living with HIV in Kenya are associated with immoral behaviour according to ActionAid International, an anti-poverty agency, and Women fighting AIDS in Kenya, a local NGO. This belief has tended to perpetuate the stigma against people infected with the virus. The report also found a high degree of stigmatization against women and children living with HIV. However, the latest Kenya AIDS Indicator Survey showed that HIV spread fast in stable and long-term relationships as well. The report showed that women bear the brunt of the stigma and many had been abandoned by their husbands after testing positive.

To read full article: [Http://www.plusnews.org/report.aspx?ReportID=89316](http://www.plusnews.org/report.aspx?ReportID=89316).

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### Nepal: Girls sold into servitude

A local NGO Friends of Nepal has been highlighting the plight of girls sold into servitude. The Nepalese Youth Opportunity Foundation has explained that the practice of selling daughters into servitude - "kamlari" - is generally done through a middleman. The girls are exposed to undernourishment, slave-like conditions, physical and mental ill-treatment. The organizations rescued almost 10,000 kamlaris although estimates suggest there may be 20,000 around the country. Many were younger than 14 years old.

To read full article: [Http://www.irinnews.org/report.aspx?ReportID=89364](http://www.irinnews.org/report.aspx?ReportID=89364).

## **Senegal: Widespread sexual violence against young girls**

UNICEF found in a study that silence by girls' families on sexual violence contributed to a culture of impunity. A report concluded that violence was widespread against girls aged 10 to 13. The taboo surrounding sexual violence and the importance of family honour has led to the problem not being addressed. Even when the parents react, they often decide to settle the matter within the family or ask a traditional local leader to mediate. Rape cases are rarely pursued in court due to the family's fear of social stigma and the wish to ensure that a girl will get married. UNICEF said that the lack of education about sexual violence and children's rights was a crucial factor in the prevalence of the problem.

To read full article: <http://www.irinnews.org/report.aspx?ReportID=89471>.

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## **Sierra Leone: Impunity in rape cases continues**

In Sierra Leone, the high level of rape and sexual violence that resulted from the civil war from 1991 to 2002 has continued into peace time. In 2007, the government passed a law making rape and sexual violence, including within the marriage, a criminal offence. However, there have been many problems ensuring that the laws are enforced and rapists are very rarely successfully prosecuted. In 2009, for example nearly 1000 cases of sexual assault filed did not result in action against the perpetrators. It appeared that pressure on the claimants was one of causes for the lack of convictions. Fear of visibility and retaliation were other reasons for the lack of enforcement.

To read full article: <http://www.irinnews.org/report.aspx?ReportID=89581>.

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## **Swaziland: Married women may not register property in their own name**

Swaziland's Supreme Court has reversed a decision by the High Court in February 2010 that allowed married women to register property in their own name. The High Court had declared a section of the 1968 Deeds Registry Act unconstitutional on the basis of the 2005 Constitution. The Constitution grants men and women equal rights, however, the country is still ruled by older laws which treats women as second-class citizens. Although the Constitution is clear that any legislation contrary to it must fall away, little has changed due to government inaction. The inability by women to hold property in their own name leads to dependency and possible cases of abuse where women are unable to leave their husband because they do not have a place to live or means of subsistence. Although Parliament has been told to change the laws found unconstitutional within one year of the ruling, activists are sceptical that this will be done.

To read full article: <http://www.irinnews.org/report.aspx?ReportID=89510>.

For more information see: <http://www.wcl.american.edu/hrbrief/17/3legal.pdf?rd=1>.

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## New Publications

### ***A Wrong Kind of Victim? One Year On: An Analysis of UK Measures to Protect Trafficked Persons***

**The Anti-Trafficking Monitoring Group, June 2010**

The Anti-Trafficking Monitoring Group was formed in May 2009 and works according to a human rights approach to protect the well-being and best interests of trafficked persons. This report, launched on 16 June 2010, examines how the UK is meeting its obligations under the Council of Europe Convention on Action against Trafficking in Human Beings. The report concludes that the UK Government anti-trafficking measures are not compliant with the Convention and in relation to children, it is not compliant with other aspects of UK law or best practice.

Although the report found that there were areas of good practice in the UK where implementation of the Convention had led to increasing awareness about human trafficking, overall the UK is failing to meet its obligations under the Convention. This is because, amongst other reasons, the UK, has in implementing the Convention, misunderstood key provisions of the Convention, not addressed the entirety of the Convention, delegated considerable authority on identification to a flawed mechanism staffed by substantially unaccountable officials and overlooked the necessary safeguards for child victims of trafficking in the implementation of the Convention. The research also found that, in contravention of the rule of law, the exercise of discretion was too broadly applied within the National Referral Mechanism (NRM), the procedure by which victims of trafficking can be identified.

These problems negatively affect the ability by the UK to meet its obligations under the Convention in the areas of protection and prosecution. Moreover, there has been little or no meaningful engagement in the area of prevention. The report emphasizes the need for a national anti-trafficking watchdog to oversee matters as suggested in the Convention and rejected by the UK as unnecessary. The report provides a list of recommendations.

To see the summary report:

[http://www.antislavery.org/includes/documents/cm\\_docs/2010/r/report\\_summary.pdf](http://www.antislavery.org/includes/documents/cm_docs/2010/r/report_summary.pdf).

To read the full report:

[http://www.antislavery.org/includes/documents/cm\\_docs/2010/a/1\\_atmg\\_report\\_for\\_web.pdf](http://www.antislavery.org/includes/documents/cm_docs/2010/a/1_atmg_report_for_web.pdf).

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## UK Training and Events

*Rights of Women provides training for organisations on essential issues concerning women's rights.*

### **Stop the traffic: protecting and supporting trafficked women in the UK**

**1 Day - Darlington - 23 July 2010 - The Dolphin Centre - FREE Course  
London - 06 October 2010 – NCVO**

Understand the criminal and immigration laws that apply to women who have been trafficked into the UK for sexual exploitation and learn to navigate and assess the National Referral Mechanism and other measures implemented by the government for the protection of victims of trafficking. One year on from UK's ratification of the Council of Europe's Convention on Action Against Trafficking in Human Beings this one day course, trained in partnership with the POPPY Project, will enable you to identify and support women who have been trafficked and covers elements of both the criminal and asylum law.

You will receive a copy of [Seeking Refuge? A handbook for asylum-seeking women](#) and a copy of [From Report to Court: A handbook for adult survivors of sexual violence](#)

### **Protection from persecution? Asylum law and process**

**1 Day - London – 21 October 2010 – NCVO**

Asylum-seeking women are some of the most marginalised and vulnerable women in our society. Caught up in a system that appears incomprehensible, they remain invisible to many service providers. This one day course, co-trained with Asylum Aid, is a practical and insightful introduction to the law that determines who is entitled to protection in the UK and how decisions are made and challenged. This unique and innovative course focuses specifically on the needs of asylum-seeking women who are, or have experienced, gender-based violence.

Each participant will receive a copy of [Seeking Refuge? A handbook for asylum-seeking women.](#)



## *Charter of rights of women seeking asylum*



**Endorsements: 211**

**Google group membership: 120**

This month's lead article *Charter of rights of women seeking asylum: two years on* highlights the progress that has been made towards establishing a truly gender-sensitive asylum determination system. However, it also serves to underline how much is left to do before this goal is reached.

The *Charter of rights of women seeking asylum* lays out a pathway to achieving gender sensitivity within the asylum system and it is very encouraging to see that the UKBA have fulfilled our first recommendation by appointing a Gender Champion. This in itself is only a first step but we hope that this and other engagement processes between *Charter* endorsers and UKBA will lead to progress on both an operational and a strategic level.

The greatest merit of the *Charter* is the backing of the numerous and varied organisations who have chosen to endorse it and by doing so to add their voice to the campaign. In moving forward, it is important to maintain and strengthen this coalition.

If your organisation has already endorsed the *Charter* we hope you will consider encouraging your contacts to do the same. You are welcome to use/amend the draft over page.

If your organisation has not endorsed the *Charter*, please encourage them to do so by visiting [www.asylumaid.org.uk/Charter](http://www.asylumaid.org.uk/Charter) or sending an email with the name of the organisation who wishes to endorse to [Charter@asylumaid.org.uk](mailto:Charter@asylumaid.org.uk). You can also use this email if you would like further information about the *Charter*.

In this way, we will all be in a stronger position to influence the UK Border Agency to progress towards a gender sensitive culture.

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Dear

I am writing to encourage you to endorse the *Charter of Rights of Women Seeking Asylum* which we [or name of your organisation] have already endorsed. The aim of the *Charter* is to obtain rights for women seeking asylum in the UK.

Over 200 organisations have now endorsed the *Charter*, including Amnesty International UK, Oxfam, Rape Crisis and Liberty.

Those of us who have endorsed the *Charter* believe that a culture change in the asylum system is urgently needed to ensure that women asylum seekers receive a comparable standard of treatment to women settled in the UK in similar situations. The *Charter* was started two years ago and has had a substantial impact but there is more yet to be done.

For more about the *Charter*, please go to [www.asylumaid.org.uk/Charter](http://www.asylumaid.org.uk/Charter)

To endorse the *Charter*, just send an email to [Charter@asylumaid.org.uk](mailto:Charter@asylumaid.org.uk) with your organisation's name stating that you are endorsing the *Charter*. You can also use this email if you would like further information about the *Charter*.

She was detained without charge

Nobody believed her story and no-one spoke up for her

Her family and friends didn't know where she was

**Afraid...isolated...**

She had no idea what would happen to her next

**And that was after she sought asylum in the UK**

Our asylum system is now so tough that, all too often, this is how people seeking help are treated. And that can't be right.

We believe the system should be fair and just and that every asylum seeker should have legal help to make their case - only then can we say in good conscience 'let the law take its course'.

Asylum Aid is an independent, national charity that secures protection for people seeking refuge in the UK from persecution in their home countries.

We provide expert legal representation to asylum seekers and campaign for a fair and just asylum system. Founded in 1990, we have since helped 30,000 people to get a fair hearing. In 2009 85% of our clients were granted leave to stay in the UK when decisions were made on their claims for protection.

**Please support us**

**Your donation will safeguard our independence and enable us to stand up for fair asylum rights without fear or favour.**

You can make a donation via our website:  
[www.asylumaid.org.uk/pages/give\\_now.html](http://www.asylumaid.org.uk/pages/give_now.html)  
OR send it to us by post with this form:

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I want to make a one-off gift of £ .....

(please make cheques payable to Asylum Aid) *giftaid it*

**Your Gift Aid declaration**

If you are a UK taxpayer, the value of your donation can increase by at least 25% under the Gift Aid scheme — at no additional cost to you! Please tick the box below to join the Gift Aid scheme.

I confirm that I am a UK taxpayer and that I pay as much income or capital gains tax as Asylum Aid will reclaim in the tax year. Please treat all donations I make or have made to Asylum Aid for the past four years as Gift Aid donations until further notice.

Please notify us if you are no longer eligible to Gift Aid your donations.

We will not sell or swap your personal details with any other organization. We would like to keep you informed about our work, campaigning and membership. If you do not wish to receive any information from Asylum Aid other than relating to your donation, please tick this box.

[www.asylumaid.org.uk](http://www.asylumaid.org.uk)

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Or, I want to make a regular gift to Asylum Aid by setting up a Standing Order

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each month/ quarter/ year (please circle) until further notice and debit my bank account:  
Account number: .....  
Sort code: .....  
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**Please return this form in an envelope to:**  
**Freeport RRJJ-BRGA-ZHAR,**  
**Asylum Aid, Club Union House,**  
**253-254 Upper Street,**  
**London N1 1RU**



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