<table>
<thead>
<tr>
<th>Page</th>
<th>Title</th>
<th>Author</th>
</tr>
</thead>
<tbody>
<tr>
<td>74</td>
<td>Alternatives to Detention: Evidence from Canada and Switzerland</td>
<td>By Mary Bosworth</td>
</tr>
<tr>
<td>74</td>
<td>Hong Kong Court of Final Appeal Ruled on Refugee Law Gateway Issue</td>
<td>By Sebastian Ko</td>
</tr>
<tr>
<td>74</td>
<td>Contesting Refugee Status Cessation: The Rwandan Case</td>
<td>By Kelly O’Connor</td>
</tr>
<tr>
<td>75</td>
<td>Hounga v Allen: A Danger for Undocumented Migrant Workers</td>
<td>By Anjoli Maheswaran Foster</td>
</tr>
<tr>
<td>75</td>
<td>Protecting the Labour Rights and Human Rights of Migrant Domestic Workers – A Labour Regulation Approach</td>
<td>By Judy Fudge</td>
</tr>
<tr>
<td>76</td>
<td>Trafficking in Human Beings and the European Court of Human Rights – in Dubio pro State?</td>
<td>By Marija Jovanovic</td>
</tr>
<tr>
<td>76</td>
<td>Stuck in Traffic?</td>
<td>By Bridget Anderson</td>
</tr>
<tr>
<td>77</td>
<td>Solidarity, Fair Sharing of Responsibility, and Refugee Protection in the EU</td>
<td>By Jaakko Kuosmanen</td>
</tr>
<tr>
<td>77</td>
<td>The Hidden Face of Forced Labour in Britain</td>
<td>By Mei-Ling McNamara</td>
</tr>
<tr>
<td>77</td>
<td>Human Trafficking in Scotland</td>
<td>By Mei-Ling McNamara</td>
</tr>
<tr>
<td>78</td>
<td>New Bill Shifts Focus to Survivors of Human Trafficking</td>
<td>By Mei-Ling McNamara</td>
</tr>
<tr>
<td>78</td>
<td>The Role of Civil Society in the Execution of ECHR Judgments</td>
<td>By Victoria Prais</td>
</tr>
<tr>
<td>79</td>
<td>State Sovereignty v Migrants’ Rights: Who Wins before the European and Inter-American Court of Human Rights?</td>
<td>By Laura Hilly</td>
</tr>
<tr>
<td>79</td>
<td>Trapped Between the Fences</td>
<td>By Reuven (Ruvi) Ziegler</td>
</tr>
<tr>
<td>80</td>
<td>Getting Real on Children’s Rights: Is Offshore Processing Compatible with Australia’s Legal Obligations to Child Refugee Applicants?</td>
<td>By Katie O’Byrne and Jason Pobjoy</td>
</tr>
<tr>
<td>80</td>
<td>Australia’s New Offshore Processing Laws for Asylum Seekers Raise Doubt over Australia’s Commitment to Fundamental Human Rights and Beyond</td>
<td>By Elise Klein</td>
</tr>
<tr>
<td>81</td>
<td>Refugee Rights and the Lucky Country: Does Australia’s Regional Resettlement Plan Violate Human Rights?</td>
<td>By Katie O’Byrne</td>
</tr>
<tr>
<td>81</td>
<td>Sinking hopes? Climate Change Refugees in New Zealand</td>
<td>By Caroline Sawyer</td>
</tr>
<tr>
<td>82</td>
<td>The Price of Rights: Regulating International Labor Migration</td>
<td>By Martin Ruhs</td>
</tr>
<tr>
<td>82</td>
<td>Quashing Legislation Mandating Lengthy Detention of Asylum-seekers: A Resolute yet Cautious Israeli Supreme Court Judgment</td>
<td>By Ruvi Ziegler</td>
</tr>
<tr>
<td>83</td>
<td>The Prevention of Infiltration (Amendment no. 4) Bill: A malevolent response to the Israeli Supreme Court judgment</td>
<td>By Ruvi Ziegler</td>
</tr>
<tr>
<td>83</td>
<td>The Québec Charter of Values Project: Republican or Immigrant-phobic?</td>
<td>By Professor Lucie Laramanche</td>
</tr>
<tr>
<td>84</td>
<td>Indirectly Sending the Citizen Into Exile? The Relevance of British Citizenship to Proportionality Under Article 8 ECHR</td>
<td>By Rowena Moffatt</td>
</tr>
<tr>
<td>84</td>
<td>A Form of Child Trafficking in Haiti: The Orphanage Business</td>
<td>By Rachel Belt</td>
</tr>
</tbody>
</table>
Alternatives to Detention: Evidence from Canada and Switzerland
By Mary Bosworth | 5 July 2013

A new report in the UNHCR Legal and Protection Police Research Series co-authored by Cathryn Costello and Esra Kaytaz from the University of Oxford explores the nature and impact of alternatives to detention for refugees, asylum seekers and other migrants in Geneva and Toronto. Based on a combination of documentary analysis and interviews carried out in the summer of 2012, the report identifies three areas where greater attention is needed to conditions and treatment at reception. The report also explores the process for securing release from immigration detention centres in the two cities.

The cities were selected based on advice from the UNHCR that recommended them as sites “with significant accessible asylum-seeker populations, with various receptions systems in place that seemed to avoid detention.” (Costello and Kaytaz, 2013: 6). In Toronto they included shelter system in their definition of alternatives to detention, while in Geneva the CEPs to Foyers run by the Canton of Geneva.

Greater attention needs to paid to the conditions and treatment of refugees, asylum seekers and migrants. Those who felt that they had been treated fairly and well were most likely to cooperate with the legal process.

The report also explores the process for securing release from immigration detention centres in the two cities.

The People’s Republic of China has ratified the Convention Relating to the Status of Refugees 1951 and its 1967 Protocol, but has not extended the ratification to the HKSAR.

Asylum seekers in Hong Kong, who hold no valid visa, are deemed to be “illegal immigrants” with few legal rights. The HK SAR has a policy of refusing acceptance of any refugee (the appeal does not challenge this), and makes no independent refugee status determination (RSD). Instead, it relies on the UNHCR to make RSD and resettle refugees under its international refugee protection mandate. If refugee status is denied, the immigration authority steps in to order repatriation.

The RSD process is technically independent from the DOI repatriation process, although the DOI has discretion to consider the RSD decision. The UNHCR in Hong Kong permits an internal appeal against an adverse finding of its initial RSD process, but the RSD process lacks many administrative law safeguards. Success rates of both the initial decision and the appeal are low, and the RSD process suffers much delay. Moreover, the UNHCR cannot be compelled to appeal in Hong Kong courts.

The appeal in this case was made on two grounds: 1. treatment of asylum seekers by the HK SAR is subject to the principle of non-refoulement (PNR) as a customary international law obligation and a peremptory norm, it must make its own RSD, even if it does not ultimately accept refugees; and 2. the DOI must exercise its repatriation power with ‘high standards of fairness’, which is subject to judicial review, and, in doing so, has a non-delegable duty to assess an asylum seeker’s circumstances.

The CFA allowed the appeal on ground (2), and decided primarily on judicial review considerations (see [13]-[56] and [81]-[98]), namely, whether there was an issue without proper exercise of statutory power by the DOI in respect of a government policy; and the scope of the DOI’s power and the relevant standard of judicial scrutiny. As the court found that the government policy essentially captures the PNR, ground (1) was not considered.

The ruling supports judicial reviews of repatriation orders for asylum seekers, which better aligns the law with the position of asylum seekers’ international rights against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (implemented in a separate legal scheme in Hong Kong – see [63]-[69]; Secretary for Security v Prabakar [2003] HKGFA 37; and Ubamaka Edward Wilson v Secretary for Security and Director of Immigration [2011] HKCA 365). The ruling paves the way for an integrated refugee law in Hong Kong, and possibly for the HK SAR to assume its RSD responsibility.

Sebastian Ko is currently reading for the BCL at St Hilda’s College, University of Oxford, and is a volunteer attorney caseworker for the Hong Kong Refugee Advice Centre.

Contesting Refugee Status Cessation: The Rwandan Case
By Kelly O’Connor | 15 March 2013

The United Nations High Commissioner for Refugees (UNHCR) recommends that the refugee status of all Rwandans who fled the country between 1996 and 1998 should cease in June 2013. Rwandan officials argue that the country is safe. Fahanu, Human Rights Watch, and refugees themselves respond that ending refugee status could lead to deportation: forced return to Rwanda ‘where [refugees’] lives’ or freedom would be threatened on account of [their] race, religion, nationality, membership of a particular social group or political opinion. This dispute forms a larger debate in international law: when, and how, should refugee status end?

Refugee status ends once an individual re-establishes a protective state-citizen bond through one of the three double solutions of repatriation, third country resettlement, or local integration. UNHCR’s strategy for Rwandan refugees includes options for local integration and protection for those still at risk of persecution, but repatriation is favoured.

Repatriation can be voluntary or mandated. Voluntary repatriation is poorly defined, but article 1C(4) of the 1951 Convention Relating to the Status of Refugees allows refugees to re-establish themselves in their country of origin, even if they are still at risk of persecution. Articles 1C(5) and 1C(6) of the 1951 Convention allow host states to declare the cessation of refugees’ status and mandate their deportation. According to UNHCR, these articles can only be invoked if there have been fundamental, effective, and durable changes in a refugee’s country of origin that result in the re-establishment of protection.

Articles 1C(5) and (6) can be contentious for three reasons. First, exemptions due to the severity of past persecution and family ties to the host country are often not respected. Second, while states are responsible for judging whether effective protection exists in refugees’ home countries, refugees may disagree with state conclusions. Finally, articles 1C(5), (6) and (4) can become conflated if host countries make life so unbearable for refugees they are forced to repatriate, resulting in possible refoulement.

Uganda’s treatment of Rwandan refugees illustrates these points. Although Uganda has not formally declared refugee status cessation, it has rejected new Rwandan refugee applicants and coerced refugees who are afraid to repatriate by cutting food rations and re-allocating their land. Amnesty International argues that conditions in Rwanda are still unsafe, and 300 out of 1,945 refugees Uganda claimed to voluntarily repatriate between 2003-2004 had fled back to Uganda within a year. There are also concerns that planned exemption procedures for when Uganda does formally declare refugee status cessation are insufficient.
Hounga v Allen: a danger for undocumented workers
By Anjoli Maheswaran Foster | 11 March 2013

The ruling in Hounga v Allen [2012] EWCA Civ 609 will have a dangerous impact for undocumented migrant workers. The Court of Appeal’s application of the doctrine of illegality means that because these workers have no right to work, and thus their employment contract is illegal, they are deprived of all fundamental labour rights.

Hounga v Allen demonstrates the need for the right to work to be considered separately from rights at work.

Ms Hounga was a Nigerian national. It was agreed that she would travel to England to work for the Allen family, where she would perform household work and look after the children. Mrs Allen told Ms Hounga that she would be able to live in their house, receive £50 per month for her work and attend school.

In order to obtain her passport and visa, Ms Hounga lied about her age and name. When she arrived in England she also lied to the immigration officers, telling them that she was intending to visit her grandmother. Ms Hounga was assisted by the Allen family throughout this process. Thereafter Ms Hounga worked for the Allen family. During this time she received no pay, and suffered serious physical abuse from Mrs Allen. She was eventually dismissed.

Ms Hounga brought a number of claims before the Employment Tribunal. The Tribunal rejected her claims for unfair dismissal, breach of contract and unlawful deductions from wages and holiday pay. This was because they were made as a result of an illegal employment contract, which Ms Hounga had knowingly entered into. Therefore, due to the doctrine of illegality, the claims were barred on grounds of public policy. However, the claim for dismissal on racially discriminatory grounds was allowed, because Ms Hounga could not benefit from her illegal contract. However, the claim for dismissal was refused on the ground that Mrs Allen’s conduct in dismissing Ms Hounga was not linked with Ms Hounga’s illegal conduct.

However, the Court of Appeal rejected the distinction made by the Tribunal, and decided that all of Ms Hounga’s claims should be barred. Lord Justice Rimer stated that ‘If this court were to allow her to make that case, and so rely upon her own illegal actions, it would be condoning her illegal conduct. However, the claim for dismissal on racially discriminatory grounds was allowed, because Ms Hounga could not benefit from her illegal contract. However, the claim for dismissal was refused on the ground that Mrs Allen’s conduct in dismissing Ms Hounga was not linked with Ms Hounga’s illegal conduct.

Despite the ILO’s emphasis on a labour regulation approach to dealing with exploitative or abusive practices by employment agencies towards migrant domestic workers, criminal sanctions as such as those targeting trafficking and forced labour attract much greater public and official attention.

While there are cases of extreme abuse that amount to forced labour under Article 4 of the European Convention of Human Rights, as the 2012 European Court of Human Rights decision, CN v. the United Kingdom, [2012] ECHR 1191 demonstrates, this focus on the sharp edge of exploitation diverts attention from much more widespread abusive practices, such as charging fees and misrepresenting terms and conditions of employment to migrant domestic workers. Moreover, even from a labour regulation perspective, too much attention is paid to providing migrant domestic workers with an after-the-fact complaint mechanism. This solution is unlikely to be successful since, owing to their precarious immigration status and their isolation in private homes, domestic workers are too often unable or unwilling to lodge complaints.

Greater attention should be paid to dealing with the root cause of the problem – unscrupulous and unregulated employment agencies that are key actors in global care chains. The recent example of one Canadian jurisdiction, Manitoba, shows how it is possible to design a regulatory regime for some of the labour practices associated with employment agencies engaged in recruiting migrant workers.

In 2008, Manitoba enacted The Worker Recruitment and Protection Act, which provides a comprehensive foreign worker recruitment regulatory scheme composed of two interrelated parts: employer registration and foreign recruiter licensing. Employers wishing to recruit a foreign worker must apply to register with the employment standards branch, and indicate whether or not they are using a foreign worker recruiter. The Immigration Branch then contacts and informs the employer that it is responsible for reimbursing the worker any recruitment costs that the worker may have paid to anyone during the recruitment process. Not only can employers be held responsible for illegally charged placement fees, these fees can also be treated as wages, and returned to workers via wage collection processes.

The employment contract information that the employer provides to immigration officials as part of the visa process is deemed to be the minimum standard enforceable under the province’s Employment Standards Code.

The regulatory structure’s second main piece is the licensing of foreign worker recruiters, which is divided into three parts: financial, operational, and ethical licensing. Foreign worker recruiters are regulated as distinctly defined entities, which are extensively vetted, supervised and bonded. They are prohibited from acting simultaneously as immigration consultants for migrant workers and placement agencies for employers so as to avoid conflicts of interests. This firewall, along with heightened supervision, discourages the blending of legal with illegal fees. The licensing measures also provide a form of quality assurance, and ensure that those employers requiring professional assistance are dealing with reputable and accountable members of the recruitment sector. The substantial bond that is levied as part of the licensing process can be used to reimburse foreign workers for any fees collected from them at any time by any person during the recruitment process. In addition to civil recovery of illegally charged fees, there are significant penalties for contraventions.

Legislation is a necessary but not sufficient condition of adequate regulation. What is distinctive about Manitoba is the extent to which the different levels of government (in Canada immigration is primarily the responsibility of the federal government whereas employment is generally a matter of provincial jurisdiction) and different agencies (involving immigration, border control and employment standards officials) have linked and consolidated their resources to stop abusive recruiters. This regulatory regime has resulted in a shift towards direct employer recruitment and away from the use of recruiters. The few agencies that continue to recruit migrant workers to Manitoba are highly regulated and well capitalised.

Eradicating irresponsible brokers who operate as ‘flesh peddlers’ at the bottom of the labour market will not guarantee that migrant domestic workers who work and live in private homes will be treated with dignity and in accordance with international norms. Nevertheless, as the example of Manitoba demonstrates, it could put an end to some of the most prevalent abusive practices. Effective regulation of transnational labour brokers would also ensure that the costs of the care deficit in the global North are not borne by the women of the global South who cross borders to perform this essential work.

Judy Fudge is the Leverhulme Visiting Professor, Kent Law School and Lansdowne Chair in Law, University of Victoria.

Migration, Asylum, Trafficking and Human Rights
Chapter five

Protecting the Labour Rights and Human Rights of Migrant Domestic Workers – A Labour Regulation Approach
By Judy Fudge | 26 February 2013

Women who cross national borders in order to work in the households of other peoples’ families are very vulnerable to exploitation. Their precarious work situation is a function both of their precarious migrant status – typically they are admitted to the country in which they work on visas that tie their ‘rights’ to work and to reside in that country to an on-going employment relationship with a specific employer – and their employment within private homes. Employment agencies, which recruit and place domestic workers across national boundaries, are crucial actors in the construction, maintenance and reproduction of global care chains, in which women from the South migrate to the North or to contiguous countries in the South in order to provide domestic work. Employment agencies have long been associated with abusive practices, such as charging fees to workers and fraud, in the recruitment and placement of domestic workers. They also draw upon and contribute to an on-going process of racialising domestic work.

Despite the ILO’s emphasis on a labour regulation approach to dealing with exploitative or abusive practices by employment agencies towards migrant domestic workers, criminal sanctions as such as those targeting trafficking and forced labour attract much greater public and official attention.

While there are cases of extreme abuse that amount to forced labour under Article 4 of the European Convention of Human Rights, as the 2012 European Court of Human Rights decision, CV v. the United Kingdom, [2012] ECHR 1191 demonstrates, this focus on the sharp edge of exploitation diverts attention from much more widespread abusive practices, such as charging fees and misrepresenting terms and conditions of employment to migrant domestic workers. Moreover, even from a labour regulation perspective, too much attention is paid to providing migrant domestic workers with an after-the-fact complaint mechanism. This solution is unlikely to be successful since, owing to their precarious immigration status and their isolation in private homes, domestic workers are too often unable or unwilling to lodge complaints.

Greater attention should be paid to dealing with the root cause of the problem – unscrupulous and unregulated employment agencies that are key actors in global care chains. The recent example of one Canadian jurisdiction, Manitoba, shows how it is possible to design a regulatory regime for some of the labour practices associated with employment agencies engaged in recruiting migrant workers.

In 2008, Manitoba enacted The Worker Recruitment and Protection Act, which provides a comprehensive foreign worker recruitment regulatory scheme composed of two interrelated parts: employer registration and foreign recruiter licensing. Employers wishing to recruit a foreign worker must apply to register with the employment standards branch, and indicate whether or not they are using a foreign worker recruiter. The Immigration Branch then contacts and informs the employer that it is responsible for reimbursing the worker any recruitment costs that the worker may have paid to anyone during the recruitment process. Not only can employers be held responsible for illegally charged placement fees, these fees can also be treated as wages, and returned to workers via wage collection processes. The employment contract information that the employer provides to immigration officials as part of the visa process is deemed to be the minimum standard enforceable under the province’s Employment Standards Code.

The regulatory structure’s second main piece is the licensing of foreign worker recruiters, which is divided into three parts: financial, operational, and ethical licensing. Foreign worker recruiters are regulated as distinctly defined entities, which are extensively vetted, supervised and bonded. They are prohibited from acting simultaneously as immigration consultants for migrant workers and placement agencies for employers so as to avoid conflicts of interests. This firewall, along with heightened supervision, discourages the blending of legal with illegal fees. The licensing measures also provide a form of quality assurance, and ensure that those employers requiring professional assistance are dealing with reputable and accountable members of the recruitment sector. The substantial bond that is levied as part of the licensing process can be used to reimburse foreign workers for any fees collected from them at any time by any person during the recruitment process. In addition to civil recovery of illegally charged fees, there are significant penalties for contraventions.

Legislation is a necessary but not sufficient condition of adequate regulation. What is distinctive about Manitoba is the extent to which the different levels of government (in Canada immigration is primarily the responsibility of the federal government whereas employment is generally a matter of provincial jurisdiction) and different agencies (involving immigration, border control and employment standards officials) have linked and consolidated their resources to stop abusive recruiters. This regulatory regime has resulted in a shift towards direct employer recruitment and away from the use of recruiters. The few agencies that continue to recruit migrant workers to Manitoba are highly regulated and well capitalised.

Eradicating irresponsible brokers who operate as ‘flesh peddlers’ at the bottom of the labour market will not guarantee that migrant domestic workers who work and live in private homes will be treated with dignity and in accordance with international norms. Nevertheless, as the example of Manitoba demonstrates, it could put an end to some of the most prevalent abusive practices. Effective regulation of transnational labour brokers would also ensure that the costs of the care deficit in the global North are not borne by the women of the global South who cross borders to perform this essential work.

Judy Fudge is the Leverhulme Visiting Professor, Kent Law School and Lansdowne Chair in Law, University of Victoria.
Migration, Asylum, Trafficking and Human Rights
Chapter five

The Court found a violation of the procedural limb of Article 3 on account of an ineffective investigation into the first applicant’s alleged ill-treatment by the Serbian family.

However, the Court declared the Article 4 complaint inadmissible. Instead of asking whether the trafficking allegations raised a ‘credible suspicion’ of M’s victim status, the Court noted that:

“...from the evidence submitted there is not sufficient ground to establish the veracity of the applicants’ version of events (...) It follows that the applicants’ allegation that there had been an instance of actual human trafficking has not been proved (...).”

This finding is problematic on several grounds. First, given the similar nature of rights protected under Articles 3 and 4, it is not obvious why the applicants’ allegations of the circumstances, which gave rise to both complaints, were sufficient to engage Article 3, but had to be proved for Article 4. Moreover, by placing the burden of proof on the applicants, the Court makes it virtually impossible for future trafficking victims to rely on Article 4 in seeking to establish a state’s responsibility for failing to take appropriate action. That is because allegations against the state will usually be made when it has not done enough to investigate the events, leading to little evidence being available. Requiring applicants to prove these factual circumstances render the Convention inapplicable to most trafficking situations. Furthermore, it is not clear why this case is any less one of trafficking than Rantsev, given the similar failure of the authorities to establish the factual circumstances of the case.

By finding Article 4 inadmissible because the applicants failed to reach the beyond a reasonable doubt standard of proof, the Court in M creates a dangerous precedent. Instead of clarifying its scarce Article 4 jurisprudence, the Court has muddied the waters on how human trafficking engages the Convention’s protective mechanism.

States have positive obligations under international law towards victims of THB that are triggered when the state has ‘reasonable grounds to believe’ that an individual might be a victim of THB. The ECtHR in Rantsev endorses this approach. However, the lesser known case of M. requires a much higher standard of proof to trigger Article 4 protection. Asking potential trafficking victims to prove their allegations rather than to raise a credible suspicion makes the Convention virtually inapplicable in most trafficking situations.

The factual circumstances of M. case were in dispute. The applicants, a Roma family from Bulgaria, came to Italy on the promise of work from another Roma family of Serbian origin. The applicants complained that their daughter had suffered ill-treatment, sexual abuse and forced labour at hands of the Serbian family in Italy. They alleged that the Italian authorities failed to protect her or punish the perpetrators, and instead of investigating the circumstances complained of, the police instituted criminal proceedings against the girl and her mother for perjury and false accusations. The government counter claimed that the situation amounted to a typical marriage according to the Roma tradition.

To ask this question is not to put into question the undoubted abuse, injustice, extortion, rape, violence and murder experienced by migrants, particularly undocumented migrants. There is also no question that this happens, and that the vulnerable are exploited (a tricky term though) in myriad horrendous ways. However, whatever one means by grouping such heterogeneous phenomena as child labour in Benin, tobacco farming in Kazakhstan and under age prostitution in Oxford, ‘anti-trafficking’ is not the answer. It mystifies labour and labour relations, it mystifies immigration and immigration controls, it essentialises gender and childhood, it confuses and obfuscates, and importantly it also acts against the interests of many that it purports to serve.

In recent years there has been an attempt to rehabilitate human rights to some extent in this discourse, as the expression of hope and indeed of some possibility of universalism and this has drawn explicitly on migrants and the undocumented, most obviously the work of Ranciere, that has emphasised the importance of rights claims, the power of rights when they are invoked by ‘the part of no part’.

Whatever one thinks of these arguments trafficking obstructs them.

It is not only that the authority of the state has to be invoked in order to protect the rights of the Victim of Trafficking, but that the state is directly and inseparably the source of vulnerability and that the norms of protection for VoT, border controls, directly and inseparably the source of vulnerability. While undocumented migrants can challenge the source of their differentiation from citizens and assert “I’m illegal. So what?” VoT who cannot claim, “I’m a VoT. So what?”? The VoT in claiming human rights has no right to resist the author of the source of her vulnerability. She is caught in an iron cage of logic, a state created subject with no room for manoeuvre. The granting of human rights to VoT make the possibility for human rights as dissensus invoked by illegal migrants more difficult. The most objected of those formally excluded are given rights, and they are rights that are premised on the right NOT to enter, to be protected from movement. The VoT, once she has testified and her abuser is imprisoned, is supposed to return home. Indeed the narrative is that she wants to return home, and part of her innocence and victimhood is that she never wanted to move in the first place. In this way immigration controls are claimed to be a mechanism of protection for migrants, rather than a mechanism of oppression. Immigration enforcement does not ignore liberal values but directly invokes them.

The language of trafficking marks the United Kingdom as a site of free labour and equality. It draws attention to the backward employment and social relations of the migrant, in contrast to those of the citizen, yet it also overlooks the key point of difference between the migrant and the citizen, which is that the migrant is subject to immigration controls. Trafficking enables ‘us’ to congratulate ourselves on the freedom and rights within the British economy, and to respond morally and emotionally to the gap between us and them, between privilege and suffering. The commitment to combat trafficking demonstrates that non-citizens are not regarded purely as commodities, moved about for maximum profit. Through anti-trafficking it is apparent that the state, and importantly the nation, acknowledges that they are human beings who cannot be simply traded as factors of production. In this sense it rescues the national labour market by connecting it to the moral economy. It flags the social norms and obligations and the extent of tolerable inequalities: ‘we’re not saying that migrant workers should be given cushy jobs, but they are entitled to the minimum’, as a prosecutor on one UK Trafficking court case put it. Concern with trafficking focuses on borders and immigration controls while missing the crucial point that immigration controls produce relations of domination and subordination, thereby leaving state responsibility for the consequences of this completely out of the picture.

Professor Bridget Anderson, Professor of Migration and Citizenship at the University of Oxford and Deputy Director of COM-PAS. Her book Us and Them? The dangerous politics of immigration control will be published in March 2013 by OUP.

This blog post is an extract from a longer piece ‘Trafficking and the protection of human rights. Full of sound and fury, but what does it signify?’ presented on 24 January 2013 in Oxford as part of the COM-PAS International Migration and Human Rights Seminar Series.
Solidarity, Fair Sharing of Responsibility, and Refugee Protection in the EU
By Jaakko Kuosmanen | 19 February 2013

Article 80 of the Treaty on the Functioning of the European Union (TFUE) requires that asylum policies of the Union and their implementation be governed by the principle of solidarity and fair sharing of responsibility among the Member States. The EU is currently in the process of finalising its legislative package for the Common European Asylum System (CEAS). The European Council set in the Stockholm Programme the goal of establishing CEAS by the end of 2012.

There is some evidence of progress with regard to intra-EU solidarity in refugee protection – the establishment of the European Asylum Support Office (EASO) being an example of this. However, much more needs to be done before CEAS can genuinely be argued to realise the principle of solidarity and fair sharing of responsibility.

One important barrier is the Dublin Regulation, which establishes the criteria for identifying the EU state responsible for the examination of asylum claims. The Dublin Regulation remains integral part of CEAS.

A majority of Member States remain strongly supportive of the fundamental idea behind the Dublin Regulation, although in the aftermath of the ECtHR case M.S.S. v. Belgium (Scotland) Act 2009 and Criminal Justice and Licensing Act 2004; Gangmasters (Licensing) Act 2004; Immigration, Asylum and Nationality Act 2006; Scotland is a unique case on the issue of trafficking in Britain. A. It’s woefully low record of attaining prosecutions has been attributed by some to the legal hurdles in Scots law pertaining to collaboration. Its legislation relating to trafficking is complex – spread across a number of different statutes including: Proceeds of Crime Act 2002; Criminal Justice (Scotland) Act 2003; Asylum and Immigration Act 2004; Gangmasters (Licensing) Act 2004; Immigration, Asylum and Nationality Act 2006; Sexual Offences (Scotland) Act 2009 and Criminal Justice and Licensing Act (Scotland) 2010.

Scotland is a unique case on the issue of trafficking in Britain. A. It’s woefully low record of attaining prosecutions has been attributed by some to the legal hurdles in Scots law pertaining to collaboration. Its legislation relating to trafficking is complex – spread across a number of different statutes including: Proceeds of Crime Act 2002; Criminal Justice (Scotland) Act 2003; Asylum and Immigration Act 2004; Gangmasters (Licensing) Act 2004; Immigration, Asylum and Nationality Act 2006; Sexual Offences (Scotland) Act 2009 and Criminal Justice and Licensing Act (Scotland) 2010.
Throughout their ordeal – from victim identification, psycho-social support, legal representation and financial redress – they should not have felt protected by a system aimed at prosecuting their perpetrator and providing them with support. Yet at every turn, when they could have received significant help by an organisation or authority, they were turned away or ignored. Without proper criminal, immigration, and employment law joined up to protect victims of trafficking, these men have been forced to leap over the massive gaps in a system that lacks adequate human rights-centred legislation to address this growing problem.

In Edinburgh this September I was invited to attend the consultation launch of a new, comprehensive piece of legislation to address human trafficking in Scotland, the new Human Trafficking (Scotland) Bill.

By Mei-Ling McNamara | 22 October 2013

New Bill Shifts Focus to Survivors of Human Trafficking

By Mei-Ling McNamara | 22 October 2013

Earlier this year, I interviewed a group of young Bangladeshi men who had been trafficked into Scotland to work in the hotel services industry. They had been deceived, abused, exploited and threatened into working under forced labour conditions, some of them for months, others for years. As they revealed the harrowing circumstances of their stories, equally as shocking was the way in which they had been treated after they had finally escaped their situation.

Through the global tiers of a new, Human Trafficking (Scotland) Bill, aimed at dissolving the issue of corroboration in criminal trials, and the Home Secretary has announced a new Modern Slavery Bill which promises to deliver a strong criminal justice approach, the Survivors Service offered in Scotland’s proposed Human Trafficking Bill offers the most comprehensive service to address the vital needs of its victims. Placing the needs of the victims first, the Bill addresses problems such as identification, support services and referral, while acknowledging their vulnerable status – most importantly prioritising these issues over immigration. The UKBA is placed outside the decision-making process and minimum standards have been put in place to provide victims with 46 days protection. In counselling, health care and information on their legal rights. The Human Trafficking (Scotland) Bill is still in its consultation phase, but it already shows an awareness not only of the criminal justice issues required to root out traffickers, but of the urgent needs of survivors who are easily lost in the bureaucratic maze of British laws and legality.

Only through the help of a few empathetic individuals have the four Bangladeshi men been able to pursue their cases pro-bono and temporarily find work to support their families back home. They continue to live a precarious existence, remaining in legal limbo where they live a day-to-day existence faced with traumatic memories and financial insecurity. The UK and Scottish government has publicly denounced slavery on their shores and are promising to end the scourge of human trafficking they say is rife in their cities and towns. Now is the time to have political courage to go beyond the rhetoric to see how legislation can reach the lives of the people that need it most – the survivors.

Mei-Ling McNamara is a journalist and documentary filmmaker, working in both print and broadcast media. She is a doctoral candidate in Trans-Disciplinary Documentary Film at the University of Edinburgh where her work is focused on forced labour, trauma and the politics of slavery in Britain. Her documentary Children of the Cannabis Trade, broadcast on Al-Jazeera English, won the 2011 Human Trafficking Migration, Asylum, Trafficking and Human Rights Award, currently based in Edinburgh.

The Role of Civil Society in the Execution of ECtHR Judgments

By Victoria Prais | 13 May 2013

European Court of Human Rights (ECtHR) judgments can have a huge impact in Member States by highlighting systemic and serious problems in human rights protection. But what happens when an ECtHR judgment dies down? The implementation process is critical to the success of the ECtHR system. The Committee of Ministers (CM) of the Council of Europe is charged with supervising the implementation of ECtHR judgments. However, the judgment of the ECtHR has received a steady stream of rule 9 submissions from NGO’s, National Ombudsmen and other national human rights organisations. Civil society organizations (CSOs) have also provided critical “shadow” reports to the CM about the situation on the ground in various countries.

However, as a lawyer at the Department managing cases from the UK, Ireland & Cyprus, I saw mixed levels of civil society engagement. In Hirst v United Kingdom (app. no. 74025/01 (prisoner voting)) and in McKerr v United Kingdom (app. no. 28883/01) CSOs have been actively engaged and have filed Rule 9 submissions.

The case of A, B & C v Ireland app. no. 25576/05 offers another positive example of CSO engagement. The campaigning for a more aggressive approach towards human slavery, and highlights Ireland’s restrictive abortion regulations. In December 2010, the Grand Chamber of the Court unanimously held that Ireland’s failure to implement abortion legislation in spite of existing case law constituted an Article 8 violation. The Court highlighted particular issues that needed to be addressed.

In this case, CSOs have acted as a ‘critical friend’ throughout the implementation process and have, on occasion, been strident in their criticism of the government’s proposed measures. They critiqued the government’s initial Action Plan. They criticized the lack of interim measures to give effect to the judgment, and the general delay in implementation of the judgment. In one submission, an NGO provided detailed recommendations for legislation and guidelines to meet the terms of the judgment.

However, the case of Rantsev v Cyprus/Russia (app. no. 29650/04) provides a stark contrast to these examples of positive CSO engagement. The case concerned the trafficking of the applicant’s daughter, a young woman who arrived on an “artistes” visa from Russia to Cyprus where she then died. The Court found Cypriot authorities failed to conduct an effective investigation into the death, that Cypriot authorities had failed in their positive obligation to create an appropriate framework to combat trafficking and also that police failed to protect the young woman. The Court found that Russian authorities failed to effectively investigate the recruitment of the applicant’s daughter in Russia.

The paucity of civil society engagement on the case is noteworthy; there were no Rule 9 submissions on general measures. CSO’s could have provided “shadow” reports with relevant statistics or analysed the effectiveness of the current legislative framework on trafficking. There was no independent analysis of how authorities dealt with trafficking victims in Cyprus and whether operational staff were suitably trained.

It is difficult to explain civil society’s silence in some cases and active engagement in others. There may be a lack of CSO knowledge on how they can be practically involved in the execution of ECtHR judgments. Civil society may also be more developed and confident in certain countries than in others. Alternatively, some CSOs may see little value in engaging on repetitive cases whereas they could actually play a vital role.

That said, progress has been made in making civil society a partner in the execution process, and the relationship continues to grow and flourish. It may take time to get “buy in” from all quarters, but there is certainly CSO will to be involved in the process.

Victoria Prais is a Legal Officer – Human Rights Based Approach at the Scottish Human Rights Commission. She is a former lawyer at the Department for the Execution of Judgments of the European Court of Human Rights, Council of Europe.

On Tuesday 6 November 2012, the Oxford Human Rights Hub (OxHRH) in conjunction with the Oxford Migration Law Discussion Group (OxMLDG) welcomed Professor Marie-Bénédicte Dembour, Professor of Law and Anthropology at the University of Sussex.

Professor Dembour gave an engaging presentation entitled ‘State Sovereignty v Migrants’ Rights: Who wins before the European and Inter-American Court of Human Rights?’ This presentation drew upon her work on her upcoming book, provisionally titled ‘Migrant First, Human Second?’ Comparing the Approaches of the European and Inter-American Courts of Human Rights to Migrant Cases’.

Professor Dembour juxtaposed case law demonstrating the Inter-American Court of Human Rights’ comparatively ‘human-centric’ or ‘human-rights-first’ approach to cases involving migrants’ rights with what she identified as a ‘State-centric’ or ‘State-first’ approach taken by the European Court of Human Rights. She pointed to possible causes for these divergent approaches: the textual differences between the European and American Conventions on Human Rights; the social makeup of the European and Latin-American continents which reverberates with the distinctive political history and migration patterns characteristic of the two continents; and the orientations of the judges sitting on the respective benches, resulting in a particular judicial ‘habitus’ where precedents are established which set the parameters of future judicial reasoning and activity.

Professor Dembour recognised that her thesis is controversial, but asked why academics and practitioners have been reluctant to criticise the ‘European Court of Human Rights’ case law on migrants’ rights.

Her presentation was followed by a lively discussion, with questions from, among others, Shirley Ardener (Anthropology), Meghan Campbell (Law), Anne Koch (Refugee Studies Centre), Dr Martin Ruhs (COMPAS) and Mira Zou (Law).

State Sovereignty v Migrants’ Rights: Who Wins before the European and Inter-American Court of Human Rights?

By Laura Hilly | 8 November 2012

On Tuesday 6 November 2012, the Oxford Human Rights Hub (OxHRH) in conjunction with the Oxford Migration Law Discussion Group (OxMLDG) welcomed Professor Marie-Bénédicte Dembour, Professor of Law and Anthropology at the University of Sussex.

Professor Dembour gave an engaging presentation entitled ‘State Sovereignty v Migrants’ Rights: Who wins before the European and Inter-American Court of Human Rights?’ This presentation drew upon her work on her upcoming book, provisionally titled ‘Migrant First, Human Second?’ Comparing the Approaches of the European and Inter-American Courts of Human Rights to Migrant Cases’.

Professor Dembour juxtaposed case law demonstrating the Inter-American Court of Human Rights’ comparatively ‘human-centric’ or ‘human-rights-first’ approach to cases involving migrants’ rights with what she identified as a ‘State-centric’ or ‘State-first’ approach taken by the European Court of Human Rights. She pointed to possible causes for these divergent approaches: the textual differences between the European and American Conventions on Human Rights; the social make-up of the European and Latin-American continents which reverberates with the distinctive political history and migration patterns characteristic of the two continents; and the orientations of the judges sitting on the respective benches, resulting in a particular judicial ‘habitus’ where precedents are established which set the parameters of future judicial reasoning and activity.

Professor Dembour recognised that her thesis is controversial, but asked why academics and practitioners have been reluctant to criticise the ‘European Court of Human Rights’ case law on migrants’ rights.

Her presentation was followed by a lively discussion, with questions from, among others, Shirley Ardener (Anthropology), Meghan Campbell (Law), Anne Koch (Refugee Studies Centre), Dr Martin Ruhs (COMPAS) and Mira Zou (Law).

Both OxHRH and the OxMLDG were delighted to collaborate on this inter-disciplinary event, bringing together academics and students with an interest in migration law and human rights from the broader Oxford community.

Laura Hilly is a DPhil Candidate at the University of Oxford and a Managing of the Oxford Human Rights Hub Blog.

On 5 September, ‘We Refugees’, an Israeli NGO, petitioned the Supreme Court demanding that the asylum seekers be admitted to Israel immediately and have their asylum applications assessed according to Israeli international law commitments. On 6 September, a hearing was held before a three-judge panel chaired by the Court’s president, Asher Grunis. The state submitted a written response arguing that it is its sovereign right to prevent entry. The Court has scheduled another hearing for 9 September, noting that it has heard evidence presented by the state ex parte Later that afternoon, the state arranged with Egypt that the two women and the boy will be allowed to enter Israel on ‘humanitarian grounds’ (only to be immediately detained at the ‘Saharonim’ detention centre) while the 18 men had to return to Egypt.

In previous judgements, the Israeli Supreme Court has emphasised that the state is bound by the principle of non-refoulement. Like the European Court of Human Rights in Hirsy Jamaa and Others v. Italy (app. no. 27765/09) (concerning the Italian transfer of Somali and Eritrean nationals to Libyan authorities), the Israeli Supreme Court ruled in HCJ 4702/94 (Hebrew) that an individual cannot be sent back to a place where his freedom or life would be threatened. Justice Aharon Barak, then the President of the Israeli Supreme Court, established that the principle of non-refoulement can be derived not only from Article 33 of the U.N. Refugee Convention, but also from Article 1 of the Israeli Basic Law: Human Dignity and Liberty. Chief Justice Barak held that the principle ‘applies in Israel to any governmental authority relating to the expulsion of a person from Israel.’

A more recent and highly pertinent case, HCJ 7032/07 (Hebrew), involved the ‘hot return’ procedure, whereby Israel would return border-crossers to Egypt in coordination with the Egyptian authorities, without assessing the claims of potential asylum seekers. The court dismissed the petition in view of the Israeli government’s announcement that the practice has ceased (primarily due to the political developments in Egypt). However, the court held that “if and when the policy is renewed, it will follow accepted standards of international law and include proper guarantees that will assure the safety of returnees to a high degree of certainty” (par. 12, author’s translation).

Notably, the construction of the (expensive and sophisticated) fence and the refusal to admit those approaching it as asylum seekers while concomitantly refusing to set up a procedure for making asylum applications at the border crossings is part of a comprehensive government policy to deter future asylum seekers from arriving, and to encourage asylum seekers currently in Israel to leave voluntarily. The majority of asylum seekers in Israel come from Eritrea, and the State offers them (as well as Sudanese nationals) temporary collective protection from deportation without conducting individual refugee status determination procedures and without allowing them to work.

In a previous paper, I have discussed some conceptual and practical difficulties arising from the Israeli position. Moreover, these developments come against the background of legislation passed earlier this year that sanctions detention of ‘infiltrators’ crossing the Israeli Southern border for a period of up to three years in a new detention centre that has recently been completed in the Israeli Negev desert (see my discussion here). One can only hope that the moral outrage that the scenes at the border has caused, and the realisation that repatriation of Eritreans and Sudanese asylum seekers is unlikely in the foreseeable future, will lead the Israeli government to adopt a Convention-compatible asylum policy towards the Eritreans and Sudanese who currently reside in Israel, and to set up a procedure for making asylum applications at its border crossings. Otherwise similar incidents are likely to occur.

Ruvi Ziegler is a Lecturer in Law at the University of Reading Law School. He is a frequent contributor to the OxHRH Blog.
Getting Real on Children's Rights: Is Offshore Processing Compatible with Australia’s Legal Obligations to Child Refugee Applicants?

By Katie O’Byrne and Jason Pobjoy | 8 September 2012

Amidst the fierce debate surrounding the report of the Expert Panel on Asylum Seekers (Houston Report) and the subsequent enactment of the Legislation Amendment (Regional Processing and Other Measures) Act 2012 (Cth) (‘Regional Processing Act’), children’s rights have been kicked further under the carpet as the Australian Government persists in its crusade for legal exceptionalism. This note focuses on implications of the legislative changes for child refugee applicants arriving by boat, and in particular, unaccompanied minors.

Australia owes every child within its jurisdiction—including non-citizen children—the corpus of rights set out in Convention on the Rights of the Child (‘CRC’)....

The ‘best interests’ principle requires that the best interests of each individual child must be the subject of active consideration of all administrative authorities, legislative bodies and courts of law, and taken into account as a primary consideration. The UN Committee on the Rights of the Child (‘UNCRC’) has interpreted the principle to require a comprehensive assessment of the best interests of a displaced child prior to any decision fundamentally impacting that child, conducted in a friendly and safe atmosphere by qualified professionals.

The Regional Processing Act does not contain any requirement that a best interests assessment be conducted in relation to children who are transferred to another country to be processed. The majority of the High Court in Plaintiff M70 v Minister for Immigration and Citizenship noted that in the context of the (failed) Malaysia Solution the intention was to conduct the assessment after a child had reached Malaysia. Conducting a best-interests assessment after the decision to transfer is made radically misses the point of the obligation. Under the Regional Processing Act, it is not clear when—or if at all—this assessment will take place.

For the past several decades, when an unaccompanied child arrived in Australian territory the Minister for Immigration and Citizenship was appointed the child’s guardian under the Immigration (Guardianship of Children) Act 1946 (Cth) (‘Guardianship Act’), and the child became a ward of state. Before the child left Australia the Minister would have to give consent in writing, having regard to the child’s interests. The High Court in Plaintiff M70 confirmed that this consent would be reviewable under Australian administrative law. Such a review would necessarily consider the best interests of the child, as well as the ‘best interests’ principle.

In order to circumvent the High Court ruling, the Houston Report recommended that the requirement to consent be repealed. But Parliament sunk the boot even harder into children’s rights. The Regional Processing Act has amended the Guardianship Act to remove in their entirety the Minister’s guardianship responsibilities for any unaccompanied child who is taken to be processed in an offshore facility. No provision is made for any person to replace the Minister as legal guardian. This is directly contrary to guidance provided by the UNCRIC, which emphasises that a child’s best interests require the expedient appointment of a ‘competent guardian’... as a key procedural safeguard’ to be consulted about all actions taken in relation to the child. In one ferocious legislative swoop, unaccompanied children have been cast adrift.

It’s time to get real on what the new offshore processing regime means for children seeking international protection. The current regime is plainly incompatible with Australia’s international legal obligations, and is yet another blot on Australia’s increasingly tarnished human rights record. In circumstances where the Government has demonstrated an obstinate, if misconceived, intention to process refugee applicants offshore, it is crucial that these arrangements are compatible with the near-universally agreed set of rights that states owe to all children.

Katie O’Byrne graduated from the LL.M. at the University of Cambridge in 2012. Jason Pobjoy is a Ph.D. candidate at the University of Cambridge, and BCL graduate and former Oxford Pro Bono Publico Executive Committee member at the University of Oxford.

Australia’s New Offshore Processing Laws for Asylum Seekers Raise Doubt over Australia’s Commitment to Fundamental Human Rights and Beyond

By Elise Klein | September 2012

On 16 August 2012, the Migration Legislation (Regional Processing and Other Measures) Bill 2012 was passed in the Australian Parliament. In broad terms, the laws introduced as a measure to reduce the number of asylum seekers who attempt to reach Australia by boat. There are several aspects of this new law that, from a human rights perspective, are very troubling. Through a political economy lens, the new laws show how the Australian government has failed to respond of the actual reality of forced migration.

There are three human rights laws concerns worth highlighting.

First, the Act gives the Government power to transfer people who arrive by boat to a ‘regional processing country’ (likely to be Nauru and Papua New Guinea) to have their asylum claims processed. The determination of a country as a ‘regional processing country’ need not be limited by reference to international obligations or domestic laws of that country. Not only does this circumvent the decision reached by the High Court of Australia in late 2011 (which held that regional processing must meet international human rights standards), it also may violate Australia’s non-refoulement obligations under the Refugees Convention.

Secondly, the Act expressly excludes the application of natural justice to a variety of Ministerial decisions, including which regional processing centre the asylum seeker should be sent to, and which countries should be identified as regional processing centres. According to the explanatory memorandum, allowing natural justice (such as the ability to appeal the Minister’s determination) would ‘negate the policy objective to arrange for persons to be taken quickly for processing offshore’. Denying individuals their right to natural justice in the name of expediency raises serious concerns about Australia’s respect for fundamental human rights, particularly the right to a fair hearing enshrined in Article 14 of the ICCPR.

Finally, when the legislation was introduced it was not accompanied by a Statement of Compatibility with Human Rights, contrary to the Human Rights (Parliamentary Scrutiny) Act 2011. The reason for this omission is said to be based on a very narrow view that the 2012 Bill was one amending an earlier 2011 Bill, so the requirement to introduce a Statement (which is mandatory for all laws introduced to Parliament since January 2012) was not enlivened. The failure to produce such a Statement on this narrow view and in circumstances where the law clearly raises human rights issues calls into question the legitimacy of Australia’s recent National Framework for Human Rights, which seeks to promote greater scrutiny of legislation for compliance with international human rights obligations.

Legal issues aside, the new offshore processing regime is also central to a wider discussion about the nature of the global political economy and how forced migration is endemic to globalising neoliberal economic systems. A reframing of the whole debate centralising this would not be only helpful, but necessary in any attempt to move forward.

Forced migration is a global issue that reflects the structural inequality of the world we live in. When our world is moulded by war, harsh borders, trade liberalisation and climate change, the instances of people being displaced are going to continually increase. Australia, like all industrial countries, has a hand in this.

Today, more people migrate than any point in history, and this is increasing. In 2000, the UN estimated 185 million people migrating, rising to 214 million people in 2005. In the past, we saw migration predominantly originating in Europe. Today, due to the myriad of push factors borne by the Global South, we see a pattern where people are trying to cross the South-North divide.

Continuing to support the populist notion of ‘stopping the boats’ through policies such as offshore processing shows a fundamental failure to conceptualise global neoliberal economic structures that contribute to pushing people to migrate.

The politics of deterrence that characterise this new policy misses the point and the laws that underpin that policy circumvent fundamental human rights protections. People will continue to seek refugee status, not only because it is their fundamental human right to do so, but more importantly because they rarely have any other choice.

Dr. Elise Klein has a DPhil in Development Studies from the University of Oxford. She currently holds a post doctoral fellowship at the Center for Aboriginal Economic Policy Research at the Australian National University.
Refugee Rights and the Lucky Country: Does Australia’s Regional Resettlement Plan Violate Human Rights?

By Katie O’Byrne | 7 August 2013

Australian Prime Minister Kevin Rudd has announced that people who come by boat to Australia and claim asylum will be transferred to detention facilities at Manus Island in Papua New Guinea (PNG) for processing and be permanently resettled in that country. PNG signed up to Australia’s ‘Regional Resettlement Arrangement’ (RRA) in exchange for hundreds of millions of dollars redirected from Australia’s existing aid commitments. A similar deal has been struck with Nauru.

Third, the obligation of non-refoulement requires more than a commitment to not send refugees back to the countries they have fled. Australia cannot lawfully send a person to any country where he or she would face persecution. Particular concerns have been raised about high levels of violence against women in PNG and its continued criminalization of homosexuality. The Australian government has also confirmed that children and pregnant women may be sent to Manus Island despite risks to these groups of taking anti-malarial medication. Several pregnant women have already miscarried.

While PNG is a signatory to the Refugee Convention, it refuses to recognise the rights of refugees to work, housing, education and protection against expulsion. PNG has promised Australia that it will not apply these reservations in relation to persons transferred under the RRA; nonetheless, the UNHCR is concerned about the formidable challenges of integrating the resettled refugee population.

A nation of “boat people”, Australia now responds to a human rights challenge by flagrantly violating human rights. It is not beyond reach to achieve a genuine, regional solution that engages other countries, strengthens processing, shares the burden of resettlement and complies with international law by protecting human rights. In the meantime, Australia currently resettle less than 1% of the world’s refugees. On the international stage, the “lucky country” could do a lot better.

Katie O’Byrne graduated from the LL.M. at the University of Cambridge in 2012.

Sinking hopes? Climate Change Refugees in New Zealand

By Caroline Sawyer | 10 November 2013

New Zealand’s Immigration and Protection Tribunal recently considered a “climate change refugee” case under its relatively new jurisdiction, which includes protection under the ICCPR as well as the Refugee Convention.

The appellant in AF (Kiribati) [2013] NZIPT 800413 hoped to stay in New Zealand with his family, citing the deteriorating conditions in his home island of Kiribati. This Pacific island has a long history of habitation and also invasion from other islands such as Tonga or Fiji, but from the 18th century onwards was under British and imperial influence, as a result of which – as much as of its geography – it has connections to New Zealand. New Zealand’s refugee and protection regime is relatively generous in operation, but it can generally afford to be so. New Zealand is more distant from everywhere than is usually appreciated – three or four hours from Australia by aeroplane – and, with its Advance Passenger Screening, it rarely sees any arrivals without a visa or visa on arrival. New Zealand does not bring them.”

In AF’s case, the Tribunal Judge, B L Burson, reviewed for example a decision of the earlier Refugee Status Appeals Authority from 2000.

Seven grouped appeals from Tuvalu brought largely the same result. The appellants had nothing left in their country, which was sinking. Nevertheless, held Mr Joe of the Refugee Status Appeals Authority, they were “unfortunate victims … of the forces of nature”. Mr Burson’s later, closer discussion did not displace that.

Mr Burson first reviewed copious country information, establishing that employment, housing, health and even the supply of fresh drinking water in Kiribati are deteriorating as the sea gradually encroaches further on an already-overcrowded island. But the Kiribatians’ misery does not from the much poorer, Pacific islands, many of whom do prefer not to return.

The government maintains that the RRA is legal under both domestic and international law. However, while the potential for domestic legal challenge is unclear, the plan violates international law on at least three bases:

First, under Article 31 of the Refugee Convention, Australia must not penalize refugees entering its territory without authorization. The new policy punishes those who come by boat, while thousands of asylum seekers who arrive by plane each year are processed and resettled in Australia. Yet despite this tiered system, unlike any other country Australia counts all refugees in the same pool for the purposes of its overall intake, perpetuating demonizing rhetoric that every “boat person” is “taking a spot” from a refugee in an overseas camp. This confuses Australia’s Convention obligations with its voluntary sharing of international responsibility to resettle refugees processed overseas.

Second, under Article 33 of the Convention, Australia must not expel or return a refugee to territories where he or she would face threats to life or freedom on a prohibited ground (the obligation of non-refoulement). Compliance with this obligation requires an adequate system of refugee status determination. According to the RRA, PNG will undertake refugee status determination under local law. PNG has no track record in refugee status determination. Indeed, its refugee legislation was only enacted in January and the UNHCR has found significant shortcomings in its legal framework.

These announcements were prompted by a recent increase in the number of asylum seekers coming to Australia by boat, with travel generally arranged by people-smuggling networks in south-east Asia. Treacherous waters and insecure vessels led to numerous capsizes and deaths by drowning. It is unsurprising that over 90% of people coming by boat have been assessed as genuine refugees. Most would not risk such a journey unless escaping worse elsewhere.

Australia faces a human rights problem created by external forces, but the government is not speaking the language of human rights. Rather, its more pressing priority is to neutralise the “asylum seeker issue” before the upcoming federal election. Ostentatious full-page advertisements now bear down from Australia’s most popular newspapers stating: “If you come here by boat without a visa, you won’t be settled in Australia”. The Opposition Leader Tony Abbott promises an even harsher military-led response.

The government maintains that the RRA is legal under both domestic and international law. However, while the potential for domestic legal challenge is unclear, the plan violates international law on at least three bases:

First, under Article 31 of the Refugee Convention, Australia must not penalize refugees entering its territory without authorization. The new policy punishes those who come by boat, while thousands of asylum seekers who arrive by plane each year are processed and resettled in Australia. Yet despite this tiered system, unlike any other country Australia counts all refugees in the same pool for the purposes of its overall intake, perpetuating demonizing rhetoric that every “boat person” is “taking a spot” from a refugee in an overseas camp. This confuses Australia’s Convention obligations with its voluntary sharing of international responsibility to resettle refugees processed overseas.

Second, under Article 33 of the Convention, Australia must not expel or return a refugee to territories where he or she would face threats to life or freedom on a prohibited ground (the obligation of non-refoulement). Compliance with this obligation requires an adequate system of refugee status determination. According to the RRA, PNG will undertake refugee status determination under local law. PNG has no track record in refugee status determination. Indeed, its refugee legislation was only enacted in January and the UNHCR has found significant shortcomings in its legal framework.

In AF’s case, the Tribunal Judge, B L Burson, reviewed for example a decision of the earlier Refugee Status Appeals Authority from 2000.

Seven grouped appeals from Tuvalu brought largely the same result. The appellants had nothing left in their country, which was sinking. Nevertheless, held Mr Joe of the Refugee Status Appeals Authority, they were “unfortunate victims … of the forces of nature”. Mr Burson’s later, closer discussion did not displace that.

Mr Burson first reviewed copious country information, establishing that employment, housing, health and even the supply of fresh drinking water in Kiribati are deteriorating as the sea gradually encroaches further on an already-overcrowded island. But the Kiribatians’ misery does not from the much poorer, Pacific islands, many of whom do prefer not to return.
The Price of Rights: Regulating International Labor Migration
By Martin Ruhs | 6 October 2013

There are trade-offs in the labour immigration policies of high-income countries between openness to admitting migrant workers and some of the rights granted to migrants after admission. This is a key finding arising out of new research examining labour immigration policies in over 45 high-income countries, as well as policy drivers in major migrant-receiving and migrant-sending states.

Greater equality of rights for new migrant workers tends to be associated with more restrictive admission policies, especially for admitting lower-skilled workers from poorer countries. The tension between “access and rights” applies to a few specific rights that are perceived to create net-costs for the receiving countries including especially the right of lower-skilled migrants to access certain welfare services and benefits.

The trade-off raises a dilemma.

From a global justice point of view, both “more migration” and “more rights” for migrant workers are “good things”. The World Bank believes that more international labor migration, especially low-skilled migration which is currently most restricted, is one of the most effective ways of raising the incomes of workers and their families in low-income countries. At the same time, rights based organisations campaign for greater equality of rights for migrant workers as the trade-off between access and rights means that we cannot always have both – more migration and more rights – so a difficult choice needs to be made.

Low-income countries around the world are acutely aware of the trade-off between access to labour markets in high-income countries and some migrant rights. Few migrant-sending countries are willing to insist on full and equal rights for fear of reduced access to the labour markets of higher-income countries. As I discuss in my new book, The Price of Rights, some migrant-sending countries have explicitly rejected equality of rights for their nationals working abroad on the grounds that it constitutes a restrictive labour immigration policy measure.

How to respond to the trade-off between openness and rights is an inherently normative question with no one right answer. I believe that there is a strong case for advocating the liberalization of international labor migration, especially of lower-skilled workers, through temporary migration programs that provide an unbroken set of core rights and account for the interests of nation-states by restricting a few specific rights that create net costs for receiving countries, and created therefore obstacles to more open admission policies.

We should start discussing the creation of a list of universal “core rights” for migrant workers that would include fewer rights than the 1990 ILO Convention of the Rights on Migrant Workers and the 1993 ILO Convention on Migrant Domestic Workers. This is a key finding arising out of new research examining labour immigration policies in over 45 high-income countries, as well as policy drivers in major migrant-receiving and migrant-sending states.

In the present ruling, a nine-judge panel held the legislation to be in violation of Article 5 of the Basic Law: Human Dignity and Liberty which forms part of Israel’s constitutional arrangement, and pronounces that “[t]here shall be no deprivation or restriction of the liberty of a person by imprisonment, arrest, extradition or otherwise”. The court refrained from concluding whether the legislation also violated the right to freedom of movement.

In Israel, the right to liberty is subject to a general limitation clause under the basic law (similar to, inter alia, section 36 of the South African Constitution and section 1 of the Canadian Charter of Rights and Freedoms). Article 8 stipulates that ‘there shall be no violation of rights under this Basic Law except by a law compelling the values of the State of Israel, enacted for a proper purpose, and to an extent no greater than is required’. Applying the limitation clause, the court held that the first legislative purpose, the prevention of long-term settlement of ‘infiltrators’ in Israel, is proper. Conversely citing an earlier judgment, it held that the second legislative purpose, preventing further ‘infiltration’, is improper, as detainees are used merely as a means to an end, which violates their human dignity. The court refrained from determining whether an improper purpose irredeemably ‘taints’ the legislation, and conducted the three-proportionality test.

The main opinion, written by Justice Arbel, reluctantly held that the legislation passes the first sub-test (rational connection), but fails the second sub-test ‘least rights- restricting means’) since, in her view, it is the completion of the fence which prevents further infiltration and there are various alternatives to detention (AID) which include introducing a reporting requirement, or employing asylum seekers in agriculture where their residence will be employer-based. Conversely, the court’s President, Justice Grunis, asserted that these alternatives should not necessarily be considered legislative alternatives as they are executive rather than legislative acts. All judges agreed that, in the current circumstances, the legislation fails the third sub-test (narrow proportionality).

Space does not permit full appraisal of the court’s landmark judgment. I would like to offer six general observations:

First, numbers matter: the massive reduction in new entrants since the construction of a fence along the Israeli-Egyptian border and the legal calculus behind border-crossings continued at their previous pace, it is reasonable to assume that the legislation would have been upheld at least by some of the justices. The main judgment does not rule out reconsideration in light of changing factual circumstances.

Second, and relatedly, individualised determinations are not divorced from general perceptions: the separate opinions in the judgment diverge as to whether the state’s claim that most of the ‘infiltrators’ are not genuine refugees but, rather, work migrants should be accorded (equal) weight and, consequently, as to the prospects for modified legislation withholding constitutional scrutiny.

Third, the potential harms of an effectiveness test: the court’s determination that the legislation is disproportionate was based, in part, on the fact that only 1,800 of the 54,000 asylum seekers in Israel are currently detained; logically, the

Quashing Legislation Mandating Lengthy Detention of Asylum-seekers: A Resolute yet Cautious Israeli Supreme Court Judgment
By Reuven (Ruvi) Ziegler | 3 October 2013

The Israeli Supreme Court, sitting as a High Court of Justice, handed down an unanimous judgment quashing the 2012 Law for the Prevention of Infiltration (amendment no. 3 and temporary order) which mandated near-automatic 3 year detention of ‘infiltrators’ (the judgment is presently available only in Hebrew).

As I have argued elsewhere, this legislation is incompatible with Israeli constitutional law and international refugee law. 1,750 persons are currently detained pursuant to the Act, out of the 54,201 persons that present in Israel who have crossed its southern border with Egypt without authorisation. These individuals qualify as ‘infiltrators’ according to the impugned legislation.

In the present ruling, a nine-judge panel held the legislation to be in violation of Article 5 of the Basic Law: Human Dignity and Liberty which forms part of Israel’s constitutional arrangement, and pronounces that “[t]here shall be no deprivation or restriction of the liberty of a person by imprisonment, arrest, extradition or otherwise”. The court refrained from concluding whether the legislation also violated the right to freedom of movement.

In Israel, the right to liberty is subject to a general limitation clause under the basic law (similar to, inter alia, section 36 of the South African Constitution and section 1 of the Canadian Charter of Rights and Freedoms). Article 8 stipulates that ‘there shall be no violation of rights under this Basic Law except by a law compelling the values of the State of Israel, enacted for a proper purpose, and to an extent no greater than is required’. Applying the limitation clause, the court held that the first legislative purpose, the prevention of long-term settlement of ‘infiltrators’ in Israel, is proper. Conversely citing an earlier judgment, it held that the second legislative purpose, preventing further ‘infiltration’, is improper, as detainees are used merely as a means to an end, which violates their human dignity. The court refrained from determining whether an improper purpose irredeemably ‘taints’ the legislation, and conducted the three-proportionality test.

The main opinion, written by Justice Arbel, reluctantly held that the legislation passes the first sub-test (rational connection), but fails the second sub-test ‘least rights- restricting means’) since, in her view, it is the completion of the fence which prevents further infiltration and there are various alternatives to detention (AID) which include introducing a reporting requirement, or employing asylum seekers in agriculture where their residence will be employer-based. Conversely, the court’s President, Justice Grunis, asserted that these alternatives should not necessarily be considered legislative alternatives as they are executive rather than legislative acts. All judges agreed that, in the current circumstances, the legislation fails the third sub-test (narrow proportionality).

Space does not permit full appraisal of the court’s landmark judgment. I would like to offer six general observations:

First, numbers matter: the massive reduction in new entrants since the construction of a fence along the Israeli-Egyptian border and the legal calculus behind border-crossings continued at their previous pace, it is reasonable to assume that the legislation would have been upheld at least by some of the justices. The main judgment does not rule out reconsideration in light of changing factual circumstances.

Second, and relatedly, individualised determinations are not divorced from general perceptions: the separate opinions in the judgment diverge as to whether the state’s claim that most of the ‘infiltrators’ are not genuine refugees but, rather, work migrants should be accorded (equal) weight and, consequently, as to the prospects for modified legislation withholding constitutional scrutiny.

Third, the potential harms of an effectiveness test: the court’s determination that the legislation is disproportionate was based, in part, on the fact that only 1,800 of the 54,000 asylum seekers in Israel are currently detained; logically, the

Quashing Legislation Mandating Lengthy Detention of Asylum-seekers: A Resolute yet Cautious Israeli Supreme Court Judgment
By Reuven (Ruvi) Ziegler | 3 October 2013

The Israeli Supreme Court, sitting as a High Court of Justice, handed down an unanimous judgment quashing the 2012 Law for the Prevention of Infiltration (amendment no. 3 and temporary order) which mandated near-automatic 3 year detention of ‘infiltrators’ (the judgment is presently available only in Hebrew).
The prevention of Infiltration (Amendment no. 4) Bill: A malevolent response to the Israeli Supreme Court judgment
By Reuven (Ruv) Ziegler | 5 December 2013

On 16 September, the Israeli Supreme Court, sitting as a High Court of Justice (HCJ), handed down a unanimous judgment quashing the 2012 Prevention of Infiltration (Amendment no. 3) Act mandating lengthy detention of asylum seekers. The HCJ set a 90-day period during which the State had to release 1,811 asylum seekers detained under the quashed amendment. The State publishes weekly updates regarding the release rate: according to the latest figures, only 538 detainees have been released to-date.

Detainees will be prohibited from working, and will be required to assemble three times a day in order to be counted. The facility will be closed at night, and leaving the facility for more than 48 hours requires a permit. The facility’s location in the desert, far from any civilian settlement, means that there is nowhere for the detainees to go.

Section 327 of the proposed amendment authorises the borders supervisory officer to move a detainee from the ‘open’ to the ‘closed’ facility for periods ranging up to a year as a sanction for certain transgressions. The detainee will not be subject to judicial oversight; indeed, nor is the initial decision which persons to detain in the ‘open’ facility.

The HCJ judgment presented the State with an opportunity to reconsider its approach and devise a policy that meets the needs of the 5,000 asylum seekers currently living in Israel who cannot be deported, and addresses the hardships of the residents of south Tel Aviv (where many asylum seekers currently reside). Instead, the proposed Bill purports to tackle the non-existent problem of future asylum seekers entering Israel, using present asylum seekers as a means to that end.

Dr. Reuven Ziegler is a Lecturer at the University of Reading School of Law. This is a version of a post previously published on the European Society of International Law Interact Group on Migration and Refugee Law.

The Quebec Charter of Values Project: Republican or Immigrant-phobic?
By Lucie Laramée | 17 September 2013

On Tuesday, September 10, 2013, the Government of Quebec finally released its Strategy aimed at protecting the Values of the nation. It is important to say that this document is neither a bill nor a policy paper, yet. A strategy, in the new wave of multiculturalism, is a prompt aimed at assessing voters’ reaction and opinion, the Strategy affirms that three values distinguish and define Quebec: gender equality, French as a common language and the neutrality of the state.

It is in the name of such values that the Strategy proposes a total prohibition for any civil servant (from judge to janitor) to wear any ostentatious sign of religious belief on the worksite. The website even provides slides that offer examples of what is ostentatious, and of course, this includes the Islamic scarf (hijab). Why? Because it is implied that such wearing carries a risk of proselytism which would contradict the principle of the neutrality of the State and, as well, the duty of all civil servants to refrain from expressing opinions in the course of their duties. Symbols speak loud, say some. It is also implied that religious rig-out, such as the hijab, necessarily perpetuates women’s oppression. Forget about personal or political choices.

There are a lot of civil servants in Quebec, especially female workers: school boards, daycare, health care and universities, just to name a few. And as Quebec privileges immigration quicker than it acknowledges the value of a foreign diploma, a lot of overqualified and underpaid immigrant women’s jobs would be put at risk by such prohibition. In other words, we are being asked to believe that a secular and neutral State can by itself protect and promote, namely, gender equality.

Such potential outcome carries a specific human rights history in the Canadian and Quebec context. The rest of Canada is the land of multiculturalism. And for understandable reasons, Quebec, a distinct society that is well aware of the challenges to protect its culture and its development in North America and in a globalised world, denies the relevancy of such an approach. It prefers the concept of interculturalism as promoted by the Bouchard-Taylor Commission (2008). Interculturalism searches for the fine balance between nation building and liberal individual and cultural rights of all communities, including the immigrant communities.

In fact, the saga of the values started some years ago with some Supreme Court decisions (in the Multani case, 2006, as an example) that concluded in matters related to the freedom of religion. The Court then stated (and did not change its mind since then but for a nuance in the Hutterite decision, 2009), that employers and public entities have a duty to accommodate those who make their beliefs visible in the public space, as long as the accommodation is not overthrowing the administration concerned, be it public or private. Some of the cases came from Quebec, and it is fair to say that a portion of the population felt threatened by the consequences of those decisions: where would it stop? What are the limits of such accommodations? And instead on focusing on accommodation as a remedy to discrimination, the political nationalist elite of Quebec, as well as some feminist quarters, were quick to conclude ‘à la françaises’ that such a state of business was clearly conflicting with the values of Quebec and with those of a secular-neutral state.

Nobody in Quebec, is against the basic values of the nation: French as a common language, a neutral and secular state and gender equality.

But a lot of people, especially Montrealers and human rights activists, including some feminists, do not wish to promote a hierarchy of human rights that would in a Charter put gender equality above other rights and women’s rights, including their right to work and other social rights. Values are not magical! And if anything, they are black magic when used in the framework of a political agenda. Such calculation, as many of us believe, include the factoring in of the political impact of a predictable judicial debate where Quebec would lose against the Canadian Charter of Rights. Let’s just say that the Supreme Court decisions are popular in Quebec when they interpret the meaning of a distinct society. The confusion between values and human rights as nurtured by the Strategy would make it worse.

Quebec is anything but a conservative society. And we deplore the fact that the rest of Canada cannot resist another round of ‘Quebec bashing’. But we are used to it. What seems to us more dramatic is not only the potential for human rights violations carried by the Strategy, but also, the risk of an unnecessary political division inside Quebec. This would not serve the immigrants nor any modern nation.

Professor Lucie LaMarche is the Gordon F. Henderson Chair at the University of Ottawa, Canada.
Indirectly Sending the Citizen Into Exile? The Relevance of British Citizenship to Proportionality Under Article 8 ECHR

By Rowena Moffatt | 13 August 2013

Judgment in R (oao MM & Ors) v Secretary of State for the Home Department [2013] EWHC 1900 (Admin) was delivered on 5 July 2013 by Blake J. The judgment is important for two reasons: first, it rules on the lawfulness of the new maintenance requirements for family visa applications; secondly, it gives guidance on the significance of British citizenship in proportionality under Article 8 ECHR.

Blake J’s conclusion is clear: in the absence of compelling justification, refusing entry clearance in circumstances where the British citizen partner would have to relocate outside the UK to continue family life is a disproportionate interference with Article 8 ECHR rights.

The judgment concerned recent changes to the Immigration Rules requiring UK sponsors to demonstrate earnings of at least £18,600 (or more where there are children) in order to bring a spouse to the UK. Whilst Blake J did not strike down the new maintenance requirements, in relation to sponsors who are British citizens or refugees he found the requirements to be ‘unjustified and disproportionate’.

This has had an immediate effect on decision making in the Home Office as applications which do not satisfy the maintenance requirements but do not otherwise fail to be refused have been put on hold.

The changes of 9 July 2012 inserted new provisions into the Immigration Rules on Article 8 family and private life. From 9 July 2012 in relation to family life the Rules provided that a non-EU partner of a British citizen or refugee he found the requirements to be ‘unjustified and disproportionate’.

The judgment concerned recent changes to the Immigration Rules requiring UK sponsors to demonstrate earnings of at least £18,600 (or more where there are children) in order to bring a spouse to the UK. Whilst Blake J did not strike down the new maintenance requirements, in relation to sponsors who are British citizens or refugees he found the requirements to be ‘unjustified and disproportionate’. This has had an immediate effect on decision making in the Home Office as applications which do not satisfy the maintenance requirements but do not otherwise fail to be refused have been put on hold.

The judgment makes an important pronouncement on the constitutional importance of British citizenship in the context of the proportionality of interferences with family life under Article 8 ECHR.

The changes of 9 July 2012 inserted new provisions into the Immigration Rules on Article 8 family and private life. From 9 July 2012 in relation to family life the Rules provided that a non-EU partner of a British citizen or refugee he found the requirements to be ‘unjustified and disproportionate’.

The judgment makes an important pronouncement on the constitutional importance of British citizenship in the context of the proportionality of interferences with family life under Article 8 ECHR.

The changes of 9 July 2012 inserted new provisions into the Immigration Rules on Article 8 family and private life. From 9 July 2012 in relation to family life the Rules provided that a non-EU partner of a British citizen or refugee he found the requirements to be ‘unjustified and disproportionate’. This has had an immediate effect on decision making in the Home Office as applications which do not satisfy the maintenance requirements but do not otherwise fail to be refused have been put on hold.

Notwithstanding the Home Office’s stance on Article 8 ECHR since 9 July 2012, the Upper Tribunal and the High Court have consistently found that the Rules do not exhaust the remedies for Article 8 ECHR applications that should be a secondary assessment outside the Rules where necessary.

The judgment in MM considers Article 8 ECHR outside of the Rules. It finds that whilst refugees may be able to show ‘insurmountable obstacles’ to relocation, as required by the Rules, this is usually not to be a case for British citizens.

The exceptional circumstances policy maintained by the Secretary of State outside the Rules is not sufficient to ‘render the decision making process as a whole lawful and compatible with the ECHR’. This finding placed weight on the relevance and importance of British citizenship.

In addition Blake J gives guidance on how the proportionality balancing exercise should be struck where the partner in the UK is a British citizen. In short, where the sponsor is a British citizen, refusing entry clearance (or, presumably, leave to remain) to his or her partner such that the British citizen has to leave the UK in order to continue family life requires ‘compelling justification’. Striking the balance this way gives effect to ‘the constitutional right of the British citizen to reside in the country of nationality without let or hindrance’.

The issue of child recruitment into orphanages for the purpose of exploitation (the “orphanage as a business” model) reflects a newly observed development in the realm of child trafficking and one that is currently unchecked by many international and national child protection agencies. Volunteers, church groups and smaller agencies donate into what can be a corrupt and dangerous enterprise for children, potential adoptive parents and the children’s biological parents. Children may be actively recruited from poor families or parents may willingly send them to “orphanages” during hard times, with the hope of bringing them back home when the family’s financial situation improves. Over half of the 30,000 children living in orphanages or residential care centers in Haiti have at least one living biological parent and 80% have a close relative.

To control this illicit enterprise, the definition of child trafficking needs to be interpreted in a non-conventional sense. Although there are many children used for domestic labour in Haiti, which is considered the textbook definition of trafficking, many more may be separated from parents, adopted illegally or paraded in front of potential donors to put funds into the hands of businesspeople posing as benevolent orphanage owners.

Children are used to unlawfully obtain funds or money collected via their illegal adoption at some orphanages. I have met mothers who had sent children to orphanages temporarily, only to hear later that, unbeknownst to them, their children had been adopted in a faraway country. Hopefully, recent improvements in the adoption law, which include a full search for any living relatives by the IBESR, will prevent further separations. However, adoption payments made directly to orphanages remain unregulated and the IBESR lacks the means needed to chase this.

Any intervention to control orphanages needs to be balanced with the recognition that Haiti and countries of similar socio-economic standing have many genuine orphans that need to be protected and cared for in residential care centers. The regulation of these centers needs to be transparent to donors and volunteers, not just to local government officials, who may be seduced by the potentially ‘big business’ of orphanages.

Rachel Belt is currently based in Port-au-Prince, Haiti, working for the Office of Prime Minister of Haiti. In 2013, she completed her Masters in Humanitarian Management at the Liverpool School of Tropical Medicine and has a certificate in Forced Migration from Oxford and a degree from Columbia University in Political Science. Her work focuses in child protection and humanitarian management. She has previously worked for Doctors Without Borders, Project Medishare for Haiti, the International AIDS Vaccine Initiative and the World Health Organization in New York, Haiti, Geneva and Uganda.