

Women's Asylum News

Women's Project at Asylum Aid

IN THIS ISSUE

Leading Article: Trafficking and the National Referral Mechanism	p. 1-4
Sector Update	p. 4-5
Legal Issues	p. 6-11
National News	p. 11
International News	p. 11-13
UK Training and Events	p. 13-16
Charter Update	p. 17-18

To subscribe send your details to:
womenasylumnews@asylumaid.org.uk

All Asylum Aid publications are available at: www.asylumaid.org.uk

Please forward any information that you would like to include in the next edition of WAN to womenasylumnews@asylumaid.org.uk

Trafficking and the National Referral Mechanism

This article explains the role and functioning of the National Referral Mechanism for victims of trafficking and highlights the problems with the mechanism for women who seek asylum. It has been written by Catherine Briddick, Senior Legal Officer at Rights of Women.

The **Council of Europe Convention on Action against Trafficking 2005** (the Trafficking Convention) defines trafficking as: “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.¹ Following the coming into force of the Trafficking Convention on 1st April 2009, a **National Referral Mechanism** (the NRM) was put in place in the UK to identify and protect victims of trafficking.

Overview of the NRM

¹ Article 4 of the Trafficking Convention.

Certain chosen organisations, called **first responders** can refer a woman into the NRM. First responders include the police, local authorities, the NHS, organisations who are experts on trafficking (like the POPPY Project, Migrant Helpline and Kalayaan), and certain government departments. Referring a woman into the NRM involves completing a referral form which will then be assessed by the relevant **Competent Authority**. There is:

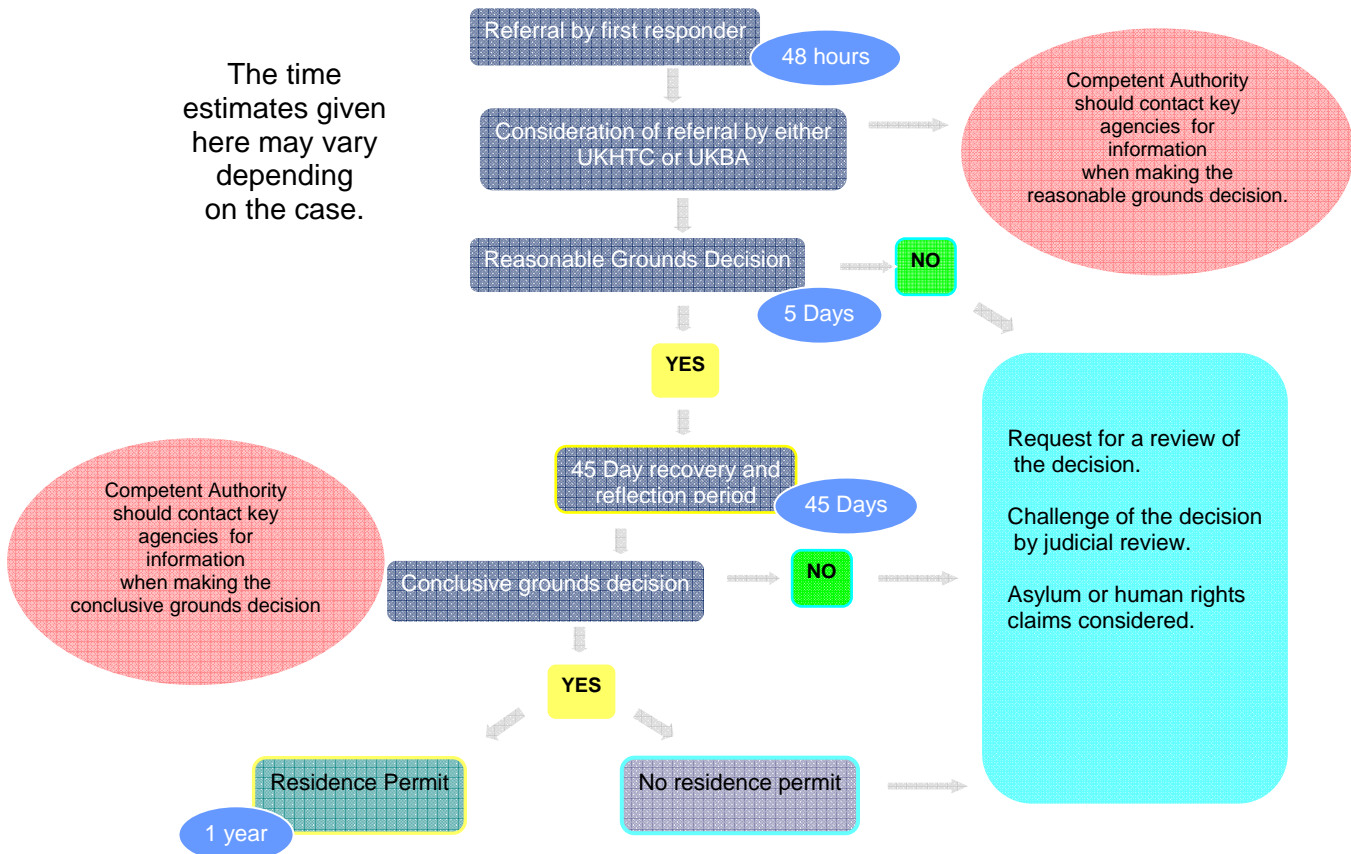
- a Competent Authority in the **UK Human Trafficking Centre** to assess cases where the victim is British or where there are no immigration issues.

And there are:

- linked but separate Competent Authorities in the **UKBA** to assess cases where trafficking may be linked to other immigration or asylum issues.

Once the referral to the relevant Competent Authority is made they will analyse the referral and should decide within 5 working days (which can be extended where necessary) whether or not there are **reasonable grounds** for believing that the person referred has been trafficked. Where there are 'reasonable grounds' for believing that the person is a victim of trafficking they will be granted a 45 day recovery and reflection period to enable them to access safe accommodation and support. Before the end of the recovery period the Competent Authority will make a 'conclusive' decision about whether or not the person is a victim of trafficking. The legal test at this stage is whether, on the balance of probabilities, the person referred is a victim of trafficking. At the end of the 45 days a decision **may** be made to extend the recovery period or to grant a 1 year renewable residence permit. There are no appeals against negative decisions at either stage (although a person can ask to have their case reviewed) and there is no legal representation through this process. The NRM operates alongside existing European, refugee and human rights law, so those who are trafficked may make other applications to remain in the UK based on either European, refugee or human rights law.

Flowchart of the National Referral Mechanism



Does the NRM offer meaningful protection for victims of trafficking?

Rights of Women is deeply concerned that the NRM fails to meet the UK's obligations under the Trafficking Convention. The establishment of Competent Authorities in the UKBA is a matter of serious concern as it illustrates that trafficking across international borders is still viewed as an immigration, rather than a human rights issue. The lack of an appeal process against negative decisions taken under the NRM raises concerns about the transparency and fairness of the decision-making process, particularly as legal representatives cannot be 'first responders' or make arguments on behalf of those who are referred. The NRM has also failed to guarantee *all* the rights set out in the Trafficking Convention, including rights to compensation and other forms of legal redress. Finally, the voluntary sector organisations who support victims of trafficking and whose work is vital to the success of the NRM continue to be over-stretched and under-resourced.

Rights of Women is particularly concerned about the continuing detention of trafficking victims who have been referred into the NRM and who have made claims for asylum. Whilst the *Asylum Process Guidance: Detained fast track and detained non-suspensive appeals - intake selection* states at paragraph 2.3 that women who have received positive, reasonable or conclusive grounds, decisions are "unlikely to be suitable for entry or continued management in detention", research done by Eaves shows that trafficked women are being routinely detained while their claim for asylum is processed.² The speed at which asylum decisions are taken in the detained fast track and the limited capacity that legal representatives have to prepare and present cases all contribute to a situation where a woman who has been trafficked and whose claim for asylum is dealt with in the detained fast track is extremely unlikely to be identified or protected.³ A key indicator of the effectiveness of the NRM has to be its ability to protect and ensure the rights outlined in the Trafficking Convention for all victims of trafficking. These rights include the provision of specialist support, health care and legal advice. The detention of potential and recognised victims of trafficking totally undermines these rights and significantly weakens the effectiveness of the NRM.

Evidence collected by the Anti-Trafficking Monitoring Group suggests that women whose cases are decided by a Competent Authority in the UKBA are significantly less likely to get positive decisions at the 'reasonable' or 'conclusive' grounds stages of the NRM than women whose cases are decided by the UKHTC.⁴ Rights of Women is therefore also concerned about the quality of UKBA decision making in trafficking cases, as errors made by the UKBA in its role as a Competent Authority are likely to be replicated or compounded when the UKBA makes a decision on the same applicant's asylum claim. One factor that affects the quality of decision making is the content of guidance given to UKBA decision-makers. The *Supplementary guidance for deciding if an individual is eligible for the provisions of the Council of Europe Convention on Action against Trafficking in Human Beings* appears to try and limit the provision of support to women who are in, or have in the immediate past been in, a trafficking situation.⁵ Rights of Women believes that there is nothing in the Trafficking Convention as a whole or its explanatory report that supports the UKBA's limited definition of who a victim of trafficking is. The recognition of a person as a victim of trafficking gives that individual important rights, not just to access a recovery and reflection period, but also to enable them to remain in the UK for the longer term to access services or support a prosecution. Similarly, the failure to recognise that a woman is a victim of trafficking has considerable implications for her credibility in any

² *Detained: Prisoners with no crime*, Stephen-Smith S, Eaves, 2008
www.eaves4women.org/Documents/Recent_Reports/Detained.pdf

³ Good Intentions: A Review of the New Asylum Model and its impact on trafficked women claiming asylum, POPPY Project and Asylum Aid, June 2008, http://www.asylumaid.org.uk/data/files/publications/83/Good_Intentions.pdf.

⁴ The Anti-Trafficking Monitoring Group 'Wrong kind of victim? One year on: an analysis of UK measures to protect trafficked persons' (June 2010) www.antislavery.org/includes/documents/cm_docs/2010/f/full_report.pdf. See also Women's Asylum News, July 2010, Issue no. 93, http://www.asylumaid.org.uk/data/files/publications/138/WAN_July_2010.pdf.

⁵ This guidance refers throughout to whether a person "is" rather than "has been" trafficked and at paragraph 9 states: "Based on an assessment of the individual circumstances of the case it may be reasonable to conclude that where a person's circumstances do not require protection or assistance at the time of that assessment, the person is unlikely to be a victim for the purposes of the Convention..."

subsequent claim she makes for refugee or human rights protection, or if she wants to give evidence in criminal proceedings against her traffickers or the men who purchased sexual services from her. The denial of victim status to someone who does not appear to the UKBA to be in need for protection or assistance *at the time of their assessment* therefore has profound consequences on other criminal or immigration law proceedings, to the detriment of the women concerned, and where it results in a decision not to prosecute a suspected trafficker, for society as a whole.

Rights of Women is concerned that the differential treatment accorded to victims of trafficking whose cases raise immigration issues, in comparison to cases which do not, violates Article 3 of the *Trafficking Convention* which states that the implementation of the Convention by Parties "in particular the enjoyment of measures to protect and promote the rights of victims, shall be secured without discrimination". If the UK is to meet its obligations under the Trafficking Convention and respond to victims of trafficking in a way that respects their human rights and offers them meaningful protection and support, the NRM and particularly the role of the UKBA within it, needs to be radically rethought.

*Rights of Women have produced a legal guide on the legal rights of women who have been trafficked into the UK for the purposes of sexual exploitation. They have also published **Seeking Refuge? A handbook for asylum-seeking women**. Both guides can be downloaded free of charge from www.rightsofwomen.org.uk.*

Catherine Briddick, Senior Legal Officer, Rights of Women

Women's Asylum News would like to thank Catherine for writing this article.

Sector Update

Revised Asylum Instruction on *Gender Issues in the Asylum Claim*

The UKBA made its revised asylum instruction on gender available to case-owners at the end of September 2010 and it is now available on their website.⁶ The revised asylum instruction was the subject of consultations over the last year, most recently through the UKBA/Charter engagement process.⁷ The instruction provides further guidance on how the UKBA's responsibilities in considering asylum claims should be carried out with regards to gender.

Some of the major positive changes include:

- Reference to the UK's obligation under the Refugee Convention, the ECHR, the EU Qualification Directive, and its positive duties under CEDAW and the Gender Equality Duty.
- A note stating that the UKBA accepts that acts of gender-specific nature, other than sexual violence, may also constitute persecution.⁸
- For those without satisfactory childcare arrangements, the UKBA will either provide childcare or reschedule the interview.
- A note that interviewers should be ready to ask searching questions while being sensitive to the difficulties an applicant may have in disclosing all the relevant information.

⁶<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/genderissueintheasylum.pdf?view=Binary>.

⁷ The terms of reference can be found here: http://www.asylumaid.org.uk/data/files/tor20100302_final.pdf.

⁸ Even though the UK has not transposed Article 9(2)(f) of the Qualification Directive into domestic legislation.

- The recognition that discriminatory measures, such as serious legal, cultural or societal restrictions on rights to private and family life, may in certain circumstances amount to persecution.
- The recognition that in terms of accessing state protection, it may not be possible for women to approach the authorities without being accompanied by a man.
- The recognition that the applicant's individual characteristics should be considered in order to assess the viability of an internal relocation option and these issues should be explored at interview for a sound decision to be reached.
- When assessing internal relocation, case-owners should also have regard to the applicant's ability to safely travel to the place of relocation.
- A variety of factors should be taken into account to assess the viability of internal relocation such as the means of travel and communication, cultural traditions, religious beliefs and customs, ethnic or linguistic differences, health facilities, employment opportunities, supporting family or other ties (including childcare responsibilities and the effect of relocation upon dependent children).
- It is the responsibility of the case-owner to demonstrate that internal relocation is reasonable/not unduly harsh.
- An acknowledgment that an understanding of the country of origin information relating to the position of women is essential to the effective conduct of interviews and to making correct decisions
- An acknowledgment that country of origin information in relation to gender may be more difficult to access and that case specific research requests to the Country of Origin Information Service may be necessary.
- It is not necessary for interviewing officers to obtain precise details about the acts of rape and sexual violence.
- Case-owners may give more time to enable applicants to submit psychological or medical evidence where trauma may affect the applicant's memory or otherwise to support her/his account.
- The recognition that in assessing risk on return the applicant's gender can put him/her at greater risk of persecution such as for example the greater risk that women and girls face of being subjected to sexual or gender-related violence during armed conflict.

There was one major area on which agreement could not be reached during the UKBA/Charter engagement process. According to ILPA, UNHCR and Asylum Aid, the manner in which the UKBA interprets and gives guidance to case-owners on the Convention ground of Particular Social Group (PSG) remains at odds with the House of Lords' judgement in *Fornah*.⁹ The UKBA's legal department's advice is that Lord Bingham's comments on PSG in *Fornah* were obiter and therefore not binding on the UKBA. Case-owners are referred to the section on PSG in the Asylum Instruction on considering the protection (asylum) claim and assessing credibility which states that for a person to be a member of a PSG they must share an immutable characteristic and must be perceived as having a distinct identity in the country in question.¹⁰ In contrast the NGOs stressed that only one of these two conditions needs to be met.

The UKBA also adopted a new Asylum Instruction on *Sexual Orientation and Gender Identity in the Asylum Claim*.¹¹

⁹ *Secretary of State for the Home Department v. K* [2006] UKHL 46 (18 October 2006).

¹⁰ <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/asylum-assessing-credibility.pdf?view=Binary>.

¹¹ <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/sexual-orientation-gender-ident?view=Binary>.

Legal Issues

Return to Sexual Violence in DRC is in Breach of Article 3 United Nations Convention against Torture

*Decisions of the Committee Against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Forty-fourth session, Communication No. 322/2007, Eveline Njamba and her daughter Kathy Balikosa v. Sweden*¹²

Eveline Njamba and her daughter Kathy Balikosa from the Democratic Republic of the Congo (DRC) made a claim for asylum in Sweden in March 2005. Their claim for asylum was based on the fact that Mrs Njamba's husband had been providing support for the rebels in the Equateur province and Goma, that anyone who was forcibly returned from Europe to DRC was arrested and questioned, that the security situation in DRC is precarious and human rights violations are committed with impunity and that Mrs Njamba is HIV-positive. The complainants argued that this placed them at risk of torture in contravention of Sweden's obligation under Article 3 of the UN Convention against Torture.

The Committee that oversees individual complaints under the Convention considered whether the complainants' removal to DRC would constitute a violation of Sweden's obligation under Article 3 of the UN Convention against Torture, not to expel or return a person to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Committee re-iterated that complainants must show a personal risk of being subjected to torture in the country to which they would be returned and that it would take into account all relevant considerations, including the existence of a "consistent pattern of gross, flagrant or mass violations of human rights" in the DRC. Previous findings by the Committee have established that the risk must be foreseeable, real, personal and present before Article 3 of the UN Convention against Torture is engaged.

The Committee looked at recent UN reports that highlighted the "alarming levels of violence against women across the country" and concluded that "violence against women, in particular rape and gang rape committed by men with guns and civilians, remains a serious concern, including in areas not affected by armed conflict". The Committee also referred to its *General Comment No 2 on Article 2* which notes that the failure by States "to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity".¹³ It thereby concluded that it was impossible to identify regions in DRC that could be considered safe for the complainants in their current and evolving circumstances. Sweden would be in breach of Article 3 UN Convention against Torture if it returned the complainants to DRC due to their personal circumstances and the level of sexual violence in DRC. The Committee did not accept that Mrs Njamba's return to DRC would breach Article 3 UN Convention against Torture on the basis of her HIV-positive status.

Although the UK has not ratified the Convention Against Torture's procedure for individual complaints to the Committee under Article 22 and thereby individuals in the UK may not bring a complaint against the UK to the Committee, the findings on the treatment of the evidence of risk in the DRC may be relevant in relation to asylum or human rights claims made by women fearing gender-related violence in DRC.

¹² <http://sim.law.uu.nl/SIM/CaseLaw/fulltextcat.nsf/160f6e7f0fb318e8c1256d410033e0a1/6e9ceef56f1c2296c1257770003017fd?OpenDocument>.

¹³ http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.GC.2.CRP.1.Rev.4_en.pdf.

Women who are HIV-positive not at Risk of Harm on Return to Zimbabwe

RS and Others (RS, EC AND BR) (Zimbabwe CG) [2010] UKUT 363 (IAC), 14 October 2010, Upper Tribunal – Immigration and Asylum Chamber

The appeals were brought by three women from Zimbabwe who are HIV-positive. They all made submissions to remain in the UK on the basis of the unavailability or discriminatory allocation of anti-retro viral treatment (ARV) in Zimbabwe and made asylum and human rights claims to remain in the UK on the basis of the Country Guidance of RN.¹⁴

The Secretary of State submitted that none of the appellants reached the threshold required for a breach of Article 3 of the European Convention on Human Rights (ECHR), relying on the case of N v United Kingdom and D v United Kingdom before the European Court of Human Rights.¹⁵ She argued that some public and private treatment was available in Zimbabwe and that there was no evidence that the Unity Government of Zimbabwe or non-state actors were deliberately withholding treatment on political grounds. She concluded that the appellants had failed to show the exceptionality requirements as established in the case of N v United Kingdom. In terms of the appellants' claims for asylum the Secretary of State argued that the situation prevailing in Zimbabwe at the time RN was decided no longer applied. More specifically, she stated that although there was still evidence of violence, this was targeted violence between ZANU-PF and MDC activists. She explained that the political situation had changed since the power-sharing agreement and the evidence showed that there no longer was any ongoing violence directed at non-activists. She asked the Tribunal to recognise that a returnee to Zimbabwe with a low profile would not be at real risk of persecution or real harm. She therefore argued that the appellants were not at risk of persecution if returned to Zimbabwe.

The appellants submitted that they should be recognised as refugees on the basis of RN because they would be unable to show allegiance to ZANU-PF and there was no proper basis on which to depart from this Country Guidance case. They also submitted that they would be subjected to treatment contrary to Article 3 ECHR because they would be discriminately excluded from any medical treatment and food aid. This discriminatory treatment, they said, was a deliberate policy of the government and was different from N's circumstances because of the "deliberate policy of denying access to MDC supporters, a wide-scale government corruption and diversion of funds, the fact the health system was in disarray and that ARVs available to the private sector were far beyond the means of the appellants". They also said that to return them to Zimbabwe would result in a breach of their right to private and family life under Article 8 ECHR and Article 14 ECHR as the decision would be discriminatory against disabled persons. Finally, the appellants made submissions under the Disability Discrimination Act 1995, saying that to return them to Zimbabwe would be in breach of the Act.

The Tribunal considered extensive country evidence provided by five independent experts and from the British Embassy in Harare. Although the Secretary of State had argued that it was timely to revisit the Tribunal's Country Guidance on Zimbabwe, the Tribunal only considered the risk on return to Zimbabwe of persons with HIV/AIDS diagnoses and concluded that in light of the limited evidence considered on the general situation in Zimbabwe and the treatment of persons without a specifically political profile, "indicates sufficiently clearly to our view, and bearing in mind that it is limited evidence

¹⁴ RN (Zimbabwe CG) [2008] UKAIT 00083, 19 November 2008.

¹⁵ N. v. United Kingdom, (Application no. 26565/05), 27 May 2008. D. v. United Kingdom, (Application no. 146/1996/767/964), 2 May 1997.

only, that there is no reason to depart from RN as the country guidance that should lie behind our decision insofar as it is relevant to do so”.

The Tribunal found that the evidence provided by the parties on the availability of various ARV drugs both within the public and the private sector and therefore concluded that some types of drugs were available in Zimbabwe whereas others were not. The Tribunal also concluded that there are a significant number of people in Zimbabwe who receive treatment for HIV/AIDS and that the waiting times are not excessive. Again the evidence presented a “mixed picture” in terms of whether access to AIDS therapy and treatment in Zimbabwe is discriminatory and politicised. The Tribunal was of the opinion that the appellants had failed to show that there was a reasonable degree of likelihood that they would be forced to show political loyalty in order to access treatment, although the Tribunal accepted that this happened occasionally it was not shown that this happened in general nor that the appellants would face discriminatory access to ARVs on return to their home areas. Finally, in terms of discriminatory access to food aid the Tribunal concluded that there was no evidence of a real risk of the appellants in question being denied food aid on a political basis. Although the Tribunal accepted again that this had happened sporadically, it said that it was “no more than sporadic and certainly not endemic”. Nor did the Tribunal consider that there was a real risk of harm for the appellants on the cumulative basis of access to medication and access to food.

On the basis of its findings under Article 3 ECHR, the Tribunal said that the appellants would not be at risk of persecution on return to Zimbabwe and therefore were not entitled to protection under the Refugee Convention. In cases involving physical health, the private life aspects of Article 8 ECHR may be engaged. One of the appellants, EC, also argued that it was a breach of Article 8 ECHR for the Secretary of State not to have updated its policy on HIV/AIDS applications for leave to remain since 2007 despite removing the document from the website “for updating”. The current document, which simply states that the Secretary of State will consider any applications in accordance with the House of Lords judgment in N v SSHD is not sufficiently clear for applicants to access and effectively regulate their conduct. However, the Tribunal agreed with the response from the Secretary of State that there is no obligation on the Secretary of State to have a policy explaining how she will exercise that discretion at any given time. The situation of the appellants in this specific case was also distinguished from the case of JA (Ivory Coast)¹⁶ because JA had been granted leave to remain specifically to continue treatment for HIV in accordance with the UKBA’s policy and the appellants in this specific case therefore had to show the exceptionally test set out in the case of D v United Kingdom. The appeal was consequently dismissed on Article 8 ECHR as well. Following this the Tribunal found no breach of the anti-discrimination clause in Article 14 ECHR because the interference (the decision to remove the appellants to Zimbabwe) was permissible or justified under Article 8 ECHR. On the basis of the submissions made with regards to the Disability Discrimination Act, the Tribunal agreed with the Secretary of State that the non-compliance with the duty under the Act, not to discriminate against a disabled person in carrying out public authority immigration functions, is necessary for the protection of rights and freedoms of other persons and that to comply with this duty under the Act would result in a disproportionate cost and burden on the limited funds of the government.

The three appellants’ cases were dismissed on all grounds.

For more information on the immigration status of women living with HIV in the UK see “A Positive Partnership: the HIV Immigration Project 2003 – 2009 by Positively Women, Asylum Aid and International Community of Women Living with HIV/AIDS”,
http://www.asylumaid.org.uk/data/files/publications/95/A_positive_partnership.pdf

¹⁶ See Women’s Asylum News, March 2010, Issue no. 90,
http://www.asylumaid.org.uk/data/files/publications/126/WAN_March_2010_issue_90.pdf.

Indiscriminate Violence in Iraq and Humanitarian Protection under Article 15(c) Qualification Directive

HM and Others (HM, RM, ASA, AA) (Iraq CG) 2010] UKUT 331 (IAC), 22 September 2010, Upper Tribunal – Immigration and Asylum Chamber

The appellants are four men from Iraq whose claims for asylum had been refused and who were granted reconsideration further to the Court of Justice of the European Union's (CJEU) judgment in *Elgafaji v Staatssecretaris van Justitie*¹⁷ and the subsequent Court of Appeal decision in *QD (Iraq) v Secretary of State for the Home Department*.¹⁸ The four appeals were then linked to form country guidance as to "the risk to Iraqi civilians who were young men and who apparently came from the cities of Kirkuk, Baqubah and Baghdad". The appellants are men who have no distinguishing characteristics other than their place of residence in Iraq. It may be worth noting that the appellants were no longer represented at this stage but that the Tribunal remained of the view that the appeals should be determined in the public interest. The UNHCR was given permission to make written submissions on the law.

The Tribunal considered in this case whether the level of indiscriminate violence in Iraq meets the threshold required to claim humanitarian protection under Article 15(c) EC Qualification Directive. The determination provides a helpful overview of the test to be applied in Article 15(c) Humanitarian Protection claims:

- a. *The Article seeks to elevate the state practice of not returning unsuccessful asylum seekers to war zones or situations of armed anarchy for reasons of common humanity into a minimum standard (QD at [21]).*
- b. *The scope of protection is an autonomous concept distinct from and broader than Art 3 protection even as interpreted by the European Court of Human Rights (ECtHR) in [NA v United Kingdom](#) (Elgafaji at [33]-[36]; QD at [20], [35]); [HH and Others](#)) at [31]).*
- c. *It is concerned with "threat .. to a civilian's life or person' rather than to specific acts of violence .. the threat is inherent in a general situation of .. armed conflict... The violence that gives rise to the threat is described as indiscriminate, a term which implies that it may extend to people irrespective of their personal circumstances" (Elgafaji [34]).*
- d. *The Article is intended to cover the "real risks and real threats presented by the kinds of endemic acts of indiscriminate violence - the placing of car bombs in market places; snipers firing methodically at people in the streets - which have come to disfigure the modern world". It is concerned with "serious threats of real harm" (QD at [27] and [31]).*
- e. *"Individual must be understood as covering harm to civilians irrespective of their identity where the degree of indiscriminate violence characterising the armed conflict taking place reaches such a high level that substantial grounds are shown for believing that a civilian ... would solely on account of his presence on the territory... face a real risk of being subjected to the serious threat" (Elgafaji [35]).*
- f. *"The more the applicant is able to show that he is specifically affected by reason of factors particular to his personal circumstances, the lower the level of indiscriminate violence required" (Elgafaji [39]).*

¹⁷ *Elgafaji (Justice and Home Affairs)* [2009] EUECJ C-465/07 (17 February 2009).

¹⁸ *QD (Iraq) v Secretary of State for the Home Department* [2009] EWCA Civ 620 (24 June 2009).

g. A consistent pattern of mistreatment is not a necessary requirement to meet the real harm standard. "The risk of random injury or death which indiscriminate violence carries is the converse of consistency" (QD at [32]).

h. There is no requirement that the armed conflict itself must be exceptional but there must be "an intensity of indiscriminate violence great enough to meet the test spelt out by the ECJ" and this will self evidently not characterise every such situation (QD at [37]).

i. "The overriding purpose of Article 15(c) is to give temporary refuge to people whose safety is placed in serious jeopardy by indiscriminate violence, it cannot matter whether the source of the violence is two or more warring factions (which is what conflict would ordinarily suggest) or a single entity or faction" (QD at [35]).

j. 'Civilian' means all genuine non-combatants at the time when the serious threat of real harm may materialise (QD [37]).

In light of the CJEU's decision in Elgafaji, the Tribunal asked itself whether "the degree of indiscriminate violence characterising the armed conflict taking place... (reach) such a high level that substantial grounds are shown for believing that any civilian, returned to the relevant country or, as the case may be, to the relevant region, would solely on account of his presence on the territory or that country or region, face a real risk of being subject to that threat."

The Tribunal concluded that to distinguish between a real risk of targeted and incidental killing of civilians during armed conflict as considered in the case of GS was not a helpful exercise, particularly in light of the Elgafaji decision stating that the scope of protection under Article 15(c) was a broad one. The Tribunal said that to a certain extent, the approach adopted in GS was a flawed non-inclusive approach because it distinguished between targeted and non-targeted attacks on civilians¹⁹ and the violence covered in Article 15(c) includes general criminality that is the result of "a general breakdown of law and order as to permit anarchy and criminality occasioning the serious harm". The tribunal also provided a more inclusive approach to the definition of "life or person" by making it clear that this was not restricted to threats to life but also "to significant physical injuries, serious mental traumas and serious threats to bodily integrity" and therefore evidence on whether Article 15(c) is engaged should not be limited to the number of civilian casualties. Following guidance in the case of HH and Others,²⁰ the Tribunal also considered the issue of internal safety of travel as Article 15(c) protection is subject to an assessment of the availability of an internal flight alternative.

The Tribunal concluded that there is not at present a level of indiscriminate violence in Iraq to demonstrate that any civilian returned there would, solely on account of his presence there, face a real risk of being subject to that threat.²¹ The Tribunal specified however that persons with specific characteristics over and above being mere civilians²² are likely to be eligible for either refugee protection or humanitarian protection under Article 15(b) and 15(c) of the Qualification Directive under the sliding scale set out in Egafaji. The Tribunal clarified that the manner in which the level of risk of indiscriminate violence must be assessed must be an inclusive one, "subject only to the need for

¹⁹ Although the Tribunal said that in this respect the approach to indiscriminate violence in GS was too narrow, the Tribunal noted that this does not have any significant impact on the assessment of levels of violence in Afghanistan and that this country guidance remains "undisturbed" by anything said in the current case.

²⁰ HH (Somalia) & Ors v Secretary of State for the Home Department [2010] EWCA Civ 426 (23 April 2010), see Women's Asylum News, May/June 2010, issue no. 92, http://www.asylumaid.org.uk/data/files/publications/131/Final_WAN_May_June1.pdf.

²¹ It appears that the Tribunal was convinced by the Secretary of State's argument that the difference between the level of violence (in terms of casualties) between 2006/2007 and 2009/2010 is substantial.

²² The Tribunal referred specifically to the following: "government officials, security personnel, civil servants, religious and political leaders, members of professional groups such as journalists, educators, medical doctors, judges and lawyers and attacks also are directed against persons based on their perceived sexual orientation, with violence against women and "honour" –related homicides (at least in certain parts of Iraq) being a serious concern" (emphasis added).

there to be a sufficient causal nexus between the violence and the conflict".²³ The Tribunal also stated that although the number of attacks or deaths affecting the civilian population was one of the factors that should be included in the assessment of risk, a wide range of other variables should also be taken into account, including criminal violence, destruction of necessary means of living, population displacement and availability of state protection.²⁴ The Tribunal said that if there were certain areas in Iraq where the degree of violence was such that it engaged Article 15(c) Qualification Directive it "considers it is likely that internal relocation would achieve safety and would not be unduly harsh in all the circumstances".

Subsequent to the Tribunal's findings on the level of indiscriminate violence in Iraq, the Tribunal concluded that none of the appellants had made out their claim of being at risk of serious harm under Article 15(c) purely by virtue of being a civilian.

In light of what the Tribunal said regarding persons with specific characteristics, it may be worth noting that the revised Asylum Instruction on *Gender Issues in the Asylum Claim*²⁵ alerts UKBA case-owners that "in assessing the risk on return, it should be noted that the applicant's gender can also put her or him at greater risk of persecution, for example: the greater risk that women and girls may face of being subjected to sexual or gender related violence in civil disturbance or armed conflict".

National News

Pregnant woman denied health care in Yarl's Wood Immigration Removal Centre

A pregnant woman detained at Yarl's Wood IRC was refused a scan for four days despite repeated requests and a court order after she was told by a midwife that she was unable to find the baby's heartbeat. It took a second court order before staff employed by the UK Border Agency took her to hospital. Theresa Diedericks had already suffered from a miscarriage last year and was since suffering from depression and anxiety. Theresa's solicitor raised strong opposition at the detention of pregnant women and emphasised that at the very least pregnant women in immigration detention should be provided with the same level of medical treatment as women outside the detention centre. The director of detention services at the UKBA denies any wrongdoings in this case.

To read the full article see: <http://www.guardian.co.uk/uk/2010/oct/08/yarls-wood-pregnant-woman>.

International News

Afghanistan: Peace settlement with the Taliban could put women at risk

Amidst preparations for peace talks between the Afghan government and the Taliban, Human Rights Watch has expressed concern that the reconciliation process could pose a threat to women's rights. While President Karzai and many of his foreign allies appear disillusioned and do not seem to see how a deal with the Taliban could further exacerbate the situation in the country, the prospect is

²³ "Further, as noted in *GS* (following *AM and AM* (Armed conflict: risk categories) Somalia CG [2008] UKAIT 00091), in the context of Article 15(c) the serious and individual threat involved does not have to be a direct effect of the indiscriminate violence; it is sufficient if the latter is an operative cause" (paragraph 78).

²⁴ In this respect it may be relevant to consider the article by Helene Lambert and Theo Farrell, "The Changing Character of Armed Conflict and the Implications for Refugee Protection Jurisprudence", *IJRL* (2010) Vol. 22(2).

²⁵ <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/genderissueintheasylum.pdf?view=Binary>.

deeply unnerving to those Afghans who suffered most under Taliban rule – women and ethnic minorities. Backed by US Secretary of State Hillary Clinton, Afghan women have fought with some success to be included in reconciliation talks with the Taliban. However, the Obama administration does not rule out support for a process which would give some political control to members of the Taliban who are known to have committed atrocities against women, as long as the Taliban abide by certain rules. While Western diplomats argue that sacrifices have to be made, Human Rights Watch emphasises that the Taliban is not just another warlord militia wanting to be involved in political decision-making but an ideological movement. In many parts of the country women are still killed by the Taliban for going to school, working or participating in the political process.

To read the full article see: <http://www.hrw.org/node/92501?tr=y&auid=6853330>.

Chechnya: Women special target in campaign to enforce Islamic rules

A spate of recent attacks against Chechen women who do not abide by traditional Muslim customs was at another low point last month when women without headscarves were barred from attending a ceremony in the region's capital Grozny. The festivities marked a new holiday in honour of women which was established by Chechnya's political leader Ramzan Kadyrov last year. Accusations, however, were voiced that the celebrations were laced with hypocrisy. Kadyrov, who is heavily relied upon by the Kremlin to maintain order in the volatile region, has been introducing an increasingly radical vision of Islam in the last few years by enforcing traditional Muslim customs which restrict women's rights. Some of these rules, such as an edict from 2007 banning bareheaded women from entering public buildings, are in direct violation of Russian law. Analysts warn that even though 90% of the Chechen population are Muslim, enforcing Islamic rules could raise tensions.

To read the full article see: <http://www.alertnet.org/thenews/newsdesk/LDE68J1QE.htm>.

Ethiopia: Slow progress in empowering women to fight FGM

With 91% of women undergoing female genital mutilation, the North East of Ethiopia not only has the highest prevalence of the practice in the country; it also takes one of its most severe forms. Reproductive health education, however, seems to be paying off as the number of girls affected is decreasing slowly. CARE Ethiopia works with former traditional circumcisers in order to increase awareness of FGM-related health effects. The organisation equips women who used to make a living from FGM with skills that enable them to find an alternative income, for example by training them to become birth attendants. CARE also aims to improve girls' access to basic services particularly in pastoral areas where they are seen as family assets. In keeping with the custom, women who have not yet undergone FGM are forbidden to carry out certain tasks, such as handing food to elders. Their economic and social dependence on men can also be a major determinant in undergoing FGM. Aside from raising awareness, it is therefore crucial to provide access to education if women are to realize the full extent of their rights.

To read the full article see: <http://www.irinnews.org/report.aspx?ReportID=90218>.

Latin America: Five million women victim to human trafficking

One month after the massacre of 72 undocumented migrants in the North East of Mexico, experts and activists at the second Latin American Conference on Smuggling and Trafficking of Human Beings have criticised the lack of attention and action given to the issue by governments. The conference

host, David Fernández Dávalos, described human trafficking as a modern, particularly malignant and better disguised version of slavery. According to the Mexican Ministry of Public Security, 250,000 people throughout Latin America become victims of human trafficking every year, but numbers vary. The Coalition Against Trafficking of Women And Girls in Latin America and the Caribbean estimate that five million women and girls are currently trapped in trafficking networks, with further 10 million in danger of falling victim to them. Even though most Latin American countries have established laws against trafficking, criminal prosecution of perpetrators remains a problem due to both the initial invisibility of the issue and the links to other organised crime such as drug trafficking.

To read the full article see: <http://ipsnews.net/news.asp?idnews=52940>.

Nepal: Commitment to end gender-based violence takes time to take effect

The Nepalese government has declared 2010 as the year to end gender-based violence. However, women are still being maltreated across the country. Deeply rooted cultural and religious norms continue to shape relationships between men and women which often results in women being considered commodities rather than human beings with their own rights. As a result of their financial dependence and political marginalization, men often feel they have the right to control them, even through violent means. CARE Nepal states that 95% of women and girls have personally experienced violence, with 77% of cases perpetrated by family members.

To read the full article see: <http://www.irinnews.org/report.aspx?ReportID=90603>.

Sudan: Southern women struggle for justice

Women in Southern Sudan are facing particular challenges as gender-based violence is underreported and spreading in the aftermath of the twenty-one year conflict. Easy access to arms has led to increased insecurity and armed violence, making girls and women, particularly in pastoral areas, vulnerable targets. Seeking justice for cases of sexual and reproductive rights violations is difficult as many women prefer dealing with such issues through customary law, according to the UN Population Fund. Observers note that customary laws tend to favour men and often punish women in cases of rape. While local government institutions are currently being introduced, it will take time to create a justice system which preserves social traditions and observes women's rights. Other key obstacles include a lack of accurate information on social issues such as gender-based violence and extremely low school attendance rates among girls.

To read the full article see: <http://irinnews.org/Report.aspx?ReportID=90693>.

UK Training and Events

New free health clinic for refugees and asylum seekers opens in Central London

Doctors of the World UK (Médecins du Monde) will run a nurse-led weekly clinic at Notre Dame Refugee Centre (NDRC) on Leicester Square. This clinic will be an extension of its Project: London outreach activities, which provide advice, support and interim healthcare to vulnerable people who are unable to access healthcare. It will specialise in work with Francophone patients but will be open to all refugees and asylum seekers.

Opening hours: 2pm-5pm every Thursday

Address: Notre Dame Refugee Centre, Maison Pierre Chanel, 16 Leicester Square, London WC2H 7BX (Blue Door- Opposite Burger King).

Tel: 020 7440 2668

E-mail: drop-in@notredamerc.org.uk

To find out more about the Notre Dame Refugee Centre visit their website:

<http://ndrefugeecentre.canalblog.com/>.

Women's Resource Centre holds annual conference

Facing our future

The Women's Resource Centre (<http://www.wrc.org.uk/>) is to hold its annual conference on Tuesday 7th December 2010 at Cass Business School (<http://www.cass.city.ac.uk/>) in London. Entitled 'Facing Our Future', the all-day conference has scheduled speakers, panels and workshops on everything from social media to social enterprise, from how to address equalities issues to what the future holds for the sector.

WRC will also hold its AGM and host an evening drinks reception.

WRC has made every effort to keep costs manageable and is offering a number of bursaries. See their website www.wrc.org.uk or email info@wrc.org.uk and mark 'conference' in the subject header, or 'AGM' if you would like to attend the AGM, or call Christina Nelson on 0207 324 3030.

Bradford Refugee Forum

Empowering Women Refugee and Asylum Seekers Conference

Bradford Refugee Forum and Partners invites you to the Empowering Women Refugee and Asylum Seekers Conference on **11 November 2010**

Carlisle Business Centre from **9.00am – 2.00pm**

A conference for women refugees and asylum seekers is to be held for the first time in Bradford next month. The event at the Carlisle Business Centre in Manningham on Thursday, November 11, which will be attended by organisations including the Immigration Advice Service, Oxfam and Bradford Action for Refugees, aims to help participants to discuss and find solutions to problems they may face. The conference will include workshops on topics including housing, health, the immigration process, children and poverty, as well as presentations by Jim Steinke, chief executive of the Northern Refugee Centre and refugee Elizabeth Benson. Miss Botomani, secretary of Bradford Refugee Forum, who is organising the conference, said she hoped the conference would result in a campaign movement for women refugees, to be launched during International Women's Day in March. Other organisations due to be at the event include the Northern Refugee Centre, Horton Housing, Our Project, Legal Aid and Bradford Immigration and Asylum Seekers Network.²⁶

Assistance to interpret will be available where possible and information will be on offer in several languages.

²⁶ For more information see: http://www.thetelegraphandargus.co.uk/news/8460218.Conference_to_help_refugees/.

Come along and have your say – exercise your right

Express any issues or concerns you may be experiencing.
Meet other people in similar situations
Service providers will be available
Tell us your issues/concerns in various workshops.

Lunch will be provided.

Please complete the form available here: [http://www.bradfordrefugeeforum.org.uk/wp-content/uploads/2010/10/Empowering Women Refugee and Asylum Seeker's Conference.pdf](http://www.bradfordrefugeeforum.org.uk/wp-content/uploads/2010/10/Empowering_Women_Refugee_and_Asylum_Seeker's_Conference.pdf)

For further information, e-mail info@bradfordrefugeeforum.org.uk.

Women for Refugee Women

Break the Silence

Women for Refugee Women (WRW) invites you to a unique event, *Break the Silence* at the **Riverside Studios in Hammersmith on 28 November 2010 at 3pm**. WRW will be presenting a play and an audience discussion to shine a light on the hidden experiences of women who come to the UK fleeing persecution. The play, *How I Became an Asylum Seeker*, is written and performed by a group of women refugees, *Women Asylum Seekers Together*. Then the author of the play, Lydia Besong, and some of the cast will join actor Juliet Stevenson and Briget Phillipson MP for a discussion. This is a wonderful opportunity to hear the inspiring voices and stories of some very courageous women, and to think about how we can support them in their struggle to find safety.

Tickets £10/£5/free for asylum seekers: www.riversidestudios.co.uk.

Women for Refugee Women: www.refugeewomen.com.

Asylum Support Appeals project

Free Training on "Support options for refused asylum seeking women"

Manchester

The Asylum Support Appeals project (ASAP) will be running a free training workshop for women's groups on "Support options for refused asylum seeking women".

This will take place **Wednesday 3 November from 10:30 – 4:00pm**,

Manchester Immigration Aid Unit, 1 Delaunays Rd, Crumpsell Green, Manchester, M8 4QS.

For more information contact Gerry or Oliver 020 8686 1888.

For more information and to download an application form see:
http://www.asaproject.org/web/index.php?option=com_content&view=article&id=58&Itemid=107

Why Refugee Women?

Minimum standards for working with refugee women in the Yorkshire and Humber region

Why Refugee Women? is inviting to the launch of the Why Refugee Women? Charter on **23 November 2010**. The Charter aims to get organisations and key stakeholders working with refugee women within Yorkshire and Humber to agree to meet minimum standards.

Date: 23 November 2010

Time: 11.00am to 1.00pm

Venue: Refugee Council, 1 Dewsbury Road, Leeds
LS11 5DQ

Therefore, organisations signing up to the charter are committing to:

- Create an open and safe environment and treat all refugee women with dignity and respect
- Ensure all workers are aware of the need for gender sensitivity and implement appropriate practices for achieving this.
- Understand gender based issues and act appropriately to take account of these
- Offer the choice of female workers/interpreters to refugee women wherever possible
- Ensure refugee women are routinely supported with childcare during asylum interviews so that they feel able to speak about confidential and sensitive issues
- Ensure refugee women are aware of their rights and independence from their Partners
- Support others in understanding Why Refugee Women?

The charter and sign up form are also available from the Why Refugee Women? website www.whyrefugeewomen.org.uk.

This event is free but booking is essential. Email marco_barnsley@hotmail.com to book your place.

Charter of rights of women seeking asylum



Endorsements: 212

Google group membership: 122

Childcare during asylum interviews

On 13th October 2010, the Immigration Minister, Damian Green was asked in the House of Commons about provision of childcare during asylum interviews. His response is reproduced below alongside other recent information. Such childcare has been the topic of a focused campaign by many of those working on issues affecting women seeking asylum over the past four years.

Asylum: Children

Bridget Phillipson:

To ask the Secretary of State for the Home Department which UK Border Agency offices provide child care when asylum seekers are being interviewed; and what plans she has for the future of that provision.

Damian Green:

We are committed to ensuring that parents who are being interviewed about their reasons for seeking protection are not placed in the position of having to give an account of personal victimisation or humiliation in the presence of their children. In general, applicants are advised in their letter of invitation not to bring their children to the interview but to make alternative arrangements.

For some families, child care will be easier to arrange-in London, for example, the majority of asylum applicants are able to reside with family and friends and as a result have a wider support network for child care. We do recognise, however, that this will not be possible for all families.

At present, the only UK Border Agency building that provides child care facilities when a parent is being interviewed about their asylum claim is in the North West. Additionally, however, in the West Midlands, the UK Border Agency is currently in the final stages of discussions with the Children's Society and hope to be in a position to provide a supervised play facility for the dependents of interviewees by January 2011. If these facilities prove successful and cost effective, we will consider extending this approach to other offices.

[House of Commons / 13 Oct 2010 : Column 299W](#)

The extracts below are taken from “Charter of rights of women seeking asylum 2 years on: impacts and actions” (June 2010):

“Following encouragement by the Welsh Consortium for Refugees and Asylum Seekers and their partners, the UKBA office in Cardiff has been providing childcare since September 2007. The UKBA office in Glasgow started providing childcare early in 2009 after persistent lobbying by the Refugee Women’s Strategy Group and the Scottish Refugee Council. [...] UKBA is paying for a local charity to provide play sessions at Waterside Court in Leeds so that children can be in a supervised play room while their mum or dad has their asylum interview. Kristian Armstrong (UKBA Children’s Champion) and Jeremy Oppenheim (UKBA North East Regional Director) attended the opening of the facility in September 2009 and UKBA has featured it in their internal newsletter as a positive project. [...] The Refugee Council is raising the issue in London.”

Meanwhile, the Asylum Instruction on *gender issues in the asylum claim* revised by UKBA and published in September 2010, mentions provision of childcare for the first time (para 7.1).

“For those without satisfactory childcare arrangements of their own, each UK Border Agency regional office has its own arrangements in place to ensure that children are not present when parents are interviewed about their reasons for seeking asylum. This can include rescheduling the asylum interview date to accommodate childcare arrangements, or the provision of childcare at or near UK Border Agency premises.”

Putting these pieces of information together, it appears that childcare is available in Cardiff, Glasgow, Leeds and Liverpool (ie North West) and is shortly to be available in Solihull (ie West Midlands). This means that all but one of UKBA’s regions (London and South East) will be providing childcare during asylum interviews. This is huge progress since the childcare campaign began in April 2007 (when there was no such provision in any region) and testament to the tenacity and commitment of all those involved.

For more information on the Charter and the Every Single Woman campaign, please go to www.asylumaid.org.uk/charter.

If your organisation would like to endorse the charter, please send an email simply stating the name of your organisation to charter@asylumaid.org.uk.

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
OR send it to us by post with this form:

Name:
Address:
.....
Postcode:
Telephone:
Email:
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

Registered in England and Wales under the Companies Act 1985 as a company limited by guarantee No 2513874 . Registered as a charity No 328729.

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

To: The Manager, Bank:
Address:
Postcode:
I wish to make a regular gift of £
each month/ quarter/ year (please circle) until further notice and debit my bank account:
Account number:
Sort code:
Starting on (date):
Signature:
Date:

(FOR OFFICIAL USE) To: The Cooperative Bank, 80 Cornhill, London EC3V 3NJ. Sort code: 08-02-28, Account number: 65281262

Please return this form in an envelope to:
Freepost RRJJ-BRGA-ZHAR,
Asylum Aid, Club Union House,
253-254 Upper Street,
London N1 1RU



Any views expressed in this publication are those of the authors. Any legal information in this bulletin is intended as a general guide only, and should not be used as a substitute for legal advice. Any contributions from, or references to, external sources (including website links), agencies or individuals do not necessarily reflect the views of Asylum Aid nor receive our endorsement.

Produced by the Women's Project at Asylum Aid
(for more information on this issue, please contact: Christel Querton)

Asylum Aid
Club Union House
253-254 Upper Street
London N1 1RY

Tel: 020 7354 9631
Fax: 020 7354 5620
Email: womenasylumnews@asylumaid.org.uk

www.asylumaid.org.uk

