

Serious ill-health offers no relief for asylum claimants

Campaigners press for revised interpretation of European Convention as Home Office resists ill-health claims

Campaigners are calling on the Government to end the practice of deporting failed asylum seekers with serious disabilities back to countries where their medical needs will not be met.

Highlighting the cases of two disabled Kenyans, Mercy Murua and Peter Gichura, whose deportation back to Kenya is imminent, the Coalition Against the Welfare Reform Bill (CAWRB) recently met with the minister for disabled people, Anne McGuire, to urge her to revisit the issue.

Ms Murua and Mr Gichura fled Kenya in 2002, claiming that they were repeatedly attacked by Nairobi police officers for their role in lobbying for the interests of a group of disabled street hawkers in the city. Ms Murua, who contracted polio as a baby and is confined to a wheelchair, says she suffered repeated sexual assaults while in police custody, through which she became pregnant, later giving birth to a daughter. Her claim for asylum on grounds of political persecution, ethnic persecution, access to medical care and refuge from rape has, so far, been rejected by the Home Office.

In a letter in October 2006 Ms Murua was told that allowing people in her situation to remain in the UK would 'overload the NHS and be unfair to British citizens who, as nationals and taxpayers, have first call'.

Mr Gichura re-applied for asylum in the UK on medical grounds in 2006 after his long term spinal injury worsened, but the Home Office rejected his petition, arguing that "a person's medical condition must be at such a critical stage that there are compelling humanitarian grounds for not removing

them to a country which lacks the medical and social services to prevent acute suffering before death". In October 2006 his case was raised by London Mayor Ken Livingstone in a letter to the Home Office, in which he wrote of 'a perception that the UK immigration regime is unbalanced, unjust and inhumane'.

Contravention

WinVisible, a charitable self-help group for women with disabilities and a member of the CAWRB, insists the Government is acting in contravention of the European convention and should rethink its stance.

Speaking to PSW, WinVisible's Claire Glassman said: "Is it acceptable that the right not to be subjected to cruel and degrading treatment under Article 3 of the European Convention on Human Rights has been reduced to the right not to suffer unduly while dying? When experts like Rachel Hurst OBE (Disability Awareness in Action and member of the Advisory Group to the Government Office for Disability Issues) confirm that, if deported, Mr Gichura, as someone with a spinal injury, would almost certainly not survive for long – how much more 'critical' can someone's situation be?"

The Home Office has rejected the suggestion that it is acting against the European Convention, citing an appeal ruling by the Law Lords in 2005 relating to the case of a Ugandan woman with advanced HIV/AIDS whose asylum claim centred on the fact that repatriation would result in her certain death because of a lack of anti-retroviral medication in her home country.



Mercy Murua, an asylum-seeker from Kenya



Article 3: the ruling that matters

Extracts from a 2005 House of Lords ruling on the case of a Ugandan woman with advanced HIV/AIDS. Her asylum claim, based on a lack of medical treatment available in her country of origin, was rejected.

... the Strasbourg court has constantly reiterated that, in principle, aliens subject to expulsion cannot claim any entitlement to remain in the territory of a contracting state in order to continue to benefit from medical, social and other forms of assistance provided by the expelling state. Article 3 imposes no such 'medical care' obligation on contracting states. This is so even where, in the absence of medical treatment, the life of the would-be immigrant will be significantly shortened.

... those acting on her behalf are seeking to press the obligations arising under the European Convention too far. The problem derives from the disparity of medical facilities in different countries of the world. Despite this disparity, an AIDS sufferer's need for medical treatment does not, as a matter of Convention right, entitle him to enter a contracting state and remain there in order to obtain the treatment he or she so desperately needs.