

**Universal Periodic Review – 13<sup>th</sup> Session**  
**CSW – Stakeholder Submission**  
**UNITED KINGDOM**

### Introduction

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1. Christian Solidarity Worldwide (CSW), a human rights organisation specialising in freedom of religion or belief, wishes to draw attention to the United Kingdom's (UK's) domestic policy over the period 2007-2011 with respect to its international obligations and treatment of asylum seekers.
2. The UK has ratified relevant international treaties that ensure freedom of religion or belief (FORB), however the manner in which policy is applied in asylum cases is highly politicised and enshrines a negative bias against applicants, thereby rendering domestic law compliant with the letter of international obligations, but not with the spirit and purpose outlined in these agreements.

### Scope of International Obligations

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3. The UK has legal, normative and moral obligations in granting asylum and in upholding freedom of religion or belief. The UK has ratified the Convention relating to the Status of Refugees including the corresponding 1967 Protocol, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), and the Convention on the Elimination of Racial Discrimination (CERD).
4. The UK takes its international obligations seriously, and has made significant efforts to ensure its own domestic compliance. For example, the UK offers refuge to those who are fleeing persecution in compliance with the refugee convention. However, there are concerns over the process of assessment of eligibility for asylum. Additionally, there are concerns over compliance with freedom of religion obligations when assessing asylum seekers.
5. **Recommendation: The State Party should ensure that its policy, procedures and practice around reviewing asylum applications and general treatment of asylum seekers are wholly consistent with its obligations under international law.**

### Constitutional and Legislative Framework

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6. There are several legislative acts that govern asylum and immigration in the UK. There are minor territorial variations in legislative application across the UK due to the devolution process, but generally a consistent approach is applied across the country.
7. National legislation comprehensively details the regulation of the asylum process in the UK. The domestic political situation within the UK means that asylum is a high-profile policy issue that features prominently in public debate around Parliamentary elections. Immigration has been a focus issue for political parties prior to each of the last two general elections, and such debate has resulted in policy changes, including the implementation of quotas.
8. Such politicised debate has led to an emphasis on seeking to control numbers of asylum seekers entering or remaining in the UK at the potential expense of the protection of the human rights of the

asylum seekers themselves. Consequently, while asylum policies ought to be focused on the technicalities of implementing the UK's international obligations within the domestic context, invariably the fulfilment of political promises are prioritised at the expense of ensuring the rights of those genuinely fleeing persecution. One documented effect has been the "culture of disbelief" that has been cited as problematic, and is illustrated by statistics. This is an implicit assumption, particularly on first review, that an asylum claim is likely to be invalid or false.<sup>1</sup> On average there are 20,000 asylum applications in the UK per year. Of these, approximately 29 percent are successful, with 71 percent failing. Those who go on to appeal the initial decision experience a 25 percent chance that the original decision will be overturned.<sup>2</sup> This means that for every case that is initially accepted, there is an almost similar number that initially fail, but are in reality deserving of protection.

9. **Recommendation: The State Party should ensure that immigration and asylum processes are implemented by an independent, non-political body to ensure treaty obligations are no longer subject to political exigencies.**

### Interaction with International Human Rights Mechanisms

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10. The UK enthusiastically engages with international human rights mechanisms and has issued a standing invitation to all of the Special Procedures of the Human Rights Council.
11. The Special Rapporteur on freedom of religion or belief visited the UK in 2007 and issued a subsequent report<sup>3</sup> which highlighted concerns over the testing of the claims of asylum seekers on freedom of religion or belief grounds.
12. Similarly, the UK was reviewed by the Human Rights Committee in 2008 with respect to its compliance under the ICCPR, and the Committee's resulting report<sup>4</sup> indicated poor treatment of asylum seekers, including lack of adequate legal representation.
13. **Recommendation: The State Party is urged to ensure that issues highlighted by the Special Rapporteur on freedom of religion or belief and the Human Rights Committee relating to asylum are adequately addressed.**

### The Right to Seek Asylum

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14. There are four key issues related to seeking asylum in the UK: cuts to legal aid, added burden of proof brought in by the "culture of disbelief", government targets for speedy decision making, and the independence and quality of interpreters. These issues taken together have a cumulative effect of creating biases that can adversely affect the UK's compliance with international obligations.

<sup>1</sup> See: "Policy Primer: Asylum Policy", The Migration Observatory website, [http://migrationobservatory.ox.ac.uk/sites/files/migobs/Asylum%20Policy%20Primer\\_0.pdf](http://migrationobservatory.ox.ac.uk/sites/files/migobs/Asylum%20Policy%20Primer_0.pdf) (accessed November, 2011)

<sup>2</sup> "Control of immigration: quarterly statistical summary first quarter 2011", UK Home Office Website, <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/control-immigration-q1-2011-t/> (accessed November, 2011)

<sup>3</sup> A/HRC/7/10/Add.3

<sup>4</sup> CCPR/C/GBR/CO

15. The design of the asylum system in the UK is particularly onerous on those claiming a right to protection from persecution. It is a complex legal system which requires competent legal advice for an asylum seeker to understand the processing of their application. The wider financial concerns in the UK have had an adverse effect on the asylum system. Cuts and restrictions made to government-funded legal aid deprive many applicants of legal representation. This is especially the case following the rejection of an application, or during a family reunification claim after refugee or humanitarian status has been granted. Further cuts to legal aid would almost certainly have a negative effect on vulnerable individuals whose cases require further appeal, which could occasion a breach of the UK's obligations under the Refugee Convention.
16. A second issue is the effect of the "culture of disbelief". The decision process for each asylum claim is evidence-based; a case owner assesses the claim, consulting with UK guidelines. However due to the aforementioned "culture of disbelief" the burden placed on the applicant is akin to an adversarial court system. The applicant not only has to demonstrate a well-founded fear of persecution and that they are a member of a particular social group (as outlined in the Refugee Convention), but must also prove that they are a credible witness. Although this is an implicit requirement, it clearly contradicts the spirit of the UK's international obligations.
17. Government targets for processing asylum cases can also prove problematic. Recently a government target was set specifying the processing of 90 percent of all asylum cases within six months of application. Irrespective of whether this target is met, there is a clear push towards efficiency targets. Target-driven processing can occasion pressures resulting in situations where key experiences that claimants have faced are overlooked, or salient cultural differences that require time to overcome are not taken into consideration.
18. Many asylum seekers have faced appalling and traumatizing situations in their countries of origin. In addition many have experienced additional distress when making their journey to safety in the UK. After enduring these circumstances, applicants find it hard to speak of what they have faced; precise time-based targets will often exacerbate the situation for these vulnerable individuals.
19. In a pressurised environment, cultural nuances can be missed or misinterpreted. With policy focusing on increasing the speed of processing asylum claims, vital information may not be communicated by the applicant due to such factors. Moreover when applicants have later divulged information, these facts are often treated with suspicion, and interpreted as an attempt to bolster an application. The current focus for a speedy assessment period does not guarantee that all the relevant factors are provided, potentially working against the claimant.
20. Many of those seeking asylum in the UK are not conversant in English. Understandably, the use of interpreters is vital in assessing claims. However the selection of interpreters needs to be done with care. In the case of Zainuddin Umer Khail (2009-10), an interpreter made inaccurate interpretations that lead the case owner to question the truthfulness of Mr Khail's assertions. Ultimately Mr Khail's case failed at first instance and had to go to appeal. Such errors in interpretation can be very damaging for individual cases and add anxiety to difficult situation.
21. Another issue with regard to interpreters is intentional mistranslation. A case which highlights this is that of Maged Malaka Eskondr Youssif (2011). This was a case where an Egyptian Christian family was fleeing persecution on the grounds of religion. During their interviews, the family was given a Muslim translator whom they believed was intentionally mistranslating. Following incorrectly interpreted answers regarding their faith, the case owner gave a negative ruling in their case. The case highlights the importance of independent, non-prejudiced interpreters in cases of asylum, especially when dealing with issues of religious persecution.

22. Furthermore, the process for selecting interpreters should take into consideration the complex socio-dynamics that exist in related countries and their international diaspora. This has been highlighted in the asylum cases of Eritreans:
23. “In the United Kingdom, many Eritrean community groups are dominated by government sympathisers who fled Ethiopian rule but stayed on after Eritrean independence. Government supporters are militant in defending their country and president with quasi-religious zeal and often with threats of violence and actual physical violence. Consequently, anyone who speaks openly about the current realities in Eritrea cannot expect to find assistance from these groups, but is likely instead to face severe harassment. There are also growing concerns regarding the impartiality of pro-government interpreters during asylum interviews, and fears that information divulged on such occasions may eventually fall into the hands of the Eritrean government, to the detriment of the family of an asylum seeker.”<sup>5</sup>
24. Special care needs to be taken to ensure the impartiality and confidentiality of interpreters so that those rightfully seeking protection under the refugee convention are guaranteed it.
25. **Recommendation: The State Party should review the impact of legal-aid cuts on the asylum process to ensure that reduced funds do not have a negative impact. The State Party should also strengthen the independence of the asylum assessment process in order to combat the “culture of disbelief”, whilst emphasising quality rather than speed in the assessment process. Finally, the State Party should implement a more rigorous system in selecting independent, non-prejudiced interpreters.**

### Freedom of Thought, Conscience and Religion

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26. The UK has a long-term and proven commitment to freedom of religion or belief. However the manner in which assessment is made in asylum cases regarding whether an individual qualifies for asylum is unnecessarily restrictive, and could amount to a violation of international obligations.
27. For example, for assessment purposes “Christianity” has been narrowly defined, and that definition does not necessarily allow for cultural context, personal preference or individual expression. Christians that suffer human rights violations but who do not fit within this particular categorisation will struggle to answer questions in the assessment, and are therefore less-likely to be granted protection. Examples of questions posed to Christians include:
- To name the books of the Bible;
  - To name the twelve disciples;
  - To name four Christian events and when they are celebrated;<sup>6</sup>
  - To name the period leading up to Christmas called?<sup>7</sup>
28. The main problem with this approach has been highlighted by the United Kingdom Evangelical Alliance (EA) in a report on asylum, which suggests that the questions are irrelevant in ascertaining whether someone is truly a Christian or not. Furthermore, when the EA canvassed its own – largely

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<sup>6</sup> Case of Maged Malaka Eskondr Youssif (2011)

<sup>7</sup> “Briefing: Alltogether for Asylum Justice”, Evangelical Alliance website, <http://www.eauk.org/public-affairs/socialjustice/upload/alltogether-for-asylum-justice.pdf> (accessed November, 2011)

Christian – membership, 90 percent of the respondents agreed such questions were irrelevant in determining whether someone was a Christian.<sup>8</sup>

29. A joint briefing by CSW and the EA on Eritrea highlights the traditional European nature of the questions. Christians in other parts of the world can have different theological frames of reference. Furthermore in situations where Christians routinely face human rights violations, and where freedom of assembly is curtailed, formal or traditional teaching on any given religion can be inconsistent. Moreover, only allowing for a proscribed definition of a “Christian” or any other religious believer does not reflect the diversity allowed for under UN definitions of freedom of religion or belief. These considerations are not included in the UK’s assessment, therefore leading to erroneous rejection of some applications.
30. There are also additional hurdles faced by asylum seekers who come from a background of apostasy or conversion from another religion. According to one confidential source, it would appear that there is a general “default setting” of disbelief regarding those who have converted and the human rights violations they have faced.
31. This “disbelief” over conversion can be seen in the case of Asad Ullah Niaz (2010), whose religion was questioned by the judge overseeing his hearing. In response Mr Niaz confirmed he was a genuine convert who was compelled by his faith to share it with others, but that in doing so faced possible death if returned to Pakistan, where Christian apostates face severe human rights violations. The judge responded by saying “I find that if the appellant held such intense Christian beliefs that he would risk his life to convert Muslims there, then he would accept the consequences he predicts and would not apply to remain in the United Kingdom to protect him from the consequences of his own action.” By making such a remark, the judge effectively questioned Mr Niaz’s right to publicly manifest his religion.
32. **Recommendation: The State Party should review the criteria used to verify the genuine religion or belief of asylum applicants and ensure that a correct definition of freedom of religion or belief, as enshrined in international law, is understood at all levels within the asylum process and that applicants are treated appropriately and accordingly.**

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<sup>8</sup> Ibid.