



Refugee Council

Between a rock and a hard place: the dilemma facing refused asylum seekers

December 2012



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Executive summary

The UN states there are 15 million refugees worldwide. Many of these people have fled serious human rights abuses in their own countries, including torture, sexual violence, and forced conscription at the hands of both government and militia groups. Among the countries that a high number of people have fled from in Africa in recent years are the Democratic Republic of Congo (DRC), Eritrea, Somalia, Sudan and Zimbabwe, producing millions of refugees between them over the last 10 years. This report discusses the human rights abuses that have been reported in these countries which cause refugees to continue to flee, and mean those who have already left fear returning. Many people from these countries have sought asylum in the UK over the last decade, and many have had their claims refused.

This report discusses secondary evidence collected from a number of respected organisations that regularly monitor the situation in these countries, in order to illustrate why many refused asylum seekers have an understandable fear of returning to their own countries. Some of the issues raised in reports on these countries include:

- Severe punishment inflicted upon those who have evaded compulsory national service including the death penalty, imprisonment for up to five years, punishment of family members and fines in **Eritrea**.
- Indiscriminate attacks on civilians by government and paramilitary Al-Shabaab forces, extrajudicial killings of opposition members, and the forced conscription of women and children in **Somalia**.
- The torture and killing of people seen to oppose the powerful Zanu-PF party in **Zimbabwe**, and ongoing political violence in the run up to the elections next year.
- Human rights activists, journalists, and opponents of the ruling National Congress Party being consistently targeted by the government in **Sudan** who employ security forces, the military, and the police as tools of repression to harass, intimidate, arrest, detain and torture them.

In some cases, the experiences of women are different to those experienced by men and include:

- The mass rape and sexual violence against women and girls at the hands of the army, the police and non-state militia groups, carried out with almost complete impunity in **DRC**.
- Politically-motivated violence and rape committed against women members of the opposition party to Robert Mugabe by ZANU-PF supporters and government security forces in **Zimbabwe**.
- Widespread female genital mutilation (FGM) and underage marriage, despite being illegal in **Eritrea**. Up to 90 per cent of women are victims of domestic violence, and perpetrators will only be prosecuted if the injuries are life-threatening.

Refused asylum seekers: between a rock and a hard place

The current government, and previous governments, have long held the position that refused asylum seekers who have exhausted the asylum process should leave voluntarily, or should expect to be removed if they do not leave of their own accord.

There are many reasons why people from these countries may not take up the option of voluntary return. These include:

- Ongoing violations of human rights and instability such as those discussed in this report mean that **people fear that they will be in danger if they return**.
- People feel that **the decision the UK Border Agency (UKBA) has made on their asylum claim is incorrect**, and a significant number of negative initial decisions are overturned on appeal by the courts. **The overturn rate on initial decisions on women's claims is consistently higher than men's**, due to a

failure to understand the nature of violence that women may flee leading case owners to doubt women's credibility.

- People feel that they have not been able to get a fair and correct decision on their asylum claim as they are **unable to access good quality legal advice from the outset**.
- **Inconsistencies and omissions in the UKBA's Operational Guidance Notes** which are used by case owners to determine asylum claims.
- According to the government some asylum seekers who would face the 'real risk of serious harm or persecution' if returned to their home country should still be refused asylum here if they are able to **relocate to other parts of their home country**. In some countries moving into a new area can raise suspicions among the groups from whom asylum seekers fled, and can be particularly problematic for women.

The UKBA does not forcibly return people in large numbers. There may be a range of reasons for this, such as:

- They cannot return people due to lack of co-operation of home countries who will not receive returnees, or their embassies will not provide them with the necessary travel documents that they need in order to travel to their country.
- The UKBA loses touch with refused asylum seekers once they have come to the end of the process and are no longer receiving any support, making it difficult to enforce removals.

At the Refugee Council, a high number of our destitute clients are from the five countries featured in this report. From October 2010–11, 25 per cent of our clients accessing our destitution services were from these five countries, and 20 per cent the following year. Refused asylum seekers are more likely to be destitute than other groups of asylum seekers and refugees, as they often have no access to government support or permission to work. This can force people into street homelessness, begging and sex work. Women who are destitute are particularly exposed to the risk of further violence or exploitation in the UK.

Recommendations

- The UK government must acknowledge the fears of refused asylum seekers and the dangerous situations facing them on return to countries where human rights abuses and violence are ongoing. They must particularly acknowledge the acute situations facing women on return. The government's returns policy must reflect this, by being transparent about the countries they are currently unable to return people to, and by not expecting people to return when their countries clearly remain unsafe.
- The UK government should broaden the use of Humanitarian Protection and Discretionary Leave to those who are not found to be refugees but whose countries remain unsafe, so that they can access basic rights, support and services, and some stability while they wait to return.
- People who are unable to return to their own countries should not be forced into destitution. The government should provide end-to-end financial support and accommodation for asylum seekers, so that people are not made destitute while they wait for the situation in their country to improve. Asylum seekers, both during and at the end of the process should also be given permission to work, so that they can support themselves. Priority should be given to developing appropriate safeguards to ensure that destitution does not force asylum seeking women into living arrangements that make them more vulnerable to sexual violence and exploitation.
- The UK Border Agency must focus on getting decisions on asylum claims right first time to ensure that those who need protection here as refugees can get it: this includes ensuring access to quality legal support from the outset, ensuring Operational Guidance Notes are comprehensive and up to date, reviewing the relocation policy, and eliminating the culture of disbelief at the UK Border Agency.

Introduction

The UN states there are 15 million refugees worldwide.¹ Many of these people have fled serious human rights abuses in their own countries, including torture, sexual violence, and forced conscription at the hands of both government and militia groups. The majority (80 per cent) escape to refugee camps in neighbouring countries, while some make a longer journey to safety in Europe or countries that can offer them protection under the 1951 UN Refugee Convention.

Among the countries that a high number of people have fled from in Africa in recent years are the Democratic Republic of Congo, Eritrea, Somalia, Sudan and Zimbabwe, producing millions of refugees between them over the last 10 years. According to sources cited in this report, conflict and human rights abuses in those countries are still very much ongoing. As a result, refugees continue to flee, and those who have already left have well-founded fears of returning.

Many people from these countries have sought asylum in the UK over the last decade, and continue to do so. These countries have regularly appeared in the top ten nationalities of asylum seekers coming to the UK over the last ten years, according to Home Office figures.

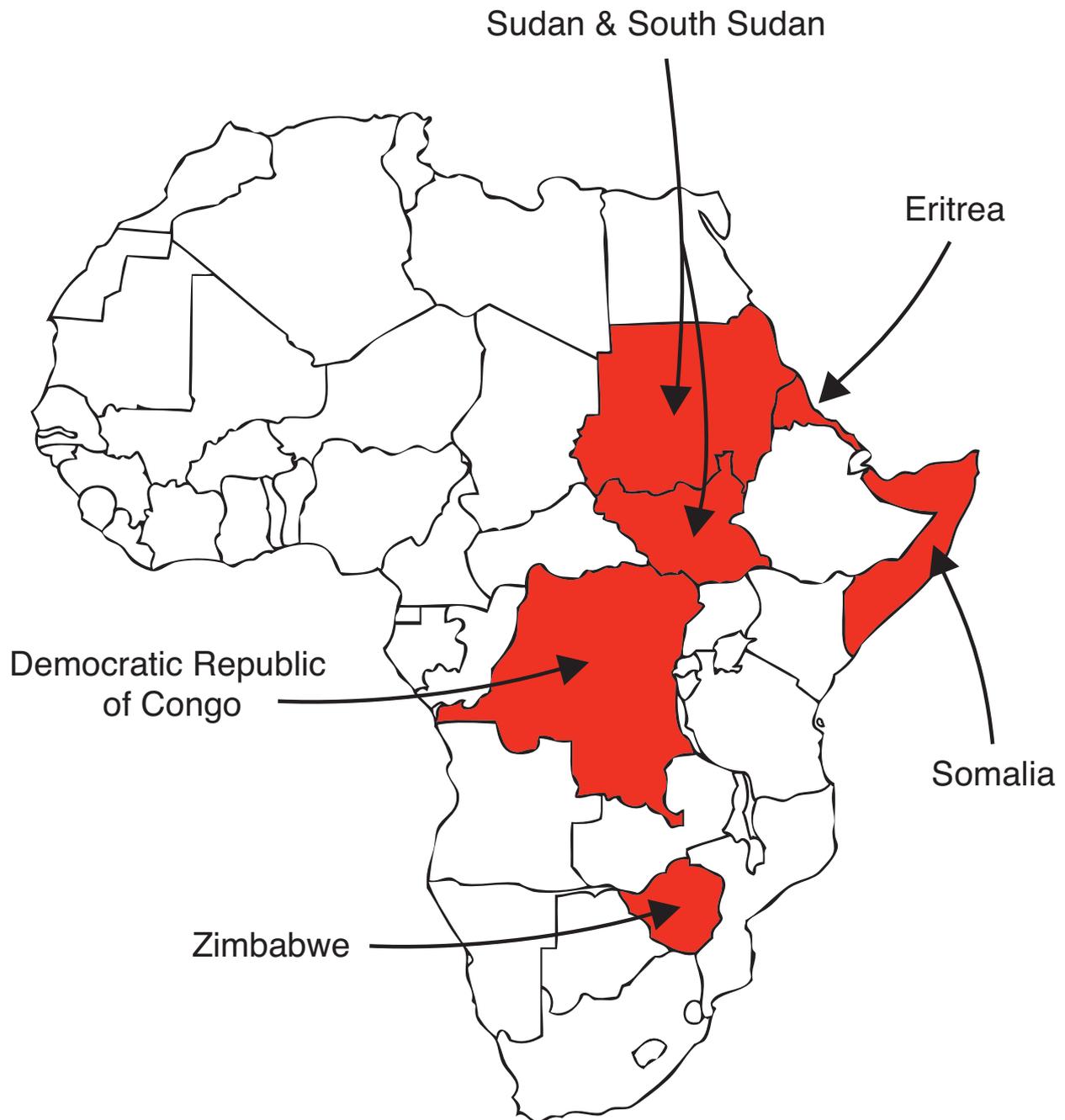
A high number of people from these countries are refused asylum here. Once they have come to the end of the asylum process and receive a negative decision, the UK government expects them to return home. If they do not return voluntarily, the government states that they will be forcibly returned to their countries.

Many, however, do not go back, sometimes because the UK government is unable to send them back, but largely because the situation that caused them to flee in the first place still remains a reality. They fear returning so much that many take the difficult decision to stay in the UK, often making huge personal sacrifices in doing so. Having exhausted their appeal rights, refused asylum seekers usually have no access to financial support or accommodation, and are left living in destitution and without access to basic services. This includes pregnant women, for whom destitution is particularly serious given the health implications for themselves and the future health of their children. It is these people the Refugee Council believes to be living 'between a rock and a hard place'.

This report examines the situations in these five African countries, in order to illustrate why many refused asylum seekers have an understandable fear of returning to their own countries. We have chosen these countries as illustrations as the UK has seen significant numbers of asylum seekers from them over the last decade, and a high number of the Refugee Council's destitute clients originate from them. The types of situations we describe in this report may of course be happening in other countries too. While we know from news reports that circumstances in these five countries are changing all the time, people may still have a genuine fear of return as they cannot be sure of whether the situation that caused them to flee in the first place has improved or changed. We also discuss the specific risks facing women in each chapter, as the abuses women face are often distinct from those faced by men, and in some countries are particularly acute.

This report discusses secondary evidence collected from a number of respected organisations that regularly monitor the situation in these countries, including the United Nations, Human Rights Watch, and Amnesty International. We have also drawn upon some of the UK Border Agency's (UKBA) country of origin information used by their staff when considering asylum applications. The Refugee Council's work is usually focused on the experience of refugees and asylum seekers once they arrive in the UK, and ensuring our clients get the support they need to rebuild their lives here. Their experiences, however, are inextricably connected to the global context, and in particular, the conditions in the countries they have fled from. It is information about these conditions that decisions on their asylum claims will be based, as well as decisions about whether they will be forced to return. For this reason, we have turned our attention abroad to highlight the impact foreign affairs are having on the lives of people who came to the UK to seek safety, but have been refused protection here.

While this report in no way explains the full extent of the dangers facing people on return to their own country, it shows what evidence can be found from desk research to demonstrate that those who are not returning home, have good reason not to. It also highlights the desperate situation facing those stuck in limbo in the UK, because they cannot go home. We have offered several recommendations for the government in terms of what action they should take to ensure that the suffering so many refused asylum seekers endure while living in this country, is finally brought to an end.



1 UNHCR 2012, *Global Trends 2011*

Democratic Republic of Congo

Introduction

Violent conflict, political instability, and human rights violations in the Democratic Republic of Congo since the 1990s are among reasons thousands of people have become displaced internally or have fled the country. Civil war in 2003 resulted in the loss of an estimated three million lives. At the end of 2011, 491,500 refugees had sought protection in neighbouring countries, while over 1.7 million people had become internally displaced.² The fighting continues: the United Nations High Commissioner for Refugees (UNHCR) reports that more than 40,000 people have fled to Uganda and 15,000 to Rwanda since the start of 2012 due to fighting in the eastern Kivu regions.³ There was also extensive press reporting of widespread violence before the presidential elections in November 2011.

Background to conflict

The Democratic Republic of Congo (DRC) has long been a centre of corruption, armed insurrection and destructive foreign influence, and has seen relatively few periods of stability since its independence in 1960, including wars in 1996 and 1998 in the east of the country between national and foreign armed groups struggling for power and access to resources.⁴

The current problems are a 'spill-over' of the Rwandan civil war and subsequent genocide into the country. Since 2009, a series of related bloody military and paramilitary campaigns has resulted in millions of people being killed, and many more having been forced to leave their homes under threat of involuntary conscription, torture and summary execution. A militant group led by Bosco Ntaganda, who is now wanted by the International Crimes Committee for crimes against humanity, engaged in wide-reaching practices of child conscription, arbitrary arrests and assassination of government opponents. Moreover, the intrusion of the Ugandan-based Lord's Resistance Army (LRA) has only served to escalate incidents of human rights violations.⁵

As a result, the United Nations Security Council has intervened, sending peacekeepers to the country in an effort to curb the rising tide of violence. However, the significant numbers of peacekeepers in the area did not prevent abuses and rape, murder and forced conscription.⁶

Even after several years of attempts to establish a cease-fire between warring factions and democratic reform, dangers to civilians are still very real, and any reform can be seen as mostly cosmetic. As of 2009, almost six million people have been killed in the conflicts, over half under the age of five. Over 1.1 million people are still unable to return to their homes in the east for fear of persecution. Between 2006 and 2011, an estimated 1.7 million people were internally displaced in the east and a further 491,500 became refugees in neighbouring countries.⁷ Renewed violence between government troops, FDLR forces, and local defence groups displaced over 100,000 civilians between November 2011 and January 2012. More than 12,000 other people were displaced in the central Katanga Province.⁸

Persecution and human rights abuses

The Democratic Republic of Congo remains politically unstable with the government targeting opposition politicians and their supporters. Politically motivated violence has been especially fierce during election periods, and this was widely reported in the run-up to and in the aftermath of the November 2011 presidential and national assembly elections, by the UK and international press. The government engaged in politically motivated intimidation including arrests of opposition politicians and their supporters.⁹ Human Rights Watch reported that "violence perpetrated by police and other state security services included restrictions on political activities, unnecessary force against demonstrators, and arbitrary arrests primarily directed toward opposition parties, their supporters, and journalists."¹⁰ The UN's report into the pre-election period also showed that journalists and human rights defenders faced the risk of being killed and are regularly tortured, threatened or arbitrarily arrested and detained.¹¹

The human rights situation in the Democratic Republic of Congo remains grave as the army and non-state armed forces continue to attack civilians. According to the US department of State (2011), armed groups commit serious abuses with impunity, some of which may constitute war crimes and crimes against humanity such as unlawful killings, disappearances, mass rape, and torture. They also recruit children as soldiers and for forced labour.¹² The Human Rights Watch report, *You will be punished* has documented the killings, sexual violence, torture, beatings, and abductions of civilians in the east of the country. The fighting and human rights abuses continue today, and in November 2012 the UN advised states not to return people to the eastern Kivu provinces of the country due to the escalating security and human rights situation there.¹³

An Amnesty International report describes the treatment of people in custody:

“Torture and other ill-treatment remained common in military, police and intelligence service custody. Armed groups were also responsible for such abuses. Conditions in all detention centres and prisons constituted cruel, inhuman or degrading treatment. Scores of prisoners and pre-trial detainees died from starvation and treatable illnesses. Rape and other sexual abuse of female prisoners were widespread.”¹⁴

The UN Special Rapporteur on Extrajudicial Executions states that ‘being imprisoned in the Democratic Republic of Congo jail is often a fate worse than hell’.¹⁵ In their latest annual report, Amnesty states that prisons continued to lack the resources to ensure people were detained in conditions that met international minimum standards. Several prisoners died as a result.¹⁶

According to Amnesty International’s Director for Africa, “the inability of the Democratic Republic of Congo to bring to justice members of its own army and armed groups for crimes under international law, has fostered a culture of impunity, leading to attack after attack against civilians”.¹⁷

Refused asylum seekers returning to the Democratic Republic of Congo are viewed as traitors and are treated as such. According to a Justice First report, *Unsafe Return*, returnees are accused of being political opponents of the president and of having betrayed the country, and are subjected to inhuman and degrading treatment to obtain confessions about their activities in the UK.¹⁸ The report states that refused asylum seekers removed to the Democratic Republic of Congo are at risk of: interrogation at the airport, arbitrary detention, being denied access to lawyers, torture, and rape in detention. The report also documents the detention and ill treatment of children removed with parents.¹⁹ *The Guardian* newspaper has reported on the detention and torture of two refused asylum seekers who were removed from the UK on 13 March 2009.²⁰

Risks facing women

The human rights situation remains grave for women and girls, hundreds of thousands of whom are reported to have been subjected to sexual violence at the hands of government forces, police and other armed groups. According to a Human Rights Watch report, between January and September 2009, 1,400 civilians were killed and 7,500 women and girls were raped during the government military operations against the FDLR.²¹ According to the UN Special Representative of the Secretary General in the Democratic Republic of Congo, at least 15,000 cases of rape occurred in eastern part of the country in 2009 and every day, crimes of sexual violence were committed with almost total impunity.²² Amnesty International has also documented cases of mass rape by armed groups including the rape of 100 women in Nyakiele village near Fizi on the night of 11 June 2011 and the rape of more than 300 women, girls, men and boys in Walikale Territory, North Kivu during a four day ordeal in July and August 2010.²³ The US Department of State Country Report on Human Rights Practices in the Democratic Republic of Congo from April 2011 states that government security forces, non-governmental armed entities, and civilians perpetrated widespread and mass rape against women and girls.

In March 2009, the UN Secretary-General reported to the UN Security Council that members of non-state armed entities, the Congolese army, and the police were responsible for 81 per cent of all reported cases of sexual violence in conflict zones and 24 per cent in non-conflict areas.²⁴ The UN Population Fund (UNFPA),

the agency coordinating efforts against sexual violence in the country, estimated that 200,000 Congolese women and girls had become victims of sexual violence since 1998.²⁵ The US Department of State report also quotes a study by the Journal of the American Medical Association on sexual violence in Eastern Congo covering the last 15 years of conflict in North and South Kivu and Ituri, Orientale which found that nearly 75 per cent of individuals in these regions experienced sexual violence, 35 per cent of which were conflict related.²⁶ In April 2010, Oxfam published a detailed report on sexually motivated violence (showing location and timing of attacks, perpetrators, types of violence and trends over time) in the eastern part of the Democratic Republic of Congo.²⁷ In another report published in July 2011 Oxfam states that “in many of the communities surveyed, sexual exploitation of children is becoming increasingly the norm”.²⁸

As a US Department of State report notes, “prosecutions for rape and other types of sexual violence remained rare” with only 287 (2 per cent) of the 14,200 rape cases registered in South Kivu between 2005 and 2007 going to court.²⁹ An Amnesty report stated that while some prosecutions took place, impunity was still widespread and victims were often threatened.³⁰

Congolese women also face social, legal and marital subjugation and discrimination.³¹ The minimum legal age of marriage for girls is 15, whereas for boys it is 18.³² In a 2011 study, nearly two-thirds of married women reported being physically or sexually abused by their husbands.³³

Five per cent of women in the country have experienced female genital mutilation.³⁴ Women and girls are particularly vulnerable to violence and murder due to the commonly held belief in witchcraft. A 2010 UN report found that:

“Significant numbers of children and women are accused of being witches [...] and are subjected to torture, harsh beatings and other cruelty as a result. Some have been killed, in most cases by their own families [...] there is almost total impunity for such killings”.³⁵

The DRC is both a source and destination country for sex and labour trafficking.³⁶ Girls in cities are especially at risk of being forced into prostitution, sometimes by their parents at a very early age.³⁷ In addition, military groups are known to recruit and abduct girls to serve as servants, spies and sex-slaves.³⁸

2 UNHCR, 2012, *Global Trends Report 2011*

3 UNHCR, 20 November 2012, “As fighting reaches Goma, UNHCR calls on states not to return refugees”, <http://www.unhcr.org.uk/news-and-views/news-list/news-detail/article/as-fighting-reaches-goma-unhcr-calls-on-states-not-to-return-refugees.html>

4 These groups include: the Congolese army and the main armed groups that had fought against each other during the war; the Democratic Forces for the Liberation of Rwanda (FDLR); the National Congress for the Defence of the People (CNDP), the Allied Democratic Forces (ADF) and the Lord’s Resistance Army (LRA).

5 Human Rights Watch, 2012, *World Report 2012 – Democratic Republic of Congo*

6 Amnesty International, 2010, *Mass Rape in Walikale: still a need for protection in Eastern Congo*

7 UNHCR, 2012, *Global Trends 2011*

8 UNHCR, 2012, *Renewed clashes and insecurity causing displacement in Eastern Democratic Republic of the Congo*

9 Amnesty International, 19 December 2011, “Democratic Republic of Congo: Post-election intimidation through arrests must end”

10 Human Rights Watch, 2012, *World Report: Democratic Republic of Congo*

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14 Amnesty International, 2010, *Human Rights in Democratic Republic of Congo – Amnesty International Report 2010*

15 Press statement by Professor Philip Alston, UN Special Rapporteur on extrajudicial executions. Mission to the Democratic Republic of the Congo, 5–15 October 2009 http://www2.ohchr.org/english/issues/executions/docs/PressStatement_SumEx_DEMOCRATIC_REPUBLIC_OF_CONGO.pdf

16 Amnesty International, 2012, *Annual Report 2012 – Democratic Republic of Congo*

- 17 Amnesty International, 23 June 2011, press release, “New mass rapes in Democratic Republic Of Congo are result of horrific failure of justice”, <http://www.amnesty.org/en/for-media/press-releases/new-mass-rapes-Democratic-Republic-of-Congo-are-result-horrific-failure-justice-2011-06-23>
- 18 Justice First, 2011, *Unsafe Return*
- 19 Ibid.
- 12 Diane Taylor, Guardian, 27 May 2009, “*Refused asylum seekers tell of imprisonment in Democratic Republic of Congo and violent persecution when they return*”
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- 23 Amnesty International, 2010, *Democratic Republic of Congo: Mass rapes in Walikale: Still a need for protection and justice in eastern Congo*
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- 26 US Department of State Country Reports, 2009, *Democratic Republic of Congo*
- 27 Oxfam, 2010, ‘*Now, the World is without Me*’: *An Investigation of Sexual Violence in Eastern Democratic Republic of Congo*
- 28 Oxfam, 28 July 2011, ‘*We are entirely exploitable*’: *The lack of protection for civilians in eastern Democratic Republic Of Congo*
- 29 US Department of State Country Reports, 2009, *Democratic Republic of Congo*
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- 32 The Coalition of the Campaign of Africa for Women’s Rights, 2011, referenced in Home Office
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- 34 US State Department, 2010, *The US Department of State’s Country Report on Human Rights Practices*, referenced in Home Office
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- 37 UNCRC, 2009, *Consideration of reports submitted by states parties under article 44 of the Convention, Concluding observations: Democratic Republic Of Congo*, referenced in Home Office
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Eritrea

Introduction

Ongoing human rights abuses in Eritrea have caused an increasing number of people to flee the country since 1993. As a result, Eritrea is now one of the largest refugee producing countries in the world. UNHCR figures show that at the end of 2011, there were 252,000 Eritrean refugees worldwide, making this the ninth largest refugee population globally.³⁹

Background to conflict

Long coveted as a country of strategic importance due to its extended Red Sea coastline, Eritrea's long battle for independence from Ethiopia ended – after 30 years of war – in 1993. Following a five-year period of relative peace, a renewed conflict with Ethiopia resulted in tens of thousands of casualties, ending with a tense armistice in 2001. A UN security zone now separates the countries.

The only political party, the ruling Popular Front for Democracy and Justice (PFDJ), has no viable competition. Despite a constitution calling for full elections dating back to 1997, to this date no such elections have been held, and the country's president, Isaias Afewerki, has remained in power for nearly twenty years since Eritrea became an independent state. In the Reporters Without Borders latest index of press freedom, Eritrea ranked last, 179th in the world for the fifth year running, with no single media outlet that is not owned by the state.⁴⁰

In July 2012 the UN Human Rights Council passed a resolution on Eritrea, which condemned the widespread violations of human rights, and made a series of demands to the government. It went on to ask for access by a mission from the Office of the High Commissioner, and for information to be provided to the Commissioner on the whereabouts of all detained persons. They also agreed to appoint a Special Rapporteur on the situation of human rights in Eritrea for a period of one year.⁴¹

Persecution and human rights abuses

The human rights situation in Eritrea has remained extremely serious for a number of years. Targets of abuse are usually opponents of the regime or those perceived to be, including military deserters, national service draft evaders, those trying to escape the country, journalists, and students.⁴² The International Crisis Group stated in 2010 that Eritrea is "...a prison state, without rule of law or independent judiciary and where the legal process is routinely ignored and internal security is ever more oppressive and ubiquitous".⁴³ Human Rights Watch states, "torture, arbitrary arrests, detention, and forced labour are rampant in the country and rule by fiat is the norm".⁴⁴ According to Human Rights Watch in 2012, torture takes various forms including severe beatings, mock drowning, being hung by the arms from trees, and being tied up in the sun in contorted positions for hours or days. Detainees are also held in unlit underground bunkers and in shipping containers with extremely hot daytime and freezing night-time temperatures. Detention conditions are also harsh and deaths in custody are common due to ill-treatment, torture, and denial of medical treatment.⁴⁵

Eritrea is an authoritarian state with only one official political party – the People's Front for Democracy and Justice (PFDJ), which has dominated public and private life since 1994. The UN reports that Eritrean authorities do not tolerate political dissent, with government critics being arrested, held *incommunicado* in secret detention, or simply "disappearing". Relatives also face reprisals from the authorities for inquiring about the arrest or detention of family members. Eritrean authorities reportedly monitor the political activities of the diaspora, harass critics, and intimidate exiled Eritreans into participating in pro-government rallies and into paying remittances.⁴⁶ Since 2001, thousands of politically motivated arrests have occurred. In light of this, as UNHCR points out, refused asylum seekers who are critical of government or are members of, are associated with, or are even perceived to be associated with, opposition political groups, will be at risk if they return to Eritrea.⁴⁷

Compulsory and indefinite national service for those under 50, irrespective of gender, continues to be a major cause of flight from Eritrea.⁴⁸ Human Rights Watch states that Eritrea has “misused its national service system to keep a generation of Eritreans in bondage.”⁴⁹ UN reports show that national service conscripts are used as cheap and involuntary labour on projects that personally benefit ranking civilian and military leaders.⁵⁰

As military service applies to all citizens, Eritreans living abroad since childhood or born in exile are not exempt and will be conscripted upon return if they satisfy the age criteria and are medically fit.⁵¹ The Eritrean authorities perceive individuals who are eligible for conscription but who have left Eritrea illegally as many asylum seekers do, as ‘draft evaders’, irrespective of whether they have completed active national service or have been demobilised. Evaders and deserters are regarded as disloyal and treasonous towards the government, and are therefore punished for their perceived disloyalty.⁵² They experience severe penalties including the death penalty, imprisonment for up to five years, punishment of family members and fines. US reports show the Eritrean government is responsible for extrajudicial killings, by authorising the use of lethal force and summary executions against individuals resisting or attempting to flee during military searches for deserters and evaders. Military personnel on the border have standing orders to shoot on sight people who are attempting to flee the country.⁵³

The Eritrean government views refused asylum seekers who return to the country as enemies of the state and is responsible for the mistreatment and persecution of people who have returned, whether voluntarily or involuntarily. According to Amnesty International and Human Rights Watch, refused asylum seekers who are forcibly returned to Eritrea face arrest without charge, detention, ill-treatment, torture, and death at the hands of the authorities.⁵⁴ The US government’s *Country Report for Eritrea* (2011) states that refugees and asylum seekers repatriated from other countries during 2010 had disappeared.⁵⁵ Eritrean authorities detained the majority of the 1,200 asylum seekers forcefully returned from Egypt in June 2008, in military facilities. Similarly, asylum seekers who were forcibly returned from Malta in 2002, Libya in 2004, and the UK and Germany were either killed, arrested on arrival, tortured, and sent to prisons where most are still believed to be held with no access to the outside world.⁵⁶

Consequently, UNHCR’s current *Country Guidelines for Eritrea* has advised against the forceful return of refused asylum seekers to Eritrea because “of the real risk of persecution they will face in the hands of authorities”.⁵⁷

Religious rights are severely restricted in Eritrea, for all but the four officially recognised religions – Sunni Islam, the Eritrean Orthodox Church, the Roman Catholic Church, and the Evangelical Lutheran Church. The authorities regard all other faiths as “unpatriotic”, “foreign” and a threat to national security.⁵⁸ According to the Freedom House’s report, *The Worst of the Worst – Eritrea*, “persecution of minority Christian sects and ethnic groups has escalated in recent years”.⁵⁹

Followers of other religions, particularly Jehovah’s Witnesses, are subject to harassment, imprisonment, torture, and death at the hands of the authorities. Human Rights Watch states that “adherents of ‘unrecognised religions’ are seized in raids on churches and homes and imprisoned and tortured until they renounce their faith.”⁶⁰ According to Amnesty International up to 3,000 Christians from unregistered church groups were in detention in 2010 in conditions that amounted to torture. Religious detainees are usually confined in overcrowded metal shipping containers and unventilated underground cement cells without sanitation facilities. The authorities also use force, including torture, to compel detainees to renounce their religious beliefs as a pre-condition of release. Amnesty International reports that some detainees have died from torture and the harsh conditions they have been exposed to.⁶¹

Risks facing women:

Women in Eritrea are the subject of widespread human rights abuses that stem mainly from harmful traditional practices, traditional power structures, and societal discrimination.⁶² Reports state women and girls commonly face domestic violence, rape, FGM, harassment, and discrimination if they fail to conform to conventional roles.⁶³ Many forms of violence which women experience are socially accepted, and in this area there is a disparity between law and practice. For example, although FGM and underage marriage are

illegal, they remain widespread.⁶⁴ The traditional view is that women should marry between 15–18, whereas men are expected to marry between 20–25.⁶⁵

Domestic violence is prevalent in Eritrea, with married girls under 18 being particularly at risk, although studies indicate that up to 90 per cent of women are victims. There is no formal support for victims and perpetrators will only be prosecuted if the injuries are life-threatening.⁶⁶ What is more, spousal rape is not considered a crime because the legal definition specifies that rape occurs outside of marriage.⁶⁷

Trafficking of women and girls inside the country and to the Gulf States is a huge problem. This is primarily for the purpose of domestic servitude and to a lesser extent sex trafficking.⁶⁸

Female conscripts for national service often face sexual harassment and violence including rape and are coerced into sexual intercourse with commanders through threats of heavy military duties, harsh postings, and denial of home leave. Those refusing to submit to sexual exploitation and abuse from their superiors are often detained, tortured, and ill-treated.⁶⁹ A study of Eritrean women seeking asylum in Norway in 2007 reported rapes and other abuses during national service, including “detention (short-and long-term), beatings, forced abortions (and attempted abortions), forced heavy labour, forced ingestion of drugs, death threats, degrading treatment, continuous sexual violence and rape, as well as possible forced pregnancy and sexual enslavement.”⁷⁰

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Somalia

Introduction

Years of conflict in Somalia have resulted in thousands of deaths, and millions of people being forced to flee and becoming displaced. As a result, Somalia has become a major producer of refugees worldwide – at the end of 2011, Somalia was the third largest refugee producing country in the world with 1,077,000 refugees.⁷¹

Background to conflict

Somalia has been in an effective state of civil war since 1990, when its government was toppled by opposition groups supported by the then Ethiopian regime. Formerly a prosperous seafaring nation with a rich cultural heritage spanning thousands of years, the country had been left without an effective central government, its civilians under the protection of local authoritarian or clan groups including militant Islamist group Al-Shabaab.

In 1992, after conflict and famine left 300,000 inhabitants dead, the UN attempted to manufacture a ceasefire, so as to promote dialogue and aid attempts to re-establish a central government. But this resulted in short-term gains in security, with a long-term return to armed conflict for the next twenty years.

Since 2010, renewed fighting has resulted in over 4000 civilian casualties, including over a thousand deaths,⁷² the forced displacement of over 300,000 people who fled to neighbouring countries in 2011,⁷³ as well as the internal displacement of more than 1,400,000 persons.⁷⁴ Assassinations, torture and government corruption are still commonplace, foreign intervention continues to be seen as problematic, and it is projected that it will be several years before Somali refugees would be able to safely return without fear of persecution.

This year saw the first elections of a new government in twenty years. Yet the fighting shows no signs of abating. Despite their withdrawal from the capital Mogadishu, Al-Shabaab continues to attack the capital, including with suicide bombings, according to Human Rights Watch.⁷⁵ Press reports in 2012 showed that heavy clashes still continue between Al-Shabaab rebels and Ethiopian troops in central Somalia.⁷⁶

Persecution and human rights abuses

Reports have shown both government and non-state armed forces seriously violated international humanitarian law through indiscriminate attacks against civilians and suspected opponents.⁷⁷ Several reports implicated Somalia's Transitional Federal Government forces in carrying out indiscriminate attacks on civilians, arbitrary arrests, extrajudicial killings of alleged Al-Shabaab members, and of repressing civil and political rights.⁷⁸

Similarly, Al-Shabaab has carried out extrajudicial killings of suspected informers or enemy sympathisers, and public executions and beheadings for minor infractions of Al-Shabaab's strict interpretation of Sharia law, as well as torture and other ill-treatment.⁷⁹

Members of minority clans are often vulnerable to attacks because they lack the military capability to defend themselves and do not generally benefit from the protection of warlords and militia groups of the large clans. Thus, in southern and central Somalia's lawless environment, members of minority clans are exposed to an increased risk of rape, attack, abduction, and having their real and personal property confiscated.⁸⁰

Human Rights Watch reports that the forced conscription of adults and children is widespread. Al-Shabaab has been particularly active in the recruitment of children since the second half of 2008, becoming common practice in 2009. By April 2010 anecdotal reports indicated that child recruitment increased significantly and

has shown no signs of reducing. In April 2011 a report from the UN secretary-general cited military sources stating that Al-Shabaab abducted an estimated 2,000 children for military training in 2010.⁸¹

The Transitional Federal Government (TFG) also recruited children in violation of their stated policy against this practice. In UNICEF's report *Ongoing Somalia Crisis is a Children's Crisis* (2011) the charity condemned the "increased recruitment, as well as the alleged detention of child combatants by TFG forces".⁸² The Amnesty International report, *In the line of fire: Somalia's children under attack* also documents extensive recruitment and training of children by the TFG and insurgent forces. According to the report, almost all the Somali refugees interviewed in 2010 cited the forcible conscription of children, or the risk of such recruitment, as a reason for fleeing Somalia.⁸³

Children continue to be killed or maimed as a result of indiscriminate shelling, gunfire, widespread insecurity, and the targeting of schools. The International Committee of the Red Cross (ICRC) reported that in 2010, 43 per cent of patients admitted to the two main referral hospitals in Mogadishu with war-related injuries were women and children.⁸⁴

Risks facing women:

Women and girls continue to face severe discrimination and ill-treatment in the hands of Al-Shabaab in southern and central Somalia. This includes flogging, and arbitrary detention for greeting men, including relatives, in public or for violating al-Shabaab's strict dress code.⁸⁵ UNHCR has reported a number of such cases including the flogging of 200 women in Mogadishu for allegedly failing to wear the prescribed veil and the flogging of another group of women for wearing bras.⁸⁶

Rape is a significant threat for women in Somalia. Al-Shabaab militants are known to have abducted girls and force them to 'marry' them and use them as sexual slaves and spies.⁸⁷ However, they are not the only perpetrators. Women are at risk of gang rape and sexual violence from youth gangs, the police and male students, especially those who have been internally displaced due to the on-going conflict.⁸⁸ In this context, it is unsurprising that sexual violence is rarely punished by the police and the victim's family often 'settle' the matter by accepting financial compensation⁸⁹ and forcing her to marry her rapist.⁹⁰

Sexual and gender-based violence, including early and forced marriage, domestic violence, female genital mutilation, and rape, is reportedly widespread.⁹¹

It is reported that just under 98 per cent of women in Somalia have undergone FGM⁹² between the ages of 5–8,⁹³ and the majority have been subjected to the harshest form, infibulation.⁹⁴ Infibulation causes multiple serious health problems such as bladder and urine infections, cysts, infertility, blood loss, increased risk of complications and death of the mother or child during childbirth.⁹⁵ The cultural pressure for girls to undergo FGM is so strong that if a family refused to do so, it can result in a family member being attacked by other family or clan members.⁹⁶

Domestic violence is the norm and is only illegal if it results in serious injury or death.⁹⁷ Spousal rape is legal.⁹⁸ 45 per cent of women aged 20–24 are married by age 18⁹⁹, and forced marriage is common.¹⁰⁰ A woman's father or male guardian traditionally chooses her husband and a daughter's refusal to marry their choice puts her at risk of violence from family and community.¹⁰¹ BBC News has reported incidents of women who refused forced marriage being beheaded and their heads being sent to their fathers.¹⁰²

Women are customarily used as tools for men to gain power over one another or to form alliances with other clans. For example, marriage is often used as a peace agreement¹⁰³ but if a suitor considers the bride-price set by a woman's father to be too high, he may rape her in order to lower the price because women who have been raped are socially stigmatised.¹⁰⁴

The Somali practice of 'inherited marriage' is common among nomadic tribes, where a widow will be forced to marry her deceased husband's brother. In Al-Shabaab, where all soldiers are considered to be brothers, the practice of inherited marriage allows soldiers to marry the widows of their deceased fellow soldiers.¹⁰⁵

There is evidence that trafficking occurs in certain parts of Somalia, where women are trafficked from the coast to pirates' homes to be exploited in domestic and sexual slavery.¹⁰⁶ Somali women have also been found for sale in markets in Tanzania and Sudan.¹⁰⁷

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Sudan

Introduction

Decades of civil war in Sudan and conflict in the western region of Darfur have caused the deaths of hundreds of thousands of people, and the displacement of millions. According to UNHCR, Sudan is the fourth largest country of origin for refugees, with an estimated 500,000 refugees worldwide. An estimated 102,000 people fled from Sudan in 2011, mainly to South Sudan (76,800) and Ethiopia. Violence continues today: following a peace agreement in 2005, South Sudan seceded from Sudan in July 2011, and while the split was peaceful, there has been unrest and violence in Sudan and the transitional areas since. UNHCR reports there were approximately 2,400,000 internally displaced people in Sudan at the end of 2011 plus an estimated 350,000 displaced in the newly independent South Sudan as a result of fighting.¹⁰⁸

Background to conflict

Sudan has been plagued by numerous armed conflicts, dating back to its independence from colonial rule in 1955. For long periods, the country could be seen as unable, or unwilling, to protect its own citizens from the actions of insurgent groups, often with large-scale human rights violations being the ultimate result.

The civil conflict between the government of Sudan and the Sudanese Peoples Liberation Movement/Army (SPLA) came to an end with the signing of the Comprehensive Peace Agreement in 2005. A referendum was held in 2011 whereby the south voted for the establishment of a new state. While this brought the main conflict to an end, the three transitional areas – Abyei, Blue Nile, and Southern Kordofan – have continued to experience inter-communal fighting over cattle, land, and natural resources. There has also been fighting in these areas between Sudanese government forces and SPLA elements. Such fighting occurred in Southern Kordofan in June 2011 and according to the UN, caused more than 73,000 people to flee from the area.¹⁰⁹ Additionally, the militant group, the Lord's Resistance Army (LRA), resumed attacks on villages in South Sudan and caused 25,000 people to flee their homes in Western Equatoria by August 2011, according to Amnesty.¹¹⁰

Recent fighting, however, has mainly taken place in Darfur in western Sudan. The recent atrocities in Darfur reflect a protracted history of ethnic and tribal violence, most likely enabled by the incursion of foreign military and paramilitary groups. The situation was highlighted in a letter from the executive director of Human Rights Watch that reported, in relation to the internal district of Darfur in 2006, government militias were guilty of crimes against humanity including widespread killing of civilians, rape as a tool of war, systematic torture, robbery and recruitment of child soldiers.¹¹¹ According to Amnesty International, the fighting since 2010 has caused hundreds of casualties and displacement of an estimated 70,000 people from Darfur.¹¹²

Over 400,000 Sudanese people have claimed asylum under the 1951 convention, and another 5 million internally displaced as a result of the continued fighting.

Persecution and human rights abuses

Both government and non-state militia forces continue to carry out deliberate attacks on civilians. According to the Human Rights Watch report, *Darfur in the Shadows*, government forces and allied militia have attacked civilians in SLA-controlled areas, leading to the death of scores of civilians, the destruction of property, and displacement.¹¹³

The army and their supportive armed militia group, the Janjaweed, carry out machine gun attacks in civilian areas and displaced persons' camps, and torch houses.¹¹⁴ A joint Human Rights Watch and Amnesty International report, *Sudan: Southern Kordofan Civilians Tell of Air Strike Horror* documents such attacks in the Nuba Mountains. Daniel Bekele, Human Rights Watch's Africa Director said:

“The relentless bombing campaign is killing and maiming civilian men, women and children, displacing tens of thousands, putting them in desperate need of aid, and preventing entire communities from planting crops and feeding their children.”¹¹⁵

According to aid groups quoted in the report, the bombing, attacks, and fighting have displaced more than 150,000 people in areas under control of opposition forces, where government restrictions have also prevented aid groups from delivering food and other assistance.¹¹⁶

Human Rights Watch and Amnesty International reported that the Sudanese government employed security forces – the National Intelligence and Security Service (NISS), the military, and the police – as tools of repression to harass, intimidate, arrest, detain and torture human rights activists, journalists, and those who spoke out against the government, or those suspected of having links to rebel movements. They document several cases of torture and ill treatment of Darfuri activists by the NISS.¹¹⁷ Inside Darfur, NISS security officials have targeted activists in the displaced persons camps. According to the Darfur Bar Association, 64 Darfuri civilians are currently detained in prisons in Darfur and Khartoum arbitrarily without charge, some for prolonged periods.¹¹⁸ Amnesty International’s *Annual Report 2012 – Sudan* also highlights continuing incidents of arbitrary arrest, detention, torture and ill treatment of political activists and human rights defenders by NISS agents, who are immune from prosecution and disciplinary measures for human rights violations. As a result of these practices, human rights defenders continued to flee the country and to limit their activities when inside Sudan.¹¹⁹

Risks facing women:

Women and girls in Sudan live in a context of discrimination and an ever-present risk of violence. Their persecution is inflicted, authorised or ignored by the state.

Sexual violence and rape have been used as a weapon of war in the long-term conflict in Sudan¹²⁰ and as a means of silencing politically active women.¹²¹ During 2011, internally displaced women and girls travelling to and living in refugee camps were particularly at risk. NGOs working in the country reported government forces committing targeted rape, sexual violence and murder against displaced women and girls. Rapists are able to act with impunity¹²² partly because government forces benefit from immunity for their crimes¹²³ but also because Sudanese law contains no mechanism to bring them to justice. According to Sudanese law, if a married woman is raped, the perpetrator will only be penalised if there are four male eye-witnesses to the crime; otherwise the woman risks being charged with adultery,¹²⁴ for which the punishment is death by stoning.¹²⁵ Since rape is only referred to in relation to adultery law, there is no legal definition and therefore no punishment for the rape of an unmarried women. Marital rape and domestic violence are also legal and are naturally rarely reported. However, various research studies suggest that violence is a common occurrence in the lives of many Sudanese married women.¹²⁶

A series of Public Order laws, introduced since the 1990s, have increased the state’s control over personal conduct with the effect of eroding the rights and freedoms of women¹²⁷ and targeting them for transgressing a fundamentalist moral order. The Sudan Public Order Police are known to have been responsible for acts of brutality against women.¹²⁸ The Criminal Act 1991, for example, states that those who wear clothing considered to be ‘indecent or immoral’, such as women wearing trousers or having their heads uncovered, can be subjected to a punishment of 40 lashes.¹²⁹ The Public Order Code 1996 enforces the separation of men and women, both in public and private places.¹³⁰

Forced early marriage and childbirth is common in Sudan¹³¹ and early marriage and polygamy have been promoted by the Sudanese parliament as recently as 2010.¹³² While figures vary as to the average age of marriage, one study indicated that 38 per cent of women aged 20–49 were married before the age of 18.¹³³ The legal age of marriage is 10 for girls and 15 or after puberty for boys.¹³⁴

A Foreign and Commonwealth Office report found that 89 per cent of women and girls aged 15–49 have been subjected to female genital mutilation.¹³⁵ The trafficking of girls for labour or prostitution and the sexual abuse of children are significant problems¹³⁶ for which there is inadequate state protection.¹³⁷ Street children,

women and girls from rural areas and those who are internally displaced are most at risk. In addition, during the civil war, girls were abducted by armed groups for the purpose of sexual slavery.¹³⁸ A US State Department Report in 2012 highlights an increase in child prostitution in recent years.¹³⁹

Inhumane prison conditions affect women as 75 per cent of female prisoners are pregnant or have young children and therefore find the manual labour, cramped conditions and poor quality of food are particularly difficult. Female prisoners risk being raped and asked to exchange sexual favours for essentials like soap.¹⁴⁰

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Zimbabwe

According to the UN, the highest number of new asylum claims globally in 2011, either with UNHCR or with state asylum systems, originated from Zimbabwe (52,500).

Background to conflict

Once seen as ‘the breadbasket’ of Africa because of its thriving economy, Zimbabwe has seen a downward spiral following its independence from colonial rule in 1965, when the settler white government declared Unilateral Declaration of Independence from Britain. Independence was followed by a 15 year war of liberation which resulted in Robert Mugabe coming to power as prime minister in 1980. Following the hyperinflation of the country’s currency, and resulting economic crisis, since 1998, the country has experienced increasing human rights abuses, including arbitrary arrest and widespread political violence.

Many Zimbabweans fled due to the political violence surrounding the 2000, 2002, 2005 and 2008 elections. The 2008 elections resulted in the deaths of up to 200 people, the beating and torture of 5,000 people, and the displacement of 36,000.¹⁴¹ The signing of the power-sharing agreement in September 2008 between ruling party Zanu-PF and the Movement for Democratic Change (MDC) did not stop the political violence, which continues today and looks set to escalate during the 2013 elections.¹⁴² Further, the coalition Government of National Unity (GNU), has failed to implement its agenda to draft a new constitution, this despite now being over a year behind schedule. Despite calls for expansive election reforms and external mediation via the South African Development Community (SADC), a roadmap to change has largely failed in its implementation, this due to widespread suspicion and mistrust in senior government positions.¹⁴³

Opposition groups continue to allege a lack of protection from government groups, or active involvement in attacks on opponents to the regime. Due to the difficulties inherent in reporting the news in a country largely seen as having the worst regional press freedom – as well as one of the worst in the world – these stories can usually not be confirmed. Over two million people have fled the regime in the past decade, most of them finding shelter in temporary refugee camps in neighbouring South Africa.¹⁴⁴

Persecution and human rights abuses

Despite the establishment of a power sharing government, political persecution of members of the MDC and their supporters continues. As the US government report on Zimbabwe for 2010 states, “ZANU-PF supporters continued to assault suspected and known MDC members and their families, civil society activists, and student leaders.”¹⁴⁵ Similarly in the UK country guidance case of RN in 2008, the tribunal found that:

“Although a power sharing agreement has been signed between Mr Mugabe on behalf of Zanu-PF and Mr Tsvangirai on behalf of the MDC, the evidence presented does not demonstrate that the agreement as such has removed the real risk of serious harm we have identified for anyone now returned to Zimbabwe who is not able to demonstrate allegiance to or association with the Zimbabwean regime.”¹⁴⁶

The tribunal further stated in the UK country guidance case of EM and Others (2011):

“As a general matter, Zimbabweans without Zanu-PF connections, returning from the UK after a significant absence to live in a rural part of Mashonaland West, Mashonaland central, Mashonaland East, Manicaland, Masvingo or Midlands province would face a real risk of persecution because of a continuing risk of being required to demonstrate loyalty to ZANU-PF.”¹⁴⁷

Serious human rights violations remain very much a reality in Zimbabwe and torture, harassment, and politically motivated persecution are widespread.¹⁴⁸ The Human Rights Watch report, *Perpetual Fear, Impunity and Cycles of Violence in Zimbabwe*, notes that human rights abuses and a lack of accountability for abuses continue to be a serious problem.¹⁴⁹ The Foreign and Commonwealth Office report, *Human Rights and Democracy in the Commonwealth*, states that torture continues to be endemic across Zimbabwe. According to the report, security forces employ torture to conduct politically motivated interrogations, while the police regularly use torture when interviewing suspects in criminal cases.¹⁵⁰ The US Government *Country Reports on Human Rights Practices in Zimbabwe* published in April 2011 makes similar claims:

“Security forces, police, and ZANU-PF-dominated elements of the government continued to commit numerous, serious human rights abuses. ZANU-PF’s dominant control and manipulation of the political process through trumped-up charges, arbitrary arrest, intimidation, and corruption effectively negated the right of citizens to change their government.”¹⁵¹

The torture methods employed include beating victims; suspension; burning; electric shock; and falanga (beating the soles of the feet). One NGO reported that 5,051 victims of torture sought treatment for injuries and trauma throughout the country in 2010.¹⁵² According to Amnesty International’s report, *Crackdown on Activists in Zimbabwe*, those targeted for abuse include members of the opposition and their supporters, supporters of civil society and human rights activists.¹⁵³

Risks facing women:

The UN states that the subordination of women is ingrained in Zimbabwean society.¹⁵⁴ In many communities, rape and violence against women is seen as the normal way of maintaining control and resolving conflict, to which the state turns a blind eye.¹⁵⁵ According to the Zimbabwe National Statistic Agency’s 2012 study:

“27% of women reported that they have experienced sexual violence at some point in their life [...] 92% reported that the sexual violence was committed by their current or former husband/partner or boyfriend.”¹⁵⁶

At least 21 per cent of Zimbabwean girls’ first experience of sex is forced,¹⁵⁷ which is said to be linked to the widely held belief that intercourse with a virgin can cure men of HIV/AIDS.¹⁵⁸ In many cases sexual abuse or rape is committed by teachers or other adults in positions of authority.¹⁵⁹ Infibulations, the most extreme form of FGM, is practiced by the Remba (or Lemba) ethnic group.¹⁶⁰

Since 2000, there has been a sharp rise in the levels of politically-motivated violence and rape committed against female members of the opposition party.¹⁶¹ The most common perpetrators are ZANU-PF supporters,¹⁶² but government security forces are also responsible for brutal treatment of female demonstrators and activists.¹⁶³

One third of women in Zimbabwe marry under the age of 18. Although there is a lower age limit of 18 for civil marriage, the more popular alternative of customary marriage has no age limitation.¹⁶⁴ In customary marriages, polygamy, bride price and virginity testing are all permitted,¹⁶⁵ men have custody of any children and widows are prohibited from inheriting their husband’s property.¹⁶⁶ Because customary marriage is recognised by the State, the legal safeguards governing civil marriage, such as the ban on forced marriage, have little effect. Therefore, women remain vulnerable to customary practices, such as being forced to marry the brothers of their late spouses or being offered a young girl in marriage as a compensatory payment in an inter-family dispute.¹⁶⁷

Zimbabwean women and girls as young as 12 are trafficked for sex and labour within Zimbabwe and to other countries. Some are sexually exploited by truck drivers in exchange for transportation across borders to Mozambique and South Africa.¹⁶⁸ There are also reports of girls being recruited and forced into prostitution through the guise of beauty pageants.¹⁶⁹

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- 167 US Department of State, 2012, *Country Reports on Human Rights Practices 2011*, referenced in Home Office
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Refused Asylum Seekers: Between a rock and a hard place

Despite the evidence to show that human rights abuses and persecution are ongoing, a high number of asylum seekers from these countries are refused asylum in the UK, and are expected to return home or be forcibly removed. This chapter explores the government policy for refused asylum seekers, why people are not going back, and what happens to them if they remain here.

Government policy for refused asylum seekers

According to the UK government, maintaining a credible asylum system also relies on maintaining effective returns policies for those who are found not to be in need of protection here. In particular, the current government, and previous governments, have long held the position that refused asylum seekers who have exhausted the asylum process should leave voluntarily, or should expect to be removed if they do not leave of their own accord.

In a speech to the National Asylum Stakeholders Forum in May 2010, the then Immigration Minister Damian Green said:

“...removing more failed asylum seekers, more quickly, has been one of the key achievements of this year, and an area where we will maintain a keen focus in the future. Of course I want failed asylum seekers to leave voluntarily but, if they do not, their return must be enforced. That is essential for the integrity of the system and for restoring public confidence in our asylum system...if you are serious about winning public support for an efficient and compassionate asylum system, you must be serious about making returns policy effective.”¹⁷⁰

Government instructions for those whose asylum claims are refused, state:

“If your case owner decides there are no reasons for you to stay, you and your dependants will be expected to leave the United Kingdom. Your case owner will tell you about options you have, including voluntary return to your country using the Voluntary Assisted Return and Reintegration Programme...If you do not leave the country, we will remove you. We may detain you until you are removed.”¹⁷¹

For those who are returned, there is no mechanism in place to monitor their safety, so there is no evidence to show that the UK has ensured the safety of people after sending them back to their home countries.

Voluntary return – why it is not happening

Refused asylum seekers are expected to return home voluntarily, either by arranging it themselves, or through the Assisted Voluntary Returns programme. However, Home Office figures show that last year, 1097 people from these five countries were refused asylum here, but only 144 people returned home voluntarily.

In this chapter, we outline the reasons many refused asylum seekers are not taking up this option.

1. Fear of return

As shown earlier in this report, the ongoing human rights violations and conflict in countries across the world mean that a significant number of refused asylum seekers in the UK fear returning. For many, the situation that caused them to flee in the first place remains very much a reality and even if it has changed, people will not necessarily be aware or fear that it remains unstable.

A high proportion of people from the countries in this report who have applied for asylum in the UK have been refused: in the last 10 years, 80 per cent of applicants from the DRC, 76 per cent from Sudan, 74 per

cent from Zimbabwe, 54 per cent from Somalia, and 52 per cent from Eritrea, were given negative decisions on their asylum claims.¹⁷² Many of these people will have been refused asylum under the very limited definition of the 1951 UN Refugee Convention, but would still face risk of persecution, torture or death if they return. The Convention states that a refugee is a “person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable to, owing to such fear, is unwilling to avail himself of the protection of that country.” As shown above, indiscriminate violence, attacks on civilians, and arbitrary detention are examples of how people may be at general risk on return. Many will be persecuted for simply having left the country and claiming asylum elsewhere.

The fear many people feel causes them to make the difficult choice to remain in the UK, and as they are not offered any kind of interim protection, they must endure a life with few rights and little or no support, the impact of which is explained in the next chapter. They also make huge personal sacrifices: as a study by the Joseph Rowntree Charitable Trust found, “some [refused asylum seekers] desperately missed their family, but stayed in the UK to safeguard their lives, fearing death and persecution if they returned”.¹⁷³

As we will discuss below, decisions on asylum cases are often incorrect. Our argument here, however, is that even if the asylum system in the UK made correct and fair decisions every time on asylum cases, people who are rightly refused but fear return to their countries because it is unsafe, are not receiving the protection they actually need.

2. Decisions on asylum cases

Many asylum seekers feel they cannot return because they have been wrongly refused protection by the UK government. The Refugee Council and other organisations working on behalf of asylum seekers have consistently raised the issue that the UKBA’s decision making is flawed, and a high number of people may be wrongly refused protection here. This means people may be returned, or expected to return, to countries where their lives will be at serious risk.

In 2011, a high number of initial negative asylum decisions were overturned by the courts on appeal, showing that a significant proportion of initial decisions may be wrong first time.

| Country of nationality | Appeals received | Total appeals determined | Appeals allowed | Appeals dismissed | Appeals withdrawn |
|---------------------------------------|------------------|--------------------------|-----------------|-------------------|-------------------|
| *Total (all countries) | 9,986 | 10,597 | 2,779 | 7,139 | 679 |
| Congo (Democratic Republic) | 111 | 141 | 47 | 80 | 14 |
| Eritrea | 189 | 210 | 101 | 98 | 11 |
| Somalia | 174 | 215 | 114 | 81 | 20 |
| Sudan | 105 | 127 | 50 | 63 | 14 |
| Zimbabwe | 490 | 611 | 208 | 368 | 35 |

Home Office Immigration Statistics April–June 2012

This is due to a number of factors including the following points:

- **Legal support**

Asylum seekers will continue to struggle to get a fair and correct decision on their case if they are unable to access good quality legal advice from the outset. As most asylum seekers do not have the means to pay for legal advice, access to legal aid is crucial, but cuts due to come in in April 2013 as a result of the

Legal Aid, Sentencing and Punishment of Offenders Act 2012, are set to make this even more difficult. While asylum matters remain in scope for legal aid, the exclusion of immigration cases will mean providers of immigration legal aid will struggle to remain viable. We have already seen a steady loss of experienced firms and community providers who, as a result of previous reductions in the amount of legal aid available, have ceased working on immigration, such as Refugee and Migrant Justice which closed in 2010 and the Immigration Advisory Service which closed in 2011. At the Refugee Council, we saw a huge spike in clients seeking help to access legal advice after the closure of these services.

Firms that remain are often forced to choose the simplest cases and give them minimal time. In a 2010 survey of Refugee Council clients 54 per cent said they had only spent 1–2 hours in total with their legal practitioners. This situation will clearly be made worse by the reduction in fees.

- **Country of Origin information**

The UKBA's Operational Guidance Notes (OGNs) used by UKBA caseworkers to determine asylum claims include recent information about the situation in countries asylum seekers have fled from. They also include any case law relating to that country and the application of legal provisions. While the content of OGNs has improved in recent years, the Still Human Still Here coalition has found that they often contain inconsistencies and omissions, and are not updated regularly enough to reflect the true situations in those countries.¹⁷⁴ The fundamental problem is that this approach “attempts to define those in need of protection as restrictively as the courts permit.”¹⁷⁵

- **Women's claims: misunderstanding and disbelief**

There are particular problems with decision making on women's claims. A study by Asylum Aid found that UKBA case owners failed to understand the nature of violence that women might flee, leading them to doubt the credibility of the claim.¹⁷⁶ While the Refugee Convention does not explicitly recognise persecution due to gender as one of the grounds on which an individual can be recognised as a refugee, a woman fleeing gender based persecution may be able to engage the Convention on the ground of membership of a 'particular social group'. This is defined as “a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society” in the UNHCR guidelines.¹⁷⁷ The Asylum Aid study found that the UKBA ignored social groups entirely in the majority of cases examined, refusing women on the basis that they did not fit any criteria in the Convention. More than a third of decisions were subsequently overturned on appeal because an immigration judge recognised that asylum should have been granted on the basis that the women belonged to a particular social group.¹⁷⁸

The UKBA's own statistics reflect a problem with decision-making on women's claims generally, with the overturn rate on initial decisions on women's claims being consistently higher than that of men.¹⁷⁹ For example, in 2011, more than 43 per cent of appeals were allowed on women's cases from DRC, as opposed to 26 per cent for men's cases. One explanation for this maybe that the Operational Guidance Note on DRC does not include a section on women despite the fact the DRC has repeatedly been called the “rape capital of the world”, including by the then UN Special Representative on Sexual Violence in Conflict.¹⁸⁰ 64 per cent of women from DRC in 2011 were refused.¹⁸¹

While steps have been made to improve women's experience of the asylum system, there is still a lack of support for women who need to disclose traumatic and personal information to support their claims. The prevalence of rape and sexual violence in the five countries examined in this report indicate the likelihood that women from these countries claiming asylum in the UK are likely to have been affected by sexual violence. The UK's criminal courts have recognised that the trauma of rape can cause feelings of shame and guilt which might inhibit a woman from going to the police. However, a woman seeking asylum is obliged to immediately tell a stranger, in the form of a UKBA representative, of any violence, including sexual violence that might form the basis of her asylum claim as soon as she claims asylum. If she does not, she risks having her credibility questioned at a later stage.

- **Relocation policy**

According to the government in several OGNs, asylum seekers who would face the ‘real risk of serious harm or persecution’ if returned to their home country should *still* be refused asylum here if they are able to relocate to other parts of their home country where they would be safe from these risks.¹⁸² Evidence, however, shows us this may not be an adequate or safe response. For example, the UNHCR *Eligibility Guidelines* for Somalia state:

“In light of the risks to safety and security, ongoing armed conflict and the shifting armed fronts and ongoing widespread human rights violations, it cannot be considered reasonable for any Somali, regardless of whether the individual originates from southern and central Somalia, Somaliland or Puntland, to relocate within or to southern and central Somalia.”¹⁸³

Relocation to Somaliland and Puntland is only possible if a person can demonstrate that they originate from those territories. They can do this by showing their membership of a clan that is considered to originate from these areas.¹⁸⁴ People who are returned there but are unable to show that they originate from there, are most likely to be detained and/or deported to territories including southern and central Somalia, where their lives and freedom could be threatened.¹⁸⁵

This also applies to Zimbabwe. Refused asylum seekers who fear that they will be persecuted if they return to their former homes are also usually unable to return to other safer parts of Zimbabwe. This situation has been acknowledged in the case of *EM and Others* (2008) where the tribunal found Zimbabweans without Zanu-PF connections, returning from the UK after a significant absence would face real risk of persecution in Mashonaland West, Mashonaland central, Mashonaland East, Manicaland, Masvingo or Midlands province.¹⁸⁶ The tribunal further found that it is unlikely that a person fearing persecution in Harare would have viable relocation alternatives to a rural area in the Eastern provinces. Relocation to other regions may be negated by other factors such as ethnic discrimination.¹⁸⁷

The use of relocation policy is particularly relevant to women’s asylum claims since it is frequently applied where the persecutors are non-state agents such as family members. Women’s asylum claims are more likely to be based on persecution committed by their family or their community (for example, forced marriage, female genital mutilation, or honour crimes). Legal representatives have raised concerns that UKBA officials apply internal relocation without sufficient analysis of the risks women would face if they returned, and that they assume that protection mechanisms will be in place such as refuges, shelters and NGOs.¹⁸⁸ This can result in single, separated, divorced or lesbian women being returned to circumstances of abuse, exploitation and further persecution. In a recent case reported in the *Guardian*, a woman from Gambia with a strong case of fear of her daughter facing FGM on return was refused asylum here on the grounds that she could relocate on return.¹⁸⁹

Forcible return – why it is not happening

The UKBA does not forcibly return people in large numbers. There may be a range of reasons for this, such as:

- They cannot return people due to lack of co-operation of home countries who will not receive returnees, or their embassies will not provide them with the necessary travel documents that they need in order to travel to their country.
- The UKBA loses touch with refused asylum seekers once they have come to the end of the process and are no longer receiving any support, making it difficult to enforce removals.

In 2011, 1097 people from these five countries were refused asylum here, yet only 49 people were forcibly removed home, and 240 were removed to other countries they had claimed asylum in previously.

Despite the fact the UK government is sometimes not in practice returning people to their own countries, they have no official policies in place that preclude the enforced return of people to particular countries. There are some guidelines to protect individual groups who may be at risk if returned to specific areas, such as non-Arab Darfuris to Darfur. Returns of people to Zimbabwe were suspended after the High Court ruling in 2006 that people would be at risk of persecution on return. This policy was overturned in 2011, and the UKBA stated that enforced removals would resume following further guidance from the Immigration Tribunal.

In the past, the UK government has acknowledged the dangers refused asylum seekers may face on return and granted them a particular form of leave to recognise the exceptional circumstances they were in as a result. For those who have not met the very limited definition of a refugee in the 1951 UN Refugee Convention, they granted people from certain countries Exceptional Leave to Remain (ELR) because of concerns for their safety or on human rights grounds. This was applied for asylum seekers from Afghanistan (1995–2002); Angola (1998–1999), Burundi (1997–2002), Congo (1997–1998), Congo Brazaville (1999–2000), Cote d'Ivoire (2000–2001), Democratic Republic of Congo (1997–2001), Iraq (1997–2001), Kosovo (1999–2000), Liberia (1990–October 2002) Libya (2000–2002), Rwanda (1997–2002), Sierra Leone (1999–2001) and Zimbabwe (2002–2004).¹⁹⁰

The government replaced ELR in 2003 with two other forms of temporary protection – these were Humanitarian Protection (HP) and Discretionary Leave (DL) and different criteria were attached to them. Humanitarian Protection is “granted to those who, though not refugees, would, if removed, face in the country of return a serious risk to life or person arising from the death penalty, unlawful killing or torture, inhuman or degrading treatment or punishment.”¹⁹¹ In limited circumstance, those not recognised as a refugee or a person who qualifies for humanitarian protection, the Home Office may offer ‘Discretionary Leave to Remain’. The longest DL has been granted for is three years and the current policy is 30 months maximum.

In 2011, just 20 people (0.7 per cent) out of 2,863 initial decisions made on applications from these five countries were granted HP: 18 from Somalia (3 per cent), 1 from Sudan (0.2 per cent) and 1 from Zimbabwe (0.2 per cent). Discretionary Leave was granted to only 185 people (6.5 per cent).¹⁹²

Expanding these forms of protection to those whose countries remain unsafe would ensure that there is some kind of safety net for people not recognised as refugees. This would allow them to access support and basic services, while they wait for the situation in their own country to become safe.

Other European countries take this approach: several EU countries have offered ‘category protection’ to people from certain countries who have not been recognised as refugees or qualify for subsidiary protection, regardless of their individual situation.¹⁹³

What happens to those who stay?

Destitution:

At the Refugee Council, a high number of our destitute clients are from these five countries. From October 2010–11, 25 per cent of our clients (1028) accessing our destitution services were from these five countries, and 20 per cent (413) the following year. Regular surveys of clients referred to the Refugee Council Day Centre for destitution services between January 2008 and September 2010 show that Eritrean people were consistently the largest group, with an average of 66 people being referred every three months, with 130 people in Jan–Mar 2010. Referrals of people from the Democratic Republic of Congo and Somalia were also amongst the highest numbers.

Refused asylum seekers are more likely to be destitute than other groups of asylum seekers and refugees. A 2009 survey by the Joseph Rowntree Charitable Trust in Leeds found that 80 per cent of destitute asylum seekers were those at the end of the asylum process, having received a negative decision on their case.¹⁹⁴ The situation is compounded by the fact that many refused asylum seekers are often ineligible or feel unable to apply for financial support and accommodation. People at the end of the asylum process can

apply for 'Section 4' support (consisting of £35.39 a week cashless support, or full board accommodation). To qualify, they must satisfy one of a set of strict criteria:

- “you are taking all reasonable steps to leave the UK or you are placing yourself in a position where you can do so; or
- you cannot leave the UK because of a physical impediment to travel or for some other medical reason; or
- you cannot leave the UK because, in the Secretary of State’s opinion, no viable route of return is currently available; or
- you have applied for a judicial review of your asylum application and have been given permission to proceed with it; or
- accommodation is necessary to prevent a breach of your rights within the meaning of the Human Rights Act 1998.”¹⁹⁵

Many refused asylum seekers will not meet these criteria, and in particular, taking ‘reasonable steps to leave’ will not be considered a viable option for those who fear returning to their country of origin. This policy fails to recognise the dangers facing people if they return, and means many people are therefore deterred from applying. Thus, as a British Red Cross report states, refused asylum seekers, “...find themselves caught in limbo; unable to seek government support or to work legally, yet unable to return”.¹⁹⁶

People are often forced into street homelessness, begging or even working in unregulated employment in order to survive. Many rely on friends and charities such as the Refugee Council, the Red Cross and church groups for food and shelter. A 2010 Red Cross report compares giving food to destitute asylum seekers in the UK to distributing food aid in Sudan, stating “the humanitarian need is the same.” There are no official statistics on the numbers of refused asylum seekers who are destitute in the UK, however, various figures have been suggested: in 2007, Refugee Action gave an estimate of 200,000¹⁹⁷ while the National Audit Office estimated the figure to be between 155,000 and 283,500 in 2005.¹⁹⁸

While the effects of destitution are devastating for all asylum seekers, evidence suggests that destitution has particularly serious implications for women asylum seekers’ safety.

In our experience of working with women in the asylum system, many will have faced violence in their own country or during their flight to safety. Arrival in the UK should signal safety but when women’s claims for asylum are refused and they are made destitute, they continue to be exposed to the risk of further violence or exploitation in the UK. A third of the women we provided therapeutic support to between September 2010 and September 2011 had been refused asylum and more than a fifth were destitute. More than a fifth had experienced gender based violence after arrival in the UK.¹⁹⁹

A report by Oxfam exploring how destitute asylum seekers survive, found that women were more likely than men to resort to commercial sex work putting them at risk of sexually transmitted infections (STIs), including HIV, as well as gender based violence. The report found that both men and women exchanged sex or entered into transactional relationships for a place to stay but that women were at a much greater risk of coercion, entrapment and violence. It noted that many of those women who pursue this strategy were physically abused, sexually exploited or manipulated, or forced to stay against their will.²⁰⁰

Among those women living in destitution are heavily pregnant women. Destitute refused asylum seekers, particularly women, are especially vulnerable in terms of negotiating safer sex.²⁰¹ They may therefore be particularly vulnerable to unwanted pregnancy as well as STIs. Refused asylum seeking women who become pregnant and are destitute are entitled to Section 4 support, but only six weeks before their due date and many of these have their babies whilst destitute, due to administrative delays. At the Refugee Council we see women in the third trimester of their pregnancy, who are street homeless.

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Conclusions and policy recommendations

This report goes some way to explain the fears of people whose asylum claims have been refused in the UK, about the dangers they face if they were to return or be forcibly returned to their countries of origin. As shown, many returnees will be persecuted simply for having left the country and claimed asylum in another country. The consequences are extremely serious: torture, rape, disappearance, and death.

We have concerns about flaws in the asylum system that mean a high number of people are wrongly refused asylum here. We are also concerned about those people who will never be recognised as refugees under the limited definition in the 1951 UN Refugee Convention, but whose lives will nevertheless be in danger if they are returned. Even if the UK Border Agency ran an asylum system that fairly, humanely and effectively assessed people's claims and gave them the right decisions every time, this group of people would not be protected under current government policy.

The UK government has a commitment to protect people who have sought safety in our country, which includes ensuring they are not sending people back to persecution or death. We believe they must also take responsibility for ensuring that those who are still living in the UK are not living in destitution and being forced into dangerous situations. In order to do that they must better protect people who are refused asylum but cannot return to their countries, and provide support to people who are living in the UK while they wait for the situation in their country to become safe.

Policy recommendations:

- The UK government must acknowledge the fears of refused asylum seekers and the dangerous situations facing them on return to countries where human rights abuses and violence are ongoing. They must particularly acknowledge the acute situations facing women on return. The government's returns policy must reflect this, by being transparent about the countries they are currently unable to return people to, and by not expecting people to return when their countries clearly remain unsafe.
- The UK government should broaden the use of Humanitarian Protection and Discretionary Leave to those who are not found to be refugees but whose countries remain unsafe, so that they can access basic rights, support and services, and some stability while they wait to return.
- People who are unable to return to their own countries should not be forced into destitution. The government should provide end-to-end financial support and accommodation for asylum seekers, so that people are not made destitute while they wait for the situation in their country to improve. Asylum seekers, both during and at the end of the process should also be given permission to work, so that they can support themselves. Priority should be given to developing appropriate safeguards to ensure that destitution does not force asylum seeking women into living arrangements that make them more vulnerable to sexual violence and exploitation.
- The UK Border Agency must focus on getting decisions on asylum claims right first time to ensure that those who need protection here as refugees can get it: this includes ensuring access to quality legal support from the outset, ensuring Operational Guidance Notes are comprehensive and up to date, reviewing the relocation policy, and eliminating the culture of disbelief at the UK Border Agency.

The Refugee Council is the leading charity in the UK working with asylum seekers and refugees. As a human rights charity, independent of government, we work to ensure that refugees are given the protection they need, that they are treated with respect and understanding, and that they have the same rights, opportunities and responsibilities as other members of our society.

This report can be downloaded at www.refugeecouncil.org.uk



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