



CANADA'S PERIODICAL ON REFUGEES REFUGE

Vol. 19 • No. 1

July 2000

RELIGIOUS PERSECUTION AND BEYOND Religious Freedom On The Run

Kathryn Graham

According to Amnesty International "a new refugee is created every 21 seconds." Many of the world's 15 million asylum seekers flee their homes and countries to escape persecution because of their religious beliefs and practices. "It is estimated that over 75% of the world's population claim adherence to a religion and yet, 2.6 billion people are denied freedom of religion including one million religious prisoners."¹ These facts alone should draw particular attention to 'religious

freedom' as a human rights issue in need of greater public address.

Often, the question of 'religious persecution' is complex in terms of making a significant distinction between persons persecuted based on religion and other types of asylum seekers since the violence may be intertwined with issues of ethnicity race, nationality, political views and/or membership in a specific social group. Nonetheless, it is essential that human rights organizations

and foreign affairs departments not discriminate between groups of refugees based on their religious beliefs. The focus must be on confronting the problem itself. By campaigning against religious rights violations, issuing reports of abuse inflicted on explicit individuals and/or groups and helping to ensure protection for such displaced and vulnerable persons, the democratic mandate of moral and social responsibility is being fulfilled.

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REFUGE

Centre for Refugee Studies
Suite 322, York Lanes
York University
4700 Keele Street, Toronto
Ontario, Canada M3J 1P3
Phone: (416) 736-5663
Fax: (416) 736-5837
Email: refuge@yorku.ca

Vol. 19 • No. 1
July 2000

Editor
MICHAEL LANPHIER

Guest Editor
KATHRYN GRAHAM

Technical Editor
JENNIFER MILLS

Assistant Editors
V. VIJAYAKUMAR & ISRAEL DORON

French Translation
Hamid Rahman

Refuge is dedicated to the encouragement of assistance to refugees by providing a forum for sharing information and opinion on Canadian and international issues pertaining to refugees. *Refuge* was founded in 1981.

It is published six times a year by the Centre for Refugee Studies, York University, Canada. *Refuge* is a non-profit, independent periodical supported by private donations and by subscriptions. It is a forum for discussion, and the views expressed do not necessarily reflect those of its funders or staff.

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Current subscription rates for one year (six issues) are: Canada Cdn.\$50; all other countries U.S.\$60. (Cheques must be drawn on a Canadian or a U.S. bank.) Current volume single issues are available at \$10 per copy.

Please enclose your purchase order or payment.

ISSN 0229-5113

The refugees based on religious persecution around the world are being forced to suffer unspeakable cruelties: displacement and disease, torture, rape, starvation and even death. Alexander Solzhenitsyn (a former target of Soviet persecution for practising freedom of expression and belief) wrote, "though it is impossible to expel evil from the world in its entirety, it is possible to constrain it within each person."² Whether academician or artist, religious cleric or laity, student or teacher, entrepreneur or politician, activism is the universal call to which we must all respond if we are to help those whose lives are being shattered and forced into exile. One refugee

named Renata (who fled the carnage in former Yugoslavia) made the sobering comment. "People are not chairs that can be moved around constantly."³ Lest we forget. Remember the persecuted! ■

NOTES

1. Figures taken from David B. Barrett, ed., *World Christian Encyclopedia: A Comparative Study of Churches and Religions in the Modern World AD 1900-2000* (Oxford, Oxford University Press 1982).
2. Solzhenitsyn, *The Gulag Archipelago: 1918-1956. An Experiment in Literary Investigation* (New York: Harper Collins, 1992), Vol. III, Part 5, Chapter 5, 105.
3. Quote taken from Amnesty International web site on Refugee Issues. □

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In 1998, Toronto singer Kathryn Graham founded MakePeace International in response to the devastating rise in global religious persecution. Personal encounters with tortured friends and their families heightened Kathryn's awareness and ignited her vision to form a creative alliance. An advocate of religious liberty and freedom of expression for all faiths, and traditions, Kathryn has made a commitment to drive into the mainstream the message of MakePeace: To act as a healing agent and a creative communication tool that will educate minds, stimulate conscience and inspire action on behalf of anyone persecuted for his or her faith.

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A Psychotherapist's Perspective on Victims of Religious Persecution: An Interview with Dr. Fern Waterman

Kathryn Graham

Introduction

As a medical consultant and psychotherapist, Dr. Fern Waterman specializes in massive psychic trauma work with Holocaust survivors and their families, torture victims, abuse, combat and incest survivors. An active member of the Canadian Centre for Victims of Torture, Dr. Waterman does extensive research on victims of persecution (ethnic, racial, religious) and provides counselling to such individuals in her private practice. Hence, her medical and psychotherapeutic background offer fresh, sensitive insights into the accounts highlighted below.

Q1: The abstract term "religious persecution" contains a number of meanings and frequently serves only to blur the complicated psychological processes involved. From a psychiatrist's perspective, would you please explain the processes that occur in both the individual and community psyche?

There is a process which occurs politically that isolate the individual and community being persecuted and how these things are brought into play. But, it does not contend with what happens to the minds of the people being persecuted. We know there is a psychological process that occurs whenever anything traumatic appears. The body and the mind have to adapt when there is no way out.

Kathryn Graham is the Creative Director of MakePeace International. The mission of this creative alliance is to utilize the arts to raise public awareness of global religious persecution and encourage action on behalf of its victims" (E-mail address: makepeace@glkobalservice.net).

Dr. Waterman is a senior medical consultant and psychotherapist with the Institute of Family Living in Toronto, Canada. She specializes in massive psychic trauma and works with Holocaust survivors. She is also a member of the advisory council for MakePeace International.

An example of this is the Nazi concentration and death camps. There were many people who saw their whole families butchered or led off to the gas chambers, who did not feel because they knew that they had to survive. It was almost normal to see people being hanged, tortured and beaten. They existed at a vegetative level in order to get through the persecution. Others, who did see it and feel it, constantly went mad. Who could in their own right mind accept that? Others, who attempted to talk about it, gradually made the best adjustment. But again, it was so insidious having to suppress all this that what was normal became incredibly abnormal to anyone sane.

There is always a blur. There is always a continuum of how groups and mass psychology work. You can't just say, "Well those Nazi did it!" The fact is what happened was an extreme of what happens in mobs, in groups, in teams. Mob seduction is what we find acceptable. We persecute because we fear that we are going to lose something our children our ideas will be diluted. There is a need for purity. In every orthodox tradition, this fear exists."

Q2: Is the psychiatric world attentive to the cry of the refugee? How do they view human rights and what does it mean to them?

"I think that the spectrum is as broad as the spectrum is for psychiatrists in that, the medical world should be attentive to the cry of the refugees and theoretically, it is on an intellectual level. How we behave as psychiatric community is another matter. Again, not every doctor is a part of The Canadian Centre for Victims of Torture. In essence, we all should be. We should be sensitive to religious and cultural issues since we are a changing society. If we judge people by our standards, we are never going to understand how to help them right

now. I am in the process of discovering what channels we have opened for refugees-both political and religious. I am trying to hook up with more official channels that we as mental healthcare givers can say; I see the stress in those patients of mine. But, some of that stress is because they do not know if they are going to be landed immigrants or not." It is wonderful for me to be able to listen to them talk about it. But mere talk is not going to provide the solution. They have to get solid help towards this goal of becoming landed immigrants and being accepted into the community as well as being able to validate themselves economically so that they can bring up their families in some kind of peace and security.

In terms of how the psychiatric world views human rights, I know that the medical schools are being taught something about medical ethics. But, whether it is broadened to look at refugee problems, I am uncertain. I would like to add something in terms of the world medical system. A number of German medical students very recently were interviewed and asked if medical ethics (never mind refugee problems) should be studied in their medical schools. The students said "no" because they have so much to learn anyway and that would just be something extra. This is a nation that practised the most horrible experiments that you could possibly imagine-more that the world ever knows. I just took a course in Nazi medicine and even I got sick. And I thought I knew everything. Here these medical students said no to being taught medical ethics because it would be too much work. That to me is very frightening.

Q3: Do you believe the medical and psychiatric communities are properly educated on the issue of refu-



gees being persecuted for their faith? If not, how could this problem be rectified?

No. I think that somehow time slots have to be created so that people in the field of mental healthcare, legal profession and grassroots organizations can be brought to talk about the problems so that when doctors or others in the field of mental healthcare run into trouble, there are channels available to access. I have had to find this out by myself. I certainly didn't discover it through anything I learned in medicine. Remember that this is the social interest aspect of medicine. Medical schools do not teach us about the physiology, structure and function of normal systems and then how they can go awry.

When I practiced a predominant ethnic area like the Jane-Finch corridor, this wasn't offered to me through the family practice unit, which would have been very good entrée for refugee organizations. We just knew that we were servicing a number of people from Portugal, Greece and increasingly from the Muslim countries. But, there was no avenue by which we could get more information. I was simply interested and gathered resources by travelling to their countries and by asking questions. Today, I would be very willing to be asked to come to a medical school and speak about the psychology of persecuted people. The government too has a role to play in rectifying the problem-curriculum and funding.

Q3: Concerning religious persecution, government bodies and economic institutions analyse the larger, societal context being affected. A major part of their response is education and information. The psychiatrist however addresses the issue from the "inside out" by attempting to help the refugee rebuild/rediscover meaning and order in his/her life. Politicians and trade organizations do not see the graves of many victims who have died or the scars on the bodies of those who have been tortured for their faith. But, the psychiatrist bears wit-

ness to the atrocities, which have taken place through storytelling and memory retrieval of the patient.

Q4: Share one account of your professional involvement with a refugee case involving religious prosecution. Describe your overall clinical observations? Any personal reactions?

The work I do and the reason I do it is because it has so much meaning for me both as a caregiver and as a mental healthcare worker as well as in a very human, emotional and spiritual sense. My oldest professional involvement with people know the basic horror story of the Holocaust and what they went through.

What are my reactions each time I hear a story? As I am taken through each individual story, the anxiety and panic that they felt, I am drawn into it. The number of sessions where I am exposed to that original story, I always felt personally rubbed raw. I felt more vulnerable at the end of those sessions, particularly top the rest of the world because I know that could have happened to me. But I have always maintained that the day I stop feeling emotion is the day I should quit my profession.

Rebuilding a life trying to restore trust and help a person heal, is often a very long and difficult process. It is one that is not entirely successful because patients continue to have flashbacks and nightmares that we de-finitely try to alleviate by other techniques such as EMDR which helps patients process their terrible memories in a different way. I have accompanied some Holocaust survivors back to Poland to help them face what has tormented them all these decades. The impact is something I will never forget. It will always be with me. Just going back to visit the horror when the people and the actual persecution itself are not there, was terrible enough for me let alone the people that survived it.

I had one patient (a Holocaust survivor) who made a pact with a friend while in the concentration camp that rather than let certain things happen,

they would kill themselves. The friend with whom she made this pact one day stood up for her rights to one of the guards. And of course, she was tortured and killed for this act in full view of everyone. The girl, who saw what happened to her teenage friend, was also forced into a very sadistic lesbian relationship by one of the guards at the work camp. And she knew that this was one of the things that were in the pact. And yet, she didn't kill herself. Frankly, I am glad that she didn't because she is a wonderful human being who has brought up several children and delightful grandchildren and has contributed even to the volunteer world. The things she has done for our society doesn't make her death worth it.

Like many Holocaust survivors, this woman lived until after we got back from Poland, with the thought and judgement that somehow she survived because of sinfulness. So until a person forgives his/her own self, that shift to healing isn't made either. When I see forgiveness on those kind of levels: for self, for the perpetrators and for the people who seemed to stand aside and let what happened take place, there is a spiritual shift that is beyond anything I as a therapist can do. I may help promote that process, but the patient or the survivor has to make that final shift. And when they do, to me that is a miracle of the human spirit. That is what makes it all worthwhile.

Q5: How can the psychiatric community provide the national and international organizations a mandate to act (in conjunction with the goodwill not only of politicians, academics, artists, economists and multi-faith groups)?

I believe that what I have been collecting and the kind of material I have been doing with both in information and the sort of processes that are going on in patients, means that I have to step out of my office and do something in the community, national and international setting. The mental health field has to get together and liaison with politicians and other people in power and hopefully get enough

respect for ourselves that when we say something, it should mean something somewhere in the right circles.

I know there are some organizations that exist, but national and international organizations should be more prominent in that I am still seeing them out for myself."

Q6: The Holocaust witnessed the unprecedented slaughter of European Jews with the intent to exterminate the race, religion and culture of the people. Describe in personal terms, your own family's struggle to escape the Nazi regime, immigrate to Canada and re-assimilate core beliefs (particularly religious).

My own family struggled to escape the Nazi regime actually was precedent of the regime in that they fled to Canada to escape anti-Semitism (which culminated in the Holocaust) and the absolute grinding poverty in which they lived in Poland. They came over in the 30s after Hitler's rise to power. But, they did not foresee the Holocaust as it happened. My grandfather's whole family (with the exception of a handful of people) was murdered in the Holocaust. So we were profoundly affected by it personally and as Jews knowing what happened to our people.

Our family has been having a struggle to come to terms with what happened. I was witness to the guilt that my grandfather lived with because he was unable to get his family over to Canada in time. In subsequent visits back to Poland, I have been able to trace how my relatives were marched to a death camp. That was a horrible and very sad journey for me. But it was important that I find out exactly what happened to them. So we lived in the shadow of the Holocaust almost daily in that, Jews have a tradition of naming their children after relatives who have already died.

My father had many tales to tell of their experiences in Poland. For instance, at Easter time everybody knew that they had to lay low. The Jewish portion of the village didn't come out for a few days because people would stream out of the churches (mostly

young men who were thugs anyway) for Christ killers to beat up.

In terms of re-assimilating our core beliefs, I don't know whether we have comprehended everything. We certainly believe in the tradition of being Jewish and all the moral structure of Judaism. We like to carry on the traditions of Sabbath and kosher. Another point to mention is that I think because we live with the collective unconscious of the Holocaust and everything that proceeded it, a lot of Jews (including myself), live unconsciously with one eye over their shoulder. We are more sensitive to persecution. Yet at the same time, we carry on with our lives not letting it impede us because we all have a task that through God, to become the best we can be.

When Jews came to Canada, they clung tenaciously to the fact that they were Jews and were going to stay that way. But, in order to survive and secure work in a more secular society, many gave up a lot of their traditional practices. Like Maslow's hierarchy, now that mere survival seems to be a problem of the past, we can afford (thanks to democracy) to observe the other rituals. Their meaning has made living Jewishly and spiritually much more meaningful to me.

Q7: In the Old Testament, Jeremiah is a celebrated figure who is referred to as the "weeping prophet" because he was sensitive, tenderhearted and wept over the suffering of his people being carried off into exile. He also warned of denial of saying, "peace, peace" to avoid seeing their problems. Who are the modern day prophets on behalf of today's 23 million refugees? Do they weep over they being persecuted?

Just as Neville Chamberlain said, "peace in our time" Our politicians are doing the same with Kosovo. Who is doing anything about it? In that respect, I am a modern day prophet because I don't hold with what is being said and only done in a partial way and that is; I do mourn the innocent people who were killed in the bombings which NATO carried out. But, I

am very unhappy with what NATO did because I don't think you should have any truck dealings with the devil. People like Milosevic are monsters. He's a thug. If NATO was really going to get Slobodan to do some kind of giving in, then ground troops should have been sent in. They could have gotten him. Millosevic could be standing in front of the war crimes tribunal today. He should not be given status in negotiating at all.

If we know anything about human behaviour, then we know that what is going on now is a continuation of what was going on during the Second World War and before Tito. Tito was so charismatic, he suppressed everything. And so everything that wasn't solved before the war and that was going on in the Balkan states, is now continuing with the same hatred and the same kind of primitive thinking. It is primitive thinking that involves collective punishment that seems to be one aspect of why they are pillaging, murdering and cleansing.

An example as to what I think of a prophet comes from a whole other field, not in the human rights arena. But, it is a spiritual sense of how people should behave. And that is through the eyes of a biologist whose name escapes me. I was 16 years old at the time and in first year university taking zoology course. This scientist talked about how our genetic material can be affected by the things in our environment. He emphasized the need to remember that we are the guardians of our genetic material. And how we treat ourselves and the world around us (physically, emotionally and psychologically) will determine what good shape that genetic material will be in. This illustrates my idea of who is a prophet. And if we treat people well, then they won't feel displaced and be forced into exile. They won't be tortured or persecuted for their beliefs, which ties in with the refugee issue. ■

The Bahá'ís Of Iran

Margaret Bremner

Abstract

The Bahá'ís of Iran concerns the Iranian Bahá'í situation since the Islamic revolution in Iran in 1979-1980. This article begins with a brief résumé of events in 1980 and 1981 which led to the Canadian Bahá'í community becoming involved in the private sponsorship of refugees. This article then discusses the Canadian Bahá'í refugee program of the 1980s, including the relationship of the Bahá'í community of Canada with the Canadian government and the growth of the initially national program into one of global proportions. Reasons for the persecution of Bahá'ís in Iran are explained, as is the nature of the persecution. In the 1991 secret Government memorandum the Bahá'í Question is noted, and details are provided regarding last autumn's raids on homes involved with the Bahá'í Institute for Higher Education. The reader is then brought up to date regarding the current private sponsorship of refugees by the Bahá'í Community of Canada. This article concludes with a short comment regarding remedies.

Résumé

Les Bahá'ís d'Iran examine la situation des Bahá'ís en Iran depuis la révolution islamique de 1979-80 dans ce pays. Cet article commence par donner un bref aperçu des événements survenus en 1980 et 1981, et qui amenèrent la communauté bahá'ie canadienne à s'engager dans la voie du parrainage privé de réfugiés. L'article examine ensuite le programme Canadien bahá'ie de parrainage de réfugiés des années 80, y compris les relations de la

communauté bahá'ie canadienne avec le gouvernement canadien et la manière dont un programme, qui avait débuté au niveau national, a fini par prendre des proportions globales. Les raisons derrière la persécution des Bahá'ís en Iran sont expliquées, ainsi que la nature de ces persécutions. La mention de la Question bahá'ie dans le mémorandum secret du gouvernement de 1991 est notée, et des détails sont donnés sur les descentes des lieux qui ont eu lieu à l'automne dernier chez des familles associées à l'Institut bahá'ie d'éducation supérieure. Enfin, les informations les plus récentes sur le programme courant de parrainage de réfugiés par la communauté bahá'ie du Canada sont présentées au lecteur. Cet article conclut avec un bref commentaire sur des solutions possibles.

Introduction

Beginning in 1979, fanatical elements steadily gained control of the Islamic revolution in Iran. It became increasingly apparent to Bahá'ís elsewhere that many of their fellow believers in that country were in serious danger, particularly if they had been visibly active as Bahá'ís. In June of 1980, executions of prominent Bahá'ís began.

In early 1980, as a direct result of the Islamic revolution, a number of Iranian Bahá'ís residing in Canada began to seek the assistance of their national administrative body – the National Spiritual Assembly – in securing the entry to Canada of friends and relatives who were stranded overseas without travel documents.

In the summer of 1981, the Iranian Ministry of Foreign Affairs circulated instructions to its embassies around the world that they should “carefully prepare a list of names of all the Bahá'ís residing within [their] jurisdiction” and “refrain from extending the passports of those individuals.”¹ If Iranian Bahá'ís who were abroad returned home, they would face persecution be-

cause of their religion; if they stayed abroad until their passports expired, and were not in an asylum-granting country, they became stateless. They were bona fide Convention refugees. The Bahá'ís in Iran were not suffering under a repressive regime; they were being actively persecuted by that regime. This marked the beginning of a large wave of Bahá'í refugees.

Recognition of Bahá'í Refugees Following the Islamic Revolution

Canada has demonstrated its commitment to promoting refugee rights through its willingness to consider cases on their unique merits, rather than simply applying the letter of the law. Canada was the first country to draw attention to the severe persecutions suffered by the Bahá'í community of Iran when, in both July 1980 and June 1981, the House of Commons passed strongly worded resolutions urging the government to bring the issue to the attention of the United Nations. This was the first intervention of its kind to be made by a national legislature. Later, Canada was the first country in the world to accept, as refugees, women who were fleeing persecution based on gender.

In late 1980, representatives of the National Spiritual Assembly of the Bahá'ís of Canada met with senior officers of both the Department of Immigration and the Department of External Affairs to discuss landed immigrant status in Canada for Iranian Bahá'ís in various countries who had not been able to renew their passports. The National Spiritual Assembly had identified three categories that were acknowledged by the Department as deserving of consideration:

1) those already in Canada and having difficulty with their immigration process; 2) those in an exposed position

Margaret Bremner has been a member of the Bahá'í faith for over twenty-five years. Since 1988, she has been working at the Bahá'í Community of Canada's Ottawa Office, focusing on refugee matters and sponsorships undertaken by the Bahá'í Community of Canada under its Master Sponsorship Agreement.

overseas and who had relatives in Canada; and 3) those with no relatives in Canada but who appeared similarly vulnerable.

The National Spiritual Assembly told the government that it would verify and guarantee the Bahá'í status of all applicants and guaranteed that the Iranian Bahá'í immigrants would not become public charges.

Private Sponsorship by the Bahá'í Community of Canada

The National Spiritual Assembly signed an umbrella agreement with the then Department of Employment and Immigration in October 1980, under which it assumed full responsibility for refugee sponsorships undertaken by its constituent groups. Thus, at the outset, this national body was, itself, the sponsor of all the Bahá'í refugees who came to Canada.

In 1982 there were 20,000 Bahá'ís in Canada, living in 1500 localities. In 325 of those localities there were enough adult Bahá'ís to permit the annual election of an administrative body called a Local Spiritual Assembly. Some of these Local Spiritual Assemblies became the constituent groups of refugee sponsorship. Canadian immigration authorities left the decision of where the Bahá'í refugees would settle, entirely in the hands of the National Spiritual Assembly. Very careful consideration was given before a local community was enlisted as a constituent group.

Fund-raising was centralized and funds for the sponsorships were distributed to the local groups from a centrally administered relief fund. Settlement responsibilities, however, were localized. Much support came from local in-kind contributions. The resultant costs were approximately half of what was spent on basic living allowances for government-sponsored refugees under the Indochinese refugee program. The refugees were given these monies as an interest-free loan from the national Bahá'í fund, to be re-paid over a long period of time, or which, under special circumstances, could be waived.

In November 1982, the National

Spiritual Assembly was able to report to the Department of Immigration that over 75% of the 200 Iranian Bahá'ís who had arrived thus far, had already been able to find employment. This fact moved the government to suggest that it would be interested in setting up its own Iranian Bahá'í settlement program, to run parallel to the one operated by the Bahá'ís themselves. By the summer of 1983, Canadian immigration officials in various foreign capitals were prepared to provide informal references that might induce embassies of other countries to take a favourable view of Iranian Bahá'í refugee applicants. This was particularly the case with regards to other Commonwealth countries.

Canada's Department of Immigration led the world in admitting and resettling Bahá'í refugees who had left Iran during the early years of the Islamic Revolution. In 1983 and 1984, through the efforts of Bahá'í representatives and Canadian government officials, the refugee program broadened beyond the Commonwealth and the United States to include Scandinavia, western Europe and Latin America. Several countries who had established traditions of not accepting refugees (notably Ireland and Switzerland) relented in the case of Iranian Bahá'ís.

By the summer of 1984, over 1,000 Bahá'í refugees had been resettled in Canada in 150 different localities. Almost all were either employed or registered at college or university. Internationally, the Bahá'ís felt that the time had come when a worldwide agency was needed, an International Bahá'í Refugee Office was established with its headquarters in the national Bahá'í Centre near Toronto. Five years later, at the end of 1989 when this office was phasing out its work, over 10,000 Iranian Bahá'ís had been successfully resettled in 25 countries.

Why are the Bahá'ís in Iran Persecuted?

While the Bahá'í Faith is not well regarded in most Muslim countries, such is particularly the case in Iran. The Bahá'í Faith originated in Iran (then Persia) in the middle of the nineteenth

century and is now that country's largest religious minority. Its followers have been persecuted to various degrees since that time.

The September/October 1982 issue of "Refuge" periodical stated that "Persecution of the Bahá'ís is not new to Iran. There was some persecution of them in the 1950s under the Shah. In the revolution of 1906-11, they were accused of being the conspiratorial force behind the constitutional movement by one side and charged with promoting authoritarianism by the other. Ironically, this came about because their religious principles command them to be loyal supporters of their government while remaining aloof from partisan politics and to promote an international world order. In fact, since the Bahá'í religion was founded in 1844, Bahá'ís have endured very serious persecution, killings and pogroms in Iran."

Generally, Muslims believe that divine revelation ceased after Muhammad and that the only true religions are Islam and those which predate it. The Bahá'í Faith teaches that divine revelation is continuous and that all the great religions are divinely inspired and represent successive stages in the spiritual evolution of humanity and society - an evolution which will continue into the future with the advent of new Messengers or Manifestations of God. For this reason, the claims of the Bahá'í Faith are viewed as a challenge.

The location of the Bahá'í World Centre in Haifa, Israel, is regarded by Iranian authorities as evidence that the Bahá'í Faith is not a religion at all, but a political movement with Zionist sympathies and Bahá'ís in Iran are commonly charged with Zionist espionage activities. Bahá'u'lláh, the Prophet-Founder of the Bahá'í Faith, was exiled from Iran by the Persian and Ottoman governments of the time, successively to Baghdad, Constantinople, Adrianople, and finally - in 1868 - to what was then the prison city of Akka, near Haifa. The designation of the Haifa/Akka area as the world centre of the international Bahá'í community dates

from this period, the latter decades of the 1800s. The modern state of Israel was established in 1948, several decades later.

The Bahá'í Faith has no clergy; rather, its communities are governed by elected local, national and international bodies. On 3 September 1983, these Bahá'í institutions were officially banned in Iran – a total of 400. Communications by the Bahá'ís of Iran with Bahá'ís and Bahá'í institutions in other countries often result in charges of espionage and crimes against national security, particularly when that communication is with the Bahá'í World Centre in Haifa.

In addition, some Bahá'í teachings and practices, such as equal rights for women and men, the compatibility of science and religion, the administration of the Bahá'í community by elected bodies and the abrogation of a professional clergy, are rejected by – and arouse the anger of – Islamic fundamentalists.

What is the Nature of the Persecution of Bahá'ís in Iran?

Discrimination against Bahá'ís in Iran, by reason of their faith, involves the denial of the most fundamental of civil, political, economic, social and cultural rights. Identified as members of a misguided group, prejudice amongst the population has been fomented against them by the Muslim clergy and the Iranian government to the extent that today the word 'Bahá'í' has become an obscenity. Authorities often use the Bahá'í community as a scapegoat. Since 1979, more than 200 Bahá'ís have been killed and another 15 have disappeared and are presumed dead.

In Iran, most government application forms have a 'religion' column which must be completed using one of the four faiths officially recognized in the Constitution, which was drawn up in April 1979. The Bahá'í Faith is excluded from the Iranian Constitution and as a consequence Bahá'ís are frequently denied access to those government-related goods, services and employment opportunities afforded other Iranian citizens. Bahá'ís have been dismissed from gov-

ernment positions, their pensions have been denied and in some cases pensions and salaries which had already been paid, were demanded returned, with the threat of imprisonment for noncompliance. Bahá'ís have been specifically denied access to certain professions, notably the legal profession; Bahá'í lawyers' licenses were revoked in 1983. Business licenses issued to Bahá'ís by the Department of Properties have been annulled.

The Iranian government does not grant legal recognition to Bahá'í marriages, resulting in many Bahá'í children being regarded as illegitimate. Charges of prostitution, adultery and immorality are other results. In divorce cases, where the mother is Bahá'í and the father is not, Bahá'í mothers are frequently denied custody of their children. The Iranian judiciary often refuses to issue a probate and thus Bahá'í heirs are denied their inheritance. Iranian Civil Law (Article 881) states that "An infidel cannot inherit from a Muslim and if among the heirs of an infidel there exists a Muslim, the heirs of the infidel will not benefit at all from the inheritance, even if they are higher up in the lineage than the Muslim." Bahá'ís are routinely denied the due legal process of written charges, written judgements, and legal representation. The law regarding compensation for any offense against a person is not applied if the victim of the crime is a Bahá'í.

Bahá'í places of worship have been confiscated and destroyed and graveyards have been appropriated and desecrated. Bahá'ís have been evicted from their homes and properties. The assets, properties and buildings of Bahá'í charitable and humanitarian foundations have been seized and no compensation has been provided.

Current Situation of the Bahá'ís of Iran: "The Bahá'í Question"

In February 1991 a secret Iranian Government memorandum, "The Bahá'í Question", was drawn up by the Supreme Revolutionary Cultural Council and signed by Iranian Supreme Leader, Ayatollah Ali Khamenei. Mr.

Reynaldo Galindo Pohl, then the United Nations' Special Representative investigating the human rights situation in Iran, obtained this document in 1993 and made it public. The memorandum firmly established a subtle government policy aimed essentially at grinding the Bahá'í community into non-existence by forcing Bahá'í children to have a strong Islamic education, pushing Bahá'í adults into the economic periphery, forcing them from all positions of prominence or influence and requiring that Bahá'í youth "be expelled from universities, either in the admission process or during the course of their studies, once it becomes known that they are Bahá'ís."

Islamic fundamentalists regard Bahá'ís as heretics and those who convert from Islam to the Bahá'í faith as apostates for whom Islamic law prescribes the death penalty. Informing others of the teachings and tenets of the Bahá'í Faith is forbidden.

Arbitrary arrests of Bahá'ís continue, with a marked increase in short term arrests since 1996 in various parts of the country. Bahá'ís have been arrested for organizing informal classes for their children and youth in order to instruct them in the teachings of their faith. Two individuals are currently serving three year jail terms for providing moral education classes to Bahá'í youth. Twelve youth arrested with their teachers were given five-year suspended sentences and were warned that they would serve their terms if they ever attended another moral education class. More than 200 Bahá'ís have been detained for periods ranging from 48 hours to six months. Fifteen individuals remain in prison, by reason of their membership and activities in the Bahá'í Faith.

The Bahá'í Institute for Higher Education (B.I.H.E.)

Since 1980, young people who declare their Bahá'í identity have been systematically excluded from colleges and universities in Iran. For a few years they were even prevented from attending the final year of high school;

this restriction ended in 1998. Deeply concerned at seeing an entire generation languish without the opportunity for higher education, in 1987 Bahá'ís in Iran established their own independent, full-fledged, yet completely decentralized, university system. The Bahá'í Institute for Higher Education was not an "underground university" since its existence was well-known to the authorities from its earliest years.

Of the roughly 1500 students who applied for admission in its first year of operation, 250 were accepted. By 1998 approximately 900 students were enrolled. At its peak, the Institute had more than 150 faculty members, of whom 25-30 were professors who had been fired from Government-run universities following the 1979 Islamic Revolution. Other faculty included professionals who donated their time to teach the students. None of the faculty was paid; all viewed the work as a form of community service.

In late September and early October 1998, as was widely reported in the international news media, agents of the Iranian Government staged a series of sweeping raids on 500 Bahá'í homes. They arrested 36 members of the B.I.H.E.'s faculty and staff and confiscated much of its equipment and records. Ethan Bronner, writing in the *New York Times* on October 29, 1998, said that the raids "brought to an abrupt end an elaborate act of communal self-preservation."

Until the Government raids, the B.I.H.E. offered Bachelor's degrees in ten subject areas: accounting, applied chemistry, biology, dental science, civil engineering, computer science, law, literature, pharmacological science, and psychology. The teaching was done principally by correspondence, although for specialized scientific and technical courses, small-group classes were usually held in private homes. The Institute also had a few laboratories, operated in privately owned commercial buildings in and around Tehran.

To informed observers, these arrests and confiscations were clearly part of a long-standing and centrally

orchestrated campaign by Iranian authorities to deal with Iran's Bahá'ís "in such a way that their progress and development are blocked" - as stated in the secret 1991 Government memorandum that instructed authorities on how to deal with "the Bahá'í question".

International and Canadian Response

Since 1985, the United Nations General Assembly has adopted resolutions critical of Iran's human rights abuses. In 1997 and 1998 these resolutions called for the implementation of recommendations made by Special Rapporteur Abdelfattah Amor with respect to the restoration of the rights of not only the Bahá'ís in Iran, but of all religious minorities in that country. Special Representative Maurice Copithorne in his most recent report to the United Nations, while noting some improvements in some human rights areas, commented that the situation of the Bahá'ís in Iran had not improved, and indeed perhaps it had worsened.

Over the past several years the Canadian Government, through its Department of Foreign Affairs, has voted for strong resolutions both at the General Assembly of the United Nations and at the annual sessions of the United Nations Human Rights Commission in Geneva. On October 7, 1998, Canadian Members of Parliament adopted an all-party motion that the House "express profound concern over the recent grave attacks on the Iranian Bahá'í community" and called "upon the government of Iran to end their oppression of the Bahá'í community". This action followed quickly on the heels of press releases from the Minister of Foreign Affairs Lloyd Axworthy calling upon the "judicial authorities to end their oppression of the Iranian Bahá'í community and respect the rights that are provided for the Bahá'ís under the Iranian constitution."

Private Sponsorship by the Bahá'í Community of Canada Today

For many years, Bahá'ís holding Iranian citizenship were unable to obtain

Iranian passports. Recently, it has become possible for some Bahá'ís to be granted these documents after considerable effort and a lengthy delay. In some cases it has taken as much as seven years of repeated applications and inquiries. Passports are often issued with unwarranted restrictions - whether the application is made in Iran or abroad. At one time, in order to leave Iran via the Tehran airport, it was necessary to sign a form stating that one was not a Bahá'í. Thus, many Bahá'ís travelled overland, initially to Pakistan or Turkey.

The National Spiritual Assembly of the Bahá'ís of Canada holds a Master Sponsorship Agreement for the sponsorship of refugees with the Department of Citizenship and Immigration. While the numbers are nowhere near as sizeable as during the crisis of the early eighties, the Bahá'í Community of Canada continues to privately sponsor Bahá'í refugees on a diminished scale, approximately half-and-half 'named' and 'unnamed' refugees.

In mid-1997 the National Spiritual Assembly of the Bahá'ís of Canada opened an Ottawa Office of the Bahá'í Community of Canada. One of the mandates of this office is to handle refugee matters. The Ottawa office assists the National Spiritual Assembly in the identification of an appropriate local community to act as constituent group. Once a local community has agreed to provide refugee assistance, the staff works with the community through to the arrival of the refugee and on until the end of the one- or two-year sponsorship period. In 1999, under the Master Sponsorship Agreement, some local Bahá'í communities offered to sponsor Kosovar refugees.

Remedies

The Canadian Human Rights Commission's 1998 Annual Report, in the section on Race, Religion And Ethnic Origin, states, "With the exception of Aboriginal people, we are a country composed of immigrants and their de-

scendants. Every year, thousands of newcomers, including many refugees, come to Canada to begin new lives. They have prospered, but so too has Canada. We are richer because of the talents and skills they have brought with them and it would be hard to imagine our country without their contributions."

This last sentence ultimately holds true for any country, city or group which has, through whatever circumstances, diversified its population. We are all necessarily richer through exposure to different languages, colours, names, faith traditions, modes of dress, celebrations, foods and ways of doing things. We would not think of Irish policemen in New York City were it not for the potato famine. Marco Polo's encounter with noodles in China gave Italians their pasta. Discarded Japanese packing materials provided European artists with the idea of wood-block printmaking.

We need to recognize our planet as the homeland of one human family. To achieve the conditions necessary for a peaceful, sustainable and advancing civilization, diversity must be welcomed within a fundamentally transformed understanding of our relationship to one another. A recent document issued by the Bahá'í International Community's Office of Public Information says that "The central spiritual issue facing all people ... whatever their nation, religion, or ethnic origin, is that of laying the foundations of a global society that can reflect the oneness of human nature. The unification of the earth's inhabitants is neither a remote utopian vision nor, ultimately, a matter of choice. It constitutes the next, inescapable stage in the process of social evolution, a stage toward which all the experience of past and present is impelling us. Until this issue is acknowledged and addressed, none of the ills afflicting our planet will find solutions, because all the essential challenges of the age we have entered are global and universal, not particular or regional."²

As we respond to the needs of the rising tide of refugees world wide, let us help others welcome diversity in our communities and promote the concept of our planet as the home of all of humanity. As Bahá'u'lláh, the founder of the Bahá'í Faith, stated over a hundred years ago, "the well-being of mankind, its peace and security are unattainable unless and until its unity is firmly established."³ ■

Notes

1. From a circular letter from the Iranian Ministry of Foreign Affairs, dated 21/5/1360 (12 August 1981), and quoted in "Refuge" magazine, September/October 1982.
2. "Who is Writing the Future? - Reflections on the Twentieth Century", section II.
3. "Gleanings from the Writings of Bahá'u'lláh", section CXXXI. □

Background Information on the Centre for Refugee Studies

The Centre for Refugee Studies (CRS) is an organized research unit of York University. Founded in 1988, the Centre for Refugee Studies is successor to the Refugee Documentation Project created in 1981 for the conservation and analysis of research documents and data collected by Operation Lifeline during the crisis of Indochinese Boat People. In 1991, CRS was designated as a Centre of Excellence by the Canadian International Development Agency (CIDA).

The Centre for Refugee Studies fosters interdisciplinary and collaborative research in all of its undertakings. The efforts of CRS are focused in areas related to a comprehensive research programme expanding from theoretical to institutional research. In carrying out this research, CRS networks with Canadian and international development agencies and academic institutes. CRS invites scholars from abroad to participate in the research. Canadian and international students are supported by CRS to undertake field studies and conduct related research. Joint research activities with institutions in the developing countries are underway. CRS plays a significant role in an advisory capacity with Canadian government and other agencies.

In our education initiatives, the general Certificate programme allows students in the undergraduate programmes (Faculty of Arts of Environmental Studies, Atkinson College and Glendon College) to register specifically for the Certificate and to specialize formally in the area of Refugee and Migration Studies and to be awarded the Certificate concurrently with the BA or BES. Students who already have an undergraduate degree can be admitted as special students by the relevant faculties and complete the requirements to receive a Certificate in Refugee and Migration Studies. The Graduate Diploma programmes offer incentives and recognition to students whose academic focus is on any of the refugee related issues. The Graduate Diploma programme was developed and passed by the Graduate Faculty Council and subsequently by the York Senate in April 1991. The Diploma is awarded concurrently to the graduate student who completes the diploma and the degree requirements.

Our communications initiatives involve acquisition efforts through data collection in our Andrew Forbes Resource Centre, a comprehensive publications programme including the periodical REFUGE and a full programme of seminars, workshops, and conferences.

The Importance of Prioritizing The Issue of Religious Freedom

Elizabeth Batha

Abstract

This article explores the nature of the right to freedom of religion as well as the nature and the extent of growing religious intolerance in the world today. The need to prevent religion based violence and displacement that occupy the contemporary international politics, this article seeks to push this concern further.

Résumé

Cet article examine la nature du droit à la liberté religieuse, ainsi que la nature et l'étendue de l'intolérance religieuse grandissante dans le monde d'aujourd'hui. L'article tente de faire monter d'un cran notre niveau de préoccupation quant à la nécessité d'empêcher que ne se produisent la violence religieuse et les déplacements de populations - préoccupations qui retiennent l'attention de la politique internationale contemporaine.

The desire to enjoy the right of religious freedom has proven itself to be one of the most potent, contagious and influential forces ever known throughout history.¹ Yet the enjoyment of religious freedom has also proven to be one of the most elusive and fragile of all human rights through the centuries.²

It is a striking fact that, despite the bloody history of religious intolerance, there have been more Christian martyrs in this century alone than in the previous nineteen combined.³ Believers around the world continue to face the most severe forms of persecution and to suffer death, torture, maiming, rape, assault, detention, enslavement, forced labour and a

Elizabeth Batha, LL.M., is the Advocacy Consultant for Christian Solidarity Worldwide UK, an organisation working for the religious liberty of persecuted Christians and helping others suffering repression, children in need and victims of disaster around the world.

host of other human rights abuses and forms of discrimination simply for holding their religious beliefs.

The numbers of those affected by religious issues alone compel the prioritisation of religious rights. It is estimated that over 75% of the population of the world claim adherence to a religion.⁴ Yet it is also estimated that 2.6 billion people are denied freedom of religion and that there are over 1 million religious prisoners and 159,000 Christian martyrs a year, a figure which is expected to rise to 210,000 by the year 2025.⁵

Yet the cry of the victims often goes unheard or unheeded. The complexity and sensitivity of the subject-matter frequently result in the issue being sidelined or completely sidestepped. The comparative responses of the international community to the phenomena of racial and religious discrimination demonstrate this paralysing fear of addressing issues pertaining to religion. Although the two problems were initially jointly prioritised at the United Nations, they were subsequently separated due to factors predominantly unrelated to their relative importance.⁶ Whilst there are a convention, treaty body, Special Rapporteur, day, week, three decades and now a forthcoming World Conference dedicated to racial discrimination, there are no such mechanisms in place for religious discrimination, which is dealt with only by a Special Rapporteur.

In addition to the compelling need to ease the suffering of victims of abuses, there are other strategic reasons why the right of freedom of religion must no longer be allowed to remain in the penumbra of human rights discourse. It is crucial that religious liberty must come to be recognised as critical both in terms of its intrinsic importance and in its significance in cultivating conditions neces-

sary for peace and the enjoyment of all human rights.

The fundamental importance of the right to religious freedom is due in part to the fact that religion often forms the foundations of an individual's and a people's sense of identity, perspective and outlook on life. The very personal nature of the right qualifies it for special attention. If the state will not respect the most intimate beliefs of individuals, it will be unlikely to accord respect to other less personal rights. Religious liberty is therefore valuable as a litmus test for the well being of human rights generally.

Religion is also significant as the major inspiration for the belief in the existence of an inherent dignity in mankind and spring from the concept of doing good to one's neighbour. The existence of religious life in a country can be an important factor in providing the motivation and conditions necessary for the realisation of civil and political rights, the provision of many of the social, economic and cultural rights and the understanding of responsibility and stewardship required for environmental and developmental rights.

The protection of religion can also be important in establishing or protecting peace, democracy and justice as religious institutions or leaders are often at the forefront of the struggle against oppression. Where they have no freedom to speak out the flame of hope for a just and democratic society dims or even dies. The position of the Catholic Church in East Timor is an example of how important the role of religious bodies can be in such situations.

Beyond being a voice for the people, religious groups and individuals are often the only or the best mediators in situations of conflict and tension. Examples of the unique role religious



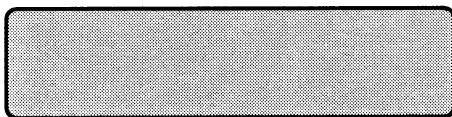
communities can play in this respect include those seen in South Africa, Rhodesia/Zimbabwe, the Philippines, El Salvador, Guatemala and East Germany.⁷

It is increasingly important to address the issue of religious intolerance now due to the changing nature of conflict in the world today. As Professor Samuel Huntington has propounded, with the demise of the Cold War there has been a shift in the causes of confrontation and the intra-civilisational clash of political ideas is now being replaced by an inter-civilisational clash of culture and religion.⁸

Analysis of the major conflicts taking place today has shown that the failure to accommodate religious and ethnic differences is one of the primary catalysts for violence. The religious elements in the tragic conflicts in the former Yugoslavia, Sudan, the Middle East, Algeria, Sri Lanka and Northern Ireland, amongst many others, demonstrate the importance of this factor.

The global resurgence in religion in the late twentieth century and the increasingly crucial role that religion is expected to play in international affairs in the future, together with the increase of religious and cultural strife, further advance the argument that the issue of religious freedom should be prioritised in human rights discourse and international relations.

Accordingly greater priority and resources to the issue of religious freedom will help to protect individuals from intolerance and human rights abuses and prevent the violence, displacement and war that lie in their wake. The adoption of measures to address the issue with both foresight and determination will help to prevent both immeasurable suffering and loss of life and the wasteful employment of resources in solving problems arising from prior inadvertence in this key area. ■



Notes

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Religious Persecution and Mass Displacements

Pedro C. Moreno

Abstract

Mass displacements due to religious persecution continue in several countries around the world. This article, while detailing instances of mass displacements due to religious persecution, emphasizes that religion is often one factor and not necessarily "the" factor in these conflicts. Listed are cases which include Iran, where the "Iranian Diaspora" is estimated at 4 million people in 1999. Of these, 408,000 emigrated or were displaced because of religious persecution. In Egypt, though there are still about 6 million Coptic Christians their numbers are constantly decreasing. Other instances include southern Mexico, where in the last 30 years over 25,000 Chamula Indians, who had become Evangelicals, were expelled from their homes and lands by local "caciques" or informal rulers. What will it take to stop mass displacements due to religious persecution? When will we learn to respect each other and live together, in spite of our differences? These questions still remain unanswered.

Résumé

Des migrations en masse causées par des persécutions religieuses continuent à se produire dans plusieurs pays du monde. Tout en examinant des cas précis de migrations en masse causées par des persécutions religieuses, cet article souligne le fait que souvent la religion ne constitue qu'un des facteurs - et pas nécessairement le plus

important - dans ces conflits. Parmi les cas mentionnés se trouve l'Iran, où la « diaspora iranienne » était estimée à 4 millions de personnes en 1999. Parmi elles, 408,000 ont migrées, ou furent déplacées, à cause de la persécution religieuse. En Égypte, malgré qu'il y reste encore environ 6 millions de chrétiens coptes, leur nombre est en déclin constant. D'autres exemples concernent la région méridionale du Mexique où plus de 25,000 Indiens Chamula, qui s'étaient joints aux églises évangéliques, furent expulsés de leurs foyers et de leurs terres par les « caciques » locaux, ou chefs officiels. Que faire pour mettre fin aux déplacements en masse causés par les persécutions religieuses? Quand apprendrons-nous à nous respecter les uns les autres et à vivre ensemble en dépit de nos différences? Ces questions restent toujours sans réponses.

Introduction

During a workshop on psychological approaches to conflict at Harvard, one of the participants identified himself as a Protestant activist from Northern Ireland. During a break I asked him, "Why are Protestants and Catholics still fighting in Northern Ireland if you believe in the same God?" His response still startles me, 12 years later. He simply said, "What God? I don't believe in God. I am an atheist."

Whether it is Northern Ireland, the Arab-Israeli conflict, Quebec, Kosovo, Sudan, East Timor or Kashmir, oftentimes religion is blamed as the source, or at least as a predominant factor for the origination and continuation of these conflicts.

The fact is that while religion, in varying degrees, does play a role in many of these conflicts --whether identified as religion itself or as part of the larger concept of "ethnicity" --there are several other factors such as territorial disputes, access to resources, ancient antagonisms, racial

differences, etc., that can be as prominent as religion in the origination and continuation of these disputes.

Having said that, I would like to highlight specifically the religious aspect present in certain conflicts and within that context the mass displacement that has followed due at least in part to religious persecution. Recently this phenomenon has also been broadly termed "ethnic cleansing."

To this day, religious refugees continue to engross the ranks of the millions of displaced persons (internal displacement alone affects some 25 million people worldwide¹) all around the world.

I will briefly highlight the situation in the Middle East, Africa and the Western Hemisphere as exemplified by the case studies of Iran, Iraq, Egypt, Sudan, and Mexico.

Iran

Though the Iranian Constitution declares that "religious minorities" such as Jews, Christians, and Zoroastrians are "protected," it also states that the "official religion of Iran is Islam and the sect followed is Ja'fari Shi'ism."²

Iranian Christians International, a human rights organization based in Colorado Springs (U.S.) reports that the "Iranian Diaspora" is estimated at 4 million people in 1999. Of these, 408,000 (including Bahai's, Armenians, Jews, Zoroastrians, Muslim converts to Christianity and others) emigrated or were displaced because of religious persecution.³

Approximately 90 percent of the population of Iran comprises of Shi'a Muslims. The Ministry of Islamic Culture and Guidance closely monitors religious activity. Though Christians and Jews are legally permitted to practice their religion and instruct their children, they are forbidden from proselytizing Muslims.

Pedro C. Moreno is a lawyer and author. He currently serves as Senior Director of Justice Initiatives with Prison Fellowship International. He has worked extensively with faith-based organizations. His articles on religious issues have appeared in several publications including *The Wall Street Journal*. Recently he contributed a chapter to the book *Religious Freedom and Evangelization in Latin America*, Editor Paul E. Sigmund, Professor of Politics at Princeton University, Orbis Books, 1999, www.orbisbooks.com.



Iraq

Reportedly some 15,000 Iraqi Christians have fled Iraq over the past five years to nearby Turkey, Greece and Jordan.⁴ Many of these Christians who have sought refugee status with the United Nations High Commissioner for Refugees (UNHCR), have been denied that status and were forcibly returned to Iraq.

In cases involving Muslim converts to Christianity and as Islamization rises, Iraqi courts are less likely to show leniency to repatriated Christians. Moreover, violent retaliation by Muslim family members against converts to Christianity is less likely to result in criminal charges. The government has taken measures to curb Islamic extremism by providing an ostensible protection for religious minorities. However, these protections are less likely to be enforced as Islamization becomes widespread.

Egypt

There are still about 6 million Coptic Christians in Egypt. But their numbers are constantly decreasing. Freedom House reports that due to terrorism from radical Muslim groups, abuses by local police and security forces and government policies that restrict and discriminate against Christians, the latter have "an emigration rate three to four times that of Muslims."⁵ It is estimated that over a million Copts have left Egypt in the past thirty years.

The U.S. State Department states that under the Egyptian Constitution "Islam is the official state religion" and that "religious practices that conflict with Islamic law are prohibited."⁶

Sudan

Since 1986, the Arab-Islamic government in Khartoum has openly declared "holy war" against Christians and other non-Muslims of southern Sudan. At one point in 1989, Uganda was hosting about 225,000 Sudanese refugees who left when fighting escalated between Sudanese forces and the government army (many of them have since

returned to Sudan. Another 50,000 were internally displaced in Sudan.⁷

Mass displacements due to religious persecution continue in several countries around the world. This article, while detailing instances of mass displacements due to religious persecution, emphasizes that religion is often one factor and not necessarily "the" factor in these conflicts.

The Special Rapporteur on the Situation of Human Rights in the Sudan reported that "an estimated 1.3 million persons" have been killed since 1983 and that the civil war "resulted in the displacement of some 4 million southerners and hundreds of thousands of refugees fleeing to neighboring countries."⁸ Incidents of persecution against Christians include withholding food from Christians who will not convert to Islam, as well as widespread reports of slavery and rape.⁹

Mexico

Mexico has seen one of the most extreme cases of mass displacement in the Western Hemisphere, largely due to religious intolerance. In the last 30 years, over 25,000 Chamula Indians in the south of Mexico, who had become Evangelicals, were expelled from their homes and lands by local "caciques" or informal rulers.¹⁰

Much of this conflict was due to religious differences between members of the traditional Catholic church and newer Evangelical churches that have seen rapid growth, especially in the southern states of Chiapas, Oaxaca and Hidalgo.

Only recently, the situation for the Chamula Indians has eased, partly as a result of the international attention given to the insurgence of the Zapatista Army of National Liberation (EZLN), which is not connected to the Evangelical churches in the region.

Conclusion

Though the situation has considerably improved in Mexico and mass displacements due to religious persecution are becoming relatively less frequent and acute in other regions of the world, the outlook is still bleak for the

other countries cited as case studies where religious persecution continues unabated.

What will it take to stop it? When will we learn to respect each other and live together, in spite of our differences? These questions still remain unanswered.

In the meantime, our task is to at least bring these instances to light and work so that these atrocities will not continue to go unnoticed and unaddressed. ■

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Case Study: Mr. Gabriel Marshal Nylowa Yak

James A. Rice

Abstract

In the following case, a refugee and victim of torture, fled religious persecution in Sudan. He first arrived in Syria where he made a claim to asylum to the UNHCR. His claim was initially refused and he fled to Hong Kong. The High Commissioner ruled that Gabriel was an "irregular mover" and that his appeal could not be considered in Hong Kong. He was sent against his will, back to Syria, without any of the documentation that substantiated his claim. During the entire time that his case was being considered, it was closely followed by Amnesty International. Gabriel was ultimately successful in his appeal and was granted protection as a refugee. He was resettled in the United States, where he lives today.

Résumé

Dans le cas qui suit, un réfugié, victime de la torture, s'enfuit de la persécution au Soudan. Il arriva en tout premier lieu en Syrie, où il soumit une demande d'asile à la HCR. Sa demande fut rejetée de prime d'abord, et il s'enfuit vers Hong Kong. Le Haut Commissaire jugea que Gabriel était une « personne aux déplacements irréguliers » et que son appel ne pouvait être entendue à Hong Kong. Contre son gré, il fut renvoyé en Syrie, mais sans aucun des documents étayant sa demande. Amnesty International avait suivi de près son cas pendant tout le temps que dura l'examen de son appel. Gabriel eut finalement gain de cause et obtint la protection du statut de réfugié. Il a été réinstallé aux États Unis, où il vit aujourd'hui.

James Rice is currently an assistant professor at Lingnan University in Hong Kong where he teaches law and philosophy. Mr. Rice is also an associate at the law firm of Pam Baker & Company where he works on refugee and other issues.

Background

Gabriel was born in Wau, southern Sudan in 1973. His father was a farmer and his mother was a farmer and housewife. In addition, Gabriel has three siblings, two elder brothers, Edward and Joseph and a sister, Mary. Gabriel is the youngest in the family.

The war between the government forces and the various opposition armed groups dominated a large part of Gabriel's formative years. Gabriel claims that during his own childhood, starvation was widespread across the entire southern region. The problem intensified following the rebellion in 1983 by the Sudan Peoples' Liberation Army (SPLA).

In 1991, Gabriel's father was killed by the military. He had lived in a village called Umbilli located near Wau. The village had been captured by the SPLA, and then retaken by government forces. Government soldiers accused Gabriel's father of involvement in the SPLA and arrested him. In fact, Gabriel's father, (Marshal Nylowa Yak) had only assisted SPLA troops by giving them some sheep and goats. Gabriel was later told by tribal members that his father had been tortured by government troops and then later shot.

In 1992, in an effort to escape the war which was then engulfing the south of the country, the rest of the family moved to a place called El Obeid. Here, Gabriel seems to have attended high school. The school was run by Catholic missionaries and was called Comboni School. Gabriel received his diploma from Comboni in 1994 in accounting, mathematics and business. His ambition was to attend college and study economics.

During his high school years, Gabriel worked part-time as a construction worker, building homes

and doing upkeep on houses. He was also involved in Catholic church activities and his youth group would regularly visit homes and pass out literature on Sundays in addition to worship service.

In 1993, the family moved once again, this time to the outskirts of Khartoum. They moved to this place because following the death of his father, there was no one to support the family and renting the house in El Obeid was financially difficult. The move to Khartoum was also done in order to be further away from the civil war. In Khartoum, although the family faced discrimination, according to Gabriel, treatment was better because there they were not threatened by the war. The family also made the move to Khartoum because according to Gabriel, in the suburbs of the city there was space for them to build a shelter. The shelter consisted of two rooms built of mud and wood and an adjoining tent which served as a place for cooking meals.

While in Khartoum, Gabriel went to church and became interested in church activities. In August 1994, Gabriel was found by security officers on the streets together with some of his friends. They were carrying bibles and other religious literature. The officers asked as to what type of books they were carrying. They showed them the bibles and they were arrested and put into vehicles and taken to the Sudan Security Office. Upon being admitted, the group was separated and slapped and punched by officers. Then, other officials asked as to what their activities were. Gabriel told them that they were visiting families and handing out the literature that they had with them.

He was taken to an interrogation room and beaten with sticks on his legs and shins. The beating went on from

about 10:00 in the morning until the evening. *On both his left and right shins there remain scar tissue from these beatings.*¹

In the evening of that day Gabriel and his friends were released from custody. The same happened again in October of 1994, also relating to Gabriel's being arrested for carrying and distributing Christian materials. Once again he was interrogated and beaten by security officers.

By 1995, Gabriel was working part time helping a friend who earned a living by repairing and cleaning computers. Gabriel's task included cleaning the machines. He was able to earn on average \$10.00 per week doing this. One of the significant events that shaped Gabriel's life also took place in 1995.

On 13 July 1995, in an effort to galvanize the people to further prosecute the war in the south, the Sudanese president, Lt. Gen. Omar Hassan Ahmad al Bashir spoke to students at Khartoum University (KU). He urged them to report for military duty and go to the south in order to "liberate" the region. According to Gabriel, this speech seems not at all to have had the effect that was intended by the president. The students already tired of the war and not inclined to volunteer for army duty, came out onto the streets and protested against the ruling National Islamic Front (NIF) and against the war in the south. Gabriel who was on the streets of Khartoum at the time, saw the protest and joined them.

The students initially marched from the KU campus to the bus terminal, in hopes of being seen by many people and of gathering additional supporters. From there, they marched to Government House, where they aired their grievances against the authorities. Gabriel was involved in this initial demonstration in front of Government House. At this point, the police and security forces confronted the demonstrators using tear gas and riot sticks in an effort to disperse the crowd.

The student protests went on for nearly a week, both in Khartoum and in Port Sudan. The student demonstra-

tions came at a particularly sensitive time in Sudan, as there had recently been an attempted military coup staged by military officers against the National Islamic Front as well.

In response to the demonstrations, the government took a hard line by cracking down on all forms of popular discontent. Government media accused the protesters of being communists and police and troops were used to break up any assembly of people. According to Gabriel, the police and troops used tear-gas and batons to break up any further public protests.

As the protests went on, the authorities expanded their crack-down on the population in general. Troops were sent out and check points were set up in and around Khartoum. This was done in order to stop and question young men found to be on the roads. If these individuals could produce no evidence that they were currently attending either college or university, they were arrested and conscripted into the army.

Gabriel was caught by the troops and conscripted into the army in this way. On 3 August 1995, he was stopped, searched, and ordered to produce an identity card. As he did not have an identity card, and could not show that he was attending university at the time, Gabriel was taken to an army camp in Jebel Aulia. There, his hair was shaved off and he was given the white uniform of new recruits. After about two weeks of basic training, he escaped the camp and fled to a place called Shajara and from there, back to Khartoum.

At that point, in an effort to avoid any further threat of military service, Gabriel applied to attend a university in Bucharest, Romania. He candidly admitted that his primary desire was to be able to leave Sudan rather than attend university in Romania. Gabriel sent the request for the information and received the application forms. He filled them in and sent them back.

During this time, Gabriel went into hiding at home in his family's shelter on the outskirts of Khartoum.

Gabriel felt very strongly that he could not and would not serve in the Sudanese Army. To do so would have been to go against his conscience. First and foremost, he felt that he couldn't fight in a war against his own people. The people in the south are generally Christians and the war, according to Gabriel, was an attempt by the ruling National Salvation Front to Islamize the south by use of military force.

For Gabriel, this meant that he would not only be fighting in a war that he didn't believe in, but that he would be fighting against members of his own ethnic group, against his own tribe and even more importantly, against other Christians like himself. In addition, Gabriel was still mindful that the Sudanese Army were the ones responsible for murdering his father back in 1991. Most importantly though, Gabriel refused to serve in the Sudanese military because it ran contrary to his religious convictions.

Detention

On 4 November 1995, Gabriel was once again arrested by troops in a random street search in Khartoum and was taken to the same military camp as before. It was then discovered from the military records that he was a deserter and he was taken to a detention centre in Khartoum, put in detention and beaten and tortured for three days. According to Gabriel, a member of the security forces also identified him at that time as having been involved in the student protests of 13 July.

During this time, Gabriel was held in solitary confinement in an isolated concrete cell and was beaten, kicked and abused by successive teams of soldiers as well as members of the security forces who were dressed in civilian clothes. The cell itself was about 3 meters by 3 meters, with no windows or other forms of ventilation. The sanitation consisted of a latrine bucket filled with the urine and excrement of the previous inmate. During this time, Gabriel was given dry bread and no water at all.

During these torture sessions he was repeatedly slapped and beaten in the face and torso. In addition, he was struck repeatedly in the kidneys and genitals by soldiers using rifle butts. During one such session, Gabriel was beaten unconscious by blows to his genitals.

In between the beatings, he was extensively interrogated by plain-clothes officers who asked him for information about other members of his family and his political background. They also wanted information about any possible involvement in the SPLA. During the interrogation, Gabriel confessed that his father had been shot by government troops in the town of Umbilli in 1991.

The response of the security personnel was to assume that Gabriel's father had been somehow involved in the SPLA. This singled him out for additional torture by the plain clothes officers. The officers engaged in the interrogation did not generally administer the beatings or other forms of torture. This was left for the most part to uniformed soldiers. However, on some occasions these officers also engaged in beatings. And on several occasions the plain clothes security officers burned Gabriel's arms and legs with cigarette butts. At one point in the interrogations one of the security officers grabbed the small wooden cross that hung about Gabriel's neck and shouted, "You are a Christian? It is you people who are causing trouble in the country".

He also endured repeated sessions where he was whipped on the back and legs with a lash made of leather and having three "tails". The soldiers also on one occasion used a red hot poker to burn his skin. Gabriel still bears a scar from this incident. *The burn scar, which is about four centimeters in diameter, bears witness to someone having sustained third degree burns and is located on his left hip.*²

During the second day of his detention, a soldier entered Gabriel's cell while Gabriel was seated on the floor. The soldier took out a knife and cut his leg, just above the knee. *There remains a scar on the left thigh, indicating a lateral*

*incision of about four centimeters in length and 3 millimeters deep.*³

On both the first and the third days of the interrogation session, a group of security officers took Gabriel out of his cell to a yard behind the cell block and then returned him to his cell again. The officers prepared a bunch of dried chillies inside the cell and then set fire to them. The resulting smoke and fumes caused extensive irritation to Gabriel's eyes, nose and throat, causing him to cough, gag and vomit. The irritation from the burning chillies lasted for nearly four hours. Even several weeks after his release from detention, Gabriel continued to cough as a result of inhaling the smoke from the chillies.

On each day of detention, he was taken from his cell, made to lie down on the ground and exposed to the sun for two hours. During this time, he was not given water. He was ordered to lie motionless for the entire time. If he moved during this time, he was exposed to fresh kicks from soldiers. At night, he was taken out of the cell and at midnight troops poured cold water over him. During the "cold water showers" Gabriel was able to drink some of the water that was poured on him. This treatment of exposure to both the heat of the day and cold water during the night for three days and nights resulted in extreme discomfort and disorientation. At the end of the three days of torture, Gabriel was released for resumption of basic training at the army camp in Jebel Aulia. Upon his release from detention, Gabriel was threatened by the security officer that if he were ever to escape again, he would be "shown hell".

Flight to Freedom

During the evenings, the conscripts would be forced to attend Islamic education lectures. During a break in the proceedings, Gabriel pretended to go off to use the toilet and made his escape from the army camp. From Jebel Aulia, he returned to Khartoum and to his family's house. On returning home, Gabriel found a letter of admission from the University of Bucharest. On 9

November, Gabriel went to the Immigration Department and presented the admission letter. He was issued an exit visa from the country on the same day on the 10th and left Sudan, ostensibly bound for Romania.

Although Gabriel had been accepted by the university in Bucharest, he never had any real intention of going there. His real plan was to flee from Sudan and the letter from the university was a way for him to obtain an exit visa from the immigration authorities.

Gabriel stopped off in Syria on 10 November and there found work on a farm, watering apple and olive trees and weeding the orchards. This was difficult work with very long hours. After being badly treated as an illegal worker, Gabriel got a job in a textile factory. The work involved carrying materials into the plant and finished product out.

In June 1996, Gabriel approached the UNHCR and made a claim for asylum. He was interviewed for fifteen to twenty minutes and was then told to come again in a month's time. The interview was only cursory and he was never asked about his treatment by the Sudanese security officials.

At the time that Gabriel made his original claim to the UNHCR office in Damascus, he was still suffering from the effects of the trauma that he had experienced at the hands of the security officers in Sudan. He had recently undergone torture and a great deal of physical and mental abuse. For Gabriel, the people who had administered the beatings and the abuse had been Moslems who were ethnically Arabic. The man who conducted the UNHCR interview in Damascus had been a man of Arabic origin, with a Moslem name. Gabriel found himself to be in a truly difficult situation. From his point of view, the man conducting the interview was the same, in both ethnicity and religion as those who he had fled from. Gabriel simply wasn't able to make his claim to asylum in a free and candid manner. Gabriel had grown up in a country where there was no concept of freedom of expression or of conscience. During that brief interview,

Gabriel was unable to make a claim that would be recognizable by the UNHCR.

He came to the office after one month and was told to come back again in another month. Finally after four months, in September 1996, Gabriel received a scrap of paper with just one word written on it, "rejected".

While in Damascus, Gabriel had attended the local Catholic church there. He had spoken to the priest about his difficulties and the church had provided Gabriel with \$900 (\$450 having been raised by the young people in the congregation, and the rest from the priest himself). This money was used to buy a ticket to Hong Kong. Upon his arrival in Hong Kong, Gabriel sought the assistance of the UNHCR and claimed asylum as a refugee.

Grounds for Refugee Status

Gabriel Marshal Nylova Yak had a well founded fear of persecution by the authorities in Sudan because of his Christian faith and his insistence to worship and be involved in church activities. He also was under threat of further persecution because of his record of being a conscientious objector to military service as well as his desertion from duty on two occasions. This was evidenced partly by the fact that he was subjected to torture following his initial desertion. When he was arrested on 4 November, and taken to the army base, his records showed that he had previously been conscripted and was then singled out for torture. Gabriel had by his convictions and his actions had demonstrated that he had fled the Sudanese military because he was a conscientious objector.

Paragraphs 167-171 of the UNHCR Handbook⁴ refers to protection of conscientious objectors. Specifically, paragraph 169 states:

*A deserter or draft-evader may also be considered a refugee if it can be shown that he would suffer disproportionately severe punishment for the military offence on account of his race, religion, nationality, membership of a particular social group or political opinion.*⁵

Further, paragraph 170 indicates:

*There are, however, also cases where the necessity to perform military service may be the sole ground for a claim to refugee status, i.e. when a person can show that the performance of military service would have required his participation in military action contrary to his genuine political, religious or moral convictions, or to valid reasons of conscience.*⁶

The treatment of Gabriel by the security officials as well as army troops was clearly in violation of internationally accepted standards.

Article 1 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Punishment defines torture as being:

*Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.*⁷

Article 3(1) of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states:

*No State Party shall expel, return (refouler) or extradite a person to another State where there substantial grounds for believing that he would be in danger of being subjected to torture.*⁸

Article 7 of the International Covenant on Civil and Political Rights, (ICCPR) prohibits the use of torture, cruel or inhuman or degrading treatment or punishment. In addition, Article 10(1) of the same convention states:

*...all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.*⁹

Gabriel in his submission to the Hong Kong Office of the UNHCR also referred to authority decided by the United Nations Human Rights Committee, namely *Estrella v Uruguay*¹⁰ and

Vuolanne v Finland.¹¹ *Estrella* offers authority for the proposition that treatment that Gabriel was subjected to in detention was in breach of Article 7 of the International Covenant on Civil and Political Rights (that no one shall be subjected to cruel, inhuman or degrading treatment or punishment). *Vuolanne* decided that the failure by the Finnish military to provide due process to military personnel under detention is in breach of Article 9 of the ICCPR (no one shall be subjected to arbitrary arrest or detention).

Article 3(2) of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment goes on to indicate that:

For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.¹²

Gabriel cited evidence that the authorities in Sudan routinely employ detention without charge or trial as well as torture as a means of silencing political opposition. It is also well documented that torture and ill treatment of prisoners are endemic in the Sudanese detention system.

In addition, Gabriel referred to the Amnesty International text on Sudan.¹³ Here Amnesty has documented the systematic use of mistreatment and torture of detainees by members of the security services. This practice referred to as *idara dakalia* (internal administration) is used by the military on both civilians and on conscripts.

Finally, the World Report, issued by Human Rights Watch and its chapter on Sudan.¹⁴ In this report, Human Rights Watch points out that Sudanese regime was in April 1996, condemned by the U.N. Commission on Human Rights. The commission cited its "deep concern," for reports of "grave human rights violations in Sudan." Included among the commissions top concerns were, extrajudicial, summary or arbitrary executions. The Human Rights

Watch report also points out that no independent domestic human rights monitor group is allowed to operate in Sudan.

The UNHCR Decision

The Hong Kong office of UNHCR categorized Gabriel as an "irregular mover" because he had initially claimed asylum in Syria. They refused to hear his submission in Hong Kong and insisted (despite his fears that he would be denied entry and deported to Sudan) that he return to Damascus in order to appeal against the initial decision. This decision on the part of the UNHCR was profoundly unhelpful, not only because of the very real fears that Gabriel had of returning there, but also because he was at that time awaiting the results of the medical examination that was crucially important in corroborating his claims to having been subjected to torture. Moreover, the decision was wrong. Although UNHCR policy allows the return of "irregular movers" to their place of first asylum, it does not require it. Since Gabriel had already secured legal representation in Hong Kong, this decision to send him back to Syria was tantamount to depriving him of due process.

Gabriel was forced to return to Syria, and arrived there on 3 January 1997. Although the UNHCR office in Hong Kong claimed that it had forwarded

his submission to the Damascus office, Gabriel was informed by staff when he went there that the files had been "lost." The appeal submission and the medical report were then rushed direct to Gabriel by courier. He had an interview in March with a protection officer from the UNHCR and was ultimately recognized as a refugee in April, 1997. Gabriel's application was forwarded to the United States Department of Justice, Immigration and Naturalization Service in Athens, Greece, and he was granted refugee status in May, 1997. Gabriel was resettled in the U.S. later in 1997.

Gabriel's case is certainly not unique. However, it does represent the systematic persecution that people of faith within Sudan have long been subjected to. His resourcefulness, persistence and luck enabled him to flee from persecution in his country and tell his story to the world. This case is also a good example of the problems that exist within the UNHCR and the lack of transparency regarding individual decisions and accountability for those decisions that presently exist within that agency. ■

NOTES

1. Medical Report, submitted by Dr. Robert Cocks, Director of A & E Medicine, Chinese University of Hong Kong, Accident and Emergency Unit, Prince of Wales Hospital, New Territories, Hong Kong. All of the

scars and other evidence of injury were found to have been consistent with having been inflicted by torture.

2. Medical Report of Gabriel Marshal Nylova Yak, p. 2.
3. *ibid*, pp. 2-3.
4. UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, Geneva, (1979), pp. 39-40.
5. UNHCR Handbook, p. 40.
6. *ibid*.
7. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (1984) U.N. Doc. A/RES/39/46. Found in *Basic Documents on Human Rights*, edited by Ian Brownlie, (1997) pp. 38-39.
8. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Brownlie, p. 39.
9. *ibid*, p. 40.
10. H.R.C. 93 (1983). Found in, *Cases and Materials on International Law*, D.J. Harris, Sweet & Maxwell, (1991) pp. 630-634.
11. H.R.C. Report, G.O.A.R., 44th Sess., Supp. P. 249 (1988). Found in *Cases and Materials on International Law*, D.J. Harris, Sweet & Maxwell (1991) pp. 634-637.
12. United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Article 3(2). Found in. *Basic Documents on Human Rights*, Brownlie, (1997) p. 39.
13. Amnesty International, Sudan, Amnesty International (1995) pp. 25-35.
14. Human Rights Watch, World Report, Human Rights Watch, (1997) pp. 55-60. □

Legitimate and Illegitimate Discrimination: New Issues in Migration

Edited by Howard Adelman

Toronto: York Lanes Press, 1995; ISBN 1-55014-238-0; 287 pages, indexed; \$22.95

Freedom of movement: If the members of a state are forced to flee, the legitimacy of that government is questionable. On the other hand, if members cannot or must leave, again the government is not democratically legitimate.

Immigration control: While limiting access and determining who may or may not become members of a sovereign state remains a legitimate prerogative of the state, the criteria, rules and processes for doing so must be compatible with its character as a democratic state.

Legitimate and Illegitimate Discrimination: New Issues in Migration, edited by Professor Howard Adelman, deals with the question of legitimacy with cases studies from the Developing World, Europe, Australia, the United States and Canada.

CONTRIBUTORS:

Rainer Bauböck, Howard Adelman, Gaim Kibreab, A. Essuman-Johnson, Grant M. Farr, Lawrence Lam, Oscar Schiappa-Pietra, Tomas Hammar, Frédéric Tiberghien (in French), Lois Foster and Arthur C. Helton.

Available from: Centre for Refugee Studies, Fax: 416-736-5837 • Email: refuge@yorku.ca

Restitution of Property and Religious Discrimination in Eastern Europe

Maria Riegger

Abstract

This work centers on the religious liberty situation in Eastern Europe, including countries such as Hungary and Romania. The article discusses disputes over property rights and titles since the fall of communism, focusing on how these have been closely interconnected with the religious background and history of different ethnic groups.

Résumé

Cet ouvrage porte sur l'état des libertés religieuses en Europe de l'est, y compris dans des pays comme la Hongrie et la Roumanie. L'article discute des différends qui ont éclaté autour des droits et des titres de propriété depuis la chute du communisme, et examine de près le fait que ces différends ont été étroitement liés avec le passé historique et religieux des divers groupes ethniques.

Introduction

The attempts by Western leaders after World War II to grant ethnic minorities the right of self-determination exacerbated ethnic tensions which had existed for centuries. The carving up of land, which was in many cases arbitrary and granting of ethnic territory to nations with different cultural backgrounds created bitter repercussions. The most serious consequence is ethnic displacement, which is now clearly manifested in Eastern Europe.

Maria Riegger studied European Politics and History at Georgetown University in the United States and at the University of East Anglia in England before working as a representative in the field of human rights in the U.S. and in Paris, France. The daughter of Hungarian immigrants to the U.S., she takes a special interest in Eastern Europe and currently works in Spain in the field of IT telecommunications.

Such ethnic turmoil has produced the subsequent problem of returning that property taken away from churches and religious groups during Nazi and Communist rule. Many Eastern European governments, recent self-styled democracies, are now having a difficult time in returning this communal and private property. The intense oppression of Eastern European peoples under Communist rule, including the cessation of most church activity and liquidation of some religions, have intensified the present heated debate over the return of property, both church-owned and private.

Ethnic differences and religious differences go hand-in-hand in this region and nationally recognized churches are often given preference over minority religious denominations. Much evidence exists that religious groups are being actively discriminated against in Eastern Europe regarding both the restitution of church property and official state registration. This religious discrimination is a clear violation of human rights and reflects the fact that Eastern European governments, though democracies in name, are not actively putting democratic elements into effect.

Restitution of Property in Hungary, Bulgaria and Czechoslovakia

Certain Eastern European governments have done a great deal to return confiscated property. Hungary, for example, has paved the way in restituting church properties. Several thousand religious community property claims have been settled by negotiation or government decisions and around \$100 millions have been paid in compensation. According to Stuart Eizenstat, Under Secretary of State for International Trade and U.S. Special Envoy on Property Claims in Central and East-

ern Europe, Hungary, was an "early leader" in drafting and passing legislation regarding restitution of private and communal property and compensation.¹ Furthermore, the Hungarian government has no citizenship or residency requirements, which other Eastern European governments require before property can be returned to its former owners. Such requirements make it difficult for those Eastern Europeans who are now U.S. citizens to lodge complaints for restitution or compensation and are thought to be roadblocks placed by the governments to delay the restitution of property to certain groups.

Eastern European governments appear to discriminate against certain religious groups regarding restitution of property. The State Department will not speak to purposeful discrimination, but Under Secretary Eizenstat states that it is a fact that Jewish property is returned at a much slower rate than property belonging to the Catholic, Orthodox, or other churches. In Bulgaria, for example, Jewish properties, as well as Catholic and Orthodox, are still in dispute. A judgment made in 1996 to return half of the Rila Hotel to the Jewish community has not yet been acted upon. Subsequent changes in Bulgarian law and privatization have further delayed such action. Such bureaucratic inefficiencies are prevalent in Eastern European democratic nations and may serve as excuses for failing to return confiscated property to certain religious groups.

The prevalence of religious discrimination in Bulgaria is reinforced by the State Department's Country Report on Human Rights Practices, which states that the Bulgarian government restricts religious freedom in practice. The Constitution holds Eastern Orthodox Christianity to be the "traditional" religion of Bulgaria and the government discriminates against non-tradi-



tional groups. The State Department lists non-traditional groups to be mostly Protestant Christian religion. In 1998, articles appeared in newspapers which were not based on any fact and which therefore misrepresented activities of non-Orthodox groups such as Evangelicals and Jehovah's Witnesses. Many episodes of official harassment by authorities were reported. In the cities of Burgas and Plovdiv local police disregarded the law by arbitrarily denying Mormons the right to proselytize (in Burgas) and to possess a legally registered place of residence (in Burgas and Plovdiv). Such discrimination, including that against groups fully registered with the law, is according to the Country Report, "often cloaked in a veneer of 'patriotism.'"² Non-traditional religious groups suffer hostility from the press, public and a number of government officials. Such an environment certainly breeds hostility toward the return of confiscated property.

The International Helsinki Federation for Human Rights' Report to the CSCE (Commission on Security and Cooperation in Europe) Supplementary Human Dimension Meeting on Freedom of Religion, March 22, 1999, also concludes that the Bulgarian government continues to interfere in the internal affairs of the largest religious communities. Several episodes of discrimination and borderline assault of Jehovah's Witnesses occurred in 1998.³ Such actions run counter to Articles 13 and 37 of the 1991 Bulgarian Constitution, which acknowledge and protect religious freedom. The extreme actions of the Bulgarian authorities and the bureaucratic "delays" suggest active discrimination against religious groups.

Representative Christopher Smith of the CSCE has also referred to the bureaucratic obstacles as being initiated by governments to delay restitution or compensation. He noted the 1994 Czech expansion of its earlier restitution law to allow those whose property was originally taken by the Nazis between 1938 and 1945 to be added to those whose property was taken by Communists in claiming restitution. Though

this expansion appeared to mark a genuine aim of the Czech government to return property, the Czech Ministry of Finance has arbitrarily imposed extra oppressive stipulations for restitution that do not appear in the law and which actually "appear designed to defeat the intent of the law."⁴ Thus, the Czech government has displayed an unwillingness to return or compensate for confiscated property. Furthermore, the Czech Republic has witnessed sharp internal conflicts over the restitution of property belonging to the Catholic Church: "The current Czech government is generally opposed to Catholic property restitution."⁵ Such opposition constitutes a clear violation of the right to freedom of religion. The Czech government discriminates against the Catholic Church by blocking the restitution of its property.

Romania

The Romanian government also willfully discriminates against the Catholic Church. In Romania, religious rivalry is heavily based upon ethnic divisiveness. Members of the Romanian Orthodox, Catholic and Protestant Churches are currently struggling for the return of property. As in Russia, the fall of communism and instatement of democracy in Eastern European nations created the need for new democratic governments to instill a sense of nationalism to replace the vacuum left by the destruction of Communism. That upsurge of nationalism includes reinforcing a national religion.

The Romanian Orthodox Church had been the official state church of Romania before Nazi and Communist rule. The Greek Catholic Church, however, numbered 1800 parishes and 1.5 million members before 1948. During that year a Communist decree dissolved the Greek Catholic Church in Romania, imprisoning its bishops and priests. The Communists appropriated the Catholic Church's property and gave its parish property to the Romanian Orthodox Church.⁶ The Greek Catholic Church was officially recognized again after 1989, and is now struggling to regain its confiscated

churches and property. But the Romanian government has been painfully slow in returning them. Instead it provided the Orthodox Church with further benefits when it passed the 1995 Education Law. This law in effect legitimizes the confiscation of certain school buildings by the Romanian state, by holding that all those buildings which belong to the Ministry of Education will remain there.⁷ Thus, these properties were re-nationalized.

The Romanian government also holds property that had formerly belonged to secular groups and individuals. Ioan Paltineanu, president of Paltin International, Inc. and former State Secretary (1991-2) of the Land Reclamation Department in the Romanian Ministry of Agriculture, claims that the current government illegally continues to hold and use 11.6 million acres of forests that were stolen from private and communal owners, including himself, by the former Communist regime.⁸ Mr. Mihai Vinatoru, president of the Committee for Private Property, holds that the failure to restore property rights in Romania is linked to the lack of respect for the rule of law. For example, the CPP has documented 1,732 cases where property was "abusively confiscated" by the Communist government. Of these cases only a few were brought to court, where corrupt judges ruled against the owners based on old Communist ideas against private property instead of the rule of law and those democratic ideas protected by the Romanian Constitution.⁹ Clearly the Romanian government has no truthful desire to return the property to its rightful owners.

Although the Greek Catholic Church has recovered a number of its former buildings (including churches and the Episcopal seat in Cluj, returned by a court order on March 13, 1998), the Romanian Orthodox Church continues to enjoy a leading national role in the Romanian state, and is supported by the government at the expense of the Greek Catholic Church and other religious groups. The Orthodox Church has attacked the "aggressive proselytism"

of Protestants. Smaller religious groups like the Protestants complain of discrimination and have denounced the State Secretariat for Religious Affairs in Romania for its methods of blocking their registration.¹⁰

Such religious discrimination is quite subtle but present nonetheless. Religious groups who are not state-recognized are having a difficult time regaining confiscated property and are thus suffering the violation of their human rights by being denied their former property as accorded under the law. This is not, however, the only current method by which Eastern European governments discriminate on religious grounds. As in Western Europe, leaders in Eastern Europe discriminate against non-traditional religious groups, often labeled as "sects." The State Department and International Helsinki Federation have both noted the Bulgarian and Romanian propensities to target non-traditional religious groups as "sects." By labeling them "sects," governments can thus more easily justify discrimination.

The Blacklisting of Religious Groups

Eastern European governments seem to be following the lead of Western European ones regarding the targeting of new religious groups. The actions of nations such as France, Germany and Austria are especially detrimental in that they influence the actions of Eastern European nations who are attempting to gain favour with the European Union.¹¹ In this manner, similar to the issue of the restitution of property, nations like Romania, Bulgaria and Russia protect and grant benefits to traditional churches at the expense of smaller religious groups.

Romania

The Romanian government and state-recognized Romanian Orthodox Church are extremely wary of non-traditional religious groups such as the Union of Christian Baptist Churches and Unitarian and Lutheran churches. They are therefore reluctant to advance pending legislation

that would replace the current religion law that dates from the Communist period for fear of the proliferation of religious "sects." This fear of such groups was exhibited by the visit of Dr. Gheorghe Angelescu, Romania's State Secretary for Religious Affairs, to Belgium during December 7-12, 1998, to meet with Belgian Minister of Justice Tony Van Parys. The two discussed the need to protect traditional religious values and Secretary Angelescu collected information about Belgium's policies on cults.¹² Similarly, in early 1998 the Latvian government held a hearing on cults attended by members of the French Observatory on Cults. A few months later a Latvian delegation was sent to France to study how the French dealt with minority religions. These meetings strongly underline the influence of Western European nations upon those in Eastern Europe.

These minority religious groups are often hindered from renting public halls and constructing church buildings. Vernon Brewer, president of missions organization World Help, states that the Emmanuel Baptist Church in Marginea, Romania, has been subjected to legal harassment and false allegations, which have prohibited the congregation from constructing a church for which the land had already been purchased.¹³ According to Peter Vidu, the coordinating pastor of the Emmanuel Baptist Church, "One of the biggest dangers today in Romania is intolerance – ethnic, political and religious." Some Orthodox Church priests falsely accuse members of minority religious groups. For example, priest John Druta of the Orthodox Church in Marginea, accused evangelicals of promoting pornography and homosexuality in an article that appeared in the local newspaper *Crisana* on April 16, 1999. According to Vernon Brewer, such accusations are meant to represent evangelicals and other members of minority religions as dangers to the community.

Bulgaria

Like Romania, the Bulgarian government attempts to limit the practices of religious groups and keep such groups under the strict control of the executive. Currently Bulgaria's ruling party, the Union of Democratic Forces, is attempting to pass a new Draft Law on Religious Affairs. According to the independent Bulgarian human rights watchdog the Tolerance Foundation, this proposed law would increase state control over religious groups.

While the draft law does include positive measures such as the reinforcement of the rights of citizens to freely choose their religious denominations (Art. 2) and to freely practice their religions alone or with others (Art. 4), these measures are largely ambiguous and ceremonial. The real purpose of the law would be to restrict the activities of religious groups. Article 42 imposes high fines on those who publicly participate in unregistered religions.¹⁴ Article 44 sets fines for those who publicly perform religious rituals or liturgical services that are not specifically listed in their church regulations.

According to Article 10, paragraph 4 of the proposed law, the Religious Directorate has the authority to give permission for the building of new places for worship. The Tolerance Foundation believes this article to be directed towards Muslims, who had until this time been able to build mosques without many problems. Furthermore, despite the Draft's reinforcement of religious equality, Article 8 reinforces the recognition of the Bulgarian Orthodox Church as having special preference. Such measures make it difficult to freely practice one's religion in Bulgaria as protected by the Bulgarian Constitution.¹⁵

Russia

Russia is also wary of non-mainstream religious groups, a sentiment partly due to the fact that Russia does not follow a tradition of religious freedom from former imperial or communist leaders.¹⁶ After December 1993, when

Russians elected a new Parliament and approved a new Constitution, the Russian Orthodox Church enjoyed a renewed popularity. Under these circumstances it is rational that the Orthodox Church now refuses to sit by and watch non-traditional, often foreign, religious groups gain influence in the nation. Russia's 1997 religion law, "On Freedom of Conscience and Religious Associations," works to the detriment of religious minorities. It recognizes Orthodoxy as having played a "special role . . . in the history of Russia and in the establishment and development of its spirituality and culture." The law requires religious groups to re-register by the December 1999 deadline and sets a 15-year waiting period for those religions deemed "non-traditional." Groups that are unregistered lack complete legal rights and cannot conduct missionary or educational work. Such stipulations appear to be a method of weeding out non-traditional religious groups, since authorities can arbitrarily deny registration to certain groups. The Jesuits, for example, were denied registration by the government though they have been present in Russia since 1772 and are thus a part of Russia's history. Furthermore, Russia's prohibition of the Jesuits from forming communities on its territory affects all Catholic orders and congregations in Russia.¹⁷ Critics of the religion law accuse the Russian Orthodox Church of attempting to monopolize Russia's spiritual life and argue that the law favors the "traditional" religions of Orthodoxy, Buddhism and Judaism. They also claim that the law counters the Russian Constitution, which protects religious freedom.¹⁸

According to The Keston Institute, local governments and provincial leaders in Russia target Baptists, Jehovah's Witnesses, Jesuits, Word of Faith and Unitarian groups as non-mainstream and thereby mysterious groups. The local government of Kirov, a city north of Georgia in southwestern Russia, has labeled Baptists as a dangerous sect. Articles in the Kirov press appeared frequently during the first

half of 1999 emphasizing the Baptists as an American group. The Russian government frequently views religious groups who have ties to the West, such as Baptists and Evangelicals, with much suspicion. Articles in local papers "Iskra" and "Kirovskaya Pravda" stated that the Baptist community does not have the right to distribute literature since it had only existed in Kirov for seven years; and that Baptists, Pentecostals and Adventists advocate isolating their members from others as well as from the common culture of the people.¹⁹ Protestants in Ekaterinburg have also alleged harassment from local authorities. Orthodox members have been picketing the Protestant New Life Church for the past eight months, though picketing there is illegal. The church has also been the subject of frequent derogatory articles in regional and city newspapers.²⁰ Such sentiment makes clear that intolerance toward non-traditional religions listed in the 1997 Russian religion law exists throughout Russia.

Patriarch Alexiy II of the Orthodox Church supports this religion law, believing that the Orthodox Church should hold precedence over other Christian religions. Defenders of the Orthodox Church, including government officials, maintain that the law is needed to halt the proliferation of dangerous sects in Russia who want to take advantage of a spiritual vacuum left by the demise of the Soviet Union.²¹ While a spiritual vacuum does arguably exist in Russia, more frequently the case is that Russian citizens voluntarily explore non-traditional religions as part of their own spiritual search. No concrete evidence exists as to criminal or moral acts by religious groups. On the contrary, groups such as the Unification Church have absolved themselves in court from wrongdoing. Seven plaintiffs sued the Unification Church in a Moscow City Court, claiming that damages had been caused to them due to their children's membership in the religious group. Both the Kuzminsky District Court, at which the case was originally

tried and the Moscow City Court stated that the plaintiffs lacked evidence to support claims of moral damage. The court was also unconvinced of evidence of psychic violence and brainwashing.²² A similar case occurred when an anti-cult committee withdrew its suit against CARP, a youth organization comprised of followers of Reverend Sun Myung Moon of the Unification Church. The prosecution's accusations, such as claiming that CARP and the Unification Church were polluting Russia's genetic pool, were also unfounded.²³

Other religious groups such as the Jehovah's Witnesses have been brought to Russian courts under the 1997 religion law in an attempt on the government's part to liquidate them. The procuracy in Magadan also attempted to close down the Word of Life Pentecostal Church in that town. In the first case, the Moscow city court judge decided that the prosecution against the Jehovah's Witnesses did not have enough evidence to prove that the group was indeed harmful to society. In the second case, the Word of Life church won a civil court case against the procuracy, which had presented inadmissible evidence.²⁴ Local Russian governments appear to be initiating frivolous lawsuits, in which hard evidence is lacking. Such suits against minority religious groups strongly suggest that those groups are unwelcome and viewed as harmful to Russian society.

A few Russian officials do acknowledge the need to protect religious liberty in the former Communist nation. In June 1999 Prime Minister Sergei Stepashin (who has since been fired by President Yeltsin) called for the upholding of religious tolerance in Russia, stating that the many co-existing religious faiths, including Christianity, Islam, Buddhism and Judaism, are all part of Russia's roots. Stepashin, a high-level security official in 1994 when President Yeltsin sent troops into the mainly Muslim region of Chechnya to quell its bid for independence, stated that if he had been better versed in the Koran and the

Muslim faith, he would have made better decisions in Chechnya.²⁵ The ignorance of many Russians regarding the practices of minority religious groups contributes to their paranoia and outward intolerance. The fact that religious liberties are protected in the Russian Constitution does not apparently deter them from acts of prejudice.

The Romanian, Bulgarian and Russian Constitutions all contain articles protecting religious liberty, stating that no citizen will suffer discrimination based on his religion. The problem of a lack of respect for the law in these nations contributes to overall discrimination. Those authorities and others that discriminate based on religion are not held accountable to the law. This factor, together with a xenophobic paranoia ingrained in the psyche of nations like Russia,²⁶ leads to blatant religious intolerance. It would seem that while these nations enact democratic laws to appease Western democracies, in practice they do not wish to grant such rights to their citizens. If these nations truly wish to be democracies, then in order to ameliorate religious intolerance the democratic laws in these nations must be enforced and the prejudicial attitudes of these people must be changed. ■

NOTES

1. Testimony by Stuart Eizenstat before the Commission on Security and Cooperation in Europe (CSCE) Hearing on Property Restitution in Central and Eastern Europe, March 25, 1999.
2. State Department 1998 Country Report on Human Rights Practices on Bulgaria, pp.8-9, p.13.
3. For example, on April 25, 1998, activists of the nationalist IMRO (Internal Macedonian Revolutionary Organization), which was part of the ruling coalition, surrounded a private home where Jehovah's Witnesses were meeting and publicly burned their literature. See the Report, pp. 7-9 for further activities.

4. Hon. Christopher H. Smith, Property Restitution in the Czech Republic, Extension of Remarks, March 15, 1999.
5. Eizenstat, see note 1.
6. "Continuing Conflict Over Return of Romanian Church Property," press release, July 14, 1998, Janice Broun, Keston News Service; and Testimony of Bishop John Michael Botean, CSCE Hearing, March 25, 1999.
7. Communication by The Rutherford Institute Budapest, Hungary branch office to International Headquarters in Virginia, USA, March 22, 1999.
8. Letter from Dr. Paltineanu to Rep. Christopher Smith, Chairman of the CSCE, March 17, 1999, p. 1.
9. Letter from Mr. Vinatoru to Rep. Christopher Smith, March 23, 1999, p. 1.
10. U.S. State Department Country Report on Human Rights Practices on Romania, 6, 1998, p.9.
11. According to Willy Fautré, Director of Human Rights Without Frontiers, actions taken against minority religious groups in France receive worldwide media coverage and gain the attention of Eastern European governments, who see them as an excuse to attempt similar tactics in order to maintain repressive legislation against such groups. See "The Deterioration of Religious Liberty in Europe," the transcript of a briefing held by the Commission on Security and Cooperation in Europe on July 22, 1998.
12. "Romania's Religion Law," press release, Compass Direct, February 19, 1999. Like France, Belgium created a black list of "sects," comprising 189 movements including Youth with a Mission, YWCA, Operation Mobilization, and Full Gospel Businessmen's Fellowship. In late 1998 the Belgian government created an "Advisory and information center on harmful and dangerous sectarian movements," similar to the French Observatory on Cults. Belgium thus seems to be closely following French policy on cults.
13. "Religious Persecution in Romania," Vernon Brewer, June 5, 1999.
14. The fine is 500,000 to 1,000,000 leva and for "corporate legal persons" the fine is 1,000,000 to 5,000,000 leva.
15. Article 13 (1) of the Bulgarian Constitution: There is freedom of religion. Article 37 (1): Freedom of conscience, freedom of thought, and choice of religious or atheistic views are inviolable. The state encourages tolerance and respect among believers of different faiths as well as between believers and nonbelievers. See Constitutions of the Countries of the World. Dobbs Ferry, NY: Oceana Publications, Inc., 1992.
16. See the Handbook on Religious Liberty Around the World, The Rutherford Institute 1996, pp. 181-8.
17. "Russia Might Prohibit Presence of Catholic Orders," press release, Human Rights Without Frontiers, June 9, 1999. Catholics are looked down upon by the Orthodox Church and, as in much of Eastern Europe, have a difficult time regaining their churches, which were confiscated during the 1917 revolution. The Russian government uses tactics to keep the churches (which number around 300) state-owned or privatized for secular use. See "Roman Catholics Struggle to Recover their Church Buildings in Russia," press release, Keston News Service, July 9, 1999.
18. See the 1998 U.S. State Department Country Report on Human Rights Practices on Russia. Critics of the law include the Communist Party of the Russian Federation. See "Communist Party Claims Religion Law Violates Constitution," press release, Nezavisimaa gazeta-religii, July 7, 1999, by Natalia Babasian.
19. "Local Press Targets Kirov's Baptists," press release, Keston News Service, by Roman Lunkin, June 28, 1999.
20. "Protestants Claim Harassment in Ekaterinburg," press release, Human Rights Without Frontiers, July 23, 1999.
21. "Patriarch Defends Religion Law Again," press release, Human Rights Without Frontiers, March 3, 1999.
22. "Unification Church Vindication," press release, Human Rights Without Frontiers, March 26, 1999.
23. "Anti-cult group withdraws suit against Rev. Moon's organization," press release, Konstantin Krylov, July 24, 1999.
24. For more details see "Magadan Pentecostals Still Under Pressure," press release, Keston News Service, June 15, 1999.
25. "Prime Minister Calls for Religious Tolerance," press release, Human Rights Without Frontiers, June 10, 1999.
26. On the Paranoia and Psyche of Russians see George Kennan, Memoirs. □

Centre for Refugee Studies On-Line

Web-Site: <http://www.yorku.ca/research/crs>

Email: refuge@yorku.ca

Security Issues and Refugees: Dilemmas, Crises, and Debates

Frances T. Pilch

Abstract

Complex emergencies involving refugees often involve dilemmas concerning security issues. Questions concerning the neutrality and demilitarization of refugee camps, the protection of aid and humanitarian workers, and law enforcement within the camps themselves continually arise. These issues are exacerbated when refugee flows occur in highly unstable areas sometimes characterized as "failed states." While debate has been stimulated by reflections on the Great Lakes crisis and has fostered creative thinking about security options, definitive plans for the support of humanitarian operations has not yet materialized. The burden placed upon UNHCR to operate in problematical situations leads inevitably to ad hoc policy arrangements, which need to be replaced with concrete operational contingency planning, possibly involving standby forces dedicated to the support of humanitarian operations.

Résumé

Les situations d'urgences complexes où des réfugiés sont concernés, présentent souvent des dilemmes sur des questions de sécurité. Des problèmes surgissent continuellement, liés à la neutralité et la démilitarisation des camps de réfugiés, la protection des travailleurs d'aide humanitaire, ainsi que le maintien de l'ordre à l'intérieur-même des camps. Ces problèmes se trouvent exacerbés lorsque les flux de réfugiés surviennent dans des régions à haute instabilité, qui sont même parfois appelées « états en faillite ». Alors que le débat s'est trouvé stimulé par des réflexions sur la crise des Grands Lacs et a encouragé la créativité dans la re-

cherche d'options possibles en matière de sécurité, des plans définitifs sur la façon de soutenir les opérations humanitaires n'ont toujours pas vu le jour. Le fardeau imposé au HCR d'opérer dans des situations problématiques mène inmanquablement à l'adoption de solutions et de politiques improvisées. Il importe de les remplacer par des plans d'urgence concrets, comportant peut-être des troupes en état d'alerte et réservées uniquement au soutien des opérations humanitaires

Introduction

In recent years, refugee flows have reached staggering proportions. The United Nations High Commissioner for Refugees (UNHCR) estimates that 22.7 million people in over 140 countries fall under its concern.¹ In addition, the kinds of conflicts that are producing refugees are different from those that fostered the original legal instruments governing the refugee regime. In contrast to the international conflicts of the first half of the Twentieth Century, the last fifty years have been witness primarily to internal conflicts—many of which have targeted civilian populations. The instability and violence that have accompanied these kinds of conflicts, in which particular ethnic groups or minorities have often been especially at risk, have led to massive refugee flows across international borders. In addition, internally displaced populations have become an issue of great concern to UNHCR.²

When massive flows of refugees have crossed national boundaries, they have often entered regions that have few resources and weak governmental infrastructure. In some cases, host states themselves have been in a state of virtual collapse and the regions into which refugees have relocated have been in a state of chaos or even civil war. These kinds of situations have posed enormous problems

for UNHCR. Many questions have arisen: how to establish and protect access to refugees, how to protect humanitarian aid workers, how to maintain neutrality in situations involving conflict and how to prevent refugee camps from becoming bases for armed militant groups. Aspects of these issues are relevant in refugee situations in West Timor, Kosovo, Tanzania, Kenya, the South Kivu Province in the Democratic Republic of the Congo (DRC) and in the current controversy over humanitarian aid in Sudan. From these challenges has arisen genuine debate over the best way in which UNHCR can accomplish its mandate given these highly volatile and unstable situations. One of the central questions being asked is, "What is the nexus between security and humanitarian aid to refugees?" Who is responsible for security arrangements and what has been the experience of UNHCR with regard to these issues? What are the possible policies regarding the physical security of refugee populations? These issues have framed a serious debate over the role of UNHCR in the contemporary world of internal and international conflicts.

Refugees and the Failed State³

Host states are generally considered to be responsible for the security of refugee populations. UNHCR generally is invited by the host government to administer relief to these populations, and is present with the consent of a government. The Refugee Convention of 1951 and its 1967 Protocol require signatories to provide refugees with the same minimum standards given comparable populations within their borders. In theory, it is the responsibility of the host state to provide for the physical security of refugees.

In fact, however, refugee flows have often entered areas of minimal infra-

Ph.D., Department of Political Science, United States Air Force Academy. E-Mail: Frances.Pilch@usafa.af.mil Tel: (719)333-8014. Presented at the International Studies Association Annual Meeting, Los Angeles, March 2000 Security Issues and Refugees: Dilemmas, Crises, and Debates.

structure and control by a central authority. In 1994, more than 2 million refugees exited Rwanda. Large populations entered Tanzania and the eastern provinces of the DRC, formerly Zaire. In the case of Zaire, the situation was especially chaotic. Zaire's population of 40 million had been governed since the 1960's by Mobutu Sese Seko, who had literally robbed the country of billions of dollars. Zaire was in economic shambles: 85% of its roads at independence had, by 1994, disintegrated into bush. AIDS was rampant, and governmental administration was nonexistent or corrupt.⁴ Zaire was an example of "the new African spectre of stateless countries," which was also seen in Somalia, Liberia and Sierra Leone.⁵

This phenomenon of the "failed state" poses substantial challenges for institutions seeking to provide humanitarian relief. Failed states are "invariably the product of a collapse of the power structures providing political support for law and order, a process generally triggered and accompanied by 'anarchic' forms of internal violence."⁶ Former Secretary-General of the United Nations, Boutros Boutros-Ghali, described the situation as follows:

A feature of such conflicts is the collapse of state institutions, especially the police and judiciary, with resulting paralysis of governance, a breakdown of law and order and general banditry and chaos. Not only are the functions of government suspended, but its assets are destroyed or looted and experienced officials are killed or flee the country. This is rarely the case in inter-state wars.⁷

The basic instruments of international law regarding refugees, the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, utilize a definition of refugee that has in fact been broadened in practice. Originally written in response to the massive relocations after World War II, the 1951 Convention defines a refugee as any person who

owing to a well-founded fear of being persecuted for reasons of race, reli-

gion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country or to return to it.⁸

The 1967 Protocol removed the date and geographical limitations of the original convention, making it a truly universal instrument. To date there are more than 137 states party to one or both of these legal instruments.

The original definition of refugee has in fact been broadened however. The Organization of African Unity Convention (OAU) Governing the Specific Aspects of Refugee Problems in Africa, adopted in 1969, is the most important of several regional instruments. It expands the definition of refugee to include

every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.⁹

The 1951 Geneva Refugee Convention talked about refugees in terms of individual persecution. The OAU Convention greatly broadened the definition of refugee, to include those people fleeing external aggression, occupation, foreign domination, or serious public disorder. Refugee status under the OAU Convention could be granted to groups as well as individuals. In addition, this convention was the first legal document to include the principle of voluntary repatriation. The OAU convention was designed in the post-decolonization era, when many important African leaders aspired to Pan-Africanism. African states were encouraged to open their borders to their brothers and sisters from other parts of the continent; and indeed, many states were then and some still are, welcoming refugees.

In the early 1970's, optimism prevailed. Most African leaders viewed

refugee problems as transitory. Refugees themselves numbered about one million and there was significant regional cooperation in dealing with refugees. However the sheer numbers of refugees, 7.2 million in 1999, combined with the lack of economic development in many African states and the increasing numbers of internal crises and conflicts, have caused a significant change in the willingness and capacities of many African states to host massive numbers of refugees. The emphasis turned to voluntary repatriation in the 1980s, and this has been the primary objective of most refugee projects.

The problem is no longer considered transitory but virtually intractable. And every aspect of the 'African refugee crisis' has changed dramatically. The main source of refugees is no longer wars of independence, but more often brutal civil and guerilla conflicts. Humanitarian refugee situations have become politicized and militarized beyond recognition. Refugees are rarely welcomed as guests these days and states are increasingly following the lead of the regions of the world in closing their doors.¹⁰

The 1950 Statute of UNHCR specifies the mandate of UNHCR, which is the protection and assistance of refugees. Its functions include providing international protection and seeking permanent solutions for the problems of refugees. According to Chapter I, General Provisions of the Statute, "The work of the High Commissioner shall be of an entirely non-political character; it shall be humanitarian and social..."¹¹ The High Commissioner is charged with providing for the protection of refugees by "(p)romoting through special agreements with Governments the execution of any measure calculated to improve the situation of refugees and to reduce the number requiring protection."¹²

The Case of Eastern Zaire

The politicization and militarization of refugees was first seen on a large scale in the Horn of Africa in the

early 1990s, when Ethiopian refugees participated in large scale assaults on humanitarian relief supplies and on the Somali population. The crisis in Eastern Zaire, however, following the genocide in Rwanda in 1994, brought these problems into high relief. The Great Lakes crisis was truly a watershed in refugee issues and has led to serious assessments of refugee policies.¹³

Among the most serious dilemmas facing the aid agencies was the question of separating militarized elements from true refugee populations. In 1994, for example, the dilemma reached a peak with the acknowledgement that armed elements were not only prevalent within the camps, but in some cases actually controlled them. Nevertheless, UNHCR continued to try to feed the refugee populations and tried to help the innocent. The High Commissioner, Sadako Ogata has stressed the difference between humanitarian aid and military or policing activities, which, she has said, is the purview of the Security Council of the United Nations.¹⁴ Others have suggested that in a complex crisis such as that of the Great Lakes, in which armed elements and guerrilla fighters are harbored in camps, once an immediate crisis is addressed, the aid agency should simply pull out. These critics have argued that if the local host government is unable or willing to provide necessary security arrangements and if the Security Council or a regional institution is also unable or unwilling to ensure the security of large refugee populations, humanitarian agencies should not be put in the position of operating in an insecure environment or trying to accomplish objectives which are not part of their mandates. Another significant change apparent during and after the Great Lakes Crisis was the new danger to aid workers. A total of 36 UNHCR staff and workers were killed or lost during the crisis.¹⁵

It was very clear in Eastern Zaire that the camps were occupied by both innocent civilians and armed ele-

ments from the former Rwandan army and the Interahamwe. These armed elements intimidated the refugee populations. Many of the refugees themselves had been forced to leave Rwanda and sometimes even killed when they wanted to return. If these factions did not live within the camps, they lived immediately outside of them. President Nyerere of Tanzania commented on this situation:

I was involved in the diplomatic work to get the international community to take the necessary action to separate the armed groups from the genuine refugees. The international community failed in that. They talked, talked, and talked. And eventually Rwanda decided to do a bit of self help (in helping destroy the camps). And today when we are talking of foreign armies in Congo, people forget about that of the other army – the Interahamwe – which is still there.¹⁶

A debate raged concerning the problem of functioning in this atmosphere of the militarization and politicization of refugee camps. In an Op Ed piece, Alain Destexhe, then Secretary-General of Médecins Sans Frontières, announced that his organization would withdraw from Rwandan refugee camps in Zaire and Tanzania, because aid to refugees was, in effect, supporting killers.¹⁷ He maintained that the only hope of breaking the grip of the armed elements would be an international force to police the camps, requested by many aid agencies. However, a UN official announced that a plan to send an international force to restore order to Rwandan refugee camps in Eastern Zaire was to be shelved for lack of funds and troops.¹⁸ Destexhe noted that "(t)he camps have turned into prisons. International aid is the key to their (armed elements) efforts to resume the war. Food represents power."¹⁹ A UNHCR spokesman responded that the situation was indeed perilous, but that UNHCR could not abandon the innocent.²⁰

The problems of "safe havens," also arose in reference to the post-

Rwandan genocide refugee crisis. Operation Turquoise, a "safe humanitarian zone" created by the French in southwest Rwanda, for Hutus fleeing from the advancing Rwandan Patriotic Front, has generated much international criticism. This unilateral French initiative, endorsed by the Security Council, appeared to provide protection to those who had instigated the genocide. "Armed extremist Hutu militia members operated openly in the zone, continuing to kill Tutsis living there and intimidating those Hutus living in camps who wanted to go home."²¹ In the end, after France had turned over the operation to UNAMIR, violent confrontations between RPA troops and Hutu extremists took place in which perhaps thousands were killed.

One of the operating principles of the agreements between governments and UNHCR is that camps be located away from sensitive borders and that they remain civilian, humanitarian, and neutral. The OAU Refugee Convention also stipulates these provisions. Clearly, the failure of the governments of Zaire and to a lesser extent Tanzania to comply with these provisions, exacerbated the crisis. UNHCR has maintained that the need to move the camps, which was essentially a treaty obligation in Zaire and Tanzania, was ignored. Because the camps were not moved, it became almost impossible to separate civilian refugees from agents of genocide. At first, militia wore uniforms and brandished arms openly. Later, one aid worker notes, uniforms were taken off and arms were hidden, when it became apparent that it was necessary to do that to obtain food and other supplies. In fact, this expert notes that it would have been extremely difficult to distinguish between innocent civilians, the FAR and the extremists. "It was impossible to separate them – they were husbands, sons, and even daughters."²²

One expert has commented that "in such a massive and difficult crisis, the

basic protection concerns are an early review of the refugees' profile; the separating out of fighters and killers; and the location of camps away from sensitive borders."²³ He notes the critical nature of support from key regional and international governments, which in the case of Zaire, was not forthcoming.

After other aid agencies threatened to pull out of the region, an *ad hoc* arrangement was developed. An elite Zairian force, *Contingent Zaïrois pour la Sécurité dans les Camps*, under the auspices of the UN, began what were essentially peacekeeping operations in refugee camps where former militias had been perpetrating violence and intimidation. A multinational team oversaw this contingent.

At the time, apparently, many other options were considered, including the use of contracted security forces, or security firms. Contracted "mercenaries," or "security for hire," have been used in some instances in Africa. The Sierra Leone Secretary of Mines allegedly employed mercenaries at one time - many of them drawn from the former South African army.²⁴ However, the use of contracted private security guards was seen to have substantial drawbacks, not the least of which was prohibitive cost.²⁵

This *ad hoc* arrangement utilizing the Zairian contingent was the first in the history of UNHCR, in which a nation's troops were used as peacekeepers on their own soil. Their orders were not to separate armed elements from civilians or perform disarmament itself, but rather only to maintain order in aid distribution. The UN would spend \$1.3 million to pay for their clothes and equipment.²⁶

UNHCR also paid the salaries of the Zairians during the crisis. The contingent itself was drawn from Mobutu's Presidential Guard, and was considered an "elite force," that was more a "gendarmérie" than a military unit. However, when the camps were attacked by Tutsi rebels in 1996, most of the Zairian contingent fled. Some Zairians were implicated in improper conduct (some apparently went away

with vehicles, etc.), but some tried to "stick it out."²⁷

At the end of 1995, the situation in Eastern Zaire was growing even more precarious. Tutsis, who had lived in the region for 200 years, were often considered foreigners and were harassed by provincial Zairian authorities. Hutu refugees in the area were accused of encouraging Zairian Hutu to attack their neighbours.

A large population of predominantly Hutu refugees from Burundi was also present in eastern Zaire. In late 1996 many were forced back to Burundi by Tutsi-led Zairian armed groups and handed over to Burundi government forces at the border. Hundreds of adult men are believed to have been executed by the Burundi security forces near the border or in the capital, Bujumbura.²⁸

In late 1995, Tutsi rebels began to challenge the Zairian army; and the Zairian government accused the Rwandan government of supporting the insurgency. Meanwhile, incursions by former FAR elements across the border into Rwanda were occurring with greater frequency. In November, 1996, Goma in Zaire fell to the rebels, undoubtedly supported by the Rwandan army. The UN evacuated its relief workers and thousands of refugees scattered, many into the interior forests of Zaire.²⁹ The rebel insurgents, with the aid of the Rwandan army, eventually made their way to Kinshasa, where they met little resistance in assuming control of the government, deposing Mobutu Sese Seko, who died shortly thereafter in a neighbouring state, from prostate cancer.

During this time period, the international community, responding to the chaos in the region and hearing reports that hundreds of thousands of refugees were at serious risk, began to consider military intervention. Canada volunteered to lead an international force into Eastern Zaire. The plan for between 10,000 and 15,000 ground troops from approximately a dozen nations was reluctantly endorsed by other members of the Secu-

rity Council, including the US, which sent a team of 40 military observers to assess the situation. The mission of the force would have been to secure the airfield at Goma and establish a 3 mile-wide corridor from Goma to Rwanda. This would have been a combination of an effort to secure access for humanitarian airlift of supplies and also to encourage Rwandan repatriation.³⁰

When the Tutsis routed the camps in November 1996, however, huge numbers of refugees began an unprecedented massive return to Rwanda. When governments and aid groups met in Stuttgart, enthusiasm for the military option had declined. Laurent Kabila, who had been installed as President of the DRC, proclaimed that "no foreign force" would be permitted on DRC's territory.³¹ By December, 1996, the idea of a UN emergency operation had essentially been ruled out.

The Great Lakes crisis, as it came to be called, focused international attention on the dilemmas faced by UNHCR in coping with massive influxes of refugees into highly unstable areas or into states with little or no administrative capacities. Zaire had little infrastructure or capacity to provide security for the camps. The massive refugee flow upset an already precarious ethnic balance and required resources which the region simply did not have. *Ad hoc* arrangements became necessary as UNHCR negotiated with local authorities. Eventually, under pressure from many aid groups, the Zairian contingent was underwritten by the UN. Neither the regional organizations nor the international community as a whole was willing to provide the resources and troops that would have been necessary to secure the camps and ensure the delivery of supplies. The consequences of this inability to provide security are well-known. The ramifications of the post-1994 crisis have been grave - a state in further collapse in which 22 different entities are participating in what has come to be called Africa's First World War, the loss of thousands

of lives of refugees in the jungles of Central Zaire and a refugee crisis that has spread from the borders of Rwanda all the way into Congo Brazzaville.

A Contrasting Case: Security and Refugees in Northern Iraq³²

In 1991, following the conclusion of the Gulf War, a crisis involving the Kurds located in the northern area of Iraq began to unfold. Encouraged by remarks by President Bush and possibly believing that Iraqi forces had been substantially undermined during the war, various Kurdish elements in this area mounted a revolt. Republican guards, however, quickly entered the area, driving thousands of Kurds into the harsh mountains of Northern Iraq and Southern Turkey. Turkey, unwilling to receive massive influxes of Kurds, reinforced its borders, even, in some instances, firing on Kurdish civilians. In spite of reports that there were more than 450,000 refugees in the mountains, and that the death rate was more than 2000 refugees per day, the international community seemed at first to be immobilized. The United States found itself in a diplomatic quandary—its NATO ally, Turkey, refused to receive the refugees. Yet clearly, the situation, from a humanitarian perspective, was becoming critical.

Secretary of State, James Baker, surveyed the situation from the air and reported to President Bush on the severity of the problem. At the time, the borders between Turkey and Iraq were porous and ill defined, and the U.S. military was not allowed on the ground in the area. Nevertheless, flights into the area were conducted fairly frequently. The U.S. military began to plan contingency operations for a humanitarian operation, should the President order one. In fact, one Sunday, President Bush announced that the U.S. would begin an airdrop of supplies. In the meantime, Mme. Mitterand, wife of France's President Mitterand, had designed a "way point" policy, in which the military would secure way points on mountain passes to facilitate repatriation of the refugees. With this

plan as a starting point, a coalition of NATO nations met in Ankara to discuss the difficulties of securing supplies for and repatriation of the Kurdish refugees. Having seen firsthand the extreme difficulty in airdropping of supplies into the area (weather conditions were dangerous and supplies often did not reach those for whom they were intended), Operation Provide Comfort was born. A "security zone" was created to bring the refugees out of the mountains, utilizing way points set up by the French. Turkey's permission was secured for the staging of the operation. A map was drawn following a natural ridgeline, and an area designated for humanitarian operations.

The Iraqi army was present in very small numbers in this area at that time. However, it was decided that Iraqi tanks and heavy artillery would not be permitted to enter. An army colonel was sent in a jeep with a white flag to speak with the Iraqi general in that area. The general was told that the coalition forces were coming across into this zone, not to occupy it, but to facilitate the return of the Kurds and to supply them with relief aid. The Iraqi general reported that he would relay the message. Subsequent to that, there was a tacit understanding that 'Operation Provide Comfort would proceed. The Iraqi military in the zone were not disarmed or harmed.

UN officials, including Mrs. Ogata, were briefed in Paris prior to the introduction of military force into the area. UNHCR had representation in the zone, and the operation was endorsed under Chapter VII of the UN Charter and Security Council Resolution 688. It called the suppression of the Kurds a threat to "international peace and security in the region," required Iraq to allow humanitarian relief into that area and demanded that Iraq cooperate with the Secretary-General to realize these goals.³³

As a result, aircraft of Turkey, France, the United Kingdom and the United States began air operations from Incirlik Air Base in Turkey to enforce a "no-fly" zone. This zone was originally designed to ensure that relief could be provided to Kurds on the

ground and that forces enforcing distribution of aid and securing return of the refugees would be protected. The demarcation line was the 36th parallel, which to date still delineates the Northern No-Fly Zone in Iraq, which was not discontinued after the refugee crisis was over.

In contrast to the situation in Eastern Zaire, one finds in an analysis of the Kurdish refugee crisis a strong determination on the part of the NATO coalition, led by the United States, to provide security for a humanitarian operation. Because of perceived strategic interests in that area, not the least of which was a desire to prevent the destabilization of Turkey through a massive influx of Kurds and fueled by the "CNN effect," which highlighted the impending humanitarian disaster, the international community took a decisive action. This action was buttressed by legal arguments contained in the Security Council Resolutions. In many respects, this instance foreshadowed operations in Kosovo, in which there were strong and close ties between humanitarian and military operations. Mrs. Ogata noted these ties and also the relationship between political solutions and humanitarian action when she commented that "(t)he Gulf crisis was a major turning point for humanitarian and refugee work.

It gave a new dimension not only to material assistance to victims of conflict and mass displacement, but also to the manner in which political action and humanitarian aid interact with each other."³⁴

Recent Security Provisions in Refugee Operations: West Timor, Kenya, Tanzania, Sudan, and Thailand

Issues concerning refugee safety, neutrality and location of camps and administration of aid in hostile environments continually arise. In Thailand, for example, the Bangkok government has asked UNHCR to expand its assistance to approximately 100,000 refugees from Myanmar who live in camps along a common border. Some of the refugees have been subject to

armed attack and UNHCR has been asked to help move refugees away from sensitive border areas.³⁵

In fact, Thailand represents one of the earliest examples of cooperation between national military forces and humanitarian refugee efforts. In the 1980s, Vietnamese refugees, seeking to reach Thailand by boat, were often subjected to "pirates" in the South China Sea. The Thai Coast Guard, funded by UNHCR, mounted an anti-piracy project to apprehend the hijackers. A liaison unit, equipped by UNHCR and made up of Thais, patrolled an area of the sea, providing some access for victims. In some instances, there were attempts to prosecute some of the pirates.

Currently, an interesting and innovative arrangement is taking place in Tanzania, in which UNHCR is providing material support to Tanzanian police units to help maintain law enforcement and security of camps.³⁶ Incentives in the nature of financial backing of salaries, training and equipment to the police are provided. The refugees consist primarily of Burundians, fleeing the civil war in the DRC and Rwandans. The total refugee population is more than 800,000. Tanzania, which had always been a model of the "welcoming state" for African refugees, had recently changed its open door policy.

In 1995, Tanzania closed its border to approximately 50,000 Rwandan and Burundian refugees. With the advent of a multi-party system, the end of Ujamaa, and a more open press, land became more highly prized and opposition to the "open door" policy more pronounced. The presence of armed elements in the refugee population from Rwanda in 1994 and the fears that the situation in Tanzania might degenerate to resemble that in Eastern Zaire, caused this major shift in Tanzanian policy. According to Tanzania's Deputy Home Affairs Minister, "Protecting and assisting refugees has brought new risks to national security, exacerbated tensions between states and caused extensive damage to the environ-

ment."³⁷ In light of the overwhelming burden of refugee influxes on states that have limited resources, the new program to support dedicated Tanzanian police units in their efforts to provide security to refugee camp operations has been a welcome innovation, that is generally acknowledged as successful.

Some support has also been given from UNHCR to Kenya. UNHCR has experienced severe problems in the Dadaab camp, which borders Ethiopia and is not far from Uganda. There, banditry and unlawfulness have been rampant. Interclan rivalries have fuelled violence in the camps and among the refugee population, which is largely Somalian. Women have been the principal victims and UNHCR reported a disturbingly high incidence of rape, some perpetrated by fellow refugees.³⁸ Because the local enforcement capacity of the Kenyan government was judged to be very weak, support was given to reinforce the police. In addition, there has been an attempt to provide support for the prosecution of rape cases in local courts.³⁹ According to one UNHCR expert, refugee communities are often very large and involve typical law and order issues common to any large community – theft, rape, intimidation, and disorderly conduct. In many cases, the local judicial or law enforcement infrastructure is unable to cope with the new security problems generated within the camps. For example, jail space may be very limited, or the judicial structure weak or non-existent.⁴⁰

Recent incidents in the civil war in Sudan have further highlighted the dilemmas facing humanitarian aid agencies concerning neutrality. In February 2000, the SPLA army, fighting for autonomy for the southern half of Sudan, demanded that relief agencies sign a "Memorandum of Understanding (MOU)" which would have the effect of recognizing the SPLA's jurisdiction over aid operations, including vehicles, evacuation and local hiring. At first, international aid agencies uniformly condemned

this memorandum, which would have effectively denied the agencies the neutrality which they have long considered essential to their work. However, as the March 1 deadline approached, many groups decided to sign the MOU, fearing that if they withdrew from the area, the vulnerable population would suffer. The EU's humanitarian office has taken a hard line against the memorandum and has criticized those agencies and NGOs that have acceded to it. The US government, in contrast, has decided to support the individual choices of NGOs. This example is representative of the kinds of issues concerning neutrality facing the humanitarian relief organizations.

In October 1999, Mrs. Ogata commented on the problems of the displaced in East and West Timor. "Since the arrival of the InterFET multinational force, UNHCR has worked in East Timor as part of an inter-agency team in bringing protection and assistance to displaced people... A UNHCR emergency team is now in Kupang, but access to refugees continues to be difficult and sporadic... it is the protection and security situation that is of more serious concern. There are many reports of people having been forced by militias to leave East Timor. There are reports of people who may be forcibly kept, hostage-like, in West Timor." Mrs. Ogata continued by stressing that "the Indonesian government must provide all necessary security measure to secure both refugees and humanitarian agencies, maintain the civilian character of refugee sites and facilitate humanitarian activities."⁴¹

Debates Over Policy Alternatives

Questions concerning security provisions involving refugees and humanitarian relief workers have become critical issues for debate. In 1998, Secretary-General Kofi Annan was directed by the Security Council to report on African conflict and the promotion of peace in the continent. Sections 53-55 of his report spoke directly to these issues. "The potential threat to African States posed by the movement of large

numbers of refugees when they are mingled with combatants must be acknowledged. In the area of the Great Lakes, the movement of large numbers of Rwandan refugees into neighboring countries became a destabilizing factor for those countries, as well as for the new Government in Rwanda."⁴²

He recommended that refugee camps and settlements be kept free of any military presence or equipment, including arms and ammunition; that the neutrality and humanitarian character of the camps and settlements be scrupulously maintained; and that refugees be settled at a reasonable distance from any border, in camps of limited size. He noted that "some of the requirements relating to the protection of refugees and the support of States hosting large refugee populations are beyond the capacity of humanitarian providers. Many relate to matters of international peace and security for which the Security Council has primary responsibility."⁴³ In an important policy recommendation, the report concludes:

I therefore urge the establishment of an international mechanism to assist host government in maintaining the security and neutrality of refugee camps and settlements. Such a mechanism might encompass training, logistics, financial support, the provision of security personnel and the monitoring of national security arrangements.⁴⁴

He notes later in the report that humanitarian assistance often raises difficult challenges. "Humanitarian assistance cannot stop a conflict and the diversion or abuse of humanitarian assistance may well prolong it."⁴⁵

Mrs. Ogata, in responding to the Secretary-General's Report on Africa, noted also that the "mixed nature of groups hosted in refugee camps – refugees coexisting with fighters, criminals and agents of genocide, has been the greatest challenge to the work of my Office throughout the Great Lakes crisis."⁴⁶ She comments that maintaining the civilian character of refugee camps is the responsibility of host governments. However, she notes

that "different situations may require a variety of responses." She recommends a "ladder of options," in which the deployment of international police of military forces would be the "last resort."

In situations in which it may be difficult for host governments to implement the required principles, international assistance is needed in building their capacity to enforce law, for example through the provision of equipment and other logistical support for police forces... There are situations, however, in which building or supporting local capacity are inadequate to maintain the civilian character of camps. Separation of refugees from criminals can then become an important security requirement and there may be no other option but to deploy international police or military forces... I hope that the Security Council will give concrete follow-up to this recommendation and will examine the possibility – for example – to create a stand-by international force in support of humanitarian operations.⁴⁷

Debate culminating in Security Council Resolution 1208 followed these reports and comments in November 1998. The Resolution states that having considered the Secretary-General's report and after affirming the primary responsibility of States hosting refugees to ensure the security, civilian and humanitarian character of refugee camps and settlements, a range of measures by the international community is needed to share the burden borne by African States hosting refugees and to support their efforts including in the areas of law enforcement, disarmament of armed elements, curtailment of the flow of arms in refugee camps and settlements, separation of refugees from other persons who do not qualify for international protection afforded to refugees... and demobilization and reintegration of former combatants. These measures could include "training, logistical and technical advice and assistance, financial support, the enhancement of national law enforcement mechanisms, the provision or supervision of security

guards and the deployment in accordance with the Charter of the United Nations of international police and military forces."⁴⁸

Progress in addressing these issues was further aided through the deliberations of the Executive Committee of the High Commissioner's Programme in January 1998. This report, "The Security of Civilian and Humanitarian Character of Refugee Camps and Settlements," noted not only the problems mentioned above, but also that "insecurity can also arise as a result of several other factors, such as conflict amongst different groups within the refugee population, conflict between refugees and the local population, common crime and banditry and in certain cases, the deployment of undisciplined police and security forces. In many instances, camps are located too close to international borders."⁴⁹

The report lists soft, medium, and hard options, which reflect the measures that can be taken to ensure the security and neutrality of camps. The following are some of the principal options suggested.⁵⁰

Soft Options: Preventive Measures and Cooperation with National Law Enforcement Authorities

- 1) Location of camps: At a reasonable distance from borders;
- 2) Size of Camps: Not to exceed 20,000, as recommended in UNHCR's Emergency Handbook;
- 3) Election of refugee representatives committed to camp neutrality;
- 4) Distribution of aid directly to individuals and families and not through leaders;
- 5) Permanent presence of international humanitarian staff in or near camps;
- 6) Assistance to host countries to carry out refugee status determination;
- 7) A strategy of cooperation with national law enforcement authorities when resources of host states are overwhelmed by security problems;
- 8) Developing targeted training for the cooperating national forces, with a

monitoring role over basic policing standards.

Medium Options: Deployment of Civilian or Police Monitors

1) Utilization of private security firms, direct hiring of security personnel and the deployment of civilian or police monitors (Report notes reservations about this option);

2) Deployment of multi-national civilian observers to conduct monitoring missions, which would report through Secretary-General to the Security

Council on the presence of armed elements in refugee camps;

3) Deployment of an international police force by the United Nations or by regional organizations, which could be authorized and mandated by the Security Council and comprised of police units contributed by Member States.

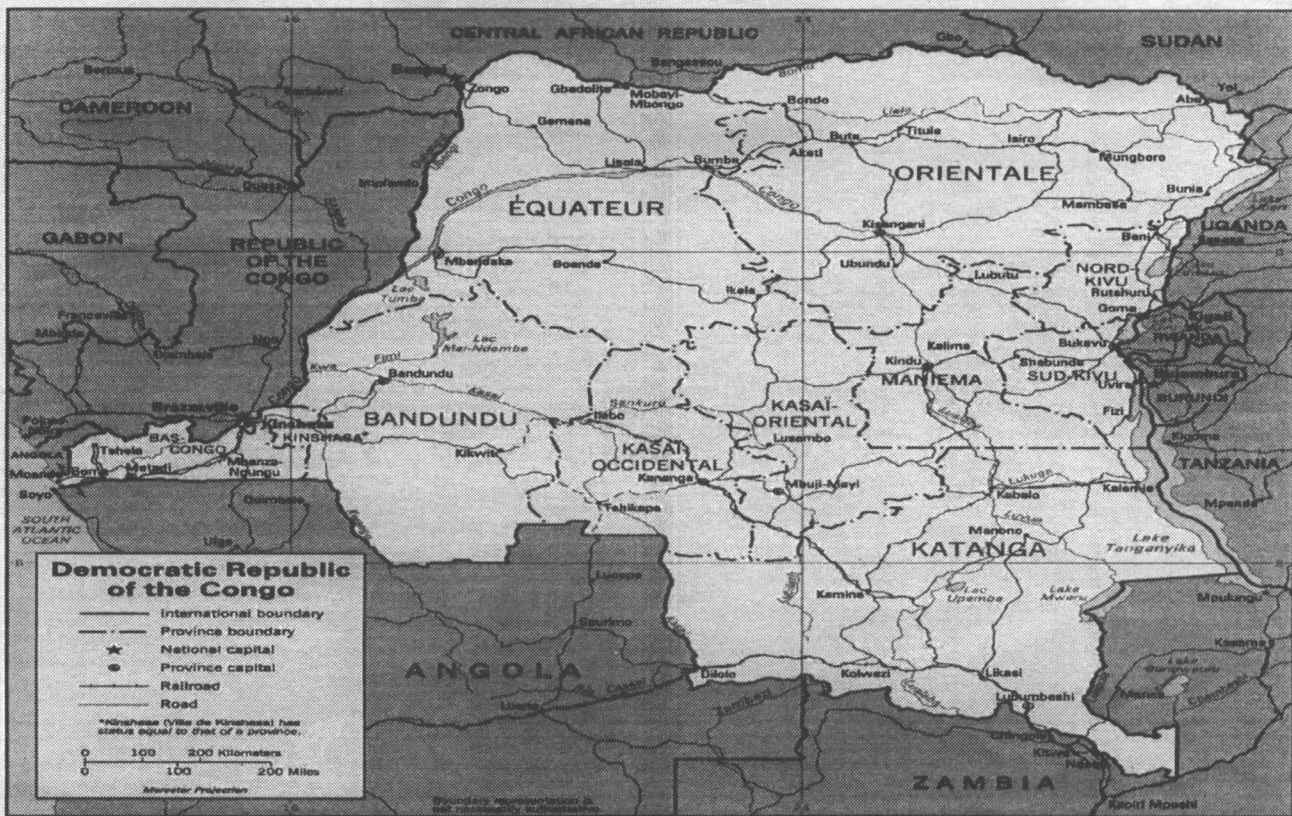
Hard Options: Military Deployment

Deployment of a UN Peacekeeping Operation or that of a multinational or regional force under Chapter VI or

Chapter VII. This would require the development of Stand-by arrangements of military and police units and personnel trained for humanitarian operations.

These options were expanded upon in the report of the Executive Committee of 14 September 1999, "Strengthening Partnership to Ensure Protection also in Relation to Security."⁵¹ In reference to partnership between states, UN agencies and other actors, the report notes that "one such approach (similar to the current Danish Refugee Coun-

Appendix A



CIA map of the Democratic Republic of the Congo. Available online at http://www.lib.utexas.edu/Libs/PCL/Map_collection/zaire.html.

cil/Norwegian Refugee Council stand-by arrangement), foresees the identification of national police and/or military entities which may be rapidly deployed to provide security in camps on an emergency basis.⁵²

In the former Yugoslav Republic of Macedonia, Swedish police officers were partners with local police to provide security in camps. Another option would be the use of stand-by arrangements such as those of the Department of Peacekeeping Operations. Yet another might be a CIVPOL model used in Bosnia and Kosovo.⁵³

The refugee operations of UNHCR in Kosovo required close cooperation with the military. The relationship between NATO forces and UNHCR was one of the subjects examined by the UNHCR Evaluation and Policy Analysis, "The Kosovo Refugee Crisis: An Independent Evaluation of UNHCR's Emergency Preparedness and Response."⁵⁴ Security problems during this crisis prompted some criticism of UNHCR. For example, a British Parliamentary report criticized UNHCR's role on security declaring that "it is not for NATO to be involved in such work, but rather UNHCR." UNHCR responded that "for UNHCR, a central lesson of the Great Lakes experience, as of experience of the problem in other situations of unresolved conflict, is that the humanitarian organizations alone cannot, and should not, be expected to address these issues. UNHCR itself cannot ensure that refugee camps are kept free of KLA interference, presence or control..."⁵⁵ The report noted that the presence of NATO forces in and around the camps in Northern Albania, where some guerrillas were present, provided a sense of relative security to the refugees. The ambiguity of UNHCR's position is evident in the following section 498 of the Report:

...UNHCR is willing to consider collaboration with military units in order to provide refugees with security...it is important to stress that the UNHCR Statute explicitly provides that the agency's role is supposed to be Humanitarian and non-political.⁵⁶

Recent Debate and Option Generation

Much attention has been focussed on the relationship between security issues and refugee concerns, particularly since the Great Lakes crisis after 1994. The ensuing debate has generated important options for coping with the challenges of refugee security issues.⁵⁷ Options involving local security forces, with the recognition that local governments often lack the capacity to deal with complex refugee emergencies, have been suggested along with options of "encadrement," or the utilization of trained and monitored cadres from the refugee community itself. The enhancement of local government security forces through bilateral or multilateral assistance might reduce dependency on the international community. CIVPOL units, typically formed of police volunteers can prevent violations of human rights by local security forces, although they are generally not equipped to deal with demilitarization programs. Private security cadres might be considered, along with international constabulary, or armed police units, to support humanitarian operations.

Presidential Decision Directive PDD 71, "Strengthening Criminal Justice Systems in Support of Peace Operations," directed the State Department to establish a new program that would train civilian police for international peacekeeping missions around the world. Civilian police would "provide a sense of security and perform tasks that heavily armed troops are not well trained to handle."⁵⁸ Although the relationship of this pool of police to humanitarian operations has yet to be spelled out, the Presidential Directive indicates a new awareness on the part of the U.S. government of the importance of these kinds of security arrangements.

Conclusion

As the twenty-first century begins, the international community confronts ever more numerous crises involving refugees. Among the most difficult is-

issues challenging UNHCR are those involving security. Simply ensuring access to aid supplies can be an overwhelming task in failed states, or those engulfed in conflict. Ensuring the civilian nature of the refugee camps themselves has proved a formidable challenge, as has the necessity of providing minimum security standards within the camps in areas where host governments do not have the will or capacity to do so. Humanitarian relief workers increasingly find themselves at ground zero in violent conflicts and retaining the neutrality required by UNHCR's mandate has proven to be a delicate undertaking. Nevertheless, it is encouraging to witness the debate that has taken place since 1994, which, though not without finger pointing and scapegoating, has produced a constructive list of options for consideration. However, the most complete list of options can only be useful if it is backed by the political will of the international community to respond quickly and firmly to future crises. The challenge is whether the lessons of the past will provide wisdom for the future. ■

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31. *New York Times*, 27 November 1996, A 12: 1.
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Feedback? Questions? Remarks?

We welcome them all.

Send to: refuge@yorku.ca

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

Anthony H. Richmond

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

*Anthony H. Richmond, F.R.S.C., is Emeritus Professor of Sociology and Senior Scholar, Centre for Refugee Studies, York University, Toronto. He is author of *Global Apartheid: Refugees, Racism and the New World Order* (Toronto: Oxford University Press Canada, 1994).*

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.¹

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.² 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%)
TOTAL APPLICATIONS	32,500	46,015	71,160
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.³ 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%)
TOTAL DECISIONS	43,660 (100%)

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.⁴ 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.⁵

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.⁶

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.⁷ 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.⁸ 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 Act⁹ 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.¹⁰ 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.¹¹ 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.¹²

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.¹³ 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.¹⁴ 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.¹⁵ 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."¹⁶ 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.
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.

Available from: Centre for Refugee Studies Fax: 416-736-5837 • Email: refuge@yorku.ca

Refugee Rights:

Report on a Comparative Survey By James C. Hathaway and John A. Dent

Toronto: York Lanes Press, 1995;
ISBN 1-55014-266-6; 82 pages;
\$11.95

Are visa controls intended to keep refugees from reaching an asylum country legal? Can asylum-seekers legitimately contest conditions of detention? At what point do refugees have the right to work, or to claim social assistance?

These are among the many issues addressed by *Refugee Rights: Report on a Comparative Survey*, a ground-breaking analysis of the human rights of refugees around the world. Working in collaboration with thirty renowned legal experts from Europe, Africa, Asia, Oceania, North America, and Latin America, Professor James Hathaway, Osgoode Hall Law School, York University, and John Dent, Senior Research Associate, International Refugee Rights Project, Osgoode Hall Law School, York University, analyze the international legal instruments that set the human rights of refugees. By grounding their analysis in real-life challenges facing refugees today, Hathaway and Dent have produced a book as valuable to activists as to scholars.

Refugee Rights will provoke debate on the adequacy of the international refugee rights regime. It is essential reading for everyone concerned to counter threats to the human dignity of refugees.

PATHS TO EQUITY:

Cultural, Linguistic, and Racial Diversity in Canadian Early Childhood Education

By Judith K. Bernhard, Marie Louise Lefebvre, Gyda Chud, and Rika Lange

Toronto: York Lanes Press ISBN 1-55014-277-1; 112 pages, size 8.5x11;
\$18.95

Paths to Equity is based on an extensive nationwide study of 77 childcare centres in Montreal, Toronto, and Vancouver on the cultural, linguistic, and racial diversity in Canadian Early Childhood Education (ECE). The report presents the results this study on how the ECE system is responding to the increasing diversity of contemporary Canadian society.

In this ground-breaking study, the authors have addressed teachers' views on diversity in the education programs; parents' difficulties in collaborating within the current education system; teachers' difficulties in understanding many "ethnic" parents; desire of many parents for better communication with staff, preferably in their own languages, and for more information about their individual children, and chances for effective input; and the evidence of some continuing problems with racism, irrespective of the good intentions of centre staff.

Paths to Equity will be of interest to ECE faculty, policymakers, centre supervisors and staff and others interested in the inclusion of diversity content in professional education programs.

Reports:

Somali Refugees in Toronto: A Profile

By Edward Opoku-Dapaah, 1995
ISBN 1-55014-278-x, 130 pp., \$12.95.

This is the first comprehensive study of Somali refugees in Toronto. It examines the social, residential, and linguistic characteristics of Somalis, their participation in the local economy, and the activity of Somali community organizations. The report also contains valuable suggestions and recommendations concerning suitable and more efficient service delivery to this community.

- **Cambodian Refugees in Ontario: An Evaluation of Resettlement and Adaptation**

By Janet McLellan, 1995
ISBN 1-55014-267-4, 142 pp., \$12.95.

This major study of Cambodian refugees in Ontario examines the effects of various forms of sponsorship on Cambodian resettlement. It also focuses on the linguistic, economic, educational, training and social dimensions of the whole process of adaptation. The delivery of services by governmental and NGO agencies as well as the effects of the past traumatic experiences of genocide and mass starvation on Cambodian refugees are fully discussed.

- **Refugee Families and Children: A Directory for Service Providers in Metro Toronto**

Compiled by
John Morris and Lydia Sawicki, 1995
ISBN 1-55014-285-2, 39 pp., \$6.95.

This directory is designed for service providers who work with refugee families and children in Metro Toronto. Its aim is to improve service provision through networking and the sharing of training opportunities.

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Fax: 416-736-5837

Email: refuge@yorku.ca



Refuge

Centre for Refugee Studies
Suite 322, York Lanes
York University
4700 Keele Street, Toronto
Ontario, Canada, M3J 1P3
Phone: 416- 736-5663
Fax: 416- 736-5837
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CALL FOR PAPERS

THEMATIC NETWORK 'WORKING ON THE FRINGES: IMMIGRANT BUSINESSES, ECONOMIC INTEGRATION AND INFORMAL PRACTICES' PUBLIC POLICY AND THE INSTITUTIONAL CONTEXT OF IMMIGRANT BUSINESSES LIVERPOOL, UNITED KINGDOM, 22-25 MARCH 2001

Proposals are invited for papers to be delivered at this international conference, sponsored by the European Union under its Targeted Socio-Economic Research programme.

This conference is the third in a series. The first two in Amsterdam (October 1999) and Jerusalem (June 2000) reviewed existing national research and the socio-economic context of immigrant businesses, respectively. Prospective participants are therefore asked to emphasise legal, institutional and public policy issues in their responses to this call. Please be as specific as possible about the ways in which the situation in the country or countries your paper considers is similar to or distinct from that of other countries.

Please send an abstract of your paper (300-400 words) by email to Jan Rath (email: rath@pscw.uva.nl) or Giles Barrett (email: g.a.barrett@livjm.ac.uk). Please do this as soon as possible, but in any case not later than **September 1, 2000**.

We will notify you if your paper can be accepted by 30 September 2000. Contributions are encouraged from any of the social sciences, from business studies, from policy disciplines and from workers in national, regional and local government. (To this end please forward this invitation to others you feel may have something to contribute.) **Costs.** There will be no conference fee for those delivering papers. Subsistence and accommodation will be provided, travel costs will be supported as fully as airfares and budgetary constraints allow. Further information on the conferences and the international network can be found on the Internet at: <http://home.pscw.uva.nl/rath/imment/tserthird.htm>

E-mail Giles Barrett (g.a.barrett@livjm.ac.uk) or Jan Rath (rath@pscw.uva.nl)