

Destitution
Keynote speech
by Almamy Taal, exiled journalist



Surveys and reports show that the number of destitute “refused” asylum seekers has considerably increased. Instead Home Office statistics indicate that the number of people seeking sanctuary in the UK is at the lowest ever. I spent 12 months to look into the specific category of people who seek sanctuary in the UK, and subsequently become trapped in a nowhere land of powerlessness, impoverishment and fear.

Between 2000 and 2007, I interviewed 466 “refused” asylum seekers, recorded 370 complaints against accommodation providers and visited 130 Section 4 properties in the West Midlands. Church groups, charity organisations and generous individuals are overstretched and powerlessly overwhelmed.

In the West Midlands, the leading charity organisation supporting destitute “refused” asylum seekers is Birmingham Law Centre, which has raised funds to set up the Asylum Seekers Destitution Fund (ASDF) to adequately respond to the increasing humanitarian crisis created and enforced by Home Office’s policies. Birmingham Law Centre set up a Steering Group, which is composed of active members of the wider voluntary sector such as ASIRT, RESTORE, Lifeline Options, Coventry Refugee Centre, British Red Cross, ARROW, Refugee Council and the Children’s Society.

With an increasing number of “refused” asylum seekers sleeping rough, Birmingham Law Centre and its partners decide to move one step further by setting up a new project called Hope Housing. Hope Housing aims to provide destitute people with temporary accommodation while referral agencies look into possible long-term remedies. People accommodated in Hope House can receive cash money from the Asylum Seekers Destitution Fund and food parcels from ASIRT.

In addition to the Funds above mentioned, Birmingham Law Centre has received a substantial amount of money from the Primary Care Trusts-PCT- and the Children’s Society. Those funds aim to tackle infant mortality by providing support to Pregnant Women and Mother with toddlers with No Recourse to Public Funds-NRPF, and Asylum Seekers with children.

It is worth mentioning the formidable role of Penny Walker of the Coventry Peace House which provides night shelter, food and moral support to destitute asylum seekers. Had these charity organisations not offered accommodation, support and possible ways of long-term remedies, many destitute “refused” asylum seekers would have died on the streets.

However, despite the massive response of the voluntary sector, many legal barriers render destitution more acute, increase vulnerability and put the life of

many people at risk. For example: pregnant women, women with children, elderly people and destitute people with serious health problems are sleeping at Coach Stations, churches, phone booths, car parks, train stations, garages, while lucky ones sleep on the floor in fellow asylum seekers' homes supported under NASS (S95-98) or Section 4.

Why should people be destitute at the first place?

The reality is that government policy has the effect of creating destitution and wretchedness among those it has let into the country as asylum seekers. The UKBA believes that inhuman measures will deter asylum seekers and will prevent those who fled to come to the UK. But what UKBA does not know is that the majority of those who fled to come here are “zombies” because they are already dead by the sense that they have witnessed “horror in its naked sense” and have already lost everything but will keep going as Winston Churchill said: “When in hell keep going”.

When Europe created its own convention on human rights, there was no equivalent of Article 25; the focus on the rights was seen as more important to Western liberal democracies. Article 25 of the Universal Declaration expresses a human right to, among other things, food, clothing, accommodation and social services. Thus that human rights law, which gives effect to the European Convention, also has no equivalent to Article 25 of the Universal Declaration. Had the universal right to food, clothing and accommodation been incorporated into law, it would not have been necessary for lawyers to look imaginatively elsewhere as people would not have been destitute. Instead in the absence of a human right to food and housing, lawyers have decided that the best bet is to argue that failure to provide adequate subsistence and accommodation amounts to inhuman or degrading treatment.

There would be a broad consensus that to deliberately starve someone is a breach of Article 3 of the universal declaration of human rights. **But the arguments have been about whether the state, doing nothing, amounts to “treatment” by the state or not.** The courts upheld that it can amount to “treatment”, opening the way for a potential obligation on the state to provide subsistence and accommodation.

From a personal point of view I am happy enough with the result, where it means that destitute people are fed and accommodated – but I think that the way that we had to get there is wrong. Article 3 was intended to be about conduct analogous to torture. The better approach would have been to have incorporated an Article 25 equivalent human right to food, clothing, accommodation etc. as an enforceable human right.

Can destitution be prevented?

A significant part of the reason why the courts have been able to hold **that underlying policies that give effect to destitution amount to “treatment” is the complete absence of alternatives to state support, because the state has already prohibited asylum seekers and “refused” asylum**

seekers from working or claiming benefits. If this was not the case, it is possible that the courts might have found that destitution was not sufficiently directly and casually linked to the state's actions.

The significance of this point in relation to this question is that this question raises whether the state should be obliged to support "refused" asylum seekers. **My opinion is that everyone should, in the first instance, try to support themselves. It is only where, because of age, illness, disability, unemployment, or other responsibilities a person finds themselves unable to support themselves that the state should have an obligation.** To put more simply, "refused" asylum seekers should have the same obligation to seek work, and the same rights to access benefits on the same terms as other people.

Made destitute by law

Support for the assertion that the law has made "refused" asylum seekers destitute can be found to some extent in the major and frequent changes in asylum law and policy that have taken place in this country since 1993. For a better understanding of the current law and policy on asylum in the UK, it is first of all necessary to have an appreciation of the political, social and economic context in which that law and policy has been formulated. The **Asylum and Immigration Act 1993** established the primacy of the 1951 convention in UK asylum law and gave immigration authorities the power to detain asylum – seekers whilst the outcome of their claim was pending. The 1993 Act also set strict limits within which appeals against asylum decisions had to be made.

Since the 1993 Act, there have been a number of important legislative changes in UK asylum law. **The Asylum and Immigration Act 1996**, for example, removed welfare benefits entitlement from asylum seekers who made their claim for asylum only after their arrival in the UK, rather than at point entry. The 1996 Act also introduced a "**white list**" of "**safe (?)**" **countries**: asylum claims made by those from such countries were treated by the Home Office as having no substance to them. The Act further ensured that those individuals who had travelled through a "**safe third country (?)**" before arriving in the UK, and who failed to claim asylum whilst in that country, could only bring an out-of-country appeal against a decision refusing them asylum in the UK. Restrictions were also placed on asylum seekers being able to work in the UK. An employer who took on an asylum seeker with false work permits or no documentation at all could face criminal sanctions if the employer had done so knowingly.

The Immigration and Asylum Act 1999 then introduced the **National Asylum Support Agency**, which was made responsible for providing support to destitute asylum seekers and their dependants during an asylum claim or whilst an appeal was pending. **The 1999 Act** also enabled the **dispersal** of asylum seekers to different parts of the UK. It extended the offences of entering the country by deception, whilst those who clandestinely brought illegal entrants into the UK now face severe penalties. Asylum applications

could also be certified as “manifestly unfounded”, whilst the right of appeal was restricted and “one stop” procedures for appeals were introduced.

The 2002 Nationality, Immigration and Asylum Act made further important changes to the UK asylum system following the terrorist attacks in the USA. These changes included the **removal of the right to work, abolition of exceptional Leave to Remain** for up to a four year period and the **introduction of the infamous Section 55**, which allowed **removal of NASS support** to those asylum seekers who had failed to make an asylum claim “as soon as reasonably practicable (?)” after arrival in the UK.

Is it inhuman or degrading treatment not to provide such support?

Yes for the reasons identified by the courts – that both it is treatment because it amounts to total control by the state, and it is inhuman or degrading to have a policy of enforced destitution. Furthermore, “refused” asylum seekers provided with support under **Section 4** raise the same kinds of issues already mentioned. It would not be necessary to argue that the issues of poor quality accommodation are inhuman or degrading treatment. It should be possible to argue that it breaches a human right to adequate accommodation.

But there is no such human right under the European Convention, and therefore the same issue persists. **Is it treatment? Potentially yes, because of the total lack of control of the occupiers of the property:** Asylum seekers are not entitled to choose or reject the property; They are required to live in the property offered to them; They are not given tenancy rights and Their occupation is precarious in the extreme, as they have no protection from eviction. **Taken together, the state has total control to such extend that it is possible to argue that it amounts to “treatment”, and therefore that inadequate accommodation might amount to a breach of Article 3.**

Thank you
God bless you all

Almamy

Almamy was born in West Africa in 1963. In 1987 he studied for a diploma in Communication Studies specialising in Journalism. He campaigned on many issues in his home country and worked as an undercover crime and political investigator, he was tortured and imprisoned and in 2005 he fled to England. While in England Almamy has been a full time volunteer at the Refugee Council, and co-founder and chair of E-JAG (West Midlands Exiled Journalists Action Group), he is Refugee Council's Representative at BLC (now Birmingham Law Centre) ASDF Panel (Asylum Seekers Destitution Funds). He is the author of Human Rights vs. Asylum System, University of Warwick, 2007; National Security vs. Protection of Individuals, University of Warwick, March 2008; Made destitute by law, published August 2008.