



**UNHCR**

United Nations High Commissioner for Refugees  
Haut Commissariat des Nations Unies pour les réfugiés



## Commission on a Bill of Rights - UNHCR submission

### Introduction

The Office of the United Nations High Commissioner for Refugees (UNHCR) is a non-political, humanitarian organization mandated by the United Nations to lead and co-ordinate international action for the worldwide protection of refugees, asylum-seekers, internally displaced persons, and stateless persons.<sup>1</sup>

UNHCR welcomes this opportunity to contribute to the current public consultation of the Commission on a Bill of Rights, set up by the UK government to *inter alia* ‘examine the operation and implementation of the UK’s obligations under the European Convention on Human Rights (ECHR), and consider ways to promote a better understanding of the true scope of these obligations and liberties’. We understand that the specific questions posed by the consultation are the following:

“(1) do you think we need a UK Bill of Rights?

If so,

(2) what do you think a UK Bill of Rights should contain?

(3) how do you think it should apply to the UK as a whole, including its four component countries of England, Northern Ireland, Scotland and Wales?

(4) having regard to our terms of reference, are there any other views which you would like to put forward at this stage?”

UNHCR will confine its comments to the application of relevant provisions of the ECHR in the field of asylum and statelessness as developed by the European Court of Human Rights (ECtHR) and applied to member States. In particular, UNHCR will give examples of the way certain provisions under the ECHR complement the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (the 1951 Convention),<sup>2</sup> for which UNHCR has a supervisory role as well as the 1954 Convention relating to the Status of Stateless Persons (1954 Convention)<sup>3</sup> which aims to regulate the status of

---

<sup>1</sup> Statute of the Office of UNHCR, GA res 428(V), Annex UN Doc A/1775 (1950). In the years following the adoption of UNHCR’s Statute, the UN General Assembly and Economic and Social Committee extended UNHCR’s competence *ratione personae*. This was done not by amending the statutory definition of “refugee” but by empowering UNHCR to protect and assist particular groups of people whose circumstances did not necessarily meet the definition in the Statute. In such cases, the institutional competence of UNHCR is based on paragraph 9 of its Statute: “The High Commissioner shall engage in such additional activities, including repatriation and resettlement, as the General Assembly may determine, within the limits of the resources placed at his disposal.”

<sup>2</sup> UN General Assembly, *Convention relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, No. 2545, vol. 189, p. 139, available at: <http://www.unhcr.org/refworld/docid/3be01b964.html> and UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, No 8791, vol. 606, p. 267, available at: <http://www.unhcr.org/refworld/docid/3ae6b3ae4.html>.

<sup>3</sup> UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, UN Treaty Series, No. 5158, vol. 360, p. 117, UNTS No. 5158, UK ratification on 16 April 1959, available at: <http://www.unhcr.org/refworld/docid/3ae6b3840.html>.

stateless persons and to ensure the widest possible enjoyment of their human rights. The UN General Assembly recognized UNHCR more generally as the UN institution with an international protection mandate for stateless persons.<sup>4</sup>

Please note the UNHCR Representation in Strasbourg has submitted recommendations to the United Kingdom Chairmanship of the Committee of Ministers of the Council of Europe, on 7 November 2011, which include the following specific recommendation about reform of the ECHR as follows:

“In the context of the reform of the European Court of Human Rights, UNHCR remains concerned by initiatives possibly limiting access to the Court by persons falling under its mandate. The Court is a unique tool of protection for refugees and asylum-seekers, internally displaced persons and stateless persons, completing the other international and regional standards in this domain. Proposals currently discussed, such as introduction of fees and compulsory representation by a lawyer, should they be adopted, need to take into account the particular situation faced by persons in need of protection. A system of exemption could for example be foreseen. UNHCR encourages the UK Chairmanship to ensure that measures adopted in the context of the reform of the European Court of Human Rights are not taken at the detriment of persons in need of international protection.”

The UK is a party to the 1951 Convention. Although the 1951 Convention has not been formally incorporated or given effect in UK domestic law<sup>5</sup>, the Asylum and Immigration Appeals Act 1993 incorporated the 1951 Convention into UK domestic law to the extent of providing that it would be unlawful for the Secretary of State to make Immigration Rules that are inconsistent with that Convention<sup>6</sup>. The 1954 Convention has not been incorporated into UK law, however.

Relevant human rights obligations are found across all the universal treaties from the International Covenant on Civil and Political Rights<sup>7</sup> to the Convention on the Rights of Persons with Disabilities.<sup>8</sup> These Conventions have not been directly or completely incorporated into UK law.<sup>9</sup> As with the unincorporated provisions of the 1954 Convention, the UK is obliged, as a matter of international law, to perform its obligations under these treaties in good faith, and the UK may not invoke the provisions of its internal law as justification for any failure to perform its obligations.<sup>10</sup>

---

<sup>4</sup> UN General Assembly resolutions A/RES/49/169 (para. 20); A/RES/50/152 (para. 14, where it was clarified that UNHCR’s activities on behalf of stateless persons are part of the office’s statutory function of providing international protection, and para. 15); A/RES/61/137 (Para. 4).

<sup>5</sup> *R v Asfaw*, [2008] UKHL 31, UK House of Lords (Judicial Committee), 21 May 2008. available at: <http://www.unhcr.org/refworld/docid/4835401f2.html>

<sup>6</sup> Asylum and Immigration Appeals Act 1993, s 2; HC 395, para 344, available at: <http://www.unhcr.org/refworld/docid/4835401f2.html>.

<sup>7</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, UNGA Resolution 2200A (XXI), 999 UN Treaty Series 171. Entered into force on 23 March 1976, in accordance with Article 49, for all provisions except those of article 41; 28 March 1979 for the provisions of article 41 (Human Rights Committee), in accordance with para. 2 of the said article 41. UK ratification 20 May 1976, available at: <http://www.unhcr.org/refworld/docid/3ae6b3aa0.html> and UN Human Rights Committee (HRC), UN Human Rights Committee (HRC), *General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para. 10, available at: <http://www.unhcr.org/refworld/docid/478b26ae2.html>.

<sup>8</sup> UN General Assembly, *Convention on the Rights of Persons with Disabilities*, 13 December 2006, A/RES/61/106, Annex , entered into force 3 May 2008, UK ratification 8 June 2006, available at: <http://www.unhcr.org/refworld/docid/4680cd212.html>.

<sup>9</sup> Although there are particular provisions in domestic legislation aimed to try to ensure compliance with some of these international law obligations (e.g. Borders, Immigration and Citizenship Act, section 55, discussed in Chapter 4 below).

<sup>10</sup> UN, *Vienna Convention on the Law of Treaties*, 23 May 1969, UN Treaty Series, vol. 1155, p. 331, Articles 26 and 27, entered into force 27 January 1980, available at: <http://www.unhcr.org/refworld/docid/3ae6b3a10.html>.

By contrast, the ECHR was incorporated into UK domestic law by the Human Rights Act 1998 (HRA) which came into force on 2 October 2000.<sup>11</sup> The HRA makes provision for the direct application within the UK of the ECHR and allows for complementary/ subsidiary protection claims to be considered alongside asylum claims.

The UK, being a member of the European Union is also bound by directives and regulations made under it<sup>12</sup> as well as decisions and interpretations on these provisions by the Court of Justice of the European Union (CJEU). In the field of asylum law, the UK has transposed the 2004 EU Qualification Directive (QD)<sup>13</sup> as well as the Procedures Directive<sup>14</sup> and the Reception Directive<sup>15</sup> into national law. The QD sets out who should be granted ‘international protection’ and what status beneficiaries should enjoy. Beneficiaries include 1951 Convention refugees as well as persons not qualifying for refugee status but still in need of international protection. There is now a legally binding recognition that where certain conditions are met, a protection obligation exists towards people threatened by indiscriminate violence. According to Article 2e) QD and Article 15 QD, a person not qualifying for refugee status is considered to be in need of international protection where there are substantial grounds indicating that the person would face a real risk of suffering serious harm in his or her country of origin in the form of a ‘serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict’ (Article 15 (c)), the death penalty or execution (Article 15 (a)) or torture or inhuman or degrading treatment or punishment of an applicant in the country of origin (Article 15 (b)).

The EU Charter of Fundamental Rights (‘the Charter’) is also relevant as it recognises a series of rights of particular relevance for asylum-seekers<sup>16</sup>. Respect for fundamental rights, including the right to asylum<sup>17</sup>, was long recognised as a general principle of EU law<sup>18</sup>. This was reinforced since the coming into force of the Lisbon Treaty on 1<sup>st</sup> December 2009, which establishes that the legal nature of the Charter’s provisions is that of primary legislation within the Union’s legal order.<sup>19</sup> Article 18, on the right to asylum, expressly incorporates (i) the rules of the 1951 Convention and 1967 Protocol and (ii) the requirements of the Treaties. EU fundamental rights (in particular, those laid down in Articles 1, 4, 18, 19(2) and 47 of the Charter) involve a series of corresponding obligations for all EU Member States under the EU asylum acquis.

---

<sup>11</sup> Arts. 2–12 and 14, Arts. 1–3 of Protocol 1, and Art. 1 of Protocol 13, all as read with Arts. 16–18.

<sup>12</sup> Subject to reservations and ‘opt outs’.

<sup>13</sup> *Council Directive 2004/83/EC of the European Union on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted*. The Qualification Directive has been transposed in the UK by the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 SI 2525 and the Statement of Changes in Immigration Rules, CM 6918, which both entered into force on 9 October 2006.

<sup>14</sup> *Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States*’.

<sup>15</sup> *Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum-seekers*’.

<sup>16</sup> UNHCR submissions made to the CJEU in the joined preliminary reference cases of *NS (Sudan) v. Secretary of State for the Home Department*, [2008] EWCA Civ 318, United Kingdom: Court of Appeal (England and Wales), 12 March 2008 and *M.E. v Refugee Applications Commissioner* (referred by the High Court of Ireland), 1 February 2011, available at <http://www.unhcr.org/refworld/docid/47ff44072.html>

<sup>17</sup> Advocate General Maduro states that the “fundamental right to asylum (...) follows from the general principles of Community law”; Advocate General Maduro’s Opinion in case C-465/07, *Meki Elgafaji and Noor Elgafaji v Staatssecretaris van Justitie* [2009] ECR I-921, para 21, available at <http://www.unhcr.org/refworld/docid/499aaee52.html>; The fact that the right to asylum preceded the Charter is also clarified by the Explanations to the Charter of Fundamental Rights of the European Union, [2007] OJ C 303/17, which provides that this right has been based on Article 63 TEC.

<sup>18</sup> C-402/05 P and C-415/05 *Kadi v. Council of the European Union and Commission of the European Communities* [2008] ECR I-6351, para 283, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62005J0402:EN:HTML>. See also T. Tridimas, “*The General Principles of EU Law*”, Oxford European Community Law Series, 7 June 2007.

<sup>19</sup> Article 6(1) Treaty on European Union, as amended.

As a consequence, the UK is bound by several partially overlapping and often simultaneously applicable key legal regimes aimed at or relevant to the protection of refugees, asylum-seekers and stateless persons.

### **ECHR and the international protection regime**

The ECHR, as interpreted by the ECtHR, offers protection against expulsion or return in particular to:

- a) persons falling under the 'refugee' definition in Article 1A(2) of the 1951 Convention but refused protection by States through the increasingly restrictive approaches of a number of European States to their obligations under the 1951 Convention as well as persons excluded from refugee protection under Article 1(F) and those for whom the protection from *refoulement* has been lifted (Article 33(2));
- b) individuals in need of international protection who do not meet the refugee definition under the 1951 Convention but who nevertheless fall under UNHCR's mandate; and
- c) Stateless persons.

The ECHR has filled a protection gap in protecting the above three groups of persons under UNHCR's mandate from forcible return where there is a risk of proscribed ill treatment. Although the ECHR does not contain a specific *refoulement* prohibition, the ECtHR developed such a prohibition through a comprehensive body of case law, based in particular on Art 3 ECHR (prohibition of torture and inhuman or degrading treatment or punishment).<sup>20</sup>

Article 3 ECHR applies irrespective of whether the risk is linked to a specific ground whereas the 1951 Convention requires that persecution be linked to race, religion, political opinion, nationality or a particular social group. The risks to which Article 3 ECHR refers do not need to be intentionally inflicted and in exceptional circumstances the ECtHR has provided protection against the return to situations where there is a lack of medical treatment<sup>21</sup> or of degrading living conditions<sup>22</sup>.

Article 3 ECHR has assisted in the development of basic standards for the treatment of asylum seekers and refugees e.g. where conditions of detention for an asylum seeker and subsequent living conditions upon release were examined by the ECtHR and found to be degrading.<sup>23</sup> Detention conditions and the failure of the Greek authorities to provide a minor asylum seeker with adequate care also amounted to a violation of Article 3 ECHR..<sup>24</sup>

---

<sup>20</sup> ECtHR, *Soering v. UK*, 1/1989/161/217, Council of Europe: European Court of Human Rights, 7 July 1989, available at: <http://www.unhcr.org/refworld/docid/3ae6b6fec.html>; *Saadi v. Italy*, Application no. 37201/06, ECtHR, 28 February 2008, available at: <http://www.unhcr.org/refworld/docid/47c6882e2.html>; *M.S.S. v. Belgium and Greece*, Application no. 30696/09, ECtHR, 21 January 2011, available at: <http://www.unhcr.org/refworld/docid/4d39bc7f2.html>.

<sup>21</sup> ECtHR, *D. v. United Kingdom*, Application no. 146/1996/767/964, ECtHR, 2 May 1997, available at: <http://www.unhcr.org/refworld/docid/46deb3452.html>.

<sup>22</sup> ECtHR, *M.S.S. v. Belgium and Greece*, Application no. 30696/09, Council of Europe: European Court of Human Rights, 21 January 2011, available at: <http://www.unhcr.org/refworld/docid/4d39bc7f2.html>.

<sup>23</sup> *Ibid.*

<sup>24</sup> ECtHR, *Rahimi v Greece*, Application no. 8687/08, ECtHR, 5 April 2011, available at: <http://www.unhcr.org/refworld/docid/4d9c3e482.html>.

Furthermore, the ECHR applies, according to Article 1 ECHR, to all persons falling under the jurisdiction of a State party to the ECHR regardless of their nationality or legal status, including, under certain conditions, extraterritorially.<sup>25</sup>

Unlike Article 33 of the 1951 Convention, the prohibition of *refoulement* according to Article 3 ECHR is an absolute and unconditional guarantee to which a derogation, exclusion or exception, e.g. on the grounds of national security, is not possible.<sup>26</sup> The obligation of *non-refoulement* extends both to direct and indirect *refoulement*.<sup>27</sup>

Article 5 ECHR (right to liberty and security of person) supplements in several respects Article 31 of the 1951 Convention (restriction of freedom of movement) by laying down human rights standards for the detention of asylum seekers and refugees. It provides protection against arbitrary and unlawful detention and standards developed by ECtHR require that detention be only resorted to where provided by law. Although Article 5 para 1(f) allows for the detention of asylum seekers and refugees to prevent a person entering a country unlawfully<sup>28</sup> and to ensure the execution of a deportation or extradition order<sup>29</sup>, the ECtHR ruled in 1992 that asylum seekers held for a prolonged period in the international (transit) zone of an airport must not be deprived of access to asylum procedures.<sup>30</sup> A later ECtHR decision confirmed that any detention made under both limbs of this sub-paragraph has to satisfy four requirements set out by the ECtHR to ensure that detention is not arbitrary.<sup>31</sup>

Article 8 ECHR (right to family life) and its interpretation by the ECtHR assists to impose an obligation on States party to both the ECHR and the 1951 Convention 'to take the necessary measures for the protection of the refugee's family'.<sup>32</sup> The ECtHR has clarified that immigration decisions may amount to a violation of Article 8 ECHR and that, in certain circumstance, there may be an obligation to permit family reunification in the host country or to facilitate family reunification in a third country.<sup>33</sup>

Article 13 ECHR (right to an effective remedy before national authorities) provides redress for an individual who has an arguable claim to be the victim of a violation of the rights set forth in the ECHR. This provision has been called upon in the case of applicants subjected to extradition or deportation on the basis of grounds asserted by executive

---

<sup>25</sup> ECtHR, *Medvedyev and Others v. France*, Application no. 3394/03, 29 March 2011, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=859369&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

<sup>26</sup> ECtHR, *Saadi v. Italy*, Application no. 37201/06, 28 February 2008, available at: <http://www.unhcr.org/refworld/docid/47c6882e2.html>.

<sup>27</sup> ECtHR, *T.I. v UK*, Appl. No. 43844/98, 4 February 2000, available at: <http://www.unhcr.org/refworld/docid/3ae6b6dfc.html>; ECtHR, *Abdolkhani and Karimnia v. Turkey*, Appl. No 30471/08, 22 September 2009, paras. 88-89 (Annex 24), available at: <http://www.unhcr.org/refworld/docid/4ab8a1a42.html>.

<sup>28</sup> ECtHR, *Saadi v. UK*, Application no. 13229/03, 29 January 2008, available at: <http://www.unhcr.org/refworld/docid/4406eccb4.html>.

<sup>29</sup> ECtHR, *M and Others v. Bulgaria*, Application no. 41416/08, 26 July 2011, available at: <http://www.unhcr.org/refworld/docid/4e326a532.html>.

<sup>30</sup> ECtHR, *Amuur v. France*, 17/1995/523/609, 25 June 1996, available at: <http://www.unhcr.org/refworld/docid/3ae6b76710.html>.

<sup>31</sup> ECtHR, *Saadi v UK*, paras 72 to 74. Application no. 13229/03, 29 January 2008, available at: <http://www.unhcr.org/refworld/docid/4406eccb4.html>.

<sup>32</sup> Recommendation, UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, *Conference of Plenipotentiaries on the Status of Stateless Persons: Summary Record of the Eighth Meeting*, 29 September 1954, E/CONF.17/SR.8, available at: <http://www.unhcr.org/refworld/docid/49997af20.html>.

<sup>33</sup> ECtHR, *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, 13178/03, 12 October 2006, available at: <http://www.unhcr.org/refworld/docid/45d5cef72.html>.

authorities, but without independent review.<sup>34</sup> Article 13 has not been incorporated into UK domestic law, where judicial review is generally held to constitute an effective remedy in expulsion cases, on the basis that the courts could effectively control the legality of executive decisions on substantive and procedural grounds and quash decisions.<sup>35</sup>

However, in 1996 and 2000, the ECtHR ruled that the notion of an effective remedy requires not only independent and rigorous scrutiny of a claim alleging substantial grounds for fearing a real risk of treatment, contrary to Article 3, but also the possibility of suspending the implementation of the measure impugned<sup>36</sup>. In cases where the scope of judicial review is limited on national security grounds, the ECtHR has found that judicial review proceedings cannot satisfy the requirements Article 13 for an effective remedy.<sup>37</sup>

The European Court of Human Rights has also considered a number of cases in relation to stateless persons.<sup>38</sup> Recent research by UNHCR and Asylum Aid<sup>39</sup> has shown that the stateless persons in the UK face a number of human rights violations including destitution, separation from their families and lengthy periods in detention. In the absence of a procedure to effectively identify stateless persons, or the possibility of stateless persons without leave to regularize their immigration status, the human rights consequences for stateless persons can be addressed through human rights challenges to the courts in reliance on the HRA. The protection afforded by human rights instruments such as the ECHR is therefore also crucial for the protection of stateless persons.

In addition, the individual complaints procedure to the ECtHR has provided interim measures which can be used for the protection of refugees and asylum seekers e.g. under Rule 39 of the Rules of Court to prevent removal to a third country pending determination of an application. Under this rule the ECtHR can indicate to the Government concerned any measures (such as suspending deportation) which it considers should be taken while it is examining a case if there is a *prima facie* case that the applicant will otherwise suffer irreparable damage for which pecuniary compensation after the close of the proceedings will not provide satisfaction. This will be particularly true in the case of expulsions or extraditions to countries that are not party to the Convention, if there is likely to be a violation of Article 2 or 3 of the Convention or of Protocol No. 6.<sup>40</sup>

---

<sup>34</sup> ECtHR, *Chahal v UK*, Application No. 70/1995/576/662, 15 November 1996, available at:

<http://www.unhcr.org/refworld/docid/3ae6b69920.html>; ECtHR, *Jabari v Turkey*, Application No. 40035/98, 11 July 2000, available at: <http://www.unhcr.org/refworld/docid/4a54bbf20.html>; ECtHR, *Al-Nashif v Bulgaria*, Application No. 50963/99, 20 June 2002, available at: <http://www.unhcr.org/refworld/docid/468cbc9d0.html>.

<sup>35</sup> 8.107, Macdonald, Ian QC & Toal, Ronan, *Macdonald's Immigration Law and Practice* (Vol 1, eighth edition, LexisNexis, 2010): ECtHR, *Hilal v. The United Kingdom*, 45276/99, 6 June 2001, available at: <http://www.unhcr.org/refworld/docid/3deb99dfa.html>.

<sup>36</sup> ECtHR, *Jabari v. Turkey*, Appl. No. 40035/98, Council of Europe: European Court of Human Rights, 11 July 2000, available at: <http://www.unhcr.org/refworld/docid/3ae6b6dac.html>

<sup>37</sup> ECtHR, *Chahal v UK*, Application No. 70/1995/576/662, 15 November 1996, available at: <http://www.unhcr.org/refworld/docid/3ae6b69920.html>.

<sup>38</sup> For example, ECtHR, *Karashev and Family v. Finland*, Application No. 31414/96, 12 January 1999, available at: <http://www.unhcr.org/refworld/docid/45d076a92.html>; ECtHR, *Slivenko v. Latvia*, 48321/99, 9 October 2003, available at: <http://www.unhcr.org/refworld/docid/402b5b034.html>; ECtHR, *Kuric and Others v. Slovenia*, Application no 26828/06, 13 July 2010, available at: <http://www.unhcr.org/refworld/docid/4c3f01312.html>.

<sup>39</sup> *Mapping Statelessness in the UK*, UNHCR and Asylum Aid, November 2011.

<sup>40</sup> ECtHR, *Chahal v UK*, Application No. 70/1995/576/662, 5 November 1996, available at:

<http://www.unhcr.org/refworld/docid/3ae6b69920.html>, ECtHR, *Saadi v. Italy*, Application no. 37201/06, 28 February 2008, available at: <http://www.unhcr.org/refworld/docid/47c6882e2.html>.

Finally, the ECHR and the case law of the ECtHR also influence the interpretation of EU directives and regulations *inter alia* in the area of asylum and immigration law. The Court of Justice of the European Union grants special significance to the ECHR although it is not a binding source of interpretation<sup>41</sup> as it forms an ‘integral part of the general principle of law observance’.<sup>42</sup>

## Conclusion

The 1951 and 1954 Conventions, oblige States to offer refugees and stateless people respectively protection in addition to a secure legal status, identity or travel documents. These Conventions lay down obligations governing *inter alia* a) the legal definition of the term ‘refugee’ and ‘stateless person’; b) the application of the 1951 Convention to refugees without discrimination and the application of the 1954 Convention to stateless persons without discrimination; and c) the issue of travel documents to refugees and stateless persons. The 1951 Convention deals additionally with d) the treatment of refugees entering illegally; e) the expulsion of refugees; and f) the *non-refoulement* of refugees. The elaboration of regional refugee law instruments has strengthened the notion of refugee protection. The protections afforded by the 1951 Convention and the 1954 Convention are complemented by those set out in the ECHR.

The ECHR as incorporated in the HRA has enabled challenges on issues relating to refugees and asylum seekers in the UK as diverse as benefits for asylum seekers and detention for accelerated procedures to be raised before the UK courts, and in some instances to the ECtHR.

Referrals to the CJEU, the highest court in the European Union, tasked with interpreting EU law and ensuring its equal application across all EU member states have also helped to clarify UK’s obligations in this area of law.

UNHCR does not have a view as to the form the obligations set out under the ECHR should take but is concerned that any proposed UK Bill of Rights should incorporate and build on the obligations set out in the ECHR as interpreted by the ECtHR and European Union legislation, including the European Charter of Fundamental Rights, and related CJEU jurisprudence.

UNHCR London  
November 2011

---

<sup>41</sup> As opposed to the Charter of Fundamental Rights of the EU. See further p.15, Hailbronner, Kay ‘EU Immigration and Asylum Law – A Commentary’ (Verlag C.H. Beck oHG, 2010).

<sup>42</sup> CJEU, *European Parliament v. Council of the European Union*, C-540/03, 26 June 2006, CJEU *European Parliament v. Council of the European Union*, C-133/06, 6 May 2008, available at: <http://www.unhcr.org/refworld/docid/4832ddb92.html>.