

# Refugees and Asylum Seekers In Britain: U.K. Immigration & Asylum Act, 1999

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## Abstract

*Trends in the numbers of asylum applicants in Britain 1997-00 are examined, together with changes in the law and in the treatment of refugees in the U.K. The system is designed to deter claimants, penalise anyone assisting illegal entry and aims to expedite removal. New regulations control the location of asylum seekers in the country, pending determination of their status. Differential treatment of various nationalities indicates systemic discrimination against certain groups.*

## Résumé

*L'article examine les tendances contenues dans les chiffres concernant le nombre de demandeurs d'asile en Grande Bretagne pour la période 1997 à 2000, ainsi que les changements apportés à la loi et au traitement des réfugiés au Royaume-Uni. Le système est fait pour dissuader les demandeurs et pénaliser quiconque aide à l'entrée illégale, et vise à accélérer le renvoi. De nouveaux règlements contrôlent le lieu de résidence des demandeurs d'asile dans le pays pendant qu'ils attendent la détermination de leur statut. Différents niveaux de traitement réservés à diverses nationalités, signalent l'existence d'une discrimination systémique contre certains groupes.*

Britain signed the UN Convention in 1954, at a time when the number of asylum applicants was very low. However, it was not incorporated into law until the Asylum and Immigration Appeals Act, 1993. Since then it has been used as an instrument of exclusion rather than inclusion, by using a

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very narrow definition of a Convention refugee, and adopting various measures designed to deter applications. Due to a growing backlog of asylum cases, hostility by press and public against alleged "illegal" immigrants, as well as so-called "economic" migrants applying for asylum, there has been a series of ever stricter legislative provisions and regulations (Schuster and Solomos, 1999). Rules introduced in 1996 denied access to social security and legal aid to those who did not apply for asylum immediately at the port of entry, together with those who were appealing a negative decision. The Court of Appeal subsequently found these measures illegal, but the Asylum and Immigration Act passed later that year reinstated the restrictions in question, as well as penalties for employers hiring undocumented immigrants. Further court cases made local authorities responsible for providing housing and food to destitute asylum seekers (Minderhoud, 1999). The latest legislation, passed in 1999, came into force immediately although some measures did not take effect until April, 2000 and others in October that year. Its main provisions are discussed below. They are part of a concerted effort by European countries to "harmonize" their immigration policies and to combat the illegal smuggling of people across borders.

## Trends in Asylum Applications

After the end of the Cold War the number of asylum seekers in the U.K. increased, as they did in many other countries. From approximately 5,000 per annum in the 1980's the numbers rose to 44,800 in 1991, falling again until to the Yugoslav crises later in the decade. There were 32,500 asylum applications in 1997, 46,015 in 1998 and 71,160 in 1999. That year the largest numbers were from the former Yugoslavia

(14,130), followed by Somalia (7,495), Sri Lanka (5,125), the former Soviet Union (3,500), Afghanistan (3,980), and Turkey (2,655). In the first five months of this year (2000) there was a total of approximately 31,000 asylum applications; China, Sri Lanka, Iran and Afghanistan were leading source countries.

Compared with Canada, far fewer asylum applicants are accepted as genuine refugees. The average acceptance rate was 11% in 1997; in 1998 it was 17% and in 1999 it rose to 22%, although it varied from almost 100% for refugees who applied from Yugoslavia, to 1% for those from Sri Lanka and Afghanistan. However, a further 9% were given "exceptional leave to remain" (ELR) in 1997, which is a form of temporary protection. The figures for ELR were 12% in 1998 and 41% in 1999 (see Table 1.) The proportion of decisions to recognise as a refugee and grant asylum, in cases dealt with under normal procedures, rose from 8% in March, 1999, to 74% in May, due to the more favourable processing of applications from Kosovo. The proportion granted asylum declined again, to 13% in December, 1999. Of some 19,460 appeals heard in 1999, 27% were allowed, 57% dismissed and 16% were withdrawn. The percentage of appeals allowed fell to 15% in May 2000 (RDS, 2000).

In 1999 there were 71,160 applications, many of whom were from the former Yugoslavia, including some from Kosovo who arrived before and after the NATO intervention. By the end of the year the backlog of cases still waiting for a final decision had increased to 102,870. Waiting time for an initial decision averaged 20 months. This was partly due to a crisis in processing applications which occurred, when a new computer system, originally contracted by the previous Conservative government, was



adopted. It was intended to speed the processing of asylum applications, but its use was delayed when it failed to function properly. Meanwhile, many of the clerical workers formerly handling cases for the Home Office had been "let go". Any asylum decision making virtually came to a halt at that time! Processing resumed later in the year after a new wave of Yugoslav, particularly Kosovo refugees arrived. The latter received much more favourable and speedier treatment than others. However, continuing delays in processing make it impossible to relate current applications to current decisions. A "backlog clearance" procedure was introduced which used somewhat relaxed criteria for ELR. Although the government expected new

procedures for dealing with asylum applicants, introduced in December 1999, would speed up processing and reduce the backlog of applicants, the decision making process is still subject to long delays. In 1998-99, the average time for a final decision, after appeal, was twenty months. The government expected that, under the new Act, delays will be reduced to six months or less, but this seems unlikely as the waiting list remains very high.<sup>1</sup>

#### Immigration Controls

Control over entry to the U.K. begins with the issue of visas which are required for a long list of countries. Citizens of European Union countries are exempted from visa requirements, as are Australia, Canada and the USA.

However, most refugee generating countries, such as the former Soviet Union, former Yugoslavia, Cambodia, China, Cuba, Congo, Ethiopia, Indonesia, Somalia, Sri Lanka, Sudan and Turkey, all require visas to enter Britain, notwithstanding the difficulty asylum applicants might face in reaching a British Embassy or Consulate. Airlines are responsible for the interdiction of undocumented migrants and this is reinforced by carrier liability which has been increased under the most recent regulations. All carriers (not just airlines) are liable to fines for bringing undocumented persons.<sup>2</sup> British officials now check passengers travelling from French railway stations on Eurostar, via the Channel

Table 1

### APPLICATIONS FOR ASYLUM IN THE UNITED KINGDOM (EXCLUDING DEPENDENTS)

DECISIONS	1997	1998	1999
GRANTED ASYLUM	3,985 (11%)	5,345 (17%)	7,080 (22%)
EXCEPTIONAL LEAVE TO REMAIN	3,115 (9%)	3,910 (12%)	13,340 (41%)*
REFUSED FOR NO CREDIBILITY	22,780 (63%)	17,465 (55%)	7,735 (24%)
REFUSED ON SAFE THIRD COUNTRY GROUNDS	2,550 (7%)	1,855 (6%)	1,830 (6%)
REFUSED FOR NON-COMPLIANCE	3,615 (10%)	2,995 (10%)	2,365 (7%)*
TOTAL DECISIONS	36,045 (100%)	31,570 (100%)	32,330 (100%)
<b>TOTAL APPLICATIONS</b>	<b>32,500</b>	<b>46,015</b>	<b>71,160</b>
APPLICATIONS WITHDRAWN	2,065	1,470	725
OUTSTANDING (Backlog)	51,770	64,770	102,870

\* includes backlog clearance cases and Kosovo applicants

Source: Research Development Statistics, Home Office, U.K.

tunnel. Trucks disembarking from Channel ferries are searched by dogs trained to detect hidden people as well as drugs. Undocumented and initially refused asylum seekers are subject to indefinite detention and removal without judicial review. Conditions in prisons and detention camps are poor.<sup>3</sup> The high refusal rate, initially and after appeal, leads to detention, removal and/or deportation. Removal applies to persons who have never received a right of entry, or residence. It does not require obtaining a warrant. Deportation applies to those who have been living in the country legally, but who commit an offence, or are refused asylum and exceptional leave to remain. In 1998-99, some 9,000 people

were detained. At any one time the number averaged 750, sometimes exceeding one thousand; of these 60% were waiting for an initial decision; 21% waiting on an appeal; and 19% pending a further challenge, or availability of documents for removal from UK.

Britain employs a private American security firm to run detention centres for failed asylum applicants and others awaiting removal or deportation. Conditions at the detention centres are deplorable. A riot occurred at Campfield House, one of the Centres, in August 1997. Inmates believed that two people had been murdered by Security Guards. They had probably committed suicide. There was much

damage and many injuries as a result of the riot. Court cases were brought against several of the detainees, but video-tapes showed that evidence had been tampered with by the guards who had perjured themselves! Meanwhile, the Home Office tried to deport one of the detainees involved, who then sued for malicious prosecution.

### High Court Decisions

In some respects the courts in Britain have taken a more liberal and humane view of asylum applicants and other immigrants in Britain, although this has not been so in all cases. A series of decisions at the Appeal court level have been found against the government. For example, in 1996-97 it was held that social security benefits could not be refused to asylum applicants in need; they were subsequently reinstated at a reduced rate. Similarly, denial of housing was found to be contrary to the duties of local authorities under the National Assistance Act.

In June, 1999 the UK government lost a critical case in the Appeal Court concerning the return to France or Germany of asylum applicants who had passed through those countries and were due to be returned to them. They came from Somali, Algeria and Sri Lanka. The reason that France and Germany were deemed "unsafe" in these cases (but not necessarily in others) was that the fear of persecution was not from the government of the applicant's country, but from sources that these governments could not guarantee to protect the applicants. The decision (which may be reconsidered by the House of Lords as the "supreme court") affects at least 218 cases currently pending deportation to France and Germany, but also sets a precedent in other cases and other countries. The Appeal Court decision is in accord with the interpretation of the UN Convention by most other countries, excepting France and Germany. Although the latter receive far more asylum applicants than Britain, it applies a narrower interpretation of

Table 2

#### ASYLUM DECISIONS IN THE U.K. FIRST FIVE MONTHS, 2000

Recognised & granted asylum	5,100 (12%)
Exceptional leave to remain	5,850 (13%)
Granted leave under backlog criteria	7,520 (17%)
Initially Refused	24,710 (57%)
Refused under backlog criteria	480 (1%)
<b>TOTAL DECISIONS</b>	<b>43,660 (100%)</b>

TOTAL APPLICATIONS	30,975
APPLICATIONS OUTSTANDING (backlog)	89,900

Source : Home Office, UK: Asylum Statistics, May, 2000.

the grounds for asylum than now determined by the Appeal Court in Britain. This decision also casts in doubt some provisions of the new Act which deems all European Union countries "safe" and obliges asylum applicants to seek asylum in the first one at whose borders they arrive, irrespective of that country's record in the treatment of refugees.

In a separate judgement the High Court also held that Britain was in breach of Article 31 of the UN Convention on Refugees and, therefore, had acted illegally in jailing asylum applicants who arrived in Britain with false documents, including those in transit to other countries and even those who had made a successful claim for asylum if they had travelled without proper documents. Britain regularly prosecuted anyone with false documents under the Criminal Attempts Act, 1981, for obtaining airline tickets and passage by deception. The High Court maintained "The combined effect of visa requirements and carrier responsibility made it well nigh impossible for refugees to travel to countries of refuge without false documents... Article 31 must henceforth be honoured." Following the Court's judgement, the Crown Prosecution Service ruled that all current proceedings of this type should be dropped, but indicated that those already in prison would not be released automatically but would have to appeal their case. There could be several hundred people in this situation. The fact that they now have a criminal record could jeopardise any future claim for asylum!

In January 2000, the Court of Appeal laid down guidelines to be adopted in determining whether it would be unduly harsh to return an asylum applicant to the country of origin. The case concerned an asylum seeker from Sri Lanka who had been refused asylum and 'exceptional leave to remain'. The Court ruled in favour of remitting the case to another tribunal for a further hearing. At the same time, it noted that written evidence by four experts, concerning the danger of removing the ap-

plicant to Sri Lanka, should not have been discounted. The Court ruled that the tribunal was bound to take into account all material considerations and to ask: would it be unduly harsh to expect the applicant to settle there? The tribunal should take into account the cumulative effect of all the evidence, using a "common sense" approach rather than a legalistic one (O'Hanlon, 2000).

However, the Appeal Courts were not invariably sympathetic to asylum seekers. Another decision by the Court of Appeal in January 2000, meant that an estimated 6,000 Kurds in Britain would face deportation. A test case concerned a Kurdish asylum seeker who had refused to perform military service, on the ground that he might be forced to kill other Kurds. The applicant had appealed a Home Office decision to deport him, citing article three of the European Convention on Human Rights. The Court upheld the Home Secretary's refusal of exceptional leave to remain, on the ground that he was unlikely to face torture, or degrading treatment if he was returned to Turkey.<sup>4</sup> In a similar case the Appeal Court also held that a Kurdish man could be returned to Germany, which was recognised a "safe third country", even though his claim for asylum in that country had been refused.<sup>5</sup>

Another critical decision was made by the highest court of appeal (the House of Lords) in July 2000. The case concerned a Romany person from Slovakia who had been persecuted by "skinheads". A critical test was whether the state was able and willing to afford protection. The unanimous decision of the judges was that, in this case, the state had done so. It was argued that complete protection against all attacks was not a practical standard. Consequently the appeal was refused.<sup>6</sup>

### **The Kosovo Crisis**

The experience in 1999 is exceptional because of the Yugoslav movement, including Kosovo. The latter were treated much more favourably. Britain is a leading member of NATO

and was directly involved in the bombing of Serbia and Kosovo. Like Canada, it responded to the emergency by accepting temporary refugees who were flown to Britain from Macedonia. Approximately 4,300 were admitted for a twelve month stay under ELR provisions ("exceptional leave to remain"). By mid-June the government announced that there would be no further evacuations, but efforts would be made to facilitate return to former homes in Kosovo. The first contingent of Kosovo returnees left Britain at the end of July under IOM (International Organization for Migration) auspices. They landed in Macedonia. Others flights followed. They receive a £250 (C\$600.00) allowance per person on departure). Their ELR lapsed at this point. While in the UK Kosovo refugees were originally intended to be coordinated by the voluntary sector, including the UK Refugee Council, the Red Cross and other bodies, but this plan was abandoned as the numbers arriving increased. Instead, the Home Office took charge, with the cooperation of local authorities who renovated disused Council (Public) housing to serve as reception centres. It is expected that they will be moved into other accommodation in due course mostly in the north of England. Local Authorities in the North and Midlands were already gearing up to handle asylum applicants who, under the terms of new legislation will be obliged to accommodate refugee applicants to be dispersed from the London area, where they presently tend to congregate. While some asylum seekers have volunteered to be accommodated outside the Greater London area, as new legislation comes into force, the government will be able to compel refugees to move to selected accommodations in the north of England, away from where most voluntary social and legal services for refugees are presently located.<sup>7</sup> However, there is some doubt whether local authorities will be able to find sufficient and appropriate accommodation.

The arrangements made for the reception of the Kosovo refugees and the

sympathy expressed toward them in the media and by the public, contrasts with hostility generally directed toward asylum applicants, particularly those from Africa and Asia, whether they travelled directly to the U.K., or via the European Union. Even the positive attitude towards the Kosovo refugees who were brought to England during the war, waned once hostilities ended. There was also hostility, whipped up by the popular press, against Roma from central European countries, allegedly begging on the streets and seeking asylum in Britain.

### **Dover, Kent**

In August 1999, a crisis occurred in the port of Dover and in other parts of Kent County where a number of asylum seekers were housed. Dover is a port which has received a number of refugees who have fled France, which is also inhospitable to asylum applicants. Others in Kent County and Dover specifically, who have been billeted in seaside boarding houses by local authorities in the London region. The latter have difficulties finding suitable cheap accommodation for asylum seekers in their own boroughs. Seaside resorts with empty 'bed and breakfast' accommodation in rooming houses are an alternative; but it forces people onto the streets during the day! An estimated five thousand refugees and asylum seekers were in Kent County, of whom 790 were in Dover. Some were allegedly smuggled into the country by truck drivers using the new Channel tunnel. Local residents were generally hostile to the newcomers, and newspapers published stories with strong racist slurs against them. A violent fracas broke out at a fair, one holiday week-end in August, 1999. Eleven people were injured, apparently by knife wounds. Newspaper reports did not make it clear whether the perpetrators were the refugees, or youth gangs taunting them. The issue quickly became politicised, with the Conservative opposition claiming that, under "New Labour", Britain had become a "soft

touch" for bogus asylum seekers and economic refugees, while the government blamed the previous administration for failing to deal expeditiously with the backlog of asylum seekers. Meanwhile, the Immigration Service Union, whose members are responsible for processing asylum applications claimed it was overwhelmed by the increased numbers arriving which averaged 200 a day, nationally, at that time.

The government response was to insist that its new legislation, which was to come into force in year 2000, would effectively stem the flow of "illegals", and speed the processing of "genuine" cases. However, in June 2000 a truck concealing 60 illegal migrants, 58 of whom had died en route, arrived in Dover from Belgium. While sympathising with the relatives of those who died, the Home Secretary called for a common European policy to end human trafficking and amendments to the UN Convention that would no longer oblige countries to adjudicate all asylum applications made at their borders.

### **Hijacked Afghanistans**

In February 2000, an Afghanistan plane on an internal flight was hijacked. After stopping to refuel in Uzbekistan the plane flew first to Moscow where it was again refuelled, given food supplies, and allowed to continue. It flew through the air space of several European countries before landing at Stanstead airport near London, England. At first it was assumed that the hijackers would make political demands for the release of prisoners held under the Taliban regime. This proved not to be the case. After 76 hours of negotiation, first the crew were able to leave the plane and eventually all passengers and the hijackers were permitted to disembark. They were initially placed under guard in the Hilton hotel at the airport and later bussed to an army training college in Gloucestershire where they were interviewed by immigration officers.<sup>8</sup> Those believed to be responsible for the hijacking (13 men) were charged with various criminal offences.

Only 73 of the 142 passengers volunteered for a return flight to Afghanistan, organized by the Geneva based IOM (International Organization for Migration). It appeared that many of the remaining passengers were friends or relatives of the hijackers and that claiming asylum in Britain was the real intent of the operation.

The initial response of the UK government was to insist that all the people on board must be removed as quickly as possible in order not to encourage anyone else to believe that hijacking a plane was an acceptable way of seeking asylum. The Home Secretary (Jack Straw) initially insisted that all the passengers would be sent back to Afghanistan, or removed to a "safe third country", as soon as all international legal requirements had been satisfied. He even announced that he personally would judge each asylum application on its merits, implying that there would be little sympathy for the claims. (In 1998-9 the majority of Afghanistan applicants had been given "exceptional leave to remain" in Britain). Tabloid newspapers expressed their hostility to the hijackers and the passengers, accusing them of not being genuine refugees but simply "economic migrants". Other newspapers took a more cautious view, emphasising Britain's obligations under the UN Convention and the long delays in processing most asylum claims. The Independent even went so far as to write an editorial heading, "Stand firm on hi-jacking - but don't panic about economic migrants". The editorial referred to Britain's history going back to the Huguenots, suggesting that "economic migrants" were likely to "less of a burden in the short run" than "genuine" asylum seekers! (The Independent, 11 February 2000).

At the time of writing, the eventual outcome of these asylum claims is unknown. Given the long delays in processing claims, despite new "fast track" procedures, it may be many months before the final determination. If some or all of the decisions are initially negative there will further delays pending appeals. The experience

of the Afghan asylum applicants is likely to be similar to that of earlier arrivals and other nationalities. Even when refugee status ( or exceptional leave to remain) is eventually granted , refugees have difficulty gaining access to the labour market. When they have professional qualifications these may not be recognized by employers. The insecurity of their situation, language difficulties and lack of citizenship, all serve to prevent full integration into society and have deleterious health effects (Bloch,2000).

### **The Immigration and Asylum Act, 1999**

The 1999 Act<sup>9</sup> requires financial bonds from visitors needing visas. This is likely to be particularly burdensome for tourists coming from the Indian sub-Continent, or other parts of Asia and Africa, many of whom wish to visit families already resident in Britain, as well as deterring students and some business travellers. Asylum seekers will be even more seriously affected. The government fears that, without a bond which would be forfeited if the persons concerned do not leave Britain on or before the entry permit expires, there will be more people overstaying, or applying for asylum.

Under the new legislation, "Smart Cards" for business travellers are to be experimentally introduced. They will "fast track" frequent travellers, freeing immigration officers to spend more time interrogating other arrivals, particularly those that seek asylum. The main thrust of the 1999 Act is punitive. The law will increase existing internal immigration controls. Fines against carriers will be increased from GBE2,000 (C\$4,800) per individual arriving without proper documents; an additional penalty will apply to anyone bringing 'clandestine entrants'. Such persons will be removed without recourse to legal aid. The new law grants police powers to immigration service e.g. to arrest and search anyone suspected of being in the country illegally i.e undocumented immigrants and "over-stayers". There will be increased fines for employers hiring "illegals." It requires

marriage registrars to report "suspicious" marriages i.e. designed only to give someone a right of abode in the U.K. Penalties for "deception", or the use of fraudulent documents are made more severe. The Act increases the government's power to remove from the U.K. anyone in breach of condition to remain, and their families without formal deportation hearings. These measures are primarily designed to deter would-be refugees from entering Britain. It will extend the use of immigration detention and increase the powers of detention custody officers. Among other provisions, immigration officers will be given the same powers of "stop and search" as the police now have (An amendment to the original draft of the Bill requires officers to obtain a warrant from a Justice of the Peace before searching premises for 'illegal' immigrants).

Britain has a three tier system for determining whether asylum shall be granted beginning with an interview at the port of entry.<sup>10</sup> Documents and interviewer's notes are then reviewed by an officer of the Home Office Asylum Division, who makes an initial determination, guided by a list of countries from which it is considered a "prima facie" case for asylum may exist or not, as the case may be. There follows an independent review by a Special Adjudicator. Previously, an Immigration Appeals Tribunal could only consider questions of law or interpretation, but when the new provisions come into force in October 2000, an appellant may claim a breach of human rights as part of the appeal.<sup>11</sup> The Act extends the use of immigration detention and increases powers of custody officers. It also ends right of appeal against deportation of offenders who have been in Britain more than seven years and limits the right of appeal against immigration decisions.<sup>12</sup>

### **Housing and Welfare**

The Refugee Council and other advocacy bodies have drawn attention to some of the most objectionable clauses in the proposed legislation, from a human rights perspective and in terms of

equitable treatment (iNexile, September 1999) . Among the provisions of the new legislation is a plan to remove asylum applicants from regular welfare benefits, at the same time denying them the right to work.<sup>13</sup> A new National Asylum Support Service (NASS) will be set up. Pending a decision on their status, applicants will be assigned housing if needed and will receive vouchers, at a level of 70% of normal welfare assistance (The latter is already below the 'poverty line' !). The Asylum Support rate varies according to age, whether a single adult or couple and whether there are children. For a single adult the allowance will be approximately C\$72.00 per week. It was originally intended that no cash would be paid, but following representations from voluntary service agencies, approximately C\$24) will be exchangeable for cash at a post-office. Successful refugee claimants may receive a backdated lump sum to make up the difference between the value of vouchers issued and the current welfare rates. The Asylum Support Service will rely heavily on voluntary agencies to administer the new support system, while the Home Office retaining the power to determine who is eligible.

Asylum applicants will be compulsorily dispersed to various regions of the country, rather than choosing to cluster in London and the south-east, where the Immigration and Nationality Department that deals with asylum decisions, together with most of the voluntary services and legal advice for refugees are located. Certain "cluster areas" for asylum seekers will be designated, mainly in the north, including Scotland. (Under the newly devolved powers of the Scottish Parliament, authorities there have already complained that the Home Office has no power to require local municipalities to accept the individuals or families who are allocated to them). Accommodations may be re-opened public housing previously regarded as unfit. Contracts were also being let to private sector bidders.<sup>14</sup> However, the Local Government Association reported, in January 2000, that some

local authorities were refusing to offer housing to asylum seekers for both political and financial reasons. A Home Office official indicted that a "holding centre" was planned in a former barracks (Independent, 28 January 2000). Plans to disperse those who claimed at port of entry and London were meant to be implemented from April 2000 but due to pressure on local authorities from those applying after entry to the country, together with efforts by some Councils in the south of England to "off-load" asylum seekers into other areas, this plan was abandoned. Instead the Treasury announced in March that an additional £10 million would be allocated to assist the local authorities with the largest number of asylum seekers to house and support.

Due to the complexity of the new arrangements, a transitional period was introduced in December 1999. Originally designed to be effective until the end of March 2000 the transitional phase had to be extended. The interim arrangements applied to new arrivals and those receiving a negative decision, after which all remaining and any new asylum seekers will be subject to the compulsory arrangements made by the NASS.<sup>15</sup> Clearing houses were established whose responsibility was to monitor the availability of accommodation and allocate people to the regions accordingly. Once offered accommodation the asylum applicant will not be able to refuse without losing all eligibility for financial support. Also denied support are adults whose asylum claim has been refused, if they do not appeal or have exhausted any appeal rights. However, refused families with children continued to receive some support pending their deportation (Refugee Council Briefing, December 1999; January 2000).

### Conclusion

The U.K. government, in a White Paper published before the new legislation was introduced, stated that it proposed to introduce an asylum determination system that was "fairer, faster and firmer" (Home Office, 1998). The evidence suggests that the new

system will, indeed be "firmer", meaning stricter and more difficult for the applicants. Restrictions on the issue of visas, combined with interdiction of those without proper documents, will ensure that many potential asylum applicants will be prevented from reaching the U.K. or will be subjected to immediate removal. One question of concern is the availability of legal aid. The Refugee Legal Centre in London is obliged to turn away many cases for lack of resources. The problem will be worse when so many asylum applicants are dispersed around the country, where experience refugee lawyers are few and far between (iNexile, November 1999, p.7).

The question arises as to whether the measures adopted under the Immigration and Asylum Act, 1999, are a legitimate response to actual or potential abuse of the UN Convention and one which is designed simply to "harmonise" Britain's asylum regulations with those of the rest of Europe. Or, do they constitute an over-reaction, a potential abuse of human rights and even a form of systemic discrimination? The Home Secretary, Jack Straw, in a speech to a European Union conference in June 2000, argued that the 1951 UN Convention is outdated. He argued that signatory countries should not be obliged to consider asylum applications from those who enter the country illegally. Instead applications should be a quota system to share out refugees among host countries. Needless to say, NGOs and the UNHCR criticised the proposal as unrealistic and a charter for governments to exclude asylum seekers.

In Britain, the Home Office is responsible for administering the Police, the Prison Service and the Immigration and Nationality Directorate. The Immigration Appellate Directory is under the Lord Chancellor's Department. All have been accused by human rights advocates of practising "institutional racism."<sup>16</sup> The inaccessibility of British visa offices in non-European countries, the prevailing assumption that the majority of asylum applicants are "really just economic migrants," and the em-

phasis on deterrence and interdiction, all mitigate against just treatment. It remains to be seen whether the new regulations and procedures will make Britain's treatment of asylum seekers "faster". So far, "firmness" has taken priority over "fairness." ■

### Notes

1. The Home Office reported that the number of decisions made in February, 2000 (7,840) exceeded new applications (6,110) thereby reducing the backlog, at that time, to 104,890. Some of those processed had been waiting for a decision since 1996. The number of initial decisions rose to 11,340 in March, 9,650 in April and 10,765 in May, 2000 (RDS, May 2000).
2. A decision by the Criminal Court of Appeal in January, 2000 maintained that carriers, such as truck drivers on British registered cross-Channel ferries, commit an offence even if asylum seekers or "illegal immigrants" are discovered on their vehicle and interdicted, before arriving at British port, and even if the driver insisted he/she was unaware of their presence (The Times, 8 February 2000).
3. The chief inspector of prisons reported that Rochester prison in Kent, where many asylum seekers in detention were held, was "filthy, vandalized, and infested with vermin". He criticised the lack of clear guidelines on how the immigration detainees should be treated. (The Guardian, 21 January 2000.) Under the new regulations detainees will be entitled to a bail hearing.
4. The judge was quoted as saying "Despite the great wealth of material available to show that grave human rights abuses still regrettably occur in Turkey, and despite the lingering sense of unease which one must inevitably feel at the return of those like this applicant to Turkey, I am unable to hold that the secretary of state was bound to find the risk of this particular applicant being ill-treated a real one" (The Guardian, 29 January 2000).
5. So called 'safe third countries' include all EU countries together with the USA, Canada, Switzerland and Norway. Under the 1999 Act there will be no appeal against a decision to remove an asylum seeker to a safe country through which they have travelled to the UK.
6. House of Lords - *Horvath v Secretary of State for the Home Department*, 4 July 2000.
7. In April 2000 the U.K. government announced additional funds would be made available to encourage lawyers to advise asylum seekers and speed the backlog

clearing process. In part this was intended to counter the activities of unqualified advisers.

8. According to a TV4 interview with an interpreter present, on the first night when there were no lawyers or IOM representatives present, Immigration Officers advised the Afghans that, if they decided to apply for asylum they would face a long period in detention before their cases were heard and that the probability of their being accepted was low. This may have influenced those who decided to return to Afghanistan. The Home Office denied any attempt at intimidation and insisted that all those signing a request for repatriation did so voluntarily.
9. The full text of the Immigration and Asylum Act, 1999 is available on the U.K. Home Office web site: [www.homeoffice.gov.uk/iaact/immigact.html](http://www.homeoffice.gov.uk/iaact/immigact.html).
10. Slightly different procedures are used for "in country" applicants i.e. persons who have entered Britain legally, e.g. on a visitor or student visa, and then apply for asylum. They apply directly to the Asylum Directorate. Such claimants are not entitled to any financial support while their application is being processed. About half of all applications are made "in country".
11. October 2000 is the date when Britain incorporates European Union human rights provisions into U.K. law.
12. The right of appeal is abolished for cases deemed to have 'no merit' and for those where the Home Secretary determines that the purpose of the appeal is merely to delay removal from the U.K.
13. Even before the 1999 legislation came into force, asylum seekers were not allowed

paid employment. Nor were they eligible for student grants, or most social security benefits (see Bloch 2000).

14. A private security company proposed housing asylum seekers in two multi-storied "barges", previously owned by a shipping company and moored on the Mersey at Liverpool. The Guardian, 18 December 1999; (see also iNexile, January, 2000:7)
15. Families with children will only go into the new system if the Government reduces average initial decision times to two months from date of application. They will still be subject to dispersal from London and the south-east, but they will continue to be the responsibility of local authorities, who must find housing and welfare assistance.
16. The fact that a small number of African and Asian asylum applicants are given refugee status, or exceptional leave to remain in Britain, does not preclude the possibility of systemic barriers that discriminate against non-Europeans, or visible minorities such as the Roma. Institutional racism is endemic in the police and other services under Home Office direction. A Commission of Inquiry into the police response to the killing of a Black youth by a white gang in 1993, found the force guilty of institutional racism through its stop and search procedures and in many other ways. The Commission made seventy recommendations for the improvement of policing practice. Under the Immigration and Asylum Act, 1999, immigration officers have been accorded similar "stop and search" powers as the police. They are being trained in the use of physical restraints and CS gas. That such raining is

needed is indicated by the case of an Afro-Caribbean person, Joy Gardner, who, in 1993, was gagged and bound during deportation proceedings, leading to her death in custody.

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## From Being Uprooted to Surviving:

### Resettlement of Vietnamese-Chinese "Boat People" in Montreal, 1980-1990

By Lawrence Lam

Toronto: York Lanes Press, 1996; ISBN 1-55014-296-8, 200 pages, indexed; \$18.95

The saga of the "boat people" is a dramatic story, a story of one of the largest refugee movements in recent years. Canada played a significant role in the resettlement of these refugees in bringing them to Canada where they could start anew. *From Being Uprooted to Surviving* by Professor Lam, is based on ethnographic data of a sample of Vietnamese-Chinese accepted for resettlement in Montreal in 1979 and 1980, who were interviewed again in 1984-85 and in 1990-91, this book provides a longitudinal account of their experience of resettlement in Canada. This experience has been marked by successive stages of their struggle to overcome structural barriers and to negotiate a meaningful niche in Canada.

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