



**Asylum Support Appeals Project's submission to the Universal Period Review by
the UN Human Rights Council**

19th November 2007

Introduction

About ASAP - Asylum Support Appeals Project (ASAP) is an advocacy charity working to reduce destitution amongst asylum seekers in the UK by protecting their legal rights to food and shelter. ASAP provides free legal advice and representation to asylum seekers in their asylum support appeals when their housing and financial support has been refused or terminated, as well as second-tier legal advice and training on asylum support law for refugee community organisations. ASAP's policy work and strategic litigation work aims to change inhumane asylum policies which are forcing many asylum seekers into long-term destitution.

What this submission is about - This submission highlights how the UK Government's asylum support policy (i.e. provision of housing and welfare support to asylum seekers) is possibly violating asylum seekers' human rights under Articles 3 and 6 of the European Convention of Human Rights. Article 3 refers to the prohibition of torture or inhumane and degrading treatment and Article 6 refers to the right to a fair trial. To illustrate these points, the submission mainly refers to two sources of information. The first source is the report by the House of Lords and House of Commons Joint Committee of Human Rights (JCHR) published in March 2007¹ following their inquiry into the treatment of asylum seekers. The second source is ASAP's own research into asylum seekers' access to legal representation at the Asylum Support Tribunal in the UK.

Violation of Article 3 prohibition of torture or inhuman and degrading treatment

Housing and welfare support for asylum seekers - In the UK, asylum seekers are not allowed to work and are dependent on cash support from the Government. The level of support is set at 70% of welfare benefits support that British citizens (who are not able to work) receive and the accommodation is provided in areas of the UK outside London on a no-choice basis. The support system has often been criticised for its incompetence, delays and errors². As of March 2007, 48,800 asylum seekers are supported by

¹ *The Treatment of Asylum Seekers, Tenth Report of Session 2006 – 07*, The Joint Commission of Human Rights, UK, <http://www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/81/81i.pdf>

² See "Process Error, CABx clients' experience of the National Asylum Support System" Feb 2002 and "Distant Voices CABx clients' experience of continuing problems of the National Asylum Support System" Oct 2002 by the National Association of Citizens Advice Bureaux (now known as Citizens Advice), UK

supported in this way.

Destitution of refused asylum seekers - Some categories of refused asylum seekers (i.e. whose claim for asylum has been refused) who meet the Government's very strict criteria are able to access a type of even more restricted support called section 4 support, which consists of vouchers and accommodation. The vast majority of the 280,000 refused asylum seekers in the UK are not eligible to receive section 4 support because they do not meet these criteria. The Government insists that these refused asylum seekers could be eligible for section 4 support if they agree to voluntarily return to their country of origin. However, the refused asylum seekers are simply unable to return due to the political instability and continuing violence to countries such as Iraq, Sudan, Zimbabwe and Somalia. As a result, they fall into long-term destitution. In 2006/07, a number of UK charities published reports on destitution of asylum seekers³ and started a national campaign⁴.

The JCHR inquiry and report - Between October 2006 and March 2007, the JCHR conducted an inquiry into the treatment of asylum seekers in the UK. The inquiry examined written and oral evidence from a wide variety of organisations which have experience of working with asylum seekers to find out if and how asylum seekers' human rights are protected in the UK. The report highlighted the unacceptable level of destitution and other hardships that asylum seekers experience as a result of inefficient and inconsistent Government policies and practices. The report calls the asylum support system "a confusing mess" and is critical of the way that already vulnerable asylum seekers, such as victims of torture and rape, pregnant women and those with serious mental and physical health problems, are not getting adequate information and advice about their legal entitlements to food and shelter. It concludes that **the Government's inhumane and degrading treatment of these asylum seekers potentially violates their human rights, violation of Article 3 of the ECHR**. ASAP strongly recommends that this comprehensive report on asylum seekers' human rights by the JCHR is considered as evidence by the UPR.

Case study - Mr M (not his real name) was a refused asylum seeker who applied for section 4 on the basis that he was 'unable to leave the UK by reason of a physical impediment to travel or for some other medical reason'. This means that persons have to prove that they are too ill to travel. He was refused section 4 support and ASAP assisted him in appealing this decision.

Mr M was referred to ASAP from a solicitor in London which was worried about his ability to cope with his hearing at the AST. We met him at the court an hour before the hearing. Mr M was visibly distressed both during our interview with him and at the hearing itself. Mr M was distracted and could not remember things. The appeal hearing was forced to adjourn for 10 minutes as Mr M became too upset to continue at one point.

We learnt that Mr M had been suffering from serious mental health problems for some years. This had resulted in him being hospitalised on one occasion for five months. He was taking various medications to control his symptoms and had regular contact with his psychiatrist. Although his illness was controlled, his doctors had provided evidence which stated that he was vulnerable to relapses, particularly if he experienced stressful events. Mr M's medical reports also showed that he had a history of self harm and had become suicidal

³ The reports include *Shaming Destitution*, Citizens Advice, UK, Jun 2006, *Down and Out in London*, Amnesty International, UK, Oct 2007, *The Destitution Trap*, Refugee Action, UK, Oct 2007, *Destitution in Leeds*, Joseph Rowntree Charitable Trust, UK, Mar 2007

⁴ Still Human Still Here campaign calls the UK Government to end destitution of refused asylum seekers. See www.stillhuman.org.uk for more information.

following the refusal of his asylum appeal. During the five years he has been in London he had moved around six times. He could not understand why he could not get 'permanent' accommodation and stated that he would be better off in the hospital.

ASAP argued during Mr M's appeal hearing that he met one of the section 4 criteria, 'unable to leave the UK by reason of a physical impediment to travel or for some other medical reason', not because he had physical health problems that prevented him from travelling, but because the idea of returning to his country would be so traumatic for him that he was likely to cause himself serious harm were he to be forced to do so because of his mental health condition.

Unfortunately his appeal was unsuccessful due to a lack of evidence specifically stating that he was unable to travel.

Violation of Article 6 of the ECHR – access to fair trial

Lack of public funding for legal representation for asylum support appeals – If the UK Government decides to refuse or withdraw housing and welfare support, asylum seekers have a right of appeal to a specialist administrative tribunal in the UK. However, there is no public funding available for legal representation for asylum seekers at these hearings. As a result many appellants attend their hearings unrepresented and unadvised (while the Government is always represented by fully-trained representing officers), leaving them unable to defend themselves adequately against possible destitution and homelessness. We believe that this is a violation of Article 6 of the ECHR – access to fair trial⁵.

Many asylum seekers decide to appeal against Government decisions to make them destitute. The Asylum Support Tribunal received 3912 appeals in 2005/06 and 1949 appeals in 2006/07⁶. There is no published information on how many asylum seekers' support is terminated or refused where there is a right of appeal.

Many of the asylum support decisions made by the Government are wrong. ASAP examined 117 negative decisions made by the Government between January and December 2006 terminating or refusing support⁷. We found that over 80% of these decisions which forced failed asylum seekers into destitution contained misapplications and/or misinterpretations of law.

Many asylum seekers find it difficult to present evidence by themselves due to various practical barriers they face, as well as their vulnerability. The main reasons for this are: a language barrier, unfamiliarity with the UK legal system and very tight deadlines for submitting notice of appeal (five days) and responding to directions (five days) while collecting documentary evidence. The majority of the appellants are already destitute and face even more barriers because they have no fixed address, no money to make phone calls, travel to see their advisors or send faxes or letters to the tribunal. Since the burden of proof rests on asylum seekers, these factors adversely affect their chances of being able to show that the initial Government decisions were wrong and that they are in fact entitled to support.

⁵ Also see ASAP's submission to the Joint Committee on Human Rights Inquiry into the Treatment of asylum seekers, Asylum Support Appeals Project, UK, Sep 2006,

http://www.asaproject.org.uk/news/ASAP_Feb07_evidence2jchr06.pdf

⁶ Based on the management information obtained from the Asylum Support Tribunal.

⁷ See *Failing the Failed? How NASS decision making is letting down destitute rejected asylum seekers*, Asylum Support Appeals Project, UK, Feb 2007,

http://www.asaproject.org.uk/news/ASAP_Feb07_FailingtheFailed.pdf

This denial of access to a fair trial is causing many asylum seekers to become destitute. ASAP's analysis of tribunal outcomes shows that those asylum seekers who received advice and/or representation are three times more likely to succeed with their asylum support appeals⁸. Between October 2006 and March 2007, while the success rate (i.e. an appeal being allowed in favour of asylum seekers) for those cases which received no advice/representation was 8% (14 out of 185 cases), the success rate goes up to 26% (132 out of 560 cases) for those cases which received advice and/or representation.

Case study - Sarah (not her real name) was a refused asylum seeker who had made a fresh asylum claim. She applied for Section 4 support because she was destitute and the fresh claim had been received by the Government but not yet processed.

When ASAP met Sarah at the Duty Scheme she had been sleeping rough for 9 months. She suffered from a serious medical condition which meant she occasionally lost consciousness without warning. She suffered from post-traumatic stress disorder having been raped and tortured in her country of origin which caused many side effects including sleepwalking. She often wandered the streets at night when she was asleep and had been robbed and assaulted. In her desperation to find money and food she had turned to prostitution and was living in a squat with a man she worked for.

The Government had refused to support Sarah. They did not accept she was destitute, saying that she had access to private means of support. They also stated her fresh claim had a limited chance of success.

ASAP represented Sarah and argued that she was destitute. There were police reports stating she had been involved in prostitution and sleeping rough. Her doctor had also been very concerned about her health and safety. Sarah won her appeal.

The JCHR recommendation on this issue - The JCHR's Recommendation number 7 reads: "The absence of provision for representation before the Asylum Support Adjudicators may lead to a breach of an asylum seeker's right to a fair hearing, particularly where an appellant speaks no English, has recently arrived in the UK, lives far from Croydon and/or has physical or mental health needs. Where an appeal fails, and as a result of the unavailability of legal representation an asylum seeker is left destitute, the result may also be a violation of Article 3 ECHR. We recommend that the Government should make legal aid funding available for representation before the Asylum Support Adjudicators. Where needed, assistance with accommodation as well as travel costs involved in attending an appeal should also be provided. We heard evidence that suggested in some cases that this assistance was not being given. In our view it is a priority that appellants receive accommodation and subsistence for the hearing."

However, in their response to this recommendation, the UK Government refuses to accept that public funding should be made available for asylum support appeals⁹.

Conclusion

ASAP believes that the UK Government is failing to protect the human rights of hundreds of thousands of asylum seekers by forcing them into inhumane and degrading

⁸ See ASAP's comment on the Government response to the JCHR's tenth report, Treatment of Asylum Seekers, Asylum Support Appeals Project, UK, Aug 2007, http://www.asaproject.org.uk/news/ASAP_on_gov_response_to_JCHRreportAug07.pdf

⁹ See Government Response to the Committee's Tenth Report of this Session: The Treatment of Asylum Seekers, UK, Jul 2007, <http://www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/134/134.pdf>

destitution and denying them an access to fair trial which could lift them out of destitution. ASAP urges the UPR to consider these issues in the light of the inquiry into the treatment of asylum seekers by the Joint Committee on Human Rights in the UK.

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