

Improving the Lives of Refugees in Scotland after the Referendum: An Appraisal of the Options

Executive Summary

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Front cover image

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The colours of the Karibu tartan are those of Karibu Scotland. Karibu (meaning 'welcome' in Swahili) was set-up in 2004 by Henriette Koubakouenda in her living room in Glasgow. She saw a need to provide support to the refugees and asylum seekers arriving in Glasgow at that time as part of the Asylum Seeker's Dispersal Programme. Karibu Scotland now has over 100 members, representing 12 African countries, with premises in the Pearce Institute in the Govan area of Glasgow. The organisation runs multiple projects throughout the city to promote the confidence, skills and integration of African women.

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A referendum on the future of Scotland is planned to take place in 2014.

Scottish Refugee Council takes no view on Scotland's constitutional status following the outcome of the referendum in 2014 nor do we have a view on which government should exercise competence in the differing aspects of asylum and refugee policy.

In the event of Scotland becoming an independent state, a future Scottish Government will need to consider and implement policies currently within the responsibility of the UK Government.

If the outcome is for the status quo, increased powers may still come to the Scottish Parliament. Thus, the UK Government may also have to reconsider the manner and extent of the Scottish Government's involvement in many policies.¹

Asylum and refugee policy is one such area.

The aims of the report are to:

- stimulate and inform debate on asylum and refugee policy within the context of the Scottish referendum on independence in 2014;
- set out Scottish Refugee Council's key principles of a fair and humane refugee protection system;
- explore, through the prism of these principles, a range of policy options under each of the potential outcomes of the referendum: the status quo, changes to the current division of powers, independence for Scotland; and
- propose recommendations.

The study

We assess particular asylum and refugee policies within the following six areas: *access to the territory and asylum procedure; assessing the asylum claim in a fair and efficient asylum process; reception and integration of asylum seekers; refugee integration; responsibility-sharing; and return.*

The list of specific policies discussed should not be read as exhaustive. It is acknowledged that these areas are in no way discrete and that changes to one area would likely impact on others.

Our assessment of policies is based on Scottish Refugee Council's principles for a fair and humane refugee protection system as well as a variety of research sources.

The policy options we present have been also

informed by in-depth study of institutional arrangements in ten countries (Germany, Austria, Switzerland, Belgium, Sweden, Norway, Ireland, Canada, the US and Australia).

The study was supported by a small expert advisory group. The study was greatly assisted by an expert advisory group which included Sarah Craig, Glasgow University; Alexandra McDowall, UNHCR; James Mitchell, Strathclyde University; Nicky Munro and Twimukye Mushaka, board members at Scottish Refugee Council.

The primary focus of the report is on principles and how these relate to the potential constitutional outcomes. A full costing audit was beyond the scope of this report. Where costs are mentioned they are indicative.

¹ In February 2012, Prime Minister David Cameron offered to consider more powers for Scotland, in the event of a 'no' vote in the referendum. (See <http://www.bbc.co.uk/news/uk-scotland-scotland-politics-20253390> and <http://www.guardian.co.uk/politics/2012/feb/16/freedoms-scotland-no-independence-cameron>). Considering policy options under increased powers in no way should be implied that we endorse increased powers to the Scottish Parliament beyond those in the Scotland Act or that this should be an option in the referendum. As is clearly stated throughout this report, we take no view on the outcome of neither the referendum nor the division of competences between the two governments.

Our principles for fair and humane asylum and refugee policy are set out on page 5 and 6 of this summary. They are consistent with the Refugee Convention; European legislation relating to refugees; international human rights instruments and human rights principles of: *humanity and dignity; universality; equality and non-discrimination; and solidarity.*

Equality of opportunity; inclusion; compassion; adherence to and promotion of universal human rights principles and democratic values; and shared responsibility are values and principles, relevant to refugee policy, that have been championed by all governments in Scotland since devolution and enjoy substantial cross-party consensus in the Scottish Parliament.

Empowering individuals and communities; partnerships to integrate services; preventing negative outcomes; and efficiency are principles underpinning the Christie Commission review into the future of public service delivery in Scotland. The review has received broad political support in Scotland.

The treatment of asylum seekers and refugees in Scotland should reflect these principles and values.

Context

The current UK Government has announced that one of its primary objectives in the field of migration is to reduce net migration to 'tens of thousands'. In relation to asylum, the UK Government has introduced a number of measures aimed at improving the quality, efficiency and fairness of the asylum procedure and reducing its cost.

In relation to migration, the current Scottish Government is primarily concerned with the demographic situation. It also wants to address the problem of the ageing population and skills and workforce shortages in some sectors.

The Scottish Government stated vision for refugee policy in an independent Scotland involves an asylum system based on integrating people seeking asylum from day one of their arrival and operated in line with international and European standards, designed to reflect Scotland's tradition

of offering refuge and its approach to the welfare and rights of children.

The number of people seeking protection in the UK is comparable to that in other EU Member States. If factors such as Gross Domestic Product and population size are taken into account, the UK's 'share' of asylum applications in the EU is considerably lower than that of many other EU Member States, including Germany, France, Belgium, Sweden, and Italy.

In 2011, 13,330,000 people outside the European Economic Area and Switzerland were granted leave to enter the UK but only 25,898 asylum requests were lodged. Whilst numbers of asylum seekers fluctuate according to the situation in their country of origin such as war, conflict or persecution, it is reasonable to assume that people seeking asylum constitute a very small proportion of all new migrants to the UK.

The number of people seeking asylum in Scotland over the last decade has equated to approximately 10% of the UK's asylum population. The vast majority of this population has been sent to Scotland to be accommodated under the UK Government's asylum dispersal scheme.

Based on the total population of people in the UK of concern to the UN High Commissioner for Refugees in 2011, Scottish Refugee Council estimates there to be approximately 20,000 refugees, asylum seekers and others of concern in Scotland.

In the event of Scottish independence and Scotland becoming a separate state, it may be assumed that the number of direct international flights to Scotland would increase. This would be unlikely to lead to a significant rise in the number of people seeking asylum and indeed may fall as other European Union member states would likely have responsibility for assessing their asylum claims (Dublin II Regulation).

In the event of Scottish independence it is also unlikely that the system of dispersing asylum applicants from other parts of the UK would continue in its current form, if at all. This would also potentially lead to a fall in the asylum population in Scotland.

Ireland, the closest European member state to the UK and part of the Common Travel Area, received 1,290 asylum applications in 2011. The number of asylum seekers in receipt of financial support from the UK Border Agency in Scotland in 2011 was 2,101.

A National Audit Office (NAO) report in 2009 found that the total cost of the UK asylum system amounted to approximately £176 million in 2007/2008.

Based on current asylum figures predicated at 10% of UK total, the cost of processing asylum requests and financially supporting applicants in an independent Scotland per annum could therefore be estimated at approximately £17.6 million, but could be significantly less based on a likely smaller population.

The NAO also estimated that processing the historic backlog of asylum cases cost the UK Government £600 million in 2007-08. Both Governments would

need to negotiate the inheritance of the current Scottish share of the UK backlog of cases resident in Scotland at the time of independence. Without a significant backlog in place, a future Scottish Government in an independent Scotland would not incur this large expense.

Apparent attitudes to immigration are difficult to disentangle from broader issues such as race relations, globalisation and the European Union. Research from the German Marshall Fund finds that people tend to drastically overestimate the proportion of the population that is 'foreign born' and become less hostile towards immigration if they are told the real figures.

Consistent polls show a majority of the British population would like to reduce overall migration numbers. When thinking about migrants, the majority think of asylum seekers (62%) while just 29% think of international students. This despite 2009 figures showing asylum being just 4% of overall migration and students comprising 37%. Most of those wanting migration reduced focus primarily on 'illegal' migration. However, some 56% of those looking to reduce migration also want to reduce asylum numbers, this may in part due to the overall lack of knowledge of actual numbers.

Research in 2006 found Scottish attitudes to asylum seekers to be more positive than those found in England. More recent research on broader migration by British Futures finds Scottish attitudes to be among the most progressive in Britain.

Fewer Scots identify immigration as one of the biggest challenges facing Britain than most other parts of the UK. Fewer Scots blame migrants for the high number of young people out of work than any other part of the UK, and outside of London, fewer Scots than anywhere else in the UK think immigration will damage the country's attempts at economic recovery.

Broader views on migration combined with a general lack of differentiation in views would indicate slightly more favourable public views in Scotland towards people seeking asylum.

Access to the Territory and Procedure

- Protection from *refoulement*¹, including non-rejection at the border; and
- Access to the territory and an asylum procedure for the purpose of determining international protection needs.

Assessing the Asylum Claim in a Fair and Efficient Asylum Process

- Trained and professional responsible authorities;
- Access to publically-funded and quality legal representation;
- Access to organisations providing information and support;
- Access to quality interpretation;
- The right to appeal an asylum decision and to remain in the country until this has been determined. Effective remedies to challenge asylum decisions through tribunals and courts (with appropriate legal aid) should be equivalent to those in other areas where decision-making determines a person's fundamental rights;
- Procedures and resources aimed at making better decisions early in the asylum procedure (front-loading);
- Procedures and resources aimed at identifying and taking into account the situation and needs of vulnerable applicants and particular equality groups;
- Procedures and resources ensuring that in all matters concerning children the best interest of the child is a primary consideration and that the child's views are taken into account in accordance with their age and maturity; and
- Respect for liberty, security and freedom of movement: people seeking asylum should not be detained for administrative convenience and should be allowed to move freely on the territory while their claim is being processed.

Reception and Integration of People Seeking Asylum

- People seeking asylum should be supported to integrate in the host country from the moment of their arrival to the benefit of both the individual and the community;
- Access to appropriate accommodation and financial support sufficient to ensure a dignified standard of living and of an equivalence to a national in need;
- Full access to healthcare;
- Full access to education;
- Immediate access to English language courses;
- People seeking asylum should be given access to the labour market to support themselves;
- Services should be designed to meet the needs of vulnerable persons and equality groups. Additional services should be provided if required to address individuals' special needs;
- Holistic assessments to identify the needs of vulnerable people seeking asylum should be made repeatedly at key intervention points throughout the asylum procedure;
- All services should be personalised;
- All unaccompanied minors should have access to appropriate accommodation and be appointed a guardian; and
- Access to and the withdrawal of reception conditions, such as welfare support, should not be used as coercive measures to enforce immigration control of people seeking asylum.

Refugee Integration

- Integration is a two-way process that involves positive change in both the individuals and the host communities and which leads to cohesive, multi-cultural communities;
- Upon recognition, refugees should be granted secure residence status, conferring them rights similar to those of nationals;
- Refugees should be supported in realising their right to family reunion; and
- Refugees should be allowed to choose whether they wish to acquire the citizenship of the host country. Barriers should not be put in their way if they choose to do so.

Responsibility-sharing

- Based on the principle of intra-EU solidarity and responsibility-sharing within the Common European Asylum System, there should be participation in the relocation of refugees from other EU countries and in efforts to improve the treatment of people seeking asylum and refugees across the EU; and
- Based on the principle of solidarity and global responsibility-sharing, a long-term future for refugees should be offered through resettlement.

Return

- Return, if necessary, should be safe, dignified and sustainable;
- Voluntary return must be prioritised over forced return;
- People seeking asylum found not to be in need of protection should only be returned after a fair and thorough examination of their asylum claim and taking all humanitarian circumstances into consideration;
- People seeking asylum whose claims have been rejected but who cannot return should be granted temporary legal status; and
- Detention pending return must not be arbitrary, and should only be used if necessary and proportionate in each case, following a careful consideration of available alternatives. It should always be for the shortest possible time where removal is imminent and should be subject to regular review and judicial oversight. It should never be imposed on children or vulnerable people.

Scottish Refugee Council does not believe that the state's legitimate concerns about preventing abuse should be addressed by curtailing individuals' human rights.

Under the current constitutional settlement (and status quo if no constitutional changes are made), immigration and nationality are reserved matters under Schedule 5 of the Scotland Act 1998. The Scottish Government has competence in a range of areas of social policy, welfare and justice functions which impact on the reception and integration of people seeking asylum and refugees in Scotland but which also relate to the asylum procedure such as child welfare and protection and the provision of legal representation.

There are many aspects of the current asylum system and approaches to refugees that could be greatly improved. With that in mind we make the following policy recommendations to the UK and Scottish Governments:

Access to the territory and procedure

- **The UK Government** should review bilateral readmission agreements and practice to ensure refugees have access to the territory and the asylum procedure in the UK. **The UK Government** should assume responsibility for examining the applications of asylum seekers in the UK where other EU Member States responsible under the Dublin II Regulation do not treat asylum seekers in accordance with international and EU law obligations;
- **The UK Government** should ensure that refugees newly-arrived in Scotland seeking protection, often destitute, and those residing in Scotland seeking protection can access the UK asylum procedure in Scotland. **The Scottish Government** should press the UK Government on this issue as a matter of equality of access to the asylum procedure;

Assessing the asylum claim in a fair and efficient asylum process

- **The UK Government** should continue to improve training and guidance to asylum decision-makers and tackle the 'culture of disbelief' within the UK Border Agency. It should consider establishing an independent agency dealing solely with the assessment of asylum applications;

- **The Scottish Government** should maintain the level of legal aid provision for asylum applicants in Scotland and ensure that all asylum seekers in Scotland access and benefit from early interventions of quality legal advice before the substantive asylum interview. **The UK Government** should extend early legal advice projects in England and Wales and improve access to legal advice in the Detained Fast Track procedures;
- **The UK Government** should ensure the continued provision of and access to independent, competent and professional advice to assist people seeking asylum to navigate the complexities of the asylum and asylum support processes;
- **The UK Government** should end, and **the Scottish Government** should resist, proposals to restrict appeal avenues to the Court of Session (Inner House) which threaten to undermine the fair and effective procedures that are essential to protect asylum seekers' fundamental rights and the principle of courts reviewing tribunal decisions;
- **The UK Government** should improve the initial asylum screening process to identify vulnerable applicants early and act on their needs. Assessments should be conducted throughout the asylum procedure at key points;
- **The UK Government** should improve training and guidance on identifying children. Invasive medical interventions should not be used to assess age. **The UK Government** should ensure the best interest of the child is represented and considered throughout the asylum system and develop a system of guardianship. **The Scottish Government** should support and further develop the Scottish Guardianship Service including consideration of placing it on a statutory footing;
- **The UK Government** should abolish the detention of people seeking asylum solely for the purpose of assessing their claim. In the interim, they should stop the arbitrary use of the Detained Fast Track and Detained Non-Suspensive Appeals process. Vulnerable asylum seekers should never be detained.

Reception and integration of asylum seekers

- **The UK Government** should allow people in the asylum process the right to work either after six months if there has been no decision on their application following the screening interview, or subject to cooperation with authorities to establish identity. **The Scottish Government** should continue to express its opposition to the current policy;
- **The UK Government** should introduce cash support throughout the asylum procedure until an asylum seeker has left the UK or been recognised as a refugee. This should be part of and administered through mainstream welfare support. Support should be provided at equivalence to nationals based on the need to ensure a dignified standard of living;
- **The Scottish Government** should work together with **the UK Government** to develop reception and integration policies and practice which benefit all people seeking asylum and host communities, for example, by ensuring new communities are prepared for asylum applicants and asylum seekers are informed about and can access services;
- **The Scottish Government** should continue to provide full access to healthcare and ensure people access this right. It should expand ESOL provision to reduce waiting times and facilitate integration.

Refugee integration

- **The UK Government** should grant permanent residence status to refugees upon recognising them as refugees and ensure affordability and accessibility of refugees becoming UK citizens, including a maximum qualifying period of five years. To avoid destitution and improve early integration, **the UK Government** should extend the 28-day period after which the UK Border Agency withdraws financial support and should reinstate dedicated advice and support to assist refugees to engage with mainstream services and rebuild their lives;

- **The UK Government** should have a clear strategy for refugee integration in the UK with responsibility clearly allocated within a UK Government department. **The Scottish Government** should ensure the implementation of the recommendations of the review of its strategy to integrate asylum seekers and refugees in Scotland and raise concerns with the UK Government where reserved competences impact on refugee integration in Scotland;
- To improve refugee integration and ensure refugees can be reunited with their family members, **the UK Government** should expand the definition of 'family' within the immigration rules; allow child refugees the right to be reunited with their families and support refugees unable to meet the travel expenses of family members.

Responsibility-sharing

- **The UK Government** should reappraise its position on not seeking to improve EU-wide asylum standards. **The Scottish Government** should engage more with **the UK Government** on promoting responsibility-sharing and raising standards in the EU;
- **The UK Government** should increase the number of resettlement places, currently 750 per year, it offers to refugees. **The Scottish Government** should identify and reduce barriers to participation of Scottish Local Authorities in the UK Government's refugee resettlement programme and consider and explore other means and possibilities for resettlement in Scotland with **the UK Government**.

Return

- **The UK Government** should grant a legal status to refused asylum seekers who cannot be returned and stop forcing them into destitution;

- **The UK Government** should end the arbitrary use of detention. Detention must be used only if necessary and proportionate in each case, following a careful consideration of available alternatives and should always be for the shortest possible time where removal is imminent. It should never be imposed on vulnerable applicants. **The Scottish Government** should make the case to **the UK Government** to ensure vulnerable asylum seekers are not detained in Scotland and detainees in Dungavel Immigration Removal

Centre (IRC) are not moved arbitrarily around the UK detention estate away from the jurisdiction where their legal representatives can act on their behalf; **the UK and Scottish Governments** should clarify their respective powers in relation to Dungavel IRC; and

- **The UK Government** should abolish the outsourcing of enforced returns to private companies and implement early engagement strategies for other groups of refused asylum seekers beyond families with children.

The Role of Sub-State Authorities in Asylum and Refugee Policy

One possible result from a referendum outcome not to support independence may still be for further negotiations between the UK Government and the Scottish Government post the referendum in 2014 on increasing the competences of the Scottish Government. There are potential areas that could be explored in relation to asylum and refugee policy. These are based on comparisons with other sub-state authorities who exercise competence in relation to asylum and refugee policy. In some instances it would not require a change to powers, but a change in working arrangements between the two governments.

Access to the territory and procedure

- Comparing practice in European countries (Germany, Switzerland, Austria, Sweden) people in Scotland seeking protection should be allowed to lodge a claim for asylum with the UK Border Agency in Scotland without having to travel to the Asylum Screening Unit in Croydon. This would not require any change in powers;

Assessing the asylum claim in a fair and efficient asylum process

- Assessing asylum applications is a state obligation and function and as such Scottish Refugee Council believes that the creation of a parallel system in Scotland as a sub-state authority to assess asylum applications (as for example exists in Italy) would be very difficult, contentious and costly to implement. However **the UK Government** should respect, engage and adapt to Scottish authorities who exercise competence in areas which currently support the asylum decision-making procedure, such as the Scottish Legal Aid Board and the Scottish Guardianship Service;

Reception and integration of asylum seekers

- **The UK and Scottish Governments** could consider Scotland playing a greater role in the provision of accommodation and reception of people seeking asylum. Asylum seekers residing in Scotland could be allowed to apply and be granted a work permit in Scotland by an authority in Scotland (Germany, Belgium, Switzerland);

Refugee integration

- The Scottish Government already exercises competence in many of the social policy areas related to refugee integration. Dedicated integration advice support was previously funded by the UK Government but has been withdrawn. Responsibilities in this area could be clearer to ensure a comprehensive refugee integration policy is in place in Scotland;
- Aspects of immigration control related to refugee integration are not devolved, such as the granting of temporary or permanent residence permits. This could potentially be one area to explore, thus **the Scottish Government** could be allowed to issue temporary or permanent residence permits to refugees. However our principled view is that refugees upon recognition should be granted permanent leave to remain whoever were to exercise competence in this area. This would be the best, most cost-effective way to improve refugee integration;

Responsibility-sharing

- **The UK and Scottish Governments** could negotiate greater involvement in **the UK Government's** refugee resettlement programme. Annual quotas and priorities could be established jointly with the UK Government. **The Scottish Government** could be allowed to select the refugees who settle in Scotland, subject to final approval by **the UK Border Agency** (a similar process is in place in Québec). This would not require changes to powers; and

Return

- Devolving powers to the Scottish Government as a sub-state authority to execute return and removal measures for people refused asylum (as is the case in Germany and Switzerland) based on immigration decisions made by the UK Government would be difficult, confusing, complex and controversial. Consideration could be given to allow **the Scottish Government or an independent body in Scotland** to refer exceptional cases to **the UK Government** to consider granting a temporary resident permit (Germany, Switzerland).

In the event of independence, we assume that the Scottish Government would have responsibility and the competence for all aspects of asylum and refugee policy within its international obligations of being an independent state. We propose what these policies could or should look like based on principles for a fair and humane protection system.

In our analysis we make the assumption that Scotland would be a member of the European Union and would be party to European acquis on asylum. In the context of negotiating EU membership, the Scottish Government would have to consider whether it would join the European Common Travel Area (Schengen Area) or if it would seek to be part of the Common Travel Area with the rest of the UK and Ireland. Both have implications for asylum and refugee policy.

We also recognise that any future changes to, for example, foreign policy or welfare benefits or in particular migration policy, will also impact upon refugees' lives as things stand at present. Thus refugee policy itself should not be seen in isolation but in relation to wider policy and societal change.

Bearing these assumptions in mind, the following recommendations should be seen as Scottish Refugee Council's initial considerations and not a definitive response.

Access to the territory and asylum procedure

- Scottish Refugee Council believes that granting access to the territory to those seeking asylum would constitute a very small part of the role of future border control authorities in an independent Scotland, thus we do not take a view on how this function should be exercised. Nevertheless, **in an independent Scotland** we would consider the option to contract out border control to the UK Border Agency not to be feasible. Looking to other European countries this function could be carried out by the police force or a new agency responsible for border management;

Assessing the asylum claim in a fair and efficient asylum process

- **An independent Scotland** should take full responsibility for granting international protection and should not contract out this core state function to the UK Border Agency. Scottish Refugee Council proposes that the best way to ensure asylum claims are assessed fairly and efficiently by professional and well-trained responsible authorities in **an independent Scotland** would be to establish a small separate asylum agency dealing solely with asylum applications;

Reception and integration of people seeking asylum

- People claiming asylum in an independent Scotland should have access to cash support sufficient to maintain a dignified standard of living and of an equivalence to a national in need. They should be given the possibility to choose their accommodation which should be in the community. **The government in an independent Scotland** could provide information about job and housing opportunities in different areas of Scotland to help people seeking asylum make an informed choice and ensure integration happens from day-one of arrival and benefits both refugees and the host community;
- Asylum seekers in **an independent Scotland** should be granted immediate access to the labour market. In some cases, access could be conditional upon cooperation with the authorities responsible for the asylum procedure;

Refugee Integration

- Refugees in **an independent Scotland** should be granted permanent residence upon receiving protection;
- Frontloading of individual integration plans drafted together with the refugee and mainstreaming integration in all public services is the best and most cost-effective way to facilitate the process;
- Refugees should be given the opportunity to choose whether to apply for citizenship after a period of permanent residence. This period should be no longer than five years and time spent in the asylum procedure should be included in the qualifying for citizenship. When developing Scotland's citizenship policy, **the government in an independent Scotland** should take into account the particular situation of refugees to ensure that no additional barriers are created;

Responsibility-sharing

- Scottish Refugee Council believes that **an independent Scotland** should establish its own refugee resettlement programme, which could consist of a mixture of government-sponsored and community-sponsored schemes as exists in Canada;

Return

- Those asylum seekers whose claims have been refused after a fair and efficient process in Scotland but who cannot be returned or where there are barriers to return could be granted a temporary residence status [with the option of being granted permanent residence or citizenship at a later date if there is no substantive change to their situation];
- Asylum seekers whose claims are refused should be allowed to submit an application for a work permit without leaving Scotland and be granted or refused in line with whatever rules are created for migration policy;
- Voluntary return should always be prioritised over forced return measures. Given issues of accountability and the controversies surrounding the current UK practice of enforced return, Scottish Refugee Council does not believe the UK Border Agency should have any role in such process, should it be introduced in **an independent Scotland**; and
- One institution should be responsible for return policy to ensure that all voluntary return options and alternatives to detention have been exhausted before enforced return and/or detention is considered. Asylum seekers whose claims have been refused should never be detained in prisons.

The future of Scotland and the place of refugees within it are important matters. We hope that this report makes a critical contribution to, and helps inform the important discussions and debates that are taking place and will continue to take place over the next few years.

scottish
refugee
council

Scottish Refugee Council is an independent charity dedicated to providing advice and information for people who have fled horrific situations around the world.

We have been advocating and campaigning for the rights of refugees since 1985.

To find out more, sign up to our e-newsletter by going to our website:
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